



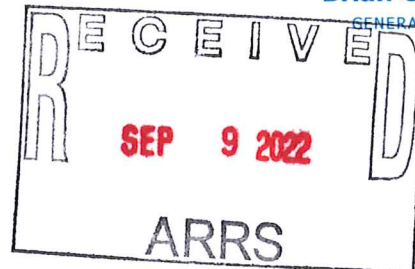
Andy Beshear
GOVERNOR

**FINANCE AND ADMINISTRATION CABINET
OFFICE OF GENERAL COUNSEL**

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Holly M. Johnson
SECRETARY

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GENERAL COUNSEL



September 9, 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: **200 KAR 1:016**, Data Breach Notification Forms

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 200 KAR 1:016, the Finance and Administration Cabinet proposes the attached amendment to 200 KAR 1:016, Data Breach Notification Forms.

Sincerely,

/s/ Cary B. Bishop
Assistant General Counsel
Office of General Counsel
Finance and Administration Cabinet
200 Mero Street, 5th Floor
Frankfort, KY 4622

9/6/22

SUGGESTED SUBSTITUTE

FINANCE AND ADMINISTRATION CABINET Commonwealth Office of Technology

200 KAR 1:016. Data breach notification forms.

RELATES TO: KRS **61.931**, 61.932, 61.933

STATUTORY AUTHORITY: KRS 42.726(3)(2)(b), 61.932(2)(b)2., 61.933

NECESSITY, FUNCTION, AND CONFORMITY: KRS 42.726(3)(2)(b) authorizes the Finance and Administration Cabinet, Commonwealth Office of Technology (~~[""]~~COT~~[""]~~) to promulgate administrative regulations relating to COT's duties. KRS 61.933 specifically authorizes COT to promulgate administrative regulations prescribing the notification form to be used by state agencies and nonaffiliated third parties when they suspect or have determined that a breach of personal information has occurred with respect to personal information that the state agency or nonaffiliated third party maintains or otherwise possesses on behalf of another agency. KRS 61.932(2)(b)2. specifically authorizes COT to promulgate administrative regulations prescribing the form to be used if a law enforcement agency has requested a delay in notification of a security breach to allow for investigation of the breach. **This administrative regulation establishes the data breach notification forms.**

Section 1. Administrative – Required Forms.

- (1) Finance Form FAC-001, Suspected and Determined Breach Notification Form, or a form substantially similar thereto, shall be completed by a state agency or nonaffiliated third party to provide written notification of a suspected or determined security breach of personal information collected, maintained, or stored by the agency or nonaffiliated third party.
- (2) Finance Form FAC-002, Delay Notification Record, or a form substantially similar thereto, shall be completed by a state agency or nonaffiliated third party if the notification of a suspected or determined breach of personal information collected, maintained, or stored by the agency or nonaffiliated third party has been delayed pursuant to a request from a law enforcement agency or with the approval of the Office of the Attorney General. **All documentation related to the delay shall be attached to the form.**

Section 2. Incorporation by Reference.

- (1) The following **material is**~~[materials are]~~ incorporated by reference:
 - (a) "Finance Form FAC-001, Suspected and Determined Breach Notification Form", **September 13**~~[Effective Date June 15]~~, 2022; and
 - (b) "Finance Form FAC-002, Delay Notification Record", **September 13**~~[Effective Date June 15]~~, 2022.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Commonwealth Office of Technology, 101 Cold Harbor Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m., and on the Finance and Administration Cabinet's Web site, <https://finance.ky.gov/office-of-the-secretary/Pages/finance-forms.aspx>.

CONTACT PERSON: Robin Goodlett, Administrative Specialist III, Office of General Counsel, Finance and Administration Cabinet, 200 Mero Street, 5th Floor, Frankfort, Kentucky 40622, phone (502) 564-6660, fax (502) 564-9875, email RobinM.Goodlett@ky.gov.

Changes to Material Incorporated by Reference: **FAC-001**

Each page, top right corner:

Insert "Revision Date: 09/13/2022".

Delete "Effective Date: 06/15/2022".

Page 2, grey box:

After "KRS 61.933(1)(a)", insert "2".

Delete "(2)".

Page 3, Section 4, References:

For KRS 42.726, after "?id=", insert "53177".

Delete "50544".

FAC-002

Page 1, top right corner:

Insert "Revision Date: 09/13/2022".

Delete "Effective Date: 06/15/2022".

Page 1, References:

For KRS 42.726, after "?id=", insert "53177".

Delete "50544".

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

200 KAR 1:016

Contact Person: Robin Goodlett, Administrative Specialist III, Office of General Counsel, Finance and Administration Cabinet, 200 Mero Street, 5th Floor, Frankfort, Kentucky 40622. Phone: (502) 564-6660. Fax: (502) 564-9875.

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No local government entities will be affected, but COT and any state agency which suspects or experiences a security breach of personal information will be required to submit the required forms.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 42.726; KRS 61.932; and KRS 61.933.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? None.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? None.

(c) How much will it cost the regulated entities for the first year? None.

(d) How much will it cost the regulated entities for subsequent years? None.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-): None.

Expenditures (+/-): None.

Other Explanation: N/A.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. This administration regulation will not have a major economic impact.



Finance & Administration Cabinet Suspected and Determined Breach Notification Form

Section 1

(To be completed within 72 hours of determination/notification of security breach.)

1. Indicate whether the required notifications have been made in writing:

- ☐ Commissioner of the Kentucky State Police;
- ☐ Auditor of Public Accounts;
- ☐ Attorney General;
- ☐ Secretary of the Finance & Administration Cabinet (if applicable);
- ☐ Commissioner of the Department for Local Government (if applicable);
- ☐ Commissioner of the Kentucky Department of Education (if applicable); and
- ☐ President of the Council on Postsecondary Education (if applicable)

2. Date Security Breach Determined: _____

3. Date and Time of Notification to Above-Listed Agencies: _____

4. Agency Name: _____

5. Agency Contact: _____

6. Agency Contact Phone Number: _____

7. Agency Contact Email: _____

8. Third-Party Security Breach? ☐ YES ☐ NO

a. If YES, Third-Party Name: _____

b. If YES, Date Third-Party Notified Agency: _____



Section 2

(To be completed within 48 hours of conclusion of investigation required by KRS 61.933(1)(a)2.)

1. Indicate whether the required notifications have been made in writing:

- ☐ Commissioner of the Kentucky State Police;
- ☐ Auditor of Public Accounts;
- ☐ Attorney General;
- ☐ Secretary of the Finance & Administration Cabinet (if applicable);
- ☐ Commissioner of the Department for Local Government (if applicable);
- ☐ Commissioner of the Kentucky Department of Education (if applicable);
- ☐ President of the Council on Postsecondary Education (if applicable);
- ☐ Commissioner of the Department for Libraries and Archives (if applicable); and
- ☐ Commonwealth Office of Technology (if applicable)

2. Was personal information breached? ☐ YES ☐ NO

a. If YES, Explain: _____

b. Total Number of Individuals Impacted: _____

c. Date Affected Individuals Notified: _____

d. Indicate whether the required notices have been provided:

- | | |
|--|--|
| <input type="checkbox"/> Web Posting | <input type="checkbox"/> Regional or Local Media |
| <input type="checkbox"/> Major Statewide Media (if applicable) | <input type="checkbox"/> Mail/Letter |
| <input type="checkbox"/> Email | <input type="checkbox"/> Telephone |
| <input type="checkbox"/> Other (explain): _____ | |

3. Were all consumer credit reporting agencies notified? ☐ YES ☐ NO

a. If YES, When: _____

4. Do any federal security breach compliance requirements apply? ☐ YES ☐ NO

a. If YES, Explain: _____



Section 3

(To be completed if notification delayed pursuant to KRS 61.933(3).)

1. Was notification delayed? ☐ YES ☐ NO
2. If YES, indicate why notification delayed and attach a completed FAC-002:
 - ☐ Law enforcement investigation. KRS 61.933(3)(a).
 - ☐ Agency determined that the measures necessary to restore the reasonable integrity of the data system could not be implemented within the timeframe established and would delay the breach determination. Delay was approved, in writing, by the Office of the Attorney General. KRS 61.933(3)(b).

Section 4

(To be completed at the conclusion of any resolution process.)

1. What actions were taken to resolve the security breach? _____

2. What actions, if any, have been taken to prevent future security breaches? _____

3. What actions are taken as a matter of course to protect personal data from security breaches?

4. Was there any quantifiable financial impact to the Agency reporting the security breach?

References:

KRS 42.726 – <https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=53177>

KRS 61.931 to 61.934 – <https://apps.legislature.ky.gov/law/statutes/chapter.aspx?id=37294>



Finance & Administration Cabinet Delay Notification Record

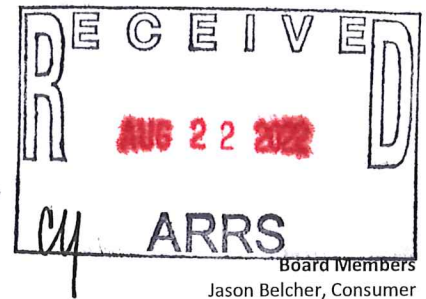
All documentation relating to any delay in security breach notification must be attached to this record.

1. Agency Name: _____
2. Agency Contact: _____
3. Agency Contact Phone Number: _____
4. Agency Contact Email: _____
5. Third-Party Security Breach? ☐ YES ☐ NO
 - a. If YES, Third-Party Name: _____
6. Was notification delayed due to a law enforcement investigation? ☐ YES ☐ NO
 - a. If YES, Law Enforcement Agency That Investigated: _____
 - b. If YES, Date Law Enforcement Notified Agency of Investigation: _____
7. Was notification delayed because the Agency determined that the measures necessary to restore the reasonable integrity of the data system could not be implemented within the timeframe established and would delay the breach determination? ☐ YES ☐ NO
 - a. If YES, Date Request Submitted to the Office of the Attorney General: _____
 - b. If YES, Date Request Approved by the Office of the Attorney General: _____

References:

KRS 42.726 – <https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=53177>

KRS 61.931 to 61.934 – <https://apps.legislature.ky.gov/law/statutes/chapter.aspx?id=37294>



Andy Beshear
Governor

KENTUCKY BOARD OF PHARMACY

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Executive Director
Christopher P. Harlow, Pharm. D.

August 22, 2022

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

Re: 201 KAR 2:015. Continuing education.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 2:015, the Board of Pharmacy proposes the attached staff suggested substitute for 201 KAR 2:015.

Sincerely,

Christopher Harlow, PharmD
Executive Director
Kentucky Board of Pharmacy

Final, 6-27-2022

SUGGESTED SUBSTITUTE

**BOARDS AND COMMISSIONS
Board of Pharmacy**

201 KAR 2:015. Continuing education.

RELATES TO: KRS 315.010, 315.065, 315.120, 315.121

STATUTORY AUTHORITY: KRS 315.065, 315.110(1), 315.191(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.065(2) and (3) ~~require~~requires~~require~~ the Board of Pharmacy to establish continuing education requirements for pharmacists. This administrative regulation establishes requirements for the continuing pharmacy education of registered pharmacists and requires all registered pharmacists holding a license issued by the board to participate in continuing pharmacy education as a means of renewal of their licenses.

Section 1. Definitions.

- (1) "Continuing education unit" or "CEU" is defined by KRS 315.010~~(8)~~~~(7)~~~~(8)~~.
- (2) "Sponsor" means a person, school, association, company, corporation, or group who wishes to develop a continuing education program.

Section 2.

- (1) Continuing education hours for credit shall be relevant to the practice of pharmacy and free of commercial bias.
- (2) Continuing education hours shall be approved if approved by:
 - (a) The Accreditation Council for Pharmacy Education (ACPE); or
 - (b) The board.

Section 3.

- (1) Continuing education sponsors shall submit an Application for Provider CE Approval to the board:
 - (a) At least sixty (60) days prior to the presentation date, if pre-approval is sought; or
 - (b) Between sixty (60) days prior and thirty (30) days after the presentation date, if pre-approval is not sought.
- (2) Program changes shall be submitted to and approved by the board, or the approval of the program shall be void.
- (3) Continuing education credit shall be given only once for each program per participant.
- (4) Sponsors shall retain a file of each participant's program completion for three (3) years.
- (5) Board approval of each program shall expire three (3) years after the date of approval.

Section 4.

- (1) Pharmacists requesting approval of individually obtained continuing pharmacy education shall submit an Application for Pharmacist CE Approval to the board within thirty (30) days of completion of the educational presentation.
- (2) The board shall notify the requesting pharmacist whether the application request has been approved or denied.
- (3) Continuing education that has not been approved by ACPE or the board shall not be used to meet continuing education requirements for renewal or issuance of a license.

Section 5.

- (1) A pharmacist shall:
 - (a) Complete a minimum of one and five-tenths (1.5) CEU (fifteen (15) contact hours) annually between January 1 and December 31; ~~[and]~~
 - (b) For licensing years 2023 through 2028, one (1) contact hour of the fifteen (15) contact hours shall be on the opioid epidemic or opioid use disorder; and; ~~[and];~~
 - (c) Not transfer or apply excess hours or units for future years.
- (2) A pharmacist may be granted a deferral on a year-to-year basis at the determination~~[discretion]~~ of the board for illness, incapacity, or other extenuating circumstances.
- (3) A pharmacist first licensed by the board within twelve (12) months immediately preceding the annual renewal date shall be exempt from the continuing pharmacy education provisions for that year.
- (4) Pharmacists shall:
 - (a) Keep valid records, receipts, and certifications of continuing pharmacy education programs completed for three (3) years; and
 - (b) Submit that documentation to the board upon~~[en]~~~~[upon]~~ request.
- (5) Submission of a fraudulent statement or certificate concerning continuing pharmacy education shall subject the pharmacist to discipline as provided in KRS 315.121.

Section 6. Each pharmacist~~[All pharmacists]~~ shall keep the board informed of the pharmacist's~~[their]~~ correct address~~[addresses]~~.

Section 7. CEU may be transferred from another state to Kentucky if the transfer state recognizes Kentucky CEU.

Section 8. A licensee who failed to timely renew his or her license shall:

- (1) Comply with the applicable provisions of KRS 315.120(2) or (3); and
- (2) Complete fifteen (15) hours of continuing education for each year the applicant failed to renew his or her license, up to a maximum of seventy-five (75) hours.

Section 9. Incorporation by Reference.

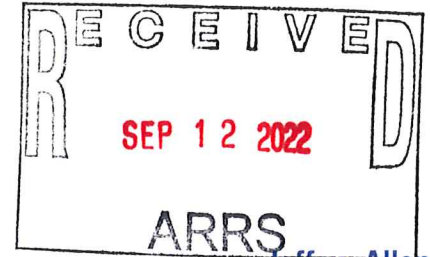
- (1) The following material is incorporated by reference: ~~(a)~~ [following material is incorporated by reference:]
 - ~~[(a)]~~ "Application for Provider CE Approval", June 2018; and (b)~~], is incorporated by reference~~~~]; and~~~~];~~
 - ~~(2)~~~~[(b)]~~ The "Application for Pharmacist CE Approval", June 2018. ~~(2)~~~~], is incorporated by reference.~~
 - ~~(3)~~~~[(2)]~~ This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, 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://pharmacy.ky.gov/Forms/Pages/default.aspx>.

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



BOARD OF DENTISTRY

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Andy Beshear
Governor

Jeffrey Allen
Executive Director

Sept. 09, 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 8:550**. Anesthesia and Sedation

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 8:550, the Kentucky Board of Dentistry proposes the attached amendment to 201 KAR 8:550.

Sincerely,

Jeff Allen
Executive Director
Kentucky Board of Dentistry

Final, 9/8/2022

SUGGESTED SUBSTITUTE

BOARDS AND COMMISSIONS
Board of Dentistry
(Amended After Comments Version)

201 KAR 8:550. Anesthesia and sedation related to dentistry.

RELATES TO: KRS 313.035, **313.060**

STATUTORY AUTHORITY: KRS 313.035(1)

NECESSITY, FUNCTION AND CONFORMITY: KRS 313.035(1) requires the board to promulgate administrative regulations related to anesthesia and sedation permits. The administration of local anesthesia, sedation, and general anesthesia is an integral part of dentistry and the foundation of pain control. This administrative regulation establishes requirements for permits to perform sedation or anesthesia associated with dentistry.

Section 1. Definitions. (1) **"ADA" means the American Dental Association["Analgesia" means the diminution or elimination of pain].**

(2) **"Analgesia" means the diminution or elimination of pain["ADA" means American Dental Association].**

(3) "ASA" means American Society of Anesthesiologists.

(4) "Continual" means repeated regularly and frequently in steady succession.

(5) "Continuous" means prolonged without any interruption.

(6) "Deep sedation" means a drug-induced depression of consciousness during which patients cannot be easily aroused, but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function could be impaired. The patient might require assistance in maintaining a patent airway, and spontaneous ventilation could be inadequate. Cardiovascular function is usually maintained.

(7) "Enteral" means a technique of administration in which the agent is absorbed through the gastrointestinal (GI) tract or oral mucosa (oral, rectal, or sublingual).

(8) "General anesthesia" means a drug-induced loss of consciousness during which a patient is not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation could be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function might be impaired.

(9) "Immediately available" means onsite at the facility and available for immediate use.

(10) "Local anesthesia" means the elimination or diminution of sensation, especially pain, in one (1) part of the body by the topical application or regional injection of a drug.

(11) "Maximum Recommended Dose" or "MRD" means the maximum FDA-recommended dose of a drug for minimal sedation, as printed in FDA-approved labeling for unmonitored home use.

(12) "Minimal sedation" means a minimally depressed level of consciousness produced by a pharmacological method that retains the patient's ability to independently and continuously maintain an airway and respond normally to tactile stimulation and verbal command. Although cognitive function and coordination might be modestly impaired, ventilatory and cardiovascular functions are unaffected.

(13) "Moderate sedation" means a drug-induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. Intervention is not required to maintain a patent airway, and spontaneous ventilation

is adequate. Cardiovascular function is usually maintained. This term includes the enteral administration of drugs exceeding the maximum recommended dose during a single appointment.

(14) "Nitrous oxide sedation" or "N₂O sedation" means a technique of inhalation sedation with nitrous oxide and oxygen.

(15) "Operating dentist" means a licensed dentist with primary responsibility for providing dental care during a procedure.

(16) "Pediatric patient" means a patient twelve (12) years of age or younger.

(17) "Qualified anesthesia provider" means a licensed anesthesiologist, Certified Registered Nurse Anesthetist, or dentist with an applicable sedation permit.

(18) "Qualified dentist" means a licensed dentist with an applicable sedation permit. ***[A qualified dentist can also be an operating dentist if they fulfill the requirement of subsection (15) of this section.]***

(19) "Time-oriented anesthesia record" means documentation at appropriate time intervals of drugs administered, doses of drugs administered, and physiologic patient data obtained during patient monitoring.

(20) "Trained individual" means personnel with an active certification in Basic Life Support for Healthcare Providers, who has been trained in monitoring EKG's, pulse oximetry, blood pressures, airway management, and capnography. Training, whether formal or internal, is documented in employee records.

Section 2. Scope and Applicability. (1) The board shall be committed to the safe and effective use of sedation and anesthesia by licensed, educated, and trained dentists.

(2) Because large doses of local anesthetics, especially in combination with sedative agents, carry the risk of central nervous system depression, each licensed dentist shall be aware of the maximum, safe dosage limits for each patient.

(3) Level of sedation shall be independent of the route of administration. Moderate or deep sedation, or general anesthesia, may be achieved via any route of administration.

(4) Because sedation and general anesthesia are a continuum and it is not always possible to predict how an individual patient will respond, each licensed dentist intending to produce a given level of sedation shall be able to diagnose and manage the physiologic consequences for patients whose level of sedation becomes deeper than initially intended. For all levels of sedation, the qualified dentist shall have the training, skills, drugs, and equipment to identify and manage such an occurrence until either:

(a) Assistance arrives; or

(b) The patient returns to the intended level of sedation without airway or cardiovascular complications.

(5) Because new indications, agents, and techniques lead to changes in anesthesia and sedation practices, the board shall evaluate changes for safety, efficacy, and to what extent changes become accepted practice within the profession of dentistry.

Section 3. Nitrous Oxide Sedation. (1) Nitrous oxide sedation may be used by a Kentucky-licensed dentist without a sedation permit or by a Kentucky-licensed dental hygienist who is registered to deliver nitrous oxide analgesia under the direct supervision of a dentist ***pursuant to as per*** KRS 313.060(10).

(2) Equipment used in the administration of nitrous oxide sedation shall have functional safeguard measures that:

(a) Limit the minimum oxygen concentration to thirty (30) percent; and

(b) Provide for scavenger elimination of nitrous oxide gas.

(3) The dentist shall:

(a) Ensure that a patient receiving nitrous oxide is constantly monitored; and

(b) Be present in the office while nitrous oxide is being used.

(4) A Kentucky-registered dental assistant shall not independently administer nitrous oxide sedation, but may initiate nitrous oxide sedation if the dentist is in the office and gives the dental assistant specific instructions regarding the mode of administration and the titration, rate, and dosage of the anesthetic agent.

Section 4. Minimal Sedation. (1) A sedation permit shall not be required for a Kentucky-licensed dentist to provide minimal sedation ~~[as defined by Section 1(12) of this administrative regulation]~~.

(2) A patient whose only response is reflex withdrawal from repeated painful stimuli shall not be considered to be in a state of minimal sedation.

(3) The enteral administration of drugs exceeding the maximum recommended dose during a single appointment is considered to be moderate sedation, and Section 5 of this administrative regulation shall apply.

(4) Nitrous oxide, if used in combination with a sedative agent, may be considered to produce minimal, moderate, or deep sedation, or general anesthesia.

(5) If more than one (1) drug is administered enterally to achieve the desired sedation effect, with or without the concomitant use of nitrous oxide, Section 5 of this administrative regulation shall apply.

(6) A dentist who administers minimal sedation shall do so within a sufficient margin of safety to avoid an unintended loss of consciousness. The use of the MRD to guide dosing for minimal sedation is intended to create this margin of safety.

(7) If minimal sedation is administered to a patient who is taking another substance known to increase the sedative effects on the patient, Section 5 of this administrative regulation shall apply.

(8) An operating dentist shall not be required to complete additional training to administer minimal sedation.

(9) The administration of minimal sedation by another dentist or qualified anesthesia provider shall require the operating dentist to maintain current certification in Basic Life Support for Healthcare Providers.

(10) Clinical guidelines.

(a) Patient history and evaluation. Patients considered for minimal sedation shall be evaluated prior to the start of any sedative procedure. In healthy or medically stable individuals who are in the patient physical status classification of (ASA I, II) as established in the ASA Physical Status Classification System, this evaluation shall consist of a review of the patient's current medical history and medication use. In addition, patients with significant medical considerations who are in the patient physical status classification of (ASA III, IV) as established in the ASA Physical Status Classification System shall, unless otherwise documented by the provider, require consideration of a consultation with their treating physician prior to being administered minimal sedation.

(b) Pre-operative evaluation and preparation.

1. The patient or the patient's parent, legal guardian, or caregiver, shall be advised regarding the planned procedure and any other anticipated possible procedures associated with the delivery of any sedative agents. Informed consent for the proposed sedation shall be obtained in writing prior to its administration.

2. Adequate oxygen supply and the equipment necessary to deliver oxygen under positive pressure shall be determined prior to the administration of minimal sedation.

3. The patient shall be physically examined prior to the administration of minimal sedation. Baseline vital signs including body weight, height, blood pressure, and pulse rate shall be obtained unless rendered impractical by the nature of the patient, procedure, or equipment. Body temperature shall be measured if clinically indicated.

4. Preoperative dietary restrictions shall be considered based on the sedative technique prescribed.

5. The patient or the patient's parent, legal guardian, or caregiver, shall be given preoperative verbal and written instructions regarding the patient's sedation and procedure.

(c) Personnel and equipment requirements.

1. Personnel. All clinical staff participating in the care of a minimally sedated patient shall be certified in Basic Life Support for Healthcare Providers.

2. Equipment.

a. A positive-pressure oxygen delivery system suitable for the patient being treated shall be immediately available.

b. All equipment shall be examined for proper performance prior to each administration of sedation.

c. If inhalation equipment is used, it shall have a fail-safe system that shall be examined and calibrated and a functioning device that shall prohibit the delivery of less than thirty (30) percent oxygen, or a calibrated and functioning in-line oxygen analyzer with audible alarm.

d. A scavenging system shall be used if gases other than oxygen or air are delivered to a patient.

3. Monitoring and documentation.

a. Monitoring. The dentist or a trained individual chosen by the dentist, shall remain in the treatment room during active dental treatment to monitor the patient continuously until the patient meets the criteria for discharge to the recovery area. The following shall be monitored unless precluded or invalidated by the nature of the patient:

(i) Consciousness. The patient's level of sedation and responsiveness to verbal commands shall be continually assessed;

(ii) Oxygenation. Oxygen saturation by pulse oximetry shall be continually evaluated;

(iii) Ventilation. The patient's chest excursions shall be monitored and respirations shall be verified; and

(iv) Circulation. Blood pressure and heart rate shall be evaluated pre-operatively and postoperatively.

b. Documentation. A sedative record shall be maintained for each patient to whom sedation is administered. The sedative record shall include the names of all drugs administered including local anesthetics, the time administered, the route of administration, dosages, and monitored physiological parameters.

4. Recovery and discharge.

a. Oxygen and suction equipment shall be immediately available if a separate recovery area is utilized.

b. The dentist or a trained individual chosen by the dentist shall monitor the patient during recovery until the patient is ready for discharge.

c. The dentist shall examine the patient and document the patient's level of consciousness, oxygenation, ventilation, and circulation prior to discharge.

d. The patient, parent, escort, legal guardian, or caregiver shall be given post-operative verbal and written instructions prior to or upon discharge.

(d) Emergency management.

1. If a patient enters a deeper level of sedation than the dentist is qualified to provide, the dentist shall stop the dental procedure until the patient is returned to the intended level of sedation.

2. The operating dentist shall be responsible for the sedative management, adequacy of the facility and staff, equipment, protocols, and diagnosis and treatment of emergencies related to the administration of minimal sedation and patient rescue.

Section 5. Moderate Sedation. (1) A Moderate Sedation Permit issued by the board shall be required for a Kentucky-licensed dentist to administer moderate sedation [~~as defined by Section 1(13) of this administrative regulation~~].

(2) A dentist who administers moderate sedation shall do so within a sufficient margin of safety to avoid an unintended loss of consciousness.

(3) A qualified dentist shall be aware that repeated dosing of an agent before the effects of previous dosing can be fully appreciated could result in a greater alteration of the state of consciousness than intended. A dentist who administers moderate sedation shall refrain from administering an additional drug increment before the previous dose has taken full effect.

(4) A patient whose only response is reflex withdrawal from a painful stimulus shall not be considered to be in a state of moderate sedation.

(5) To qualify for a Moderate Sedation Permit, a dentist shall:

(a) Submit an Application for Sedation or Anesthesia Permit;

(b) Pay the fee required by 201 KAR 8:520; and

(c) Provide documentation that the dentist meets the educational requirements of subsections/paragraphs ~~(6)(a) and (b) [or (7)]~~ of this section.

(6) Education requirements for moderate sedation.

(a) To administer moderate sedation to an adult patient, a dentist shall have current certifications in Basic Life Support for Healthcare Providers and Advanced Cardiac Life Support, and complete:

1. A comprehensive training program in moderate sedation that complies with the requirements established in the Moderate Sedation section of the ADA Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students at the time training was commenced; or

2. An advanced education program accredited by the Commission on Dental Accreditation that provides comprehensive training necessary to administer and manage moderate sedation commensurate with this administrative regulation.

(b) To administer moderate sedation to a pediatric patient, a dentist shall have successfully completed:

1. An advanced education program accredited by the Commission on Dental Accreditation that provides comprehensive training necessary to administer and manage moderate sedation commensurate with this administrative regulation; and

2. Current certifications in Basic Life Support for Healthcare Providers and Pediatric Advanced Life Support.

(c) ~~If [Te] authorizing [authorize] a third-party~~ **authorizing [authorize] a third-party** qualified anesthesia provider to administer moderate sedation to an adult patient, the operating dentist shall **confirm that at least two (2) members of the onsite care team** maintain current certifications in Basic Life Support for Healthcare Providers and Advanced Cardiac Life Support. ~~The operating dentist or the facility at which the moderate sedation is being administered shall maintain a current certification in Basic Life Support for Healthcare Providers in order for a qualified anesthesia provider to provide moderate sedation.~~

(d) ~~If [Te] authorizing [authorize] a third-party~~ **authorizing [authorize] a third-party** qualified anesthesia provider to administer moderate sedation to a pediatric patient, the operating dentist shall **confirm that at least two (2) members of the onsite care team** maintain current certifications in Basic Life Support for Healthcare Providers and Pediatric Advanced Life Support.

~~(e) Any valid moderate sedation permits issued prior to this administrative regulation shall remain active until their expiration date and shall comply with the requirements of this section, except that moderate adult enteral and parenteral permit holders shall have until December 31, 2023 to comply with subsection (6)(a)1. and 2. of this section.~~

(7) Clinical guidelines; patient history and evaluation.

(a) Patients considered for moderate sedation shall be evaluated prior to the start of any sedative procedure. In healthy or medically stable individuals **who are in the patient physical status classification of (ASA I, II) as established in the ASA Physical Status Classification System**, this evaluation shall consist of a review of the patient's current medical history, medication use, body mass index, airway evaluation, and ASA status.

(b) Patients with significant medical considerations who are in the patient physical status classification of (ASA III, IV) as established in the ASA Physical Status Classification System shall, unless otherwise documented by the provider, require consideration of a consultation with their treating physician prior to being administered moderate sedation.

(8) Pre-operative evaluation and preparation.

(a) The patient or the patient's parent, legal guardian, or caregiver, shall be advised regarding the planned procedure and any other anticipated possible procedures associated with the delivery of any sedative agents. Informed consent for the proposed sedation shall be obtained in writing prior to its administration.

(b) Adequate oxygen supply and the equipment necessary to deliver oxygen under positive pressure shall be determined prior to the administration of moderate sedation.

(c) The patient shall be physically examined prior to the administration of minimal sedation. Baseline vital signs including body weight, height, blood pressure, and pulse rate shall be obtained unless rendered impractical by the nature of the patient, procedure, or equipment. Body temperature shall be measured if clinically indicated.

(d) Preoperative dietary restrictions shall be considered based on the sedative technique prescribed.

(e) The patient or the patient's parent, legal guardian, or caregiver, shall be given preoperative verbal and written instructions regarding the patient's sedation and procedure, including pre-operative fasting instructions based on the ADA Guidelines for the Use of Sedation and General Anesthesia by Dentists~~[Dentist, adopted October 2016]~~.

(9) Personnel and equipment requirements.

(a) Personnel. All clinical staff participating in the care of a moderately sedated patient shall be certified in Basic Life Support for Healthcare Providers.

(b) Equipment.

1. A positive-pressure oxygen delivery system suitable for the patient being treated shall be immediately available.

2. All equipment shall be examined for proper performance prior to each administration of sedation.

3. If inhalation equipment is used, it shall have a fail-safe system that shall be examined and calibrated and a functioning device that shall prohibit the delivery of less than thirty (30) percent oxygen, or a calibrated and functioning in-line oxygen analyzer with audible alarm.

4. A scavenging system shall be used if gases other than oxygen or air are delivered to a patient.

5. Equipment necessary to establish intravascular or intraosseous access and a defibrillator or automated external defibrillator shall be immediately available until the patient meets discharge criteria.

(10) Monitoring and documentation.

(a) Monitoring.

1. If leaving the room, a qualified dentist shall have at least one (1) month of general anesthesia training and shall select a trained individual to continuously monitor the patient; or

2. A qualified anesthesia provider shall remain in the treatment room during active treatment until the patient meets the criteria for discharge to the recovery area.

(b) The following shall be monitored:

1. Consciousness. The patient's level of sedation and responsiveness to verbal commands shall be continually assessed;

2. Oxygenation. Oxygen saturation by pulse oximetry shall be continually evaluated;

3. Ventilation: The qualified anesthesia provider shall be responsible for the observation of ventilation and breathing by monitoring end tidal CO₂ unless precluded or invalidated by the nature of the patient. In addition, ventilation shall be monitored by continual observation of qualitative

signs, which may include auscultation of breath sounds with a precordial or pretracheal stethoscope, or observation of chest excursions;

4. Circulation. The qualified anesthesia provider shall continually evaluate blood pressure and heart rate unless invalidated by the nature of the patient and noted in the time-oriented anesthesia record; and

5. The patient's pulse oximetry, heart rate, end tidal CO₂, blood pressure, and level of consciousness shall be monitored continually and recorded at least every five (5) minutes.

(c) Documentation. A sedative record shall be maintained for each patient to whom sedation is administered. The sedation record shall include the names of all drugs administered including local anesthetics, the time administered, the route of administration, dosages, and monitored physiological parameters.

(11) Recovery and discharge.

(a) Oxygen and suction equipment shall be immediately available if a separate recovery area is utilized.

(b) When active treatment concludes and the patient recovers to a minimally sedated level, the qualified anesthesia provider or a trained individual chosen by the qualified anesthesia provider shall remain with and continue to monitor the patient until the patient is discharged from the facility. The qualified anesthesia provider shall not leave the facility until the patient is discharged.

(c) The qualified anesthesia provider or a trained individual chosen by the qualified anesthesia provider shall continually monitor the patient's blood pressure, heart rate, oxygenation, and level of consciousness during recovery.

(d) The qualified anesthesia provider shall determine and document the patient's level of consciousness, oxygenation, ventilation, and circulation prior to discharge.

(e) The patient, parent, escort, legal guardian, or caregiver shall be given post-operative verbal and written instructions prior to or upon discharge.

(f) Because re-sedation could occur after the effects of a reversal agent have waned, if a pharmacological reversal agent is administered before the patient's discharge criteria have been met, the patient's escort shall be notified of the risk of re-sedation.

(12) Emergency management.

(a) If a patient enters a deeper level of sedation than the qualified anesthesia provider is qualified to provide, the procedure shall stop until the patient is returned to the intended level of sedation.

(b) The qualified anesthesia provider shall be responsible for the sedative management, adequacy of the facility and staff, equipment, protocols, and diagnosis and treatment of emergencies related to the administration of moderate sedation and patient rescue.

Section 6. Deep Sedation and General Anesthesia. (1) A Deep Sedation and General Anesthesia Permit issued by the board shall be required for a Kentucky-licensed dentist to administer ~~[""]deep sedation[""] and [""]general anesthesia[""] as defined by Section 1(6) and (8) of this administrative regulation~~.

(2) To qualify for a deep sedation and general anesthesia permit, a dentist shall:

(a) Submit an Application for Sedation or Anesthesia Permit;

(b) Pay the fee required by 201 KAR 8:520; and

(c) Provide documentation that the dentist meets the educational requirements of subsection/paragraph ~~(subsection)~~ (3)(a) of this section.

(3) Education requirements.

(a) To administer deep sedation or general anesthesia, a dentist shall have successfully completed:

1. An advanced education program accredited by the Commission on Dental Accreditation, which provides comprehensive training necessary to administer and manage deep sedation or general anesthesia; and

2. Current certifications in:

- a. Basic Life Support for Healthcare Providers;
- b. Advanced Cardiac Life Support if administering sedation to adult patients; and
- c. Pediatric Advanced Life Support if administering sedation to pediatric patients.

(b) ~~If [Te] authorizing~~**authorize** a **third-party** qualified anesthesia provider to administer deep sedation or general anesthesia, the operating dentist shall **confirm that at least two (2) members of the onsite care team** maintain current certifications in:

1. Basic Life Support for Healthcare Providers;
2. Advanced Cardiac Life Support if sedation is administered to adult patients; and
3. Pediatric Advanced Life Support if sedation is administered to pediatric patients.

~~[The operating dentist or the facility at which deep sedation or general anesthesia is being administered shall maintain a current certification in Basic Life Support for Healthcare Providers in order for a qualified anesthesia provider to provide deep sedation or general anesthesia.]~~

(4) Clinical guidelines; for patient history and evaluation. Each patient considered for deep sedation or general anesthesia shall be suitably evaluated prior to the start of any sedative procedure. In healthy or medically stable individuals **who are in the patient physical status classification of** (ASA I, II) **as established in the ASA Physical Status Classification System**, this evaluation shall consist of a review of the patient's current medical history, medication use, body mass index, airway evaluation, nothing by mouth status, and ASA status. In addition, patients with significant medical considerations **who are in the patient physical status classification of** (ASA III, IV) **as established in the ASA Physical Status Classification System** shall, unless otherwise documented by the provider, require consideration of a consultation with their treating physician prior to being administered deep sedation or general anesthesia.

(5) Pre-operative evaluation and preparation.

(a) The patient or the patient's parent, legal guardian, or caregiver, shall be advised regarding the planned procedure and any other anticipated possible procedures associated with the delivery of any sedative agents. Informed consent for the proposed sedation shall be obtained **in writing** prior to its administration.

(b) Adequate oxygen supply and the equipment necessary to deliver oxygen under positive pressure shall be confirmed prior to the administration of deep sedation or general anesthesia.

(c) The patient shall be physically examined prior to the administration of deep sedation or general anesthesia. Baseline vital signs including body weight, height, blood pressure, blood oxygen saturation, and pulse rate shall be obtained unless rendered impractical by the nature of the patient, procedure, or equipment. Body temperature shall be measured if clinically indicated.

(d) The patient or the patient's parent, legal guardian, or caregiver, shall be given preoperative verbal and written instructions regarding the patient's sedation and procedure, including pre-operative fasting instructions based on the ASA Summary of Fasting and Pharmacologic Recommendations **contained within Appendix 1 of the ASA Practice Guidelines for Preoperative Fasting and the Use of Pharmacologic Agents to Reduce the Risk of Pulmonary Aspiration: Application to Healthy Patients Undergoing Elective Procedures**.

(e) An intravenous line shall be established and secured throughout the procedure, except for patients with special needs **pursuant to**~~[as per]~~ subsection (9) of this section.

(6) Personnel and equipment requirements.

(a) Personnel. All clinical staff participating in the care of a deeply sedated patient or a patient who has been administered general anesthesia shall be certified in Basic Life Support for Healthcare Providers.

(b) A minimum of three (3) individuals shall be present while a patient is being treated with deep sedation or general anesthesia. If a pediatric patient is being treated with deep sedation or general anesthesia, in addition to the operating dentist, a separate qualified anesthesia provider shall manage the patient's anesthesia unless the anesthesia is performed by an oral and maxillofacial surgeon.

(c) Equipment.

1. A positive-pressure oxygen delivery system suitable for the patient being treated shall be immediately available.

2. All equipment shall be examined for proper performance prior to each administration of sedation.

3. If inhalation equipment is used, it shall have a fail-safe system that shall be examined and calibrated and a functioning device that shall prohibit the delivery of less than thirty (30) percent oxygen, or a calibrated and functioning in-line oxygen analyzer with audible alarm.

4. A scavenging system shall be used if gases other than oxygen or air are delivered to a patient.

5. Equipment necessary to establish intravenous access and to monitor end tidal CO₂ and auscultation of breath sounds shall be immediately available.

6. Resuscitation medications, a defibrillator, equipment and drugs necessary to provide advanced airway management and advanced cardiac life support shall be immediately available.

(7) Monitoring and documentation.

(a) Monitoring.

1. If leaving the room, a qualified dentist shall have at least one (1) month of general anesthesia training and shall select a trained individual to continuously monitor the patient; or

2. A qualified anesthesia provider shall remain in the treatment room during active treatment until the patient meets the criteria for discharge to the recovery area. The following shall be monitored:

3. Oxygenation. Oxygen saturation by pulse oximetry shall be continually evaluated;

4. Ventilation. For an intubated patient, end-tidal CO₂ shall be continually monitored and evaluated. For a non-intubated patient, end-tidal CO₂ shall be continually monitored and evaluated unless precluded or invalidated by the nature of the patient. In addition, ventilation shall be monitored by continual observation of qualitative signs, which may include auscultation of breath sounds with a precordial or pretracheal stethoscope, or observation of chest excursions;

5. Circulation. The qualified anesthesia provider shall continually evaluate heart rate and rhythm by ECG throughout the procedure, as well as the patient's pulse rate by pulse oximetry;

6. Temperature. A device capable of measuring body temperature shall be readily available during the administration of deep sedation or general anesthesia. Equipment necessary to continually monitor body temperature shall be available and used if triggering agents associated with malignant hyperthermia are administered; and

7. The patient's pulse oximetry, heart rate, end tidal CO₂, blood pressure, and level of consciousness shall be monitored continually and recorded at least every five (5) minutes.

(b) Documentation. A sedative record shall be maintained for each patient to whom sedation is administered. The sedative record shall include the names of all drugs administered, including local anesthetics, the time administered, the route of administration, dosages, and monitored physiological parameters.

(8) Recovery and discharge.

(a) Oxygen and suction equipment shall be immediately available if a separate recovery area is utilized.

(b) When active treatment concludes and the patient recovers to a minimally sedated level, the qualified anesthesia provider or a trained individual chosen by the qualified anesthesia provider shall remain with and continue to monitor the patient until the patient is discharged from the facility. The qualified anesthesia provider shall not leave the facility until the patient is discharged.

(c) The qualified anesthesia provider or a trained individual chosen by the qualified anesthesia provider shall continually monitor the patient's blood pressure, heart rate, oxygenation, and level of consciousness during recovery.

(d) The qualified anesthesia provider shall determine and document the patient's level of consciousness, oxygenation, ventilation, and circulation prior to discharge.

(e) The patient, parent, escort, legal guardian, or caregiver shall be given post-operative verbal and written instructions prior to or upon discharge.

(9) Patients with special needs.

(a) Because many dental patients undergoing deep sedation or general anesthesia are mentally or physically challenged, it is not always possible to administer a comprehensive physical examination or appropriate laboratory tests prior to sedation. In this circumstance, the dentist responsible for administering the deep sedation or general anesthesia shall document the reasons preventing the examination of the patient in the patient's medical record.

(b) Deep sedation or general anesthesia may be administered without first establishing an indwelling intravenous line if the establishment of intravenous access after deep sedation or general anesthesia is rendered necessary because of poor patient cooperation.

(10) Emergency management. The qualified anesthesia provider shall be responsible for the sedative management, adequacy of the facility and staff, equipment, protocols, and diagnosis and treatment of emergencies related to the administration of patient rescue and deep sedation or general anesthesia.

Section 7. Multiple Application Levels. A dentist with the required education and training to provide more than one (1) level of sedation may mark all[the] levels of qualification on the Application for Sedation or Anesthesia Permit **without paying additional application fees.**

Section 8. Renewal of a Sedation or Anesthesia Permit. (1) A qualified dentist applying for renewal of an active permit to administer moderate sedation, or deep sedation or general anesthesia shall:

(a) Submit an Application for Renewal of Sedation or Anesthesia Permit;

(b) Pay the fee required by 201 KAR 8:520;

(c) Complete at least four (4) hours of clinical continuing education related to sedation or anesthesia in a classroom setting during the two (2) year term of the permit; and

(d) Maintain Advanced Cardiac Life Support[ACLS] or Pediatric Advanced Life Support[PALS] certification as required by Sections 5 and 6 of this administrative regulation.

(2) The continuing education requirements of this section shall be in addition to the license renewal requirements of 201 KAR 8:532.

(3) Unless properly renewed, each permit issued under this administrative regulation shall expire on December 31 of odd-number years.

Section 9. Location Requirement. A dentist holding a permit in accordance with this administrative regulation shall advise the board of the name and address of each facility where the dentist intends to or has ceased to administer anesthesia and sedation by submitting the Sedation or Anesthesia Permit Location Notification Form within ten (10) business days of the change.

Section 10. Facility Certificates. (1) The owner or operator of a facility shall obtain an Anesthesia or Sedation Facility Certificate from the board for any location at which a dentist holding a sedation or general anesthesia permit provides moderate sedation, deep sedation, or general anesthesia. A facility certificate shall not be required for minimal sedation or nitrous oxide sedation alone.

(2) A facility certificate shall also be required if a dentist allows an independently practicing qualified anesthesia provider to administer sedation or general anesthesia in a dental office.

(3) A facility owner or operator desiring to obtain an Anesthesia or Sedation Facility Certificate shall:

(a) Submit an Application for Sedation or Anesthesia Facility Certificate; and~~[-and]~~

(b) Pay the fee required by 201 KAR 8:520.~~[-; and]~~

~~(c) Hold an active sedation permit issued by the board.~~

(4) The owner or operator of a facility shall not allow an individual to administer anesthesia or sedation unless the individual is permitted to do so as established by this administrative regulation.

(5) The owner or operator of a facility shall maintain for at least seven (7) years, for inspection by the board, the name and license number of each dentist or independently practicing qualified anesthesia provider who has administered anesthesia or moderate sedation at that location.

(6) The owner or operator of a facility shall ensure that the facility remains equipped and staffed for the duration of time that moderate sedation, deep sedation, or general anesthesia is provided at the facility.

(7) The owner or operator of a facility shall ensure that the facility has nonexpired emergency and sedation medications.

Section 11. Renewal of Facility Certificate. (1) All active facility certificates shall expire on December 31 of odd-numbered years.

(2) ~~[Any valid facility certificates issued prior to this administrative regulation shall remain active until their original expiration date, at which time the requirements of this regulation shall have to be met prior to renewal.]~~

~~(3)] To renew a facility certificate, the owner or operator shall:~~

~~(a) Submit an Application for Renewal of Sedation or Anesthesia Facility Certificate; and [and]~~

~~(b) Pay the fee required by 201 KAR 8:520[; and~~

~~(c) Maintain an active sedation permit issued by the board].~~

Section 12. Facility Criteria. (1) To qualify for a facility certificate, the owner or operator of a facility shall attest in the Application for Sedation or Anesthesia Facility Certificate that the facility has:

(a) An oxygen and gas delivery system with fail-safe backup;

(b) A safety indexed gas system;

(c) A suction and backup system;

(d) An auxiliary lighting system;

(e) An operating room to include:

1. At a minimum, ten (10) feet by eight (8) feet or eighty (80) square feet in size;

2. An operating primary light source and secondary portable back-up source, unless a backup generator is available; and

3. Accessibility by emergency medical staff;

(f) A recovery area, including oxygen, suction, and electronic monitoring, which may be a part of the operating room;

(g) Preoperative medical history and physical evaluation form; and

(h) Anesthesia and monitoring equipment checked to ensure working order and calibration, if applicable.

(2) The following shall be maintained in working order by the facility or by the qualified individual administering sedation or anesthesia at or on behalf of the facility:

(a) Drugs for each procedure, all of which shall be unexpired, including reversal agents and emergency medications;

(b) Devices to maintain an airway with positive pressure ventilation;

(c) Anesthesia records, including monitoring and discharge records;

(d) Monitoring equipment, including pulse oximeter, blood pressure monitor, and end tidal CO2 monitor. An electrocardiogram (EKG) shall be required for facilities providing deep sedation or general anesthesia;

(e) Defibrillator or automated external defibrillator (AED); and

(f) Precordial stethoscope or pretracheal stethoscope for deep sedation or general anesthesia in pediatric patients.

Section 13. Morbidity and Mortality Incident Reports. (1) A dentist shall report to the board, in writing, any death caused by or resulting from the ~~[dentist's]~~ administration of minimal sedation, moderate sedation, deep sedation, or general anesthesia within seven (7) days after the death.

(2) A dentist shall report to the board, in writing, any incident that occurred at a facility operating under a Sedation or Anesthesia Facility permit that resulted in hospital inpatient admission or emergency room visit caused by or resulting from the ~~[dentist's]~~ administration of minimal sedation, moderate sedation, deep sedation, or general anesthesia within thirty (30) days after the hospitalization or emergency room visit.

(3) The written report to the board required in subsections (1) and (2) of this section shall include:

- (a) The date of the incident;
- (b) The name, age, and address of the patient;
- (c) The patient's original complete dental records;
- (d) The name and permit number of the dentist and the name and address of all other persons present during the incident;
- (e) The address where the incident took place;
- (f) The preoperative physical condition of the patient;
- (g) The type of anesthesia and dosages of drugs administered to the patient;
- (h) The techniques used in administering the drugs;
- (i) Any adverse occurrence including:
 1. The patient's signs and symptoms;
 2. The treatment instituted in response to adverse occurrences;
 3. The patient's response to the treatment; and
 4. The patient's condition on termination of any procedures undertaken; and
- (j) A narrative description of the incident including approximate times and evolution of symptoms.

(4) The duties established in this section shall apply to every dentist who administers any type of sedation or anesthesia.

Section 14. Registered Dental Assistant Duties while Working with Sedation Permit Holders. A registered dental assistant working with a qualified dentist administering sedation or anesthesia in accordance with this administrative regulation may, under direct supervision:

- (1) Apply noninvasive monitors on the patient;
- (2) Perform continuous observation of patients and noninvasive monitors appropriate to the level of sedation, during the pre-operative, intra-operative, and post-operative (recovery) phases of treatment;
- (3) Report monitoring parameters at pre-determined intervals, and if changes in monitored parameters occur;
- (4) Record vital sign measurements in the sedation record;
- (5) Establish and remove intravenous lines if the registered dental assistant has completed training in intravenous access;
- (6) Assist in the management of a patient emergency; and
- (7) Administer medications into an existing intravenous line upon the verbal order and direct supervision of a qualified dentist in accordance with this administrative regulation.

Section 15. Administration by Qualified Anesthesia Provider. (1) An operating dentist may authorize the administration of sedation or anesthesia by a qualified anesthesia provider.

(2) The administration of anesthesia or sedation by an individual established in subsection (1) of this section shall:

- (a) Comply with the requirements of this administrative regulation; and

- (b) Not require board review prior to the administration of sedation or anesthesia.
- (3) Nothing in this section shall preclude a dentist from working with a qualified anesthesia provider to provide care in an ambulatory care center or hospital.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

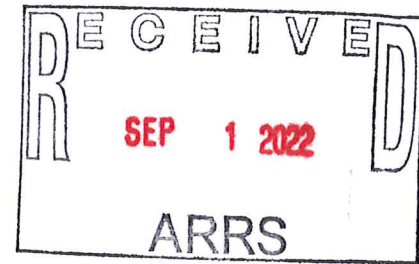
- (a) "Application for Sedation or Anesthesia Permit", March 2020;
 - (b) "Application for Sedation or Anesthesia Facility Certificate", March 2020; ***[and]***
 - (c) "Sedation or Anesthesia Permit Location Notification Form", March 2020;
 - (d) "ASA Physical Status Classification System", December 2020;**
 - (e) "ADA Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students", October 2016;**
 - (f) "ADA Guidelines for the Use of Sedation and General Anesthesia by Dentists", October 2016;**
 - (g) "ASA Practice Guidelines for Preoperative Fasting and the Use of Pharmacologic Agents to Reduce the Risk of Pulmonary Aspiration: Application to Healthy Patients Undergoing Elective Procedures", March 2017;**
 - (h) "Application for Renewal of Sedation or Anesthesia Permit", March 2020; and**
 - (i) "Application for Renewal of Sedation or Anesthesia Facility Certificate", March 2020.**
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, Monday through Friday 8 a.m. through 4:30 p.m. This material is also available on the board's Web site at <http://dentistry.ky.gov>.

CONTACT PERSON: Jeff Allen, Executive Director, Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282, email jeffrey.allen@ky.gov.

MATERIAL INCORPORATED BY REFERENCE

At the time that the agency files this staff suggested amendment it will need to file one (1) clean copy of each of the following forms:

- "ASA Physical Status Classification System", December 2020
- "ADA Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students", October 2016
- "ADA Guidelines for the Use of Sedation and General Anesthesia by Dentists", October 2016
- "ASA Practice Guidelines for Preoperative Fasting and the Use of Pharmacologic Agents to Reduce the Risk of Pulmonary Aspiration: Application to Healthy Patients Undergoing Elective Procedures", March 2017
- "Application for Renewal of Sedation or Anesthesia Permit", March 2020
- "Application for Renewal of Sedation or Anesthesia Facility Certificate", March 2020



September 1, 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: 202 KAR 7:701E. Scope of practice matters.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 202 KAR 7:701E, the Kentucky Board of Emergency Medical Services proposes the attached amendment to 202 KAR 7:701E.

Sincerely,

A handwritten signature in black ink, appearing to read "John R. Holder".

John R. Holder, Chairman
Kentucky Board of Emergency Medical Services
2464 Fortune Drive, Suite 195
Lexington, KY 40509



Kentucky Board of Emergency Medical Services

2464 Fortune Drive, Suite 195

Lexington, KY, 40509

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Final, 8-24-2022
AGENCY AMENDMENT

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

202 KAR 7:701E. Scope of practice matters.

Page 12

Section 11(1)

Line 22

After "The following", insert "material is".
Delete "documents are".

Line 23

After "reference", insert a colon.
Delete the period.

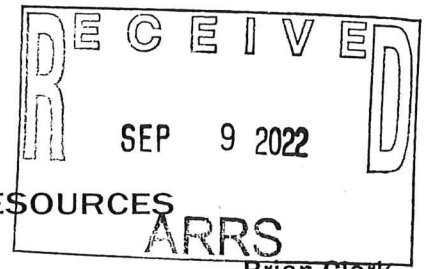
Page 14

Section 11(2)

Line 18

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

This material is also available on the agency's Web site at
<https://kbems.kctcs.edu/about/forms.aspx>.



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

September 9, 2022

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

Re: **301 KAR 2:090**. Means by which migratory game birds may be taken., 301 KAR 2:095.
Importation and Transportation of Carcasses.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 301 KAR 2:090, and 301 KAR 2:095, Kentucky Department of Fish and Wildlife Resources proposes the attached amendment to 301 KAR 2:090, 301 KAR 2:095.

Sincerely,

A handwritten signature in black ink, appearing to read "Jenny Gilbert".

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

SUGGESTED SUBSTITUTE

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

301 KAR 2:090. Means by which migratory game birds may be taken.

RELATES TO: KRS 150.010, 150.025(1), 150.305(3), (4), 150.330, 150.360(2)

STATUTORY AUTHORITY: 150.025(1), 150.305(3), (4), 150.360(2), 150.600, 50 C.F.R. 20,

21

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the Department of Fish and Wildlife to promulgate administrative regulations to establish open seasons for the taking of wildlife, ~~and~~ to regulate bag limits, and to implement or carry out the purposes of KRS Chapter 150. KRS 150.305(1) authorizes~~[150.305(3) and (4) authorize]~~ the department to promulgate administrative regulations concerning possession of wildlife protected by KRS Chapter 150. KRS 150.305(3) requires the possession of migratory birds to be governed by federal regulations. KRS 150.305(4) authorizes the commissioner, or his or her designee, to inspect commercial frozen food lockers~~[regulate the possession of harvested migratory birds and facilitates the inspection of commercial preservation facilities]~~. KRS 150.360(2) authorizes the department to restrict methods of taking wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes requirements for the taking of waterfowl within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions. (1) "Baited area" means any area where shelled, shucked, or unshucked corn~~;~~ wheat or other grain~~;~~ salt~~;~~ or other feed~~[-whatsoever]~~ capable of luring, attracting, or enticing migratory game~~[such]~~ birds is directly or indirectly, placed, exposed, deposited, distributed, or scattered.~~[-, and such area shall remain a baited area for ten (10) days following complete removal of all such corn, wheat or other grain, salt, or other feed.]~~

(2) "Baiting" means the placing, exposing, depositing, distributing, or scattering of shelled, shucked, or unshucked corn~~;~~ wheat or other grain~~;~~ salt~~;~~ or other feed so as to constitute for migratory game~~[such]~~ birds a lure, attraction, or enticement to, on, or over any areas where hunters are attempting to take them.

Section 2. Prohibited Hunting Methods. (1) Migratory birds ~~for~~~~on~~ which open seasons are prescribed may be taken by any method except those prohibited in this section.

(2) Migratory game birds and migratory waterfowl shall not be taken:

(a) With a trap, snare, net, ~~[crossbow,]~~ rifle, pistol, swivel gun, shotgun larger than ten (10) gauge, punt gun, battery gun, machine gun, fish hook, poison, drug, explosive, or stupefying substance;

(b) With a shotgun of any description capable of holding more than three (3) shells, unless it is plugged with a one (1) piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three (3) shells, except that this restriction **shall[does]** not apply during the light geese conservation order season;

(c) From or by means, aid, or use of a sinkbox or any other type of low floating device, having a depression affording the hunter a means of concealment beneath the surface of the water;

(d) From or by means, aid, or use of any motor vehicle, motor-driven land conveyance, or aircraft of any kind;

(e) From or by means of any motorboat or other craft having a motor attached, or any sailboat, unless the motor has been completely shut off or the sails furled, and its progress~~[-therefrom]~~ has ceased, except that a craft under power may be used to retrieve dead or crippled birds.~~[-but]~~ Crippled birds shall not be shot from **a[such]** craft under power;

(f) By the use or aid of live birds as decoys;

(g) On an area where tame or captive live ducks or geese are present, unless **the[such]** birds are and have been for a period of ten (10) consecutive days prior to **the[such]** taking, confined within an enclosure which substantially reduces the audibility of their calls and totally conceals **the[such]** birds from the sight of wild migratory waterfowl;

(h) By the use or aid of recorded or electrically amplified bird calls or sounds, or recorded or electrically amplified imitations of bird calls or sounds, except that this restriction **shall[does]** not apply during the light geese conservation order season;

(i) By the means or aid of any motor-driven land, water, or air conveyance or any sailboat used for the purpose of or resulting in the concentration, driving, rallying, or stirring up of any migratory bird; or

(j) By the aid of baiting, or on or over any baited area, except that~~[-nothing-in]~~ this paragraph shall **not** prohibit:

1. The taking of all migratory game birds, including waterfowl, on or over standing crops **or[;]** flooded standing crops, including:

a. Aquatics;~~[-;]~~

b. Flooded harvested croplands;~~[-;]~~

c. Grain crops properly shocked on the field where grown;~~[-;]~~ or

d. Grains found scattered solely as the result of normal agricultural planting or harvesting; and

2. The taking of all migratory game birds, except waterfowl, on or over any lands where baiting has occurred as the result of:

- a. Bona fide agricultural operations or procedures; or
- b. Manipulation of a crop or other feed on the land where grown for wildlife management purposes, ~~if provided that~~ manipulation for wildlife management purposes does not include the distribution or scattering of grain or other feed once it has been removed from or stored on the field where grown.

(3) A baited area shall remain a baited area for ten (10) days following complete removal of all corn, wheat or other grain, salt, or other feed.

Section 3. Transporting, Importing and Exporting. (1) Migratory game birds lawfully killed and possessed in accordance with the hunting laws and **administrative** regulations of any foreign country, ~~or~~ any state in the United States, or subdivision **of a state thereof**, ~~shall~~**must** be imported, exported, or transported in accordance with the provisions specified in **50 C.F.R. Part 20 [Title 50, Chapter 1, Subchapter B, Part 20 of the Code of Federal Regulations]**.

(2) **A[No]** person shall **not** transport within the United States any migratory game birds, except doves, unless the head or one (1) fully feathered wing remains attached to each **[such]** bird at all times while being transported from the place where taken until they have arrived at the personal abode of the possessor or a commercial preservation facility.

Section 4. Tagging and Recordkeeping Requirements. (1) **A[No]** person shall **not** put or leave any migratory game birds at any place, other than at his **or her** personal abode, or in the custody of another person, for picking, cleaning, processing, shipping, transportation, or storage, including temporary storage, or for the purpose of having taxidermy services performed, unless **the[such]** birds have a tag attached, signed by the hunter, stating his:

- (a) Address;
- (b) The total number and species of birds; and
- (c) The date **the[such]** birds were killed.

(2) Migratory game birds being transported in any vehicle as the personal baggage of the possessor shall not be considered as being in storage or temporary storage.

(3) **A[No]** person shall **not** receive, or have in custody, any migratory game birds belonging to another person unless **the[such]** birds are tagged as required under subsection (1) of this section.

(4) **A[No]** person shall **not** transport migratory game birds belonging to another person unless **the[such]** birds are tagged as required under subsection (1) of this section.

Section 5. Commercial **Frozen Food Lockers [Preservation Facilities]**. (1) **A[No]** commercial **frozen food locker [preservation facility]** shall receive or have in custody any migratory game birds unless **the[such]** birds are tagged as required in Section 4(1) of this administrative regulation.

(2) **A[No]** commercial **frozen food locker[preservation facilities]** shall **not**:

(a) Receive or have in custody any migratory game birds unless accurate records are maintained showing:

1. The number of each species;
2. The date **the[such]** birds were received;
3. The name and address of the person from whom **the[such]** birds were received;
4. The date **the[such]** birds were disposed of; and
5. The name and address of the person to whom **the[such]** birds were delivered.

(b) Destroy any records required to be maintained under this section for a period of one (1) year following the last entry on the record.

(c) Prevent any person authorized to enforce this administrative regulation from entering **the facility[such facilities]** at all reasonable hours and inspecting the records and the premises where **the[such]** operations are being carried on.

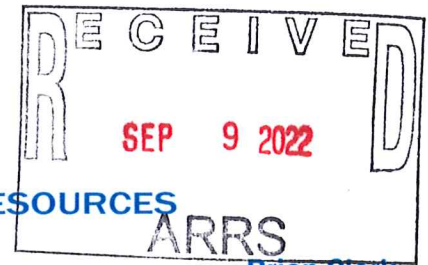
Section 6. Wanton Waste Law. **A[No]** person shall **not** kill or cripple any migratory game bird pursuant to this administrative regulation without making a reasonable effort to retrieve the bird and include it in his daily bag limit.



KENTUCKY DEPARTMENT OF FISH & WILDLIFE RESOURCES

Rich Storm
Commissioner

#1 Sportsman's Lane
Frankfort, Kentucky 40601
Phone (502) 564-3400
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Brian Clark
Deputy Commissioner

September 9, 2022

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

Re: 301 KAR 2:090. Means by which migratory game birds may be taken., 301 KAR 2:095.
Importation and Transportation of Carcasses.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 301 KAR 2:090, and 301 KAR 2:095, Kentucky Department of Fish and Wildlife Resources proposes the attached amendment to 301 KAR 2:090, 301 KAR 2:095.

Sincerely,

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

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

301 KAR 2:095. Importation, possession, and transportation of wildlife meat,~~[cervid]~~ carcasses, and parts.

RELATES TO: KRS 150.180, 150.280, 150.290

STATUTORY AUTHORITY: KRS 150.025(1)(c), 150.720(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1)(c) authorizes the Department ***of Fish and Wildlife*** to promulgate administrative regulations governing the buying, selling, or transporting of wildlife. KRS ***150.720 requires the department to promulgate administrative regulations concerning health requirements, eradication of diseases, importation, unique individual identifiers, and the responsibility of [150.720(2) authorizes the department and the Department of Agriculture to hold]*** a person ***who imports a diseased animal into the Commonwealth, in violation of statute or administrative regulation, [responsible]*** for all costs incurred in the investigation, response, and eradication of a disease ***[if the person imports a diseased animal into the Commonwealth]***. This administrative regulation establishes procedures for the importation, possession, and transportation ~~[and possession]~~ of specified wildlife~~[cervid]~~ carcasses or carcass parts~~[part]~~.

Section 1. Definitions.

(1) "Cervid" means deer, elk, moose, caribou, reindeer, and related species and hybrids of these species~~[thereof]~~, including all members of the Cervidae family and hybrids ***of this family.***~~[thereof]~~ [a member of the family Cervidae]

(2) "Chronic Wasting Disease" or "CWD" means a transmissible spongiform encephalopathy found in cervids.

(3) "CWD Surveillance Zone" means an area designated as being subject to special cervid regulations due to a CWD positive cervid detection.

~~[(2)"Clean" means having no meat matter or tissue attached to the carcass part.]~~

(4)~~[(3)]~~ "Import" means to ~~[transport a cervid carcass or carcass part into Kentucky]~~ bring goods into the state of Kentucky from another state, ***except for [but does not include]*** transportation of goods through Kentucky from outside the state.

(5) "Lagomorph" means wild rabbits, hares, and pikas, and related species and hybrids of these species~~[thereof]~~, including all wild members of the Order Lagomorpha and hybrids ***of this order***~~[thereof]~~.

Section 2. Importation and Transportation of Cervid Meat, Carcasses, and Parts.

(1) ~~A person shall not import a cervid carcass or carcass part that has any part of the spinal column or head;~~

(2) A person importing a ~~[legally taken]~~ cervid carcass or carcass ~~parts~~ **part** shall only ~~[part may]~~ possess the items of a legally harvested cervid listed in paragraphs (a) through (g) [(f)] of this subsection: ~~[-]~~

(a) Deboned meat, excluding brain matter;

(b) Antlers;

(c) ~~[(b)]~~ Antlers that are attached to a ~~[clean-]~~ skull ~~[plate]~~ cap having no meat matter or tissue attached;

(d) ~~[(e)]~~ A ~~[clean-]~~ skull having no meat matter or tissue attached;

(e) ~~[(d)]~~ Clean Upper canine teeth having no meat matter or tissue attached;

(f) ~~[(e)]~~ A finished taxidermy product; or

(g) ~~[(f)]~~ The hide; ~~[- or~~

(g) Quartered or deboned meat.]

(2) A person shall not transport a cervid carcass or carcass ~~parts~~ **part** through Kentucky from outside the state except those parts permissible for import, unless the carcass or carcass parts that are non-permissible for import are transported in a leak and spill-proof container and ~~the~~ **no** contents ~~[- thereof]~~ are **not** permitted to be deposited or disposed of within the state.

(3) Transportation of cervid carcasses or **carcass** parts out of a CWD Surveillance Zone. All persons in possession of or transporting a cervid carcass or carcass parts originating from a CWD Surveillance Zone shall only transport the following **carcass** parts out of the CWD Surveillance Zone:

(a) Deboned meat, excluding brain matter;

(b) Antlers;

(c) Antlers that are attached to a skull cap having no meat matter or tissue attached;

(d) A skull having no meat matter or tissue attached;

(e) Upper canine teeth having no meat matter or tissue attached;

(f) A finished taxidermy product; or

(g) The hide.

(4) ~~[(3)]~~ ~~[A licensed taxidermist or deer processor]~~ An individual who engages in the act of taxidermy or processing of cervid meat who accepts [a cervid head with an intact skull, spinal column, or spinal column part originating from another state or country] an imported cervid carcass or carcass **parts** **part** prohibited by subsection (1) or subsection (3) of this section shall:

(a) Contact the law enforcement division of the department within forty-eight (48) hours after [receiving] accepting the cervid carcass or carcass **parts** **part** [head, spinal column, or spinal column part];

(b) Provide to the department the hunter's:

1. Name; and

2. Address; and

(c) Transfer all nonpermitted cervid carcass and carcass parts~~[spinal column parts and the skull with the intact brain]~~ to the department~~[once the skull plate has been removed]~~.

Section 3. Importation of Wild Lagomorph Meat, Carcasses, and Parts.

(1) A person shall only import a completely skinned and fully eviscerated carcass, quarters, or deboned meat of a legally harvested wild Lagomorph.

(2) A person shall not transport wild Lagomorph meat, carcasses, or **carcass** parts through Kentucky from outside the state, except those parts permissible for import, unless the carcass or carcass parts that are non-permissible for import are transported in a leak and spill-proof container and **the[no]** contents~~[thereof]~~ are **not** permitted to be deposited or disposed of within the state.

Ryan F. Quarles
Commissioner



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

Kentucky Department of Agriculture

September 9, 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: **302 KAR 26:020**. Pesticide certification and licensing.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 302 KAR 26:020 the Kentucky Department of Agriculture proposes the attached amendments to 302 KAR 26:020.

Sincerely,

A handwritten signature in dark ink, appearing to read "Clint Quarles".

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



SUGGESTED SUBSTITUTE

Final Version: 9/8/2022 3:11 PM

Department of Agriculture Office of Consumer and Environmental Regulation

302 KAR 26:020. Pesticide certification and licensing.

RELATES TO: KRS Chapter 217B, 40 C.F.R. 156, 170, 171, 7 U.S.C. 136

STATUTORY AUTHORITY: KRS 217B.050, 217B.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. KRS 217B.060 authorizes the department to establish classifications of pesticide licenses. This administrative regulation establishes a system of certification by examination for persons required to be licensed under KRS Chapter 217B.

Section 1. Applicability.

(1) A person shall not be issued a commercial or noncommercial license to apply pesticides unless he or she is:

(a) At least eighteen (18) years of age; and

(b) Certified by examination in a category consistent with the pesticide application.

(2) A person shall not purchase restricted use pesticides unless licensed in a category consistent with the purchase.

(3) A person shall qualify for a commercial or noncommercial license after passing an examination confirming competency in the category of license consistent with the intended application of pesticides. The license examinations shall serve as the examinations necessary to fulfill federal commercial pesticide applicator certification requirements.

(4) A pesticide operator, pesticide applicator, noncommercial applicator, or private applicator shall not apply any pesticide unless he or she has certified competency and licensed in a category consistent with the application, as established in this administrative regulation, with the exception of a registered trainee acting under the direct supervision of a licensed person.

(5) The department may, after payment of all applicable fees, waive the certification requirement and issue a license to any person who holds a valid license issued by another state, tribal, or federal agency, if the person is employed by a dealer registered in Kentucky and if the other state, tribal or federal agency:

(a) Has requirements substantially similar to that of Kentucky; and

(b) Agrees to reciprocate with Kentucky.

(6) An application ~~[""]~~Pesticides License-Certification Application~~[""]~~ submitted for a reciprocal license shall be accompanied by a twenty-five (25) dollar reciprocal fee.

(7) Exceptions. The requirements in this **administrative** regulation **shall[do]** not apply to~~[the following persons]~~:

(a) Persons conducting laboratory research involving restricted use pesticides; ~~and[-]~~

(b) Doctors of medicine and doctors of veterinary medicine applying restricted use pesticides to patients during the course of the ordinary practice of those professions.

Section 2. General Requirements. To obtain certification to qualify for a license, a person shall take and pass, with a minimum score of seventy (70) percent, a certification examination in the category or categories in which certification is requested.

(1) The applicant shall submit form ~~[""]~~Pesticides License-Certification Application~~[""]~~.

(2) Competency in the use and handling of pesticides shall be determined and based upon standards established in Sections 4 and 5 of this administrative regulation.

(3) The examination shall include the general standards applicable to all categories and the additional standards specifically identified for each category or subcategory in which a person desires to be certified.

(4) Examination standards. Examinations shall conform to ~~[all-of]~~the ~~[following]~~standards **established in paragraphs (a) through (l) of this subsection.[:]**

(a) The examination **shall[must]** be presented and answered in writing.

(b) The examination **shall[must]** be proctored by an individual designated by the department and who is not seeking certification at any examination session that he or she is proctoring.

(c) Each person seeking certification **shall[must]** present at the time of examination valid, government-issued photo identification or a declaration of identity and age as proof of identity and age to be eligible for certification.

(d) Candidates **shall[must]** be monitored throughout the examination period.

(e) Candidates **shall[must]** be instructed in examination procedures before beginning the examination.

(f) Examinations **shall[must]** be kept secure before, during, and after the examination period so that only the candidates have access to the examination, and candidates have access only in the presence of the proctor.

(g) Candidates **shall[must]** not have verbal or non-verbal communication with anyone other than the proctor during the examination period.

(h) ~~[No portion of]~~The examination, **and portion of the examination,** or any associated reference materials **shall not[may]** be copied or retained by any person other than a person authorized by the department to copy or retain the examination or any associated reference materials.

(i) The only reference materials used during the examination **shall be those[are those that are]** approved by the department and provided and collected by the proctor.

(j) Reference materials provided to examinees **shall be[are]** reviewed after the examination is complete to ensure that no portion of the reference material has been removed, altered, or destroyed.

(k) The proctor **shall report[reports]** to the department any examination administration inconsistencies or irregularities, including, **for example,[but not limited to]** cheating, use of unauthorized materials, and attempts to copy or retain the examination.

(l) ~~[The examination must be conducted in accordance with any other requirements of the department related to examination administration.~~

~~(m)]~~ The department **shall[must]** notify each candidate of the results of his or her examination.

(5) A person taking the certification examination shall:

(a) Pay an examination fee of twenty-five (25) dollars; and

(b) Submit to the department prior to taking the examination:

1. A valid government-issued photo identification; or
2. A declaration of identity and age.

(6) Examination fees shall be charged each time a person takes a certification examination and shall be charged regardless of the passing or failing of the examination.

(7) Upon successfully passing an examination, a person shall have thirty (30) days from the date of testing to pay the license fees for the requested licenses. Failure to pay the license fee (twenty-five (25) dollars for applicators, \$100 for operator) within thirty (30) days after the test date by any qualifying person shall require that person to retake and pass the examination and pay all required fees before issuance of a license **could[may]** occur.

Section 3. License Categories. Commercial and non-commercial pesticide licenses shall be obtained in the categories of pesticide use or application as established in subsections (1) through (13) of this section. A private applicator license shall be obtained from the department pursuant to Section 7 of this administrative regulation.

(1) Agricultural pest control. This category shall be divided into the following subcategories:

(a) Plant. This subcategory shall include persons applying or supervising the application of pesticides in production of agricultural commodities including, **for example[but not limited to]**, tobacco, peanuts, cotton, feed grains, soybeans and forage, vegetables, small fruits, tree fruits and nuts, grasslands, non-crop agricultural lands, and greenhouses; **and**

(b) Animal. This subcategory shall include persons applying or supervising the application of pesticides on animals including beef cattle, dairy cattle, swine, sheep, horses, goats, poultry, and livestock, **and** to places on or in which animals are confined.

(2) Forest pest control. This category shall include persons applying or supervising the application of pesticides in forests, forest nurseries, and forest seed producing areas.

(3) Ornamental, turf and lawn care. This category shall include persons applying pesticides or impregnated fertilizer to control insects, weeds, and diseases in turf, lawns, and maintenance of ornamental trees, shrubs and flowers, including the control of pests that do not normally invade structures, such as bagworms, grubs, and moles. Licensure in this category shall qualify an applicator to make applications to interior landscapes, sports turf, and golf courses.

(4) Seed treatment. This category applies to commercial applicators using or supervising the use of restricted use pesticides on seeds in seed treatment facilities.

(5) Aquatic pest control. This category shall include persons applying or supervising the application of any pesticide purposefully applied to standing or running water. Applicators holding a public health pest control license and engaged in public health-related activities may make applications requiring an aquatic pest control license.

(6) Right-of-way pest control. This category shall include persons applying or supervising the application of pesticides in the maintenance of public roads, utility lines, pipelines, railway rights-of-way, or other similar areas.

(7) Industrial, institutional, and structural pest control. This category shall apply to persons who use or supervise the use of pesticides in, on, or around **[the following:]** food handling establishments, packing houses, and food-processing facilities; human dwellings; institutions, such as schools, hospitals, and prisons; and industrial establishments, including manufacturing facilities, warehouses, grain elevators, and any other structures and outside areas, public or

private, for the protection of stored, processed, or manufactured products. Industrial, institutional, and structural, pest control shall be divided into the following subcategories:

(a) Structural pest management. Structural pest management shall include persons who use pesticides, other than fumigants, to control pests, general pests, and wood-destroying organisms that ~~threaten~~**[threatens]** the structural integrity, the human occupancy, or the contents of such structures. Persons licensed under this section shall be exempt from the certification license requirements of other categories if using or supervising the use of pesticides to control pests, general pests, and wood-destroying organisms in outside areas related to a structure;~~[-]~~

(b) Structural fumigation. Structural fumigation shall include persons who use or supervise the use of a pesticide to fumigate anything other than soil, ~~[and specifically]~~including structures intended for human occupancy; ~~and~~**[-]**

(c) Wood preservatives. This subcategory shall include persons who apply pesticides to wood and wood products to protect from wood-destroying organisms. Excluded from this category shall be persons engaged in structural pest control.

(8) Public health pest control. This category shall include state, tribal, federal or other governmental employees and contractors who use or supervise the use of pesticides in government-sponsored public health programs for the management and control of pests having medical and public health importance. Applicators holding a public health pest control license and engaged in public health-related activities may make applications requiring an aquatic pest control license.

(9) Regulatory pest control. This category shall include state, tribal, federal, or other local governmental employees and contractors who use or supervise the use of pesticides in government-sponsored programs for the control of regulated pests. Licensure in this category does not authorize the purchase, use, or supervision of use of products for predator control authorized under federal law.

(10) Demonstration and research pest control. This category shall include individuals who demonstrate to the public the proper uses and techniques of applying pesticides or supervise the demonstration. Included in this group shall be persons such as extension specialists and county agents, individuals demonstrating methods used in public programs, and persons conducting field research with pesticides, and in so doing, apply or supervise the application of pesticides. This group shall include state and federal employees and other persons conducting field research on pesticides.

(11) Aerial. This category shall include persons applying pesticides using fixed or rotary wing aircraft or unmanned aerial vehicles. Persons obtaining this category shall also ~~[be required to]~~possess an additional license in another category that relates to the location of the intended target pest.

(12) Soil fumigation. This category shall include persons who use or supervise the use of a pesticide to fumigate soil.

(13) Non-soil fumigation. This category shall include persons who use or supervise the use of a pesticide to fumigate anything other than soil, ~~[specifically]~~excluding structures intended for human occupancy.

Section 4. Core Standards of Competency. Examinations shall be based on examples of problems and situations appropriate to the particular category or subcategory of the requested certification and shall include ***competency with[the following areas of competency]:***

(1) Label and labeling comprehension. Familiarity with pesticide labels and labeling and their functions, including***[all of the following]:***

- (a) The general format and terminology of pesticide labels and labeling;***[-]***
- (b) Understanding instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labels and labeling;***[-]***
- (c) Understanding that it is a violation of federal law to use any registered pesticide in a manner inconsistent with its labeling;***[-]***
- (d) Understanding labeling requirements that a certified applicator ***shall[must]*** be physically present at the site of the application;***[-]***
- (e) Understanding labeling requirements for supervising noncertified applicators working under the direct supervision of a certified applicator;***[-]***
- (f) Understanding that applicators ***shall[must]*** comply with all use restrictions and directions for use contained in pesticide labels and labeling, including being certified in the certification category appropriate to the type and site of the application;***[-]***
- (g) Understanding the meaning of product classification as either general or restricted use and that a product may be unclassified;***[-]***
- (h) Understanding and complying with product-specific notification requirements; ***and[-]***
- (i) Recognizing and understanding the difference between mandatory and advisory labeling language;***[-]***

(2) Safety. Measures to avoid or minimize adverse health effects, including***[all of the following]:***

- (a) Understanding the different natures of the risks of acute toxicity and chronic toxicity, as well as the long-term effects of pesticides;***[-]***
- (b) Understanding that a pesticide's risk is a function of exposure and the pesticide's toxicity;***[-]***
- (c) Recognition of likely ways in which dermal, inhalation, and oral exposure ***could[may]*** occur;***[-]***
- (d) Common types and causes of pesticide mishaps;***[-]***
- (e) Precautions to prevent injury to applicators and other individuals in or near treated areas;***[-]***
- (f) Need for, and proper use of, protective clothing and personal protective equipment;***[-]***
- (g) Symptoms of pesticide poisoning;***[-]***
- (h) First aid and other procedures to be followed in case of a pesticide mishap; ***and[-]***
- (i) Proper identification, storage, transport, handling, mixing procedures, and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticides and pesticide containers;***[-]***

(3) Environment. The potential environmental consequences of the use and misuse of pesticides, including the influence of***[all of the following]:***

- (a) Weather and other indoor and outdoor climatic conditions;***[-]***
- (b) Types of terrain, soil, or other substrate;***[-]***
- (c) Presence of fish, wildlife, and other non-target organisms; ***and[-]***
- (d) Drainage patterns;***[-]***

(4) Pests. The proper identification and effective control of pests, including***[all of the following]:***

- (a) The importance of correctly identifying target pests and selecting the proper pesticide **product[product(s)]** for effective pest control; **and[.]**
- (b) Verifying that the labeling does not prohibit the use of the product to control the target **pest;[pest(s)-]**
- (5) Pesticides. Characteristics of pesticides, including **[all of the following]**:
 - (a) Types of pesticides; **[.]**
 - (b) Types of formulations; **[.]**
 - (c) Compatibility, synergism, persistence, and animal and plant toxicity of the formulations; **[.]**
 - (d) Hazards and residues associated with use; **[.]**
 - (e) Factors that influence effectiveness or lead to problems such as pesticide resistance; **and[.]**
 - (f) Dilution procedures; **[.]**
- (6) Equipment. Application equipment, including **[all of the following]**:
 - (a) Types of equipment and advantages and limitations of each type; **and[.]**
 - (b) Use, maintenance, and calibration procedures; **[.]**
- (7) Application methods. Selecting appropriate application methods, including **[all of the following]**:
 - (a) Methods used to apply various forms and formulations of pesticides; **[.]**
 - (b) Knowledge of which application method to use in a given situation and that use of a fumigant and aerial application requires additional certification; **[.]**
 - (c) How selection of application method and use of a pesticide **could[may]** result in proper use, unnecessary or ineffective use, and misuse; **and[.]**
 - (d) Prevention of drift and pesticide loss into the environment; **[.]**
- (8) Laws and regulations. Knowledge of all applicable state, tribal, and federal laws and regulations; **[.]**
- (9) Responsibilities of supervisors of noncertified applicators. Knowledge of the responsibilities of certified applicators supervising noncertified applicators, including **[all of the following]**:
 - (a) Understanding and complying with requirements in 302 KAR 26:050 for commercial applicators who supervise noncertified applicators using pesticides; **[.]**
 - (b) The recordkeeping requirements of pesticide safety training for noncertified applicators who use pesticides under the direct supervision of a certified applicator; **[.]**
 - (c) Providing use-specific instructions to noncertified applicators using pesticides under the direct supervision of a certified applicator; **and[.]**
 - (d) Explaining pertinent state, tribal, and federal laws and regulations to noncertified applicators who use pesticides under the direct supervision of a certified applicator; **[.]**
- (10) Professionalism. Understanding the importance of **[all of the following]**:
 - (a) Maintaining chemical security for restricted use pesticides; **[.]**
 - (b) How to communicate information about pesticide exposures and risks with customers and the public; **and[.]**
 - (c) Appropriate product stewardship for certified applicators.

Section 5. Specific Standards of Competency. In addition to meeting the requirements of Sections 3 and 4 of this administrative regulation, persons requesting certification for a specific category shall demonstrate competence relating to that category as established in subsections (1) through (12) of this section.

(1) Agricultural. This category shall be subdivided as follows:

(a) Plant. Persons requesting agricultural plant certification shall demonstrate practical knowledge of crops and specific pests of those crops for which they could be using pesticides. Practical knowledge shall be required concerning soil and water problems, pre-harvest intervals, reentry intervals, phytotoxicity, potential for environmental contamination, drift and non-target injury, and community problems resulting from the use of pesticides in agricultural areas; **~~and~~.**

(b) Animal. Persons requesting agricultural animal certification shall demonstrate practical knowledge of agricultural animals and their associated pests and the relative hazards associated with such factors as formulation, application techniques, the age of animal, stress, and extent of treatment. Practical knowledge shall also be required concerning specific pesticide toxicities and residue potentials because host animals will frequently be used for food.

(2) Forestry. Persons requesting forest certification shall demonstrate practical knowledge of types of forests, forest nurseries, and seed production within the jurisdiction of the department and the pests involved. The required knowledge **~~shall include~~**[includes]** the cyclic occurrence of certain pests and specific population dynamics as a basis for programming pesticide applications, the relevant organisms causing harm and their vulnerability to the pesticides to be applied, how to determine when pesticide use is proper, selection of application method and proper use of application equipment to minimize non-target exposures, and appropriate responses to meteorological factors and adjacent land use. The required knowledge also **~~shall include~~**[includes]** the potential for phytotoxicity due to a wide variety of plants to be protected, for drift, for persistence beyond the intended period of pest control, and for non-target exposures.****

(3) Ornamental, turf and lawn care. Persons requesting ornamental and turf certification shall demonstrate practical knowledge of pesticide problems associated with the production and maintenance of ornamental trees, shrubs, plantings, and turf, including cognizance of potential phytotoxicity due to a wide variety of plant material and non-target organisms, drift, and persistence beyond the intended period of pest control. Practical knowledge shall also be required concerning **~~[the following:]~~** fungi, weeds, insect infestation, disease control, and fertility; the safe handling and proper application of pesticides and fertilizers; toxicity of pesticides to human and nontarget organisms; proper cleaning, disposal and containment techniques for pesticides; effects of pesticides on ground water; and the use of conveying or handling equipment. Because of the frequent proximity of application to human habitations, applicators in this category shall demonstrate practical knowledge of application methods that shall minimize or prevent hazards to humans, pets, and other domestic animals.

(4) Seed treatment. Persons requesting seed treatment certification **~~shall~~**[must]** demonstrate practical knowledge including recognizing types of seeds to be treated, the effects of carriers and surface active agents on pesticide binding and germination, the hazards associated with handling, sorting and mixing, and misuse of treated seed, the importance of proper application techniques to avoid harm to non-target organisms, and the proper disposal of unused treated seeds.**

(5) Aquatic. Persons requesting aquatic certification shall demonstrate practical knowledge of the characteristics of various aquatic use situations, the potential for adverse effects on non-

target plants, fish, birds, beneficial insects, and other organisms in the treated aquatic environment and downstream, and the principles of limited area application.

(6) Right-of-way. Persons requesting right-of-way certification shall demonstrate practical knowledge of the types of environments (terrestrial and aquatic) traversed by rights-of-way, recognition of target pests, and techniques to minimize non-target exposure, runoff, drift, and excessive foliage destruction. The required knowledge also ***shall include[includes]*** the potential for phytotoxicity due to a wide variety of plants and pests to be controlled, and for persistence beyond the intended period of pest control.

(7) Industrial, institutional, and structural pest control. This category shall be subdivided as follows:

(a) Structural pest management. Persons requesting certification in this subcategory shall demonstrate practical knowledge of a wide variety of pests including general pests and wood destroying organisms. This practical knowledge shall include their life cycles, habits, types of formulations, insecticides appropriate for their control, minimum standards of application, and methods of application that avoid contamination of habitat and exposure of people and pets and a practical knowledge of an integrated pest management program to determine if and when a treatment is needed. Components of an integrated pest management program may include education, proper sanitation, structural repair, mechanical control techniques, and pesticide application. Because human exposure is frequently a potential problem, an applicant shall demonstrate practical knowledge of the specific factors that ***could[may]*** lead to a hazardous condition. Because structural pest control may involve outdoor applications, an applicant shall also demonstrate practical knowledge of environmental conditions.

(b) Structural fumigation. Persons requesting certification in this subcategory shall demonstrate a practical knowledge of those pests for which treatment by fumigation is an appropriate control technique. This practical knowledge shall include their life cycles, fumigants appropriate for their control, and alternative control techniques. Because of the potential dangers inherent in the use of fumigant gases, especially in structures intended for human occupancy, the applicant shall demonstrate knowledge of ***[all the following]***:

1. Label and labeling comprehension. Familiarity with the pesticide labels and labeling for products used to perform non-soil fumigation, including labeling requirements specific to non-soil fumigants; ***[/]***

2. Safety. Measures to minimize adverse health effects, including ***[all of the following]***:

a. Understanding how certified applicators, noncertified applicators using fumigants under direct supervision of certified applicators, and bystanders can become exposed to fumigants;

b. Common problems and mistakes that can result in direct exposure to fumigants;

c. Signs and symptoms of human exposure to fumigants;

d. Air concentrations of a fumigant that require applicators to wear respirators or to exit the work area entirely;

e. Steps to take if a fumigant applicator experiences sensory irritation;

f. Understanding air monitoring, when it is required, and where and when to take samples;

g. Buffer zones, including procedures for buffer zone monitoring and who is permitted to be in a buffer zone;

h. First aid measures to take in the event of exposure to a fumigant; and

- i. Labeling requirements for transportation, storage, spill clean-up, and emergency response for non-soil fumigants, including safe disposal of containers and contaminated materials, and management of empty containers;[.]
3. Non-soil fumigant chemical characteristics. Characteristics of non-soil fumigants, including**[all of the following]**:
- a. Chemical characteristics of non-soil fumigants;
 - b. Specific human exposure concerns for non-soil fumigants;
 - c. How fumigants change from a liquid or solid to a gas;
 - d. How fumigants disperse in the application zone; and
 - e. Compatibility concerns for tanks, hoses, tubing, and other equipment;
4. Application. Selecting appropriate application methods and timing, including**[all of the following]**:
- a. Application methods and equipment commonly used for non-soil fumigation;
 - b. Site characteristics that influence fumigant exposure;
 - c. Conditions that could impact timing of non-soil fumigant application, such as air stability, air temperature, humidity, and wind currents, and labeling statements limiting applications under specific conditions;
 - d. Conducting pre-application inspection of application equipment and the site to be fumigated;
 - e. Understanding the purpose and methods of sealing the area to be fumigated, including the factors that determine which sealing method to use;
 - f. Calculating the amount of product required for a specific treatment area;
 - g. Understanding the basic techniques for calibrating non-soil fumigant application equipment; and
 - h. Understanding when and how to conduct air monitoring and when it is required;[.]
5. Pest factors. Pest factors that influence fumigant activity, including**[all of the following]**:
- a. Influence of pest factors on fumigant volatility;
 - b. Factors that influence gaseous movement through the area being fumigated and into the air;
 - c. Identifying pests causing the damage and verifying they can be controlled with fumigation;
 - d. Understanding the relationship between pest density and application rate; and
 - e. The importance of proper application rate and timing;[.]
6. Personal protective equipment. Understanding what personal protective equipment is necessary and how to use it properly, including**[all of the following]**:
- a. Following labeling directions for required personal protective equipment;
 - b. Selecting, inspecting, using, caring for, replacing, and disposing of personal protective equipment;
 - c. Understanding the types of respirators required **if[when]** using specific non-soil fumigants and how to use them properly, including medical evaluation, fit testing, and required replacement of cartridges and canisters; and
 - d. Labeling requirements and other laws applicable to medical evaluation for respirator use, fit tests, training, and recordkeeping;[.]

7. Fumigant management plans and post-application summaries. Information about fumigant management plans and when they are required, including ~~[all of the following]~~:

- a. When a fumigant management plan shall[must] be in effect, how long it shall[must] be kept on file, where it shall[must] be kept during the application, and who shall[must] have access to it;
- b. The elements of a fumigant management plan and resources available to assist the applicator in preparing a fumigant management plan;
- c. The person responsible for verifying that a fumigant management plan is accurate; and
- d. The elements, purpose, and content of a post-application summary, who shall[must] prepare it, and when it shall[must] be completed; and

8. Posting requirements. Understanding posting requirements, including ~~[all of the following]~~:

- a. Understanding who is allowed in an area being fumigated or after fumigation and who is prohibited from being in the[such] areas;
- b. Distinguishing fumigant labeling-required posting and treated area posting, including the pre-application and post-application posting timeframes for each; and
- c. Proper choice and placement of warning signs; and[-]

(c) Wood preservative. Persons requesting certification in this category shall demonstrate practical knowledge in the use of wood preservatives, air monitoring procedures, personal protective clothing and equipment, hygiene, related health and safety measures, emergency procedures, and practices necessary to prevent environmental contamination.

(8) Public health. Persons requesting public health certification shall demonstrate practical knowledge of vector-disease transmission as it relates to and influences pesticide application programs. A wide variety of pests are involved, and pests shall be known and recognized. Appropriate life cycles and habitats shall be understood as a basis for control strategy. An applicant shall have practical knowledge of a great variety of environments ranging from streams to those conditions found in buildings. An applicant shall have knowledge of how to minimize damage to and contamination of areas treated, acute and chronic exposure of people and pets, and non-target exposures. An applicant shall also have a practical knowledge of the importance and employment of nonchemical control methods as sanitation, waste disposal, and drainage.

(9) Regulatory pest control. Persons requesting certification in this category shall demonstrate practical knowledge of regulated pests, applicable laws relating to quarantine and other regulation of pests, and the potential impact on the environment of pesticides used in suppression and eradication programs. They shall demonstrate knowledge of factors influencing introduction, spread, and population dynamics of relevant pests. Their knowledge shall extend beyond that required by their immediate duties because[since] their services are frequently required in other areas of the country where emergency measures are invoked to control regulated pests and where individual judgments are necessary[must be made].

(10) Demonstration and research. Persons requesting certification in this category shall demonstrate practical knowledge of the potential problems, pests, and population levels reasonably expected to occur in a demonstration situation and the effects of pesticides on target and non-target organisms. In addition, they shall[must] demonstrate competency in each pest control category applicable to their demonstrations. The person shall demonstrate an understanding of techniques to mitigate effects of pesticides on non-target organisms. ~~[In~~

~~general;~~ Persons conducting demonstration pest control work shall possess a practical knowledge in each pest control category applicable to their demonstrations.

(11) Aerial pest control. Persons requesting certification in this category shall demonstrate practical knowledge of the pest problems and pest control practices associated with performing aerial application of pesticides, including ~~[all the following]~~:

(a) Labeling. Labeling requirements and restrictions specific to aerial application of pesticides including:

1. Spray volumes;
2. Buffers and no-spray zones; and
3. Weather conditions specific to wind and inversions; ~~[-]~~

(b) Application equipment. Understand how to choose and maintain aerial application equipment, including ~~[all of the following]~~:

1. The importance of inspecting application equipment to ensure it is in proper operating condition prior to beginning an application;
2. Selecting proper nozzles to ensure appropriate pesticide dispersal and to minimize drift;
3. Knowledge of the components of an aerial pesticide application system, including pesticide hoppers, tanks, pumps, and types of nozzles;
4. Interpreting a nozzle flow rate chart;
5. Determining the number of nozzles for intended pesticide output using nozzle flow rate chart, aircraft speed, and swath width;
6. How to ensure nozzles are placed to compensate for uneven dispersal due to uneven airflow from wingtip vortices, helicopter rotor turbulence, and aircraft propeller turbulence;
7. Where to place nozzles to produce the appropriate droplet size;
8. How to maintain the application system in good repair, including pressure gauge accuracy, filter cleaning according to schedule, and checking nozzles for excessive wear;
9. How to calculate required and actual flow rates;
10. How to verify flow rate using fixed timing, open timing, known distance, or a flow meter; and
11. When to adjust and calibrate application equipment; ~~[-]~~

(c) Application considerations. The applicator ~~shall~~ **[must]** demonstrate knowledge of factors to consider before and during application, including ~~[all of the following]~~:

1. Weather conditions that could impact application by affecting aircraft engine power, take-off distance, and climb rate, or by promoting spray droplet evaporation;
2. How to determine wind velocity, direction, and air density at the application site; and
3. The potential impact of thermals and temperature inversions on aerial pesticide application; ~~[-]~~

(d) Minimizing drift. The applicator ~~shall~~ **[must]** demonstrate knowledge of methods to minimize off-target pesticide movement, including ~~[all of the following]~~:

1. How to determine drift potential of a product using a smoke generator;
2. How to evaluate vertical and horizontal smoke plumes to assess wind direction, speed, and concentration;
3. Selecting techniques that minimize pesticide movement out of the area to be treated; and
4. Documenting special equipment configurations or flight patterns used to reduce off-target pesticide drift; ~~and~~ ~~[-]~~

(e) Performing aerial application. The applicator ***shall[must]*** demonstrate competency in performing an aerial pesticide application, including ***[all of the following]***:

1. Selecting a flight altitude that minimizes streaking and off-target pesticide drift;
2. Choosing a flight pattern that ensures applicator and bystander safety and proper application;
3. The importance of engaging and disengaging spray precisely when entering and exiting a predetermined swath pattern;
4. Tools available to mark swaths, such as global positioning systems and flags; and
5. Recordkeeping requirements for aerial pesticide applications including application conditions if applicable.

(12) Soil Fumigation. Persons requesting certification in this category shall demonstrate practical knowledge of the pest problems and pest control practices associated with performing soil fumigation applications, including ***[all the following]***:

(a) Label and labeling comprehension. Familiarity with the pesticide labels and labeling for products used to perform soil fumigation, including ***[all of the following]***:

1. Labeling requirements specific to soil fumigants;
2. Requirements for certified applicators of fumigants, fumigant handlers and permitted fumigant handler activities, and the safety information that certified applicators ***shall[must]*** provide to noncertified applicators using fumigants under their direct supervision;
3. Entry-restricted periods for tarped and untarped field application scenarios;
4. Recordkeeping requirements; and
5. Labeling provisions unique to fumigant products containing certain active ingredients;

(b) Safety. Measures to minimize adverse health effects, including ***[all of the following]***:

1. Understanding how certified applicators, noncertified applicators using fumigants under direct supervision of certified applicators, field workers, and bystanders can become exposed to fumigants;
2. Common problems and mistakes that can result in direct exposure to fumigants;
3. Signs and symptoms of human exposure to fumigants;
4. Air concentrations of a fumigant that require that applicators wear respirators or exit the work area entirely;
5. Steps to take if a fumigant applicator experiences sensory irritation;
6. Understanding air monitoring, when it is required, and where and when to take samples;
7. Buffer zones, including procedures for buffer zone monitoring and who is permitted to be in a buffer zone;
8. First aid measures to take in the event of exposure to a soil fumigant; and
9. Labeling requirements for transportation, storage, spill clean-up, and emergency response for soil fumigants, including safe disposal of containers and contaminated soil, and management of empty containers; ***[+]***

(c) Soil fumigant chemical characteristics. Characteristics of soil fumigants, including ***[all of the following]***:

1. Chemical characteristics of soil fumigants;
2. Specific human exposure concerns for soil fumigants;
3. How soil fumigants change from a liquid or solid to a gas;
4. How soil fumigants disperse in the application zone; and

5. Compatibility concerns for tanks, hoses, tubing, and other equipment;[~~:-~~]

(d) Application. Selecting appropriate application methods and timing, including[~~all of the following~~]:

1. Application methods, including, for example, [but not limited to] water-run and non-water-run applications[~~:-~~] and equipment commonly used for each soil fumigant;
2. Site characteristics that influence fumigant exposure;
3. Understanding temperature inversions and their impact on soil fumigant application;
4. Weather conditions that could impact timing of soil fumigant application, such as air stability, air temperature, humidity, and wind currents, and labeling statements limiting applications during specific weather conditions;
5. Conducting pre-application inspection of application equipment;
6. Understanding the purpose and methods of soil sealing, including the factors that determine which soil sealing method to use;
7. Understanding the use of tarps, including the range of tarps available, how to seal tarps, and labeling requirements for tarp removal, perforation, and repair;
8. Calculating the amount of product required for a specific treatment area; and
9. Understanding the basic techniques for calibrating soil fumigant application equipment;[~~:-~~]

(e) Soil and pest factors. Soil and pest factors that influence fumigant activity, including[~~all of the following~~]:

1. Influence of soil factors on fumigant volatility and movement within the soil profile;
2. Factors that influence gaseous movement through the soil profile and into the air;
3. Soil characteristics, including how soil characteristics affect the success of a soil fumigant application, assessing soil moisture, and correcting for soil characteristics that could hinder a successful soil fumigant application;
4. Identifying pests causing the damage and verifying they can be controlled with soil fumigation;
5. Understanding the relationship between pest density and application rate; and
6. The importance of proper application depth and timing.

(f) Personal protective equipment. Understanding what personal protective equipment is necessary and how to use it properly, including all of the following:

1. Following labeling directions for required personal protective equipment;
2. Selecting, inspecting, using, caring for, replacing, and disposing of personal protective equipment;
3. Understanding the types of respirators required when using specific soil fumigants and how to use them properly, including medical evaluation, fit testing, and required replacement of cartridges and canisters; and
4. Labeling requirements and other laws applicable to medical evaluation for respirator use, fit tests, training, and recordkeeping;[~~:-~~]

(g) Fumigant management plans and post-application summaries. Information about fumigant management plans, including[~~all of the following~~]:

1. When a fumigant management plan shall[must] be in effect, how long it shall[must] be kept on file, where it shall[must] be kept during the application, and who shall[must] have access to it;

2. The elements of a fumigant management plan and resources available to assist the applicator in preparing a fumigant management plan;
 3. The person responsible for verifying that a fumigant management plan is accurate; and
 4. The elements, purpose and content of a post-application summary, who ***shall[must]*** prepare it, and when it ***shall[must]*** be completed; ***and[-]***
- (h) Buffer zones and posting requirements. Understanding buffer zones and posting requirements, including ***[all of the following]***:
1. Buffer zones and the buffer zone period;
 2. Identifying who is allowed in a buffer zone during the buffer zone period and who is prohibited from being in a buffer zone during the buffer zone period;
 3. Using the buffer zone table from the labeling to determine the size of the buffer zone;
 4. Factors that determine the buffer zone credits for application scenarios and calculating buffer zones using credits;
 5. Distinguishing buffer zone posting and treated area posting, including the pre-application and post-application posting timeframes for each; and
 6. Proper choice and placement of warning signs.
- (13) Non-soil fumigation. ***[Non-soil fumigation.]*** Persons requesting certification in this category shall demonstrate practical knowledge of the pest problems and pest control practices associated with performing fumigation applications of pesticides to sites other than soil and specifically excluding structures intended for human occupancy, including ***[all the following]***:
- (a) Label and labeling comprehension. Familiarity with the pesticide labels and labeling for products used to perform non-soil fumigation, including labeling requirements specific to non-soil fumigants; ***[-]***
- (b) Safety. Measures to minimize adverse health effects, including ***[all of the following]***:
1. Understanding how certified applicators, noncertified applicators using fumigants under direct supervision of certified applicators, and bystanders can become exposed to fumigants;
 2. Common problems and mistakes that can result in direct exposure to fumigants;
 3. Signs and symptoms of human exposure to fumigants;
 4. Air concentrations of a fumigant that require applicators to wear respirators or to exit the work area entirely;
 5. Steps to take if a fumigant applicator experiences sensory irritation;
 6. Understanding air monitoring, when it is required, and where and when to take samples;
 7. Buffer zones, including procedures for buffer zone monitoring and who is permitted to be in a buffer zone;
 8. First aid measures to take in the event of exposure to a fumigant; and
 9. Labeling requirements for transportation, storage, spill clean-up, and emergency response for non-soil fumigants, including safe disposal of containers and contaminated materials, and management of empty containers; ***[-]***
- (c) Non-soil fumigant chemical characteristics. Characteristics of non-soil fumigants, including ***[all of the following]***:
1. Chemical characteristics of non-soil fumigants;
 2. Specific human exposure concerns for non-soil fumigants;
 3. How fumigants change from a liquid or solid to a gas;
 4. How fumigants disperse in the application zone; and

5. Compatibility concerns for tanks, hoses, tubing, and other equipment;
- (d) Application. Selecting appropriate application methods and timing, including ***[all of the following]***:
1. Application methods and equipment commonly used for non-soil fumigation;
 2. Site characteristics that influence fumigant exposure;
 3. Conditions that could impact timing of non-soil fumigant application, such as air stability, air temperature, humidity, and wind currents, and labeling statements limiting applications under specific conditions;
 4. Conducting pre-application inspection of application equipment and the site to be fumigated;
 5. Understanding the purpose and methods of sealing the area to be fumigated, including the factors that determine which sealing method to use;
 6. Calculating the amount of product required for a specific treatment area;
 7. Understanding the basic techniques for calibrating non-soil fumigant application equipment; and
 8. Understanding when and how to conduct air monitoring and when it is required; ***[:]***
- (e) Pest factors. Pest factors that influence fumigant activity, including ***[all of the following]***:
1. Influence of pest factors on fumigant volatility;
 2. Factors that influence gaseous movement through the area being fumigated and into the air;
 3. Identifying pests causing the damage and verifying they can be controlled with fumigation;
 4. Understanding the relationship between pest density and application rate; and
 5. The importance of proper application rate and timing; ***[:]***
- (f) Personal protective equipment. Understanding what personal protective equipment is necessary and how to use it properly, including ***[all of the following]***:
1. Following labeling directions for required personal protective equipment;
 2. Selecting, inspecting, using, caring for, replacing, and disposing of personal protective equipment;
 3. Understanding the types of respirators required when using specific non-soil fumigants and how to use them properly, including medical evaluation, fit testing, and required replacement of cartridges and canisters; and
 4. Labeling requirements and other laws applicable to medical evaluation for respirator use, fit tests, training, and recordkeeping; ***[:]***
- (g) Fumigant management plans and post-application summaries. Information about fumigant management plans and when they are required, including ***[all of the following]***:
1. When a fumigant management plan ***shall[must]*** be in effect, how long it ***shall[must]*** be kept on file, where it ***must[must]*** be kept during the application, and who ***shall[must]*** have access to it;
 2. The elements of a fumigant management plan and resources available to assist the applicator in preparing a fumigant management plan;
 3. The person responsible for verifying that a fumigant management plan is accurate; and
 4. The elements, purpose and content of a post-application summary, who ***shall[must]*** prepare it, and when it ***shall[must]*** be completed; ***and***

(h) Posting requirements. Understanding posting requirements, including~~[all of the following]~~:

1. Understanding who is allowed in an area being fumigated or after fumigation and who is prohibited from being in such areas;
2. Distinguishing fumigant labeling-required posting and treated area posting, including the pre-application and post-application posting timeframes for each; and
3. Proper choice and placement of warning signs.

Section 6. Competency Certification Maintenance.

(1) To maintain eligibility for licensure renewal, each person certified and licensed under this administrative regulation, other than a private applicator or a non-certified applicator **~~established~~[described]** in 302 KAR 26:070, shall in the three (3) year period prior to the annual renewal application submission, attend at least twelve (12) continuing education units (CEU) of training, approved by the department **in accordance with subsection (2) of this section**, in the use and application of pesticides.

(2) All continuing education units approved by the department shall consist of at least one (1) topic from the core standards of competency listed in Section 4 of this administrative regulation and at least one (1) topic from the specific standards of competency listed in Section 5 of this administrative regulation.

(3) At least one (1) CEU credit **~~shall~~[must]** be obtained from the Specific Standards of Competency listed in Section 5 of this administrative regulation related to each category of license held by the person.

(4) Credit shall be awarded in full continuing education units only.

(5) Failure to obtain at least twelve (12) CEU credits within three (3) year period prior to renewal shall result in the licensee not being granted a new license until:

- (a) The former license holder successfully passes the competency examination for the license associated with the CEU deficiency; and
- (b) All required fees and any associated fines are paid.

Section 7. Private Applicators.

(1) Private applicator certification and licensing.

(a) Before using or supervising the use of a restricted use pesticide as a private applicator, a person **~~shall~~[must]** obtain a license after being certified as having the necessary competency to use restricted use pesticides for pest control in the production of agricultural commodities.

(b) There shall be no fee for this license.

(c) Persons seeking certification as private applicators **~~shall~~[must]** demonstrate practical knowledge of the principles and practices of pest control associated with the production of agricultural commodities and effective use of restricted use pesticides, including~~[all of the following]~~:

1. Label and labeling comprehension. Familiarity with pesticide labels and labeling and their functions, including~~[all of the following]~~:
 - a. The general format and terminology of pesticide labels and labeling;~~[-]~~
 - b. Understanding instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labels and labeling;~~[-]~~

- c. Understanding that it is a violation of Federal law to use any registered pesticide in a manner inconsistent with its labeling;[.]
 - d. Understanding when a certified applicator ***shall[must]*** be physically present at the site of the application based on labeling requirements;[.]
 - e. Understanding labeling requirements for supervising noncertified applicators working under the direct supervision of a certified applicator;[.]
 - f. Understanding that applicators ***shall[must]*** comply with all use restrictions and directions for use contained in pesticide labels and labeling;[.]
 - g. Understanding that additional certification and licensing is required to use restricted use pesticides for fumigation or aerial application;[.]
 - h. Understanding the meaning of product classification as either general or restricted use[.] and that a product may be unclassified;[.]
 - i. Understanding and complying with product-specific notification requirements; ***and[.]***
 - j. Recognizing and understanding the difference between mandatory and advisory labeling language;[.]
2. Safety. Measures to avoid or minimize adverse health effects, including~~[all of the following]~~:
- a. Understanding the different natures of the risks of acute toxicity and chronic toxicity, as well as the long term effects of pesticides;[.]
 - b. Understanding that a pesticide's risk is a function of exposure and the pesticide's toxicity;[.]
 - c. Recognition of likely ways in which dermal, inhalation, and oral exposure ***could[may]*** occur;[.]
 - d. Common types and causes of pesticide mishaps;[.]
 - e. Precautions to prevent injury to applicators and other individuals in or near treated areas;[.]
 - f. Need for, and proper use of, protective clothing and personal protective equipment.
 - g. Symptoms of pesticide poisoning;[.]
 - h. First aid and other procedures to be followed in case of a pesticide mishap; ***and[.]***
 - i. Proper identification, storage, transport, handling, mixing procedures, and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticides and pesticide containers;[.]
3. Environment. The potential environmental consequences of the use and misuse of pesticides, including the influence of~~[the following]~~:
- a. Weather and other climatic conditions;[.]
 - b. Types of terrain, soil, or other substrate;[.]
 - c. Presence of fish, wildlife, and other non-target organisms; ***and[.]***
 - d. Drainage patterns;[.]
4. Pests. The proper identification and effective control of pests, including~~[all of the following]~~:
- a. The importance of correctly identifying target pests and selecting the proper pesticide ***product; and[product(s).]***
 - b. Verifying that the labeling does not prohibit the use of the product to control the target ***pest;[pest(s).]***

5. Pesticides. Characteristics of pesticides, including **~~[all of the following]~~**:
 - a. Types of pesticides; **~~[.]~~**
 - b. Types of formulations; **~~[.]~~**
 - c. Compatibility, synergism, persistence, and animal and plant toxicity of the formulations; **~~[.]~~**
 - d. Hazards and residues associated with use; **~~[.]~~**
 - e. Factors that influence effectiveness or lead to problems such as pesticide resistance; **~~and [.]~~**
 - f. Dilution procedures; **~~[.]~~**
6. Equipment. Application equipment, including **~~[all of the following]~~**:
 - a. Types of equipment and advantages and limitations of each type.
 - b. Uses, maintenance, and calibration procedures.
7. Application methods. Selecting appropriate application methods, including **~~[all of the following]~~**:
 - a. Methods used to apply various forms and formulations of pesticides; **~~[.]~~**
 - b. Knowledge of which application method to use in a given situation and that use of a fumigant or aerial application requires additional certification; **~~[.]~~**
 - c. How selection of application method and use of a pesticide **~~could [may]~~** result in proper use, unnecessary or ineffective use, and misuse; **~~and [.]~~**
 - d. Prevention of drift and pesticide loss into the environment; **~~[.]~~**
8. Laws and regulations. Knowledge of all applicable state, tribal, and federal laws and regulations, including understanding the Worker Protection Standard in 40 C.F.R. Part 170 and the circumstances where compliance is required; **~~[.]~~**
9. Responsibilities for supervisors of noncertified applicators. Certified applicator responsibilities related to supervision of noncertified applicators, including **~~[all of the following]~~**:
 - a. Understanding and complying with requirements in **~~302 KAR 26:070[304 KAR 27:005]~~** for private applicators who supervise noncertified applicators using restricted use pesticides; **~~[.]~~**
 - b. Providing use-specific instructions to noncertified applicators using restricted use pesticides under the direct supervision of a certified applicator; **~~and [.]~~**
 - c. Explaining appropriate State, Tribal, and Federal laws and regulations to noncertified applicators working under the direct supervision of a certified applicator; **~~[.]~~**
10. Stewardship. Understanding the importance of **~~[all of the following]~~**:
 - a. Maintaining chemical security for restricted use pesticides; **~~and [.]~~**
 - b. How to communicate information about pesticide exposures and risks with agricultural workers and handlers and other persons; **~~and [.]~~**
11. Agricultural pest control. Practical knowledge of pest control applications to agricultural commodities including **~~[all of the following]~~**:
 - a. Specific pests of relevant agricultural commodities; **~~[.]~~**
 - b. How to avoid contamination of ground and surface waters; **~~[.]~~**
 - c. Understanding pre-harvest and restricted entry intervals and entry restricted periods and areas; **~~[.]~~**
 - d. Understanding specific pesticide toxicity and residue potential when pesticides are applied to animal or animal product agricultural commodities; **~~and [.]~~**

e. Relative hazards associated with using pesticides on animals or places in which animals are confined based on formulation, application technique, age of animal, stress, and extent of treatment.

(2) Private applicator minimum age. A private applicator **shall[must]** be at least eighteen (18) years old.

(3) Private applicator competency. The certification of competency for each private applicator candidate **shall[must]** be established based upon the standards **established[set forth]** in paragraph (a) of this subsection in order to assure that private applicators have the competency to use and supervise the use of restricted use pesticides in accordance with applicable state, tribal, and federal laws and regulations. Either a written examination process as **established[described]** in paragraph (a) of this subsection or a non-examination training process as **established[described]** in paragraph (b) of this subsection shall be used to assure the competency of private applicators.

(a) Determination of competency certification by examination. If an examination process is used to determine the competency of private applicators, the examination process **shall[must]** meet all of the requirements of Section 2(4) of this administrative regulation.

(b) Training for competency certification without examination. Any candidate for certification as a private applicator may complete a training program approved by the department to establish competency. A training program to establish private applicator competency **shall[must]** conform to **[all-of]the [following]criteria established in subparagraphs 1. and 2. of this paragraph.[:]**

1. Identification. Each person seeking certification **shall[must]** present a valid, government-issued photo identification, or a declaration of identity and age at the time of the training program to be eligible for certification.

2. Training programs for private applicator certification. The training program for private applicator certification **shall[must]** cover the competency standards **established[outlined]** in **subsection (1)(c) of this section[paragraph (a) of this subsection]** in sufficient detail to allow the private applicator to demonstrate practical knowledge of the principles and practices of pest control and proper and effective use of restricted use pesticides.

(4) Exceptions. The requirements in this section **shall[do]** not apply to**[the following persons]:**

(a) Persons conducting laboratory research involving restricted use pesticides; **and[.]**

(b) Doctors of medicine and doctors of veterinary medicine applying restricted use pesticides to patients during the course of the ordinary practice of those professions.

(5) Renewals. A private applicators license shall be deemed automatically renewed at the moment of issuance for the following two (2) calendar years from the calendar year of issuance.

Section 8. Credentials. If a person meets all the requirements to obtain a category-specific license under KRS Chapter 217B and this administrative regulation, the department shall issue a document signifying that he or she is licensed and certified in the category for which he or she qualifies.

(1) Inactive status.

(a) If an applicator or operator, for any reason, changes status and is no longer employed by a dealer or a structural pest management company but elects to maintain his or her license, the licensee shall do so by advising the department of the change and the reason for the change.

- (b) The department shall then issue to that person a notification that the license shall be held in inactive status.
- (c) The license holder shall be required to maintain certification and pay the annual renewal fee.
- (d) The licensee shall not be required to register as a dealer or be permitted to perform any type of regulated activity until the license is reactivated and properly assigned to a dealer.
- (2) Kentucky Department of Agriculture employee license and certification. An employee of the department shall not obtain or maintain any pesticide license other than a noncommercial or private applicator license during the term of employment with the department unless required by the department in the performance of official duties.

Section 9. License Renewal and Employment Reporting.

- (1) Each license issued by the department shall expire on December 31 of each calendar year.
- (2) Failure to renew a license, after January 31 of each year, shall result in the former license holder being required to retest as an initial applicant, after any applicable fines are paid.
- (3) At the time of license renewal, each dealer or structural pest management company shall submit to the department a list with the following information on each employee:
 - (a) Name;
 - (b) Address; and
 - (c) Primary telephone number.
- (4) Within thirty (30) days of the addition or termination of an employee, the dealer or structural pest management company shall submit to the department the information required in subsection (3) of this section for each new or terminated employee.

Section 10. Conversion of License Categories and Qualifying Certifications. Upon final adoption of this administrative regulation the following conversion of categories and qualifying certifications will become effective:~~[-]~~

- (1) A licensee holding a current Category 1(a) Agricultural Pest Control, Plant and Animal ~~shall~~**[will]** convert to holding both a Category 1(a) Agricultural Pest Control, Plant and a Category 1(b) Agricultural Pest Control, Animal, without any additional qualification by examination or training certification. Upon expiration of any license category the licensee ~~shall~~**[must]** obtain qualification by examination or training certification:~~[-]~~
- (2) A licensee holding a current Category 1(b) Agricultural Pest Control, Agricultural Fumigation ~~shall~~**[will]** convert to holding both a Category 12, Soil Fumigation, and a Category 13, Non-Soil Fumigation, without any additional qualification by examination or training certification. Upon expiration of any license category the licensee ~~shall~~**[must]** obtain qualification by examination or training certification:~~[-]~~
- (3) A licensee holding a current Category 18, Golf Course, Category 19, Interior Plantscapes, or Category 20, Sports Turf, ~~shall~~**[will]** convert to holding a Category 3 Ornamental, Turf and Lawn Care, without any additional qualification by examination or training certification. Upon expiration of any license category the licensee ~~shall~~**[must]** obtain qualification by examination or training certification; ~~and~~**[.]**
- (4) A licensee holding a current Category 17, Wood Preservatives, ~~shall~~**[will]** convert to holding a Category 7(c), Wood Preservatives, without any additional qualification by examination or

training certification. Upon expiration of any license category the licensee **shall[must]** obtain qualification by examination or training certification.

Section 11. Structural Pest Control and Fumigation Licenses. A person holding a general pest and wood-destroying organism or fumigation license shall be, by reason of KRS 217B.180(3), certified to purchase or use restricted-use pesticides. This shall not relieve them from obtaining certification under the federal law as contained in the federal Insecticides, Fungicide, and Rodenticide Act of 1972, as amended, 7 U.S.C. 136 et seq. The certification of persons certified under KRS 217B.180(3) may be modified, suspended, or revoked pursuant to 302 KAR 26:150. To maintain certification, persons certified pursuant to KRS 217B.180(3) shall meet the requirements of 302 KAR 26:020.

Section 12. Material Incorporated by Reference.

- (1) "Pesticides License-Certification Application" (2019), is incorporated by reference.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

Ryan F. Quarles
Commissioner

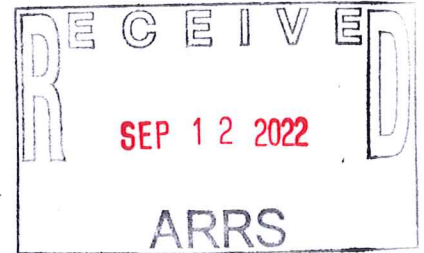


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Kentucky Department of Agriculture

September 9, 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: 302 KAR 26:030. Pesticide recordkeeping.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 302 KAR 26:030 the Kentucky Department of Agriculture proposes the attached amendments to 302 KAR 26:030.

Sincerely,

A handwritten signature in black ink, appearing to read "Clint Quarles".

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



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**Department of Agriculture
Office of Consumer and Environmental Regulation**

302 KAR 26:030. *Pesticide recordkeeping.*

RELATES TO: KRS Chapter 217B

STATUTORY AUTHORITY: KRS 217B.050, 217B.105(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. KRS 217B.105 requires the department to promulgate recordkeeping administrative regulations pertaining to KRS Chapter 217B. This administrative regulation establishes requirements for **pesticide-related** recordkeeping.

Section 1. Recordkeeping for Restricted Use Pesticide Distribution.

- (1) Applicability. The provisions of this section shall apply to any person, including pesticide sales agents and dealers, distributing restricted use pesticides for use in an application.
- (2) Any person who distributes restricted use pesticides shall maintain the following records with respect to the distribution of each restricted use pesticide:
 - (a) Purchaser's name and address;
 - (b) Date of the distribution;
 - (c) License number, license expiration date, and license category of the person obtaining the restricted use pesticide;
 - (d) Brand name, EPA registration number, quantity, and type of restricted use pesticide distributed;
 - (e) Emergency exemption or state special local need registration number, if applicable; and
 - (f) Name of target pest.
- (3) Retention.
 - (a) All persons required to maintain records **by 302 KAR Chapter 26[under this chapter]** shall retain the records for a period of at least three (3) years from the date of distribution.
 - (b) Maintenance of duplicate records shall not be required.
- (4) Availability. All persons required to maintain records required under this section shall make **these[such]** records available to the department upon request.

Section 2. Recordkeeping for Restricted Use and General Use Pesticide Applications.

- (1)~~[Applicability.]~~(a) The provisions of this section shall apply to any private applicator, dealer, structural pest management company, licensed operator, licensed applicator, or trainee applying restricted use pesticides.
 - (b) The provisions of this section shall also apply to any private applicator, dealer, licensed operator, licensed applicator or trainee applying general use pesticides.
 - (c) Structural pest management companies and their associated licensed operators, licensed applicators, and trainees shall keep records for applications of general use pesticides **as established in Section 3 of this administrative regulation[according to 302 KAR 26:030, Section 3]**.
- (2) Private applicators, dealers, structural pest management companies, licensed operators, licensed applicators, **and[or]** trainees who apply pesticides shall maintain the following records:
 - (a) Name and address of person receiving application services;

- (b) Location of application;
- (c) Size of area treated;
- (d) Crop, commodity, stored product, or type of area treated;
- (e) Time and date of application;
- (f) Brand name or product name of pesticides applied;
- (g) EPA registration number;
- (h) Total amount of each pesticide applied per location per application;
- (i) Name of person making the pesticide application;~~[-]~~
- (j) If application is made by a trainee, the name of the trainee;
- (k) If application is made by a trainee, name and license number of the supervising applicator;
- (l) Records required under 302 KAR 26:050 related to trainee supervision;
- (m) Purpose of application; and
- (n) Any other record as required by the label.

(3) Retention.

- (a) All persons required to maintain records under this section shall retain the records for a period of at least three (3) years from the date of use or application.
- (b) Maintenance of duplicate records shall not be required.
- (c) If an application of a pesticide is made in the name of a person or business entity, then maintenance of only one (1) set of records for each application shall be required by that person or business entity, even ***if[though]*** one (1) or more persons may have used or applied pesticides.
- (4) Availability. All persons required to maintain records required under this section shall make ***these[such]*** records available to the department upon request.

Section 3. Recordkeeping for Structural General Use Pesticide Applications.

(1) Applicability.

- (a) The provisions of this section shall apply to any structural pest management company and associated licensed operator, licensed applicator~~z~~, or trainee using general use pesticides in structural applications.
- (b) Structural pest management companies and their associated licensed operators, licensed applicators~~z~~, and trainees shall keep records for applications of restricted use pesticides ***as established in Section 2 of this administrative regulation[according to 302 KAR 26:030, Section 2]***.
- (2) Structural pest management companies and associated licensed operators, licensed applicators~~z~~, or trainees who apply general use pesticides in structural applications shall maintain the following records:
 - (a) Name and address of person receiving application services;
 - (b) Location of application;
 - (c) A description of the use of the area where the pesticide application is made;
 - (d) Time and date of the pesticide application;
 - (e) Beginning and ending time of an application, if made in a school;
 - (f) Brand or product name of pesticides applied;
 - (g) Estimated amount of each pesticide applied~~z~~;
 - (h) The target pests to be treated;
 - (i) Name of person making the pesticide application;~~[-]~~
 - (j) If application is made by a trainee, the name of the trainee;
 - (k) If application is made by a trainee, name and license number of the supervising applicator; and
 - (l) Records required under 302 KAR 26:050 related to trainee supervision.
- (3) Retention.

- (a) All persons required to maintain records under this section shall retain the records for a period of at least three (3) years from the date of use or application.
- (b) Maintenance of duplicate records shall not be required.
- (c) If an application of a pesticide is made in the name of a person or business entity, then maintenance of only one (1) set of records for each application shall be required by that person or business entity, even ***if[though]*** one (1) or more persons may have used or applied pesticides.
- (4) Availability. All persons required to maintain records required under this section shall make ***these[such]*** records available to the department upon request.

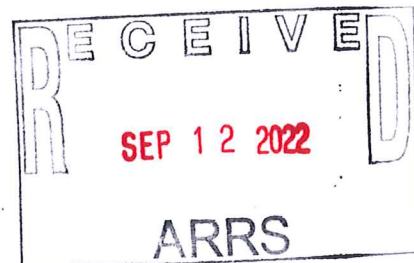
Ryan F. Quarles
Commissioner



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Kentucky Department of Agriculture

September 9, 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: **302 KAR 26:050**. Pesticide trainee registration and supervision requirements.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 302 KAR 26:050 the Kentucky Department of Agriculture proposes the attached amendments to 302 KAR 26:050.

Sincerely,

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



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Department of Agriculture Office of Consumer and Environmental Regulation

302 KAR 26:050. *Pesticide* trainee registration and supervision requirements.

RELATES TO: KRS Chapter 217B

STATUTORY AUTHORITY: KRS 217B.050, 217B.187, 217B.560

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. KRS 217B.187 and ~~[KRS]~~217B.560 ~~require~~**[requires]** the department to promulgate administrative regulations pertaining to registration and supervision of trainees under KRS Chapter 217B. This administrative regulation establishes **pesticide-related** requirements trainee registration and supervision.

Section 1. Applicability. This administrative regulation applies to any dealer, structural pest management company, licensed commercial operator, or licensed commercial applicator who allows or relies on a trainee to use a restricted use or general use pesticide under direct supervision.

Section 2. Non-commercial Supervision of Trainees Prohibited. Trainees shall not use pesticides under supervision of a non-commercial license holder.

Section 3. Registration of Structural Pest Management Company Trainees.

- (1) A structural pest management company shall not employ a trainee to apply pesticides without registering the trainee with the department. ~~A~~**[It shall be unlawful for any]** person ~~shall not~~**[to]** act as a trainee without being registered.
- (2) Each application to register a trainee under this section shall be accompanied by a twenty-five (25) dollar trainee registration fee.
- (3) Trainee registration issued pursuant to this section shall be valid for ninety (90) days and shall not be reissued or renewed.

Section 4. General Requirements.

- (1) Requirements for the supervising operator or applicator.
 - (a) The supervising operator or applicator shall have a practical knowledge of applicable requirements contained in this **administrative** regulation and any requirements on the product label and labeling, regarding the use of restricted use or general use pesticides by trainees.
 - (b) The supervising operator or applicator shall be licensed in each category as **established**~~[set forth]~~ in 302 KAR 26:020 applicable to the supervised pesticide use.
- (2) Requirements for the trainee. The supervising operator or applicator shall ensure that each trainee using any pesticide under his or her direct supervision meets all of the **[following]** requirements **established in paragraphs (a) through (c) of this subsection** before using the pesticide.~~[;]~~
 - (a) The trainee ~~shall be~~**[has been]** trained in accordance with Section 6 of this administrative regulation **and shall apply**~~[applies]~~ prior to making an application of any pesticide.~~[;]~~
 - (b) The trainee has been instructed in the safe operation of any equipment he or she will use before mixing, loading, transferring, or applying pesticides.~~[; and]~~
 - (c) The trainee **shall be**~~[is]~~ at least eighteen (18) years old.

Section 5. Use-specific Conditions that **Shall[Must]** be Met in Order for a Trainee to Use a Pesticide. The supervising operator or applicator shall ensure that **[all-of]the [following]requirements established in subsections (1) through (7) of this section** are met before allowing a trainee to use a pesticide under his or her direct supervision.**[:]**

(1) The supervising operator or applicator shall ensure that the trainee has access to the applicable product labeling at all times during its use.

(2) **If[Where]** the labeling of a pesticide product requires that personal protective equipment be worn for mixing, loading, application, or any other use activities, the supervising operator or applicator shall ensure that the trainee has clean, labeling-required personal protective equipment in proper operating condition and that the personal protective equipment **shall be[is]** worn and used correctly for its intended purpose.

(3) The supervising operator or applicator shall provide to each trainee, before use of a pesticide, instructions specific to the site and pesticide used. These instructions shall include labeling directions, precautions, and requirements applicable to the specific use and site, and how the characteristics of the use site (**for example[e.g.]**, surface and ground water, endangered species, local population) and the conditions of application (**for example[e.g.]**, equipment, method of application, formulation) **could[might]** increase or decrease the risk of adverse effects. The supervising operator or applicator shall provide this information in a manner that the trainee can understand.

(4) The supervising operator or applicator shall ensure that before each day of use, equipment used for mixing, loading, transferring, or applying pesticides is in proper operating condition as intended by the manufacturer, and can be used without risk of reasonably foreseeable adverse effects to the trainee, other persons, or the environment.

(5) The supervising operator or applicator shall ensure that a means to immediately communicate with the supervising operator or applicator is available to each trainee using pesticides under his or her direct supervision.

(6) The supervising operator or applicator shall be physically present at the site of the use being supervised when required by the product labeling.

(7) The supervising operator or applicator shall create or verify the existence of the records required by Section 6 of this administrative regulation.

Section 6. Training Program.

(1) General training shall be presented to trainees either orally from written materials or audio-visually. The information shall be presented in a manner that the trainees can understand, such as through a translator. The person conducting the training shall be present during the entire training program and **shall[must]** respond to the trainees' questions.

(2) The person who conducts the training shall be currently licensed by the department as an operator or applicator.

(3) The training materials shall include the information that trainees need in order to protect themselves, other people, and the environment before, during, and after making a pesticide application. The training materials shall include, at a minimum**[, the following]:**

(a) Potential hazards from toxicity and exposure that pesticides present to trainees and their families, including acute and chronic effects, delayed effects, and sensitization;**[:]**

(b) Routes through which pesticides can enter the body;**[:]**

(c) Signs and symptoms of common types of pesticide poisoning;**[:]**

(d) Emergency first aid for pesticide injuries or poisonings;**[:]**

(e) Routine and emergency decontamination procedures, including emergency eye flushing techniques. Trainees **shall[must]** be instructed that if pesticides are spilled or sprayed on the body, to

immediately wash or to rinse off in the nearest clean water. Trainees **shall[must-also]** be instructed to wash or shower with soap and water, shampoo hair, and change into clean clothes as soon as possible;[.]

(f) How and when to obtain emergency medical care;[.]

(g) After working with pesticides, wash hands before eating, drinking, using chewing gum or tobacco, or using the toilet;[.]

(h) Wash or shower with soap and water, shampoo hair and change into clean clothes as soon as possible after working with pesticides;[.]

(i) Potential hazards from pesticide residues on clothing;[.]

(j) Wash work clothes before wearing them again and wash them separately from other clothes;[.]

(k) Do not take pesticides or pesticide containers used at work to your home;[.]

(l) Potential hazards to children and pregnant women from pesticide exposure;[.]

(m) After working with pesticides, remove work boots or shoes before entering your home, and remove work clothes and wash or shower before physical contact with children or family members;[.]

(n) How to report suspected pesticide use violations to the appropriate state or tribal agency responsible for pesticide enforcement;[.]

(o) Format and meaning of information contained on pesticide labels and in labeling applicable to the safe use of the pesticide, including the location and meaning of the restricted use product statement, how to identify when the labeling requires the certified applicator to be physically present during the use of the pesticide, and information on personal protective equipment;[.]

(p) Need for, and appropriate use and removal of, personal protective equipment;[.]

(q) How to recognize, prevent, and provide first aid treatment for heat-related illness;[.]

(r) Safety requirements for handling, transporting, storing, and disposing of pesticides, including general procedures for spill cleanup;[.]

(s) Environmental concerns such as drift, runoff, and wildlife hazards;[.]

(t) Restricted use and general use pesticides may be used only by a licensed operator or licensed applicator, or by a trainee working under the direct supervision of a licensed operator or licensed applicator;[.]

(u) The supervising operator's or applicator's responsibility to provide to each trainee instructions specific to the site and pesticide used. These instructions **shall[must]** include labeling directions, precautions, and requirements applicable to the specific use and site, and how the characteristics of the use site (**for example[e.g.]**, surface and ground water, endangered species, local population, and risks) and the conditions of application (**for example[e.g.]**, equipment, method of application, formulation, and risks) **could[might]** increase or decrease the risk of adverse effects. The supervising operator or applicator **shall[must]** provide these instructions in a manner the trainee can understand;[.]

(v) The supervising operator's or applicator's responsibility to ensure that each trainee has access to the applicable product labeling at all times during its use;[.]

(w) The supervising operator's or applicator's responsibility to ensure that **if[where]** the labeling of a pesticide product requires that personal protective equipment be worn for mixing, loading, application, or any other use activities, each trainee has clean, labeling-required personal protective equipment in proper operating condition and that the personal protective equipment **shall be[is]** worn and use correctly for its intended purpose;[.]

(x) The supervising operator's or applicator's responsibility to ensure that before each day of use equipment used for mixing, loading, transferring, or applying pesticides is in proper operating

condition as intended by the manufacturer, and can be used without risk of reasonably foreseeable adverse effects to the trainee, other persons, or the environment; ~~and[.]~~

(y) The supervising operator's or applicator's responsibility to ensure that a means to immediately communicate with the supervising operator or applicator ~~shall be[is]~~ available to each trainee using any pesticides under his or her direct supervision.

Section 7. Recordkeeping. Supervising operators or applicators ~~shall[must]~~ create or verify the existence of records documenting that a trainee has the qualifications required in Section ~~4[3(2)]~~ of this administrative regulation.

(1) If the trainee was trained in accordance with Section ~~4[3(2)]~~ of this administrative regulation, the record ~~shall[must]~~ contain ~~[all of]the[following information]:~~

- (a) ~~[The]~~Trainee's printed name and signature;
- (b) ~~[The]~~Date the training requirement was met;
- (c) ~~[The]~~Name of the person who provided the training; and
- (d) ~~[The]~~Title and a description of the training provided.

(2) The supervising operator or applicator shall create or verify the existence of the record containing the information in subsection (1) of this section before allowing the trainee to use any pesticides under his or her direct supervision.

(3) The dealer or structural pest management company employing the trainee shall provide the supervising operator or applicator of any trainee access to records documenting the information required subsection (1) section at the supervising operator's or applicator's principal place of business for ~~at least~~ three (3) years from the date the trainee used the pesticide.

Section 8. Exceptions. The requirements in Sections 1 through 6 of this administrative regulation ~~shall[do]~~ not apply to~~[the following persons]:~~

- (1) Persons conducting laboratory research involving restricted or general use pesticides; ~~and[.]~~
- (2) Doctors of medicine and doctors of veterinary medicine applying restricted or general use pesticides to patients during the course of the ordinary practice of those professions.

Section 9. Material Incorporated by Reference

- (1) "Trainee Registration Application", (2022), is incorporated by reference.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

Ryan F. Quarles
Commissioner



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Kentucky Department of Agriculture

September 9, 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: **302 KAR 26:060**. Identification of pesticide service vehicles.
Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 302 KAR 26:060 the Kentucky Department of Agriculture proposes the attached amendments to 302 KAR 26:060.

Sincerely,

A handwritten signature in black ink, appearing to read "Clint Quarles".

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



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Department of Agriculture Office of Consumer and Environmental Regulation

302 KAR 26:060. Identification of pesticide service vehicles.

RELATES TO: KRS Chapter 217B

STATUTORY AUTHORITY: KRS 217B.565

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. This administrative regulation establishes requirements for the identification of pesticide-related service vehicles.

Section 1. Applicability. This administrative regulation shall apply to pesticide sales agents, dealers, structural pest management companies, licensed operators, licensed applicators, or trainees who use service vehicles in the application of pesticides.

Section 2. Identification of Service Vehicles. Each vehicle actively engaged in service work in support of the application of pesticides shall be marked for easy identification with the company name registered with the department or an easily identifiable logo primarily used by the company for identification.

(1) Identification of vehicles may be permanent or removable.

(2) Removable~~[- however,]~~ signs shall accompany the vehicle **and be visible** at all times for purpose of identification.

Ryan F. Quarles
Commissioner



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Kentucky Department of Agriculture



September 9, 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

302 KAR 26:070. Non-certified pesticide applicator training and supervision.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 302 KAR 26:070 the Kentucky Department of Agriculture proposes the attached amendments to 302 KAR 26:070.

Sincerely,

A handwritten signature in black ink, appearing to read "Clint Quarles".

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



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**Department of Agriculture
Office of Consumer and Environmental Regulation**

302 KAR 26:070. Non-certified pesticide applicator training and supervision.

RELATES TO: KRS Chapter 217B

STATUTORY AUTHORITY: KRS 217B.050,

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B, ~~and~~ ~~KRS 217B.050 requires the department to promulgate administrative regulations pertaining to necessary~~ to carry out the purpose and intent of KRS Chapter 217B[this chapter], the administrative regulations may relate to the time, place, manner, and method of storage and application of pesticides and fertilizers. This administrative regulation establishes supervision, training, and recordkeeping requirements for pesticide private applicators using non-certified applicators to apply pesticides.

Section 1. **Definition.**

"Non-certified applicator" means a person who has not been certified by training or examination and uses pesticides under the direct supervision of a private applicator.

Section 2. Applicability. This administrative regulation **shall apply[applies]** to any private applicator who allows or relies on a non-certified applicator to use a general use pesticide under direct supervision. "Non-certified applicator" means any person who has not been certified by training or examination and uses pesticides under the direct supervision of a private applicator.

Section **3.[2.]** General Requirements.

(1) Requirements for the supervising private applicator.

(a) The supervising private applicator shall have a practical knowledge of applicable requirements contained in this administrative regulation and any requirements on the product label and labeling, regarding the use of general use pesticides by non-certified applicators.

(b) The supervising private applicator shall be licensed in each category as **established[set forth]** in 302 KAR 26:020 applicable to the supervised pesticide use.

(2) Requirements for the non-certified applicator. The supervising private applicator shall ensure that each non-certified applicator using a general use pesticide under his or her direct supervision meets **[all-of]the [following]requirements established in paragraphs (a) through (c) of this subsection** before using the pesticide.**[:]**

(a) The non-certified applicator has been trained in accordance with Section **5[4]** of this administrative regulation **[of this administrative regulation]** within the last twelve (12) months.**[:]**

(b) The non-certified applicator **shall be[has-been]** instructed in the safe operation of any equipment he or she will use for mixing, loading, transferring, or applying pesticides.**[;-and]**

(c) The noncertified applicator **shall be[is]** at least eighteen (18) years old, except that a noncertified applicator may be at least sixteen (16) years old if **[all-of] the [following requirements are met]:**

1. **[The]** Noncertified applicator is using the pesticide under the direct supervision of a private applicator who is an immediate family member;
2. **[The]** Pesticide is not a fumigant, sodium cyanide, or sodium fluoroacetate; and
3. **[The]** Noncertified applicator is not applying the pesticide aerially.

Section **4.[3.]** Use-specific Conditions that **Shall[Must]** be Met in Order for a Non-certified Applicator to Use a Pesticide. The supervising private applicator shall ensure that **[all-of]the [following]** requirements **established in subsections (1) through (6) of this section** are met before allowing a non-certified applicator to use a pesticide under his or her direct supervision.**[:]**

(1) The supervising private applicator shall ensure that the non-certified applicator has access to the applicable product labeling at all times during its use.

(2) **If[Where]** the labeling of a pesticide product requires that personal protective equipment be worn for mixing, loading, application, or any other use activities, the supervising private applicator shall ensure that the non-certified applicator has clean, labeling-required personal protective equipment in proper operating condition and that the personal protective equipment **shall be[is]** worn and used correctly for its intended purpose.

(3) The supervising private applicator shall provide to each non-certified applicator, before use of a pesticide, instructions specific to the site and pesticide used. These instructions shall include labeling directions, precautions, and requirements applicable to the specific use and site, and how the characteristics of the use site (**for example[e.g.]**, surface and ground water, endangered species, local population) and the conditions of application (**for example[e.g.]**, equipment, method of application, formulation) **could[might]** increase or decrease the risk of adverse effects. The supervising private applicator shall provide this information in a manner that the non-certified applicator can understand.

(4) The supervising private applicator shall ensure that before each day of use, equipment used for mixing, loading, transferring, or applying pesticides is in proper operating condition as intended by the manufacturer, and can be used without risk of reasonably foreseeable adverse effects to the non-certified applicator, other persons, or the environment.

(5) The supervising private applicator shall ensure that a means to immediately communicate with the supervising private applicator is available to each non-certified applicator using pesticides under his or her direct supervision.

(6) The supervising private applicator shall be physically present at the site of the use being supervised **if[when]** required by the product labeling.

Section **5.[4.]** Training Program.

(1) General training shall be presented to non-certified applicators either orally from written materials or audio-visually. The information shall be presented in a manner that the non-certified applicators can understand, such as through a translator. The person conducting the training shall be present during the entire training program and **shall[must]** respond to the non-certified applicators' questions.

(2) The person who conducts the training shall be currently licensed by the department as a private applicator or in a category listed in 302 KAR 26:020.

(3) The training materials shall include the information that non-certified applicators need in order to protect themselves, other people, and the environment before, during, and after making a pesticide application. The training materials shall include, at a minimum**[-, the following]:**

(a) Potential hazards from toxicity and exposure that pesticides present to non-certified applicators and their families, including acute and chronic effects, delayed effects, and sensitization;**[:]**

(b) Routes through which pesticides can enter the body;**[:]**

(c) Signs and symptoms of common types of pesticide poisoning;**[:]**

(d) Emergency first aid for pesticide injuries or poisonings;**[:]**

(e) Routine and emergency decontamination procedures, including emergency eye flushing techniques. Non-certified applicators **shall[must]** be instructed that if pesticides are spilled or sprayed on the body, to immediately wash or to rinse off in the nearest clean water;**[:]**

- (f) How and when to obtain emergency medical care;[-]
- (g) After working with pesticides, wash hands before eating, drinking, using chewing gum or tobacco, or using the toilet;[-]
- (h) Wash or shower with soap and water, shampoo hair, and change into clean clothes as soon as possible after working with pesticides;[-]
- (i) Potential hazards from pesticide residues on clothing;[-]
- (j) Wash work clothes before wearing them again and wash them separately from other clothes;[-]
- (k) Do not take pesticides or pesticide containers used at work to your home;[-]
- (l) Potential hazards to children and pregnant women from pesticide exposure;[-]
- (m) After working with pesticides, remove work boots or shoes before entering your home;[-] and remove work clothes and wash or shower before physical contact with children or family members;[-]
- (n) How to report suspected pesticide use violations to the appropriate state or tribal agency responsible for pesticide enforcement;[-]
- (o) Format and meaning of information contained on pesticide labels and in labeling applicable to the safe use of the pesticide, how to identify when the labeling requires the certified applicator to be physically present during the use of the pesticide, and information on personal protective equipment;[-]
- (p) Need for, and appropriate use and removal of, personal protective equipment;[-]
- (q) How to recognize, prevent, and provide first aid treatment for heat-related illness;[-]
- (r) Safety requirements for handling, transporting, storing, and disposing of pesticides, including general procedures for spill cleanup;[-]
- (s) Environmental concerns such as drift, runoff, and wildlife hazards;[-]
- (t) General use pesticides may be used only by a licensed operator, a licensed applicator, a private applicator, or by a non-certified applicator working under the direct supervision of a licensed operator or licensed applicator;[-]
- (u) The supervising private applicator's responsibility to provide to each non-certified applicator instructions specific to the site and pesticide used. These instructions **shall[must]** include labeling directions, precautions, and requirements applicable to the specific use and site, and how the characteristics of the use site (**for example, [e.g.]**, surface and ground water, endangered species, local population, and risks) and the conditions of application (**for example [e.g.]**, equipment, method of application, formulation, and risks) **could[might]** increase or decrease the risk of adverse effects. The supervising private applicator **shall[must]** provide these instructions in a manner the non-certified applicator can understand;[-]
- (v) The supervising private applicator's responsibility to ensure that each non-certified applicator has access to the applicable product labeling at all times during its use;[-]
- (w) The supervising private applicator's responsibility to ensure that **if[where]** the labeling of a pesticide product requires that personal protective equipment be worn for mixing, loading, application, or any other use activities, each non-certified applicator has clean, labeling-required personal protective equipment in proper operating condition and that the personal protective equipment **shall be[is]** worn and use correctly for its intended purpose;[-]
- (x) The supervising private applicator's responsibility to ensure that before each day of use equipment used for mixing, loading, transferring, or applying pesticides is in proper operating condition as intended by the manufacturer, and can be used without risk of reasonably foreseeable adverse effects to the non-certified applicator, other persons, or the environment; **and[-]**

(y) The supervising private applicator's responsibility to ensure that a means to immediately communicate with the supervising private applicator ***shall be[is]*** available to each non-certified applicator using pesticides under his or her direct supervision.

Section ***6.[5.]*** Recordkeeping. The supervising private applicator ***shall[must]*** create or verify the existence of records documenting that a non-certified applicator has the qualifications required in Section ***3(2)[2(2)]*** of this administrative regulation.

(1) If the non-certified applicator was trained in accordance with Section ***3(2)[2(2)]*** of this administrative regulation, the record ***shall[must]*** contain***[all-of]*** the***[following information]***:

- (a) ***[The]***Non-certified applicator's printed name and signature;
- (b) ***[The]***Date the training requirement was met;
- (c) ***[The]***Name of the person who provided the training; and
- (d) ***[The]***Title and a description of the training provided.

(2) The supervising private applicator shall create or verify the existence of the record containing the information in subsection (1) of this section before allowing the non-certified applicator to use any pesticides under his or her direct supervision.

(3) The supervising private applicator shall maintain all required records documenting the information for ***at least*** three (3) years from the date the non-certified applicator used the pesticide.

Section ***7.[6.]*** Exceptions. The requirements in Sections ***2 through 6[1 through 5]*** of this administrative regulation ***shall[do]*** not apply to***[the following persons]***:

- (1) Persons conducting laboratory research involving pesticides; ***and[.]***
- (2) Doctors of medicine and doctors of veterinary medicine applying pesticides to patients during the course of the ordinary practice of those professions.

Ryan F. Quarles
Commissioner

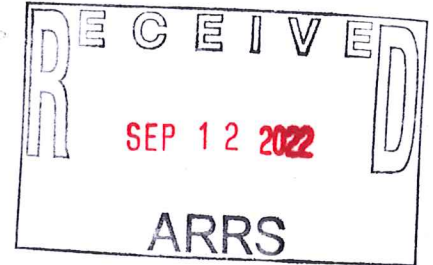


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September 9, 2022

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



302 KAR 26:080. Lawn, turf, ornamental and interior plantscape pesticide-related notice posting.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 302 KAR 26:080 the Kentucky Department of Agriculture proposes the attached amendments to 302 KAR 26:080.

Sincerely,

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



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**Department of Agriculture
Office of Consumer and Environmental Regulation**

302 KAR 26:080. Lawn, turf, ornamental and interior plantscape pesticide-related notice posting.

RELATES TO: KRS Chapter 217B

STATUTORY AUTHORITY: KRS 217B.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. This administrative regulation establishes turf, ornamental, and interior plantscape pesticide-related posting requirements.

Section 1. (1) Any operator or applicator who engages in lawn care by making applications to lawns shall:

(a) Provide a customer at the time of entering into a contract, with written information concerning pesticides or pesticide impregnated fertilizers, application procedures, and other general guidelines about making safe applications; and

(b) Immediately following an application to a lawn, ~~[the applicator shall]~~ place a lawn marker at a prominent location in the lawn. [;]

1. ~~[(e)]~~ The lawn marker shall consist of, at a minimum, a 4 in. x 5 in. white sign attached to the upper portion of a dowel or other supporting device of not less than twelve (12) inches in length. [;]

2. ~~[(d)]~~ Lettering on the lawn marker shall be in a contrasting color and shall read on one (1) side "LAWN CARE APPLICATION - PLEASE STAY OFF GRASS UNTIL DRY" in letters easily readable and not less than three-eighths (3/8) inches in height. The lawn marker may also display a symbol depicting the required message and the name, logo, and service mark of the applicator. [;]

3. ~~[(e)]~~ The lawn marker may~~shall~~ be removed and discarded by the property owner, ~~[or]~~ resident, or other person authorized by the property owner or resident, the day following an application. [;]

4. ~~[(f)]~~ For applications to residential properties of three (3) families or less, the applicator shall place one (1) lawn marker per property. ~~[; and]~~

5. ~~[(g)]~~ For applications to properties other than residential property of three (3) families or less, the applicator shall place lawn markers at primary points of entry to the property to provide notice that an application has been made to the lawn.

(2) At the time of an application to a lawn, an applicator shall provide the information listed in subsection (1)(a) of this section to the customer, either homeowner or landlord, for each pesticides or pesticide impregnated fertilizers used.

(3) Any customer or employer of an applicator, or a neighbor whose residence is adjoining to a customer or employer of an applicator, may request prior notification twenty-four (24) to forty-eight (48) hours in advance of an application by contacting the applicator and providing his or her name, address, and telephone number. In this event, the applicator shall provide notification in writing, in person, or by telephone, of the date and approximate time of application. If an applicator is unable to provide prior notification to a customer or neighbor because of the absence or inaccessibility of the individual, the applicator shall leave a written notice at the residence.

Section 2. (1) The **requirements established in paragraphs (a) through (f) of this subsection[following]** shall be **met[required]** by an applicator making applications to a golf course relating to records, notification, and information requirements.**[;]**

- (a) Immediately following an application on a golf course, the applicator shall place a golf course marker on the number-one (1) and number-ten (10) tees.**[;]**
 - (b) The golf course marker shall consist of, at a minimum, a 4 in. x 5 in. white sign attached to the upper portion of a dowel or other supporting device of not less than twelve (12) inches in length.**[;]**
 - (c) Lettering on the golf course marker shall be in a contrasting color and shall read on one **(1)** side "PLANT-REGULATING MATERIALS HAVE BEEN APPLIED. IF DESIRED, YOU MAY CONTACT THE GOLF COURSE SUPERINTENDENT FOR FURTHER INFORMATION" in letters easily readable and not less than three-eighths (3/8) inches in height. The golf course marker may also display a symbol depicting the required message and the name, logo, and service mark of the applicator.**[;]**
 - (d) The golf course marker may be removed by the applicator or other personnel authorized by the golf course management the day following application.**[;]**
 - (e) Any person whose residence directly adjoins a golf course may request prior notification of an application by contacting the golf course superintendent's office and providing his or her name, address, and telephone number. If requested, the golf course shall provide notification in writing, in person, or by telephone. In the event the golf course cannot provide advance notice, the person shall be contacted at the time of application. If the golf course is unable to provide prior notification or direct notification to a resident because of the absence or unavailability of the resident, the golf course shall leave a written notice at the residence.**[; and]**
 - (f) Material safety data sheets for each pesticide or pesticide impregnated fertilizer used in an application shall be in an area of the superintendent's office where they can be easily read and accessible by patrons of the golf course.
- (2) Records listed in Section 5 of this administrative regulation shall be maintained in the golf course superintendent's office and shall be readily available to review on request. This record shall be retained for **at least** three (3) years and be **available for[subject to]** inspection by the department.

Section 3. Any applicator who makes an application to interior plantscapes shall:

- (1) Immediately following an application to interior plantscapes, place a marker at a prominent location in the interior plantscapes. The sign shall read "PESTICIDES HAVE BEEN APPLIED - PLEASE STAY OUT OF TREATED AREA" in letters easily readable and not less than three-eighths (3/8) inches in height. The marker may also display a symbol depicting the required message and the name, logo, and service mark of the applicator. Posting requirements shall not apply if plants that are in interior plantscapes are taken off-site for an application and not returned until the plants have adequately dried; and
- (2) Provide prior notification to the customer or adjoining residents in writing, in person, or by telephone if requested, of the date and approximate time of the application. If an operator is not able to provide prior notification to a customer or adjoining residence due to the absence or inaccessibility of the individual, the applicator shall leave a written notice at the residence.

Section 4. (1) The **requirements established in paragraphs (a) through (f) of this subsection[following]** shall be **met[required]** by an applicator making applications to sports turf relating to records, notification, and information requirements.**[;]**

- (a) Immediately following an application to turf on a sports field, the applicator shall place a marker at usual entry points to the field.**[;]**
- (b) The marker shall consist of, at a minimum, a 4 in. x 5 in. white sign attached to the upper portion of a dowel or other supporting device of not less than twelve (12) inches in length.**[;]**

(c) Lettering on the marker shall be in a contrasting color and shall read on one (1) side "PESTICIDES HAVE BEEN APPLIED - PLEASE STAY OUT OF TREATED AREA" in letters easily readable and not less than three-eighths (3/8) inches in height. The marker may also display a symbol depicting the required message and the name, logo, and service mark of the applicator.~~;~~**]**

(d) The marker may be removed by the applicator or other personnel authorized by the sports field management the day following application.~~;~~**]**

(e) Any person whose residence directly adjoins a sports field may request prior notification of an application by contacting the sports field manager's office and providing his or her name, address, and telephone number. If requested, the manager shall provide notification in writing, in person, or by telephone. In the event the sports field manager cannot provide advance notice, the person shall be contacted at the time of application. If the manager is unable to provide prior notification or direct notification to a resident because of the absence or unavailability of the resident, the manager shall leave a written notice at the residence.~~;~~**and]**

(f) Material safety data sheets for each pesticide used in an application shall be in an area of the manager's office where they can be easily read and accessible by patrons of the sports field.

(2) Records listed in Section 5 of this administrative regulation shall be maintained in the manager's office and shall be readily available to review on request. This record shall be retained for **at least** three

(3) years and be **available for**~~[subject to]~~ inspection by the department.

Section 5. An applicator shall provide the following information upon request to all persons requesting notice under Sections 1, 2, and 3 of this administrative regulation, and shall record and maintain at the applicator's business address the following information relating to the application of each pesticide used:

- (1) The brand name or common name of the pesticide applied;
- (2) The pesticide type;
- (3) The fertilize rate and analysis;
- (4) The reason for use;
- (5) The concentration of end use product applied;
- (6) The rate of application,
- (7) The total gallons of end use product applied;
- (8) Any special instruction appearing on the label of the pesticide product applicable to the use of the treated area following application;
- (9) Any other precautionary or hazard information appearing on the label as applicable to the end use concentration;
- (10) The name and the state applicator license or certificate number of the individual actually making the application;
- (11) Customer name, address, and date of application;
- (12) The location area of area treated; and
- (13) Total area treated.

Section 6. Violations. The department may assess civil penalties. **Civil penalties shall be assessed as established in**~~[as provided by]~~ KRS 217B.193. **The department**~~[-or]~~ may suspend, revoke, delay issuing, or modify the provision of any license or registration issued under this chapter, if it finds that any person has committed any of the following acts, each of which **shall constitute**~~[is declared to be]~~ a violation of **302 KAR Chapter 26**~~[this chapter]~~:

- (1) Failed to provide direct on-the-job supervision of a trainee by a licensed operator or applicator in the application of a pesticide;
- (2) Failed to maintain records required under Section 5 of this administrative regulation; **and**

(3) Failed to follow notification and information requirements in accordance with Section 1, 2, 3, or 4 of this administrative regulation, including **failure to**:

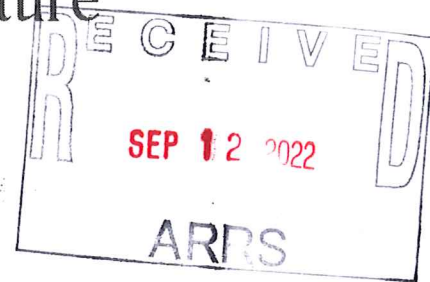
- (a) ~~**[Failure to]**~~ Provide customer written information prior to application;
- (b) ~~**[Failure to]**~~ Place required marker;
- (c) ~~**[Failure to]**~~ Meet minimum requirements for required marker;
- (d) **Provide**~~**[Failure to furnish]**~~ customer required information at application; or
- (e) **Provide**~~**[Failure to furnish]**~~ prior notification of application when requested.

Ryan F. Quarles
Commissioner



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Kentucky Department of Agriculture



September 9, 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

302 KAR 26:090. Wood destroying organism treatments and integrated pest management in schools.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 302 KAR 26:090 the Kentucky Department of Agriculture proposes the attached amendments to 302 KAR 26:090.

Sincerely,

A handwritten signature in black ink, appearing to read "Clint Quarles".

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



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**Department of Agriculture
Office of Consumer and Environmental Regulation**

302 KAR 26:090. Wood destroying organism treatments and integrated pest management in schools.

RELATES TO: KRS 217B.190, 217B.515, 217B.520, 217B.525, 217B.545

STATUTORY AUTHORITY: KRS 217B.050, **217B.515**, 217B.530

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. KRS 217B.515 requires that any person engaging in structural pest control be licensed. This administrative regulation establishes requirements applicable to the licensure and practice of commercial structural pest control and fumigation.

Section 1. Definitions.

- (1) "Children are present" means the designated time period between two (2) hours before the start time and forty-five (45) minutes after the dismissal time of the regularly scheduled school day as determined by the school authority under the calendar **established[set]** by the school board.
- (2) "Graph" means a drawing of a structure that:
 - (a) Identifies the type of structure;
 - (b) Provides an outline of the structure indicating approximate length and width;
 - (c) Records the location of any current visible wood-destroying organism activity;
 - (d) Records the location of any current visible damage caused by any wood-destroying organism; and
 - (e) Records the location of all treatment methods applied, including all partial treatments applied to any selected areas of the structure.
- (3) "Integrated pest management program" means a strategy of controlling pests, general pests, and wood destroying organisms by combining biological, chemical, cultural, mechanical, and physical control methods in a way that minimizes economic, health, and environmental risks.
- (4) "Notification" means information distributed to persons who request a notice of a pesticide application.
- (5) "Outside areas" means the property associated with commercial, industrial, or residential structures where a commercial structural pest management license holder, under KRS 217B.515, is authorized to control pests, general pests, and wood destroying organisms by means other than chemicals used for lawn care or agricultural pests.
- (6) "Posted" means a sign measuring at least 8.5 in. x 11 in. displaying the words "Pesticide Treatment Area" and "Do Not Enter" along with listing an identified time for re-entry after the pesticide application is made.
- (7) "Registry" means a list, maintained by a school authority, of individuals that request advance notification of pesticide application.
- (8) "School" means an institution for teaching children such as~~as~~, **but not limited to,** preschool, kindergarten, child day care centers, primary, **[and]** secondary, **and similar** schools.
- (9) "School authority" means superintendent, assistant superintendent, principal, assistant principal, headmaster, or a designee.

Section 2. Documentation of Treatment for Wood-destroying Organisms. At the time of treatment application for control or prevention of wood-destroying organisms, a graph shall be issued to the owner of the property.

Section 3. Integrated Pest Management in Schools. Each school district shall implement an integrated pest management program with a primary goal of controlling pests, general pests, and wood-destroying organisms with the judicious use of pesticides.

(1) Pesticides may be applied without notification indoors and to outside areas when children are not present.

(2) Pesticides may be applied without notification when children are present but shall be limited to:

(a) Germicides, disinfectants, bactericides, sanitizing agents, water purifiers, and swimming pool chemicals used in normal cleaning activities;

(b) Personal insect repellents;

(c) Human or animal ectoparasite control products administered by qualified health professionals or veterinarians;

(d) Manufactured paste, gel, or other formulations designated on the product label as bait and applied according to label instructions where humans do not have reasonable access to the application area; and

(e) Rodent control products placed in industry identified tamper-resistant bait stations or rodenticides placed in wall voids or other rodent harborage sites that are inaccessible to humans.

(3)(a) Each school authority shall maintain a registry of electronic mail or telephone contact numbers of parents or guardians who have requested notification prior to the application of pesticides in schools when children are present, and shall provide written notice to parents or guardians at the beginning of each school year of the existence of the registry and the process for being placed on the registry. The written notice shall ***state[be as follows]:***

"Dear Parent or Guardian: Each school district in the Commonwealth is required to implement a program of "integrated pest management" with the primary goal of preventing and controlling pests through strategies that may include judicious use of pesticides. The application of pesticides in the school or on school grounds during times when children are present is limited by state regulation, but there may be occasions when, after consulting with a certified pesticide applicator, the school administration determines that a pesticide application is necessary when children are present in the school. As required by state regulation, we have created a registry for parents or guardians who wish to receive an electronic message or telephone call prior to the application of pesticides in the school when children are present. Please provide the school administration your email address or phone number if you wish to be placed on this registry."

(b) Notification by the school to parents or guardians on the registry shall be required if the school authority, after consultation with the certified applicator, determines that a pesticide application other than those listed in subsection (2) of this section, is necessary when children are present in the school.

(c) For pesticide applications made when children are present, the school authority shall provide the notification to persons listed on the registry at least one (1) hour prior to the making of the application.

(4) The notification required by subsection (3)(b) of this section shall include:

(a) The date and time of the pesticide application;

(b) The target pests to be treated;

(c) A description of the use of the area treated;

(d) The brand name of the pesticides applied and the pesticide application method; and

(e) A telephone number that persons requesting prior notification can use to contact the school authority for more information.

- (5) A copy of the notification shall be maintained by the school authority for **at least** twenty-four (24) months after the notification is issued and shall be **available for[subject to]** inspection upon request by Kentucky Department of Agriculture personnel.
- (6) The certified applicator shall only be required to provide to the school authority the information required in subsection (4)(a) **through[te]** (d) of this section on an Integrated Pest Management School Acknowledgement form provided by the department. The certified applicator shall retain a copy of the completed form.
- (7) The completed form required by subsection (6) of this section shall:
- (a) Include the information required in subsection (4)(a) **through[te]** (d) of this section; and
 - (b) Be signed by the school authority acknowledging that the required information was received from the certified applicator prior to the application of pesticides when children are present.
- (8) A copy of the completed form shall be maintained for **at least** thirty-six (36) months by the certified applicator after it is received and shall be **available for[subject to]** inspection upon request by Kentucky Department of Agriculture personnel.
- (9) The area where the point of application of a pesticide occurred shall be posted by the certified applicator regardless of the absence or presence of children.

Section 4. Incorporation by Reference.

- (1) "Integrated Pest Management School Acknowledgement", 2017, is incorporated by reference.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Division of Environmental Services, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

Ryan F. Quarles
Commissioner

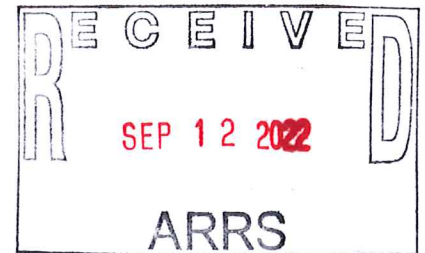


Corporate Drive
Complex
Frankfort, KY 40601
(502) 573-0282

Kentucky Department of Agriculture

September 9, 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



302 KAR 26:150. Pesticide-related Penalties.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 302 KAR 26:150 the Kentucky Department of Agriculture proposes the attached amendments to 302 KAR 26:150.

Sincerely,

A handwritten signature in black ink, appearing to read "Clint Quarles".

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



SUGGESTED SUBSTITUTE

Final Version: 9/8/2022 3:27 PM

Department of Agriculture Office of Consumer and Environmental Regulation

302 KAR 26:150. Pesticide-related Penalties.

RELATES TO: KRS 217B.120, KRS 217B.550, 7 U.S.C. 136 et seq., 40 C.F.R. 170

STATUTORY AUTHORITY: KRS 217B.050, 217B.193, 217B.990

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050 requires the Department of Agriculture to promulgate administrative regulations to implement the provisions of KRS Chapter 217B. KRS 217B.193 requires the Commissioner of the Department of Agriculture to promulgate an administrative regulation establishing a schedule of civil penalties for violations of KRS Chapter 217B, including those established in KRS 217B.120 and 217B.550. This administrative regulation establishes a system of regulatory fines pursuant to ~~[the]~~ violations **of KRS Chapter 217B** established in KRS 217B.120 and 217B.550.

Section 1. Notice of Violation and Abatement of Violation Pursuant to KRS 217B.193.

- (1) The Department of Agriculture shall, in accordance with KRS 217B.193(1), cause a notice of violation to be issued to persons, license holders, or registration holders found to be in violation of KRS 217B.120, 217B.550, 302 KAR 31:040, or 40 C.F.R. 170.
- (2) In addition to the information required to be **stated[set-out]** in the notice of violation pursuant to KRS 217B.193, the department shall notify the person, license holder, permit holder, registration holder, or certificate holder that:
 - (a) Except for good cause shown, an administrative fine in the amount established in Sections 2 and 6 of this administrative regulation shall be assessed if the violation is not corrected within the time **stated[specified]** in the notice of violation;
 - (b) He or she shall have thirty (30) days to request a hearing on assessment of the fine pursuant to KRS 217B.203 and 217B.990(2); and
 - (c) The request for hearing shall be mailed to the Kentucky Department of Agriculture, Director, Division of Environmental Services, Frankfort, Kentucky 40601.
- (3) The period for abatement of a violation shall commence on the day the notice of violation is issued pursuant to KRS 217B.193(1).
- (4) The department may allow additional time for abatement of a violation, not to exceed the maximum time established in KRS 217B.193, if it is determined that the violation cannot be corrected within the time period **stated[specified]** in the notice of violation.
- (5) The Enforcement Response Policy shall act as the guide for implementation of enforcement actions, mitigation, and penalty adjustments in all actions of this section.

Section 2. (1) Except as established in Section 3 of this administrative regulation, administrative fines for each first violation of KRS 217B.120, 302 KAR 26:080; 302 KAR 31:040, 40 C.F.R. 170, and any other administrative regulation promulgated by the department shall be:

- (a) \$300 for a violation of KRS 217B.120(1);
- (b) \$100 for a violation of KRS 217B.120(2);
- (c) \$200 for a violation of KRS 217B.120(3);
- (d) \$200 for a violation of KRS 217B.120(4);
- (e) \$200 for a violation of KRS 217B.120(5);
- (f) \$200 for a violation of KRS 217B.120(6);

- (g) \$100 for a violation of KRS 217B.120(7);
- (h) \$100 for a violation of KRS 217B.120(8);
- (i) \$100 for a violation of KRS 217B.120(9);
- (j) \$100 for a violation of KRS 217B.120(10);
- (k) \$200 for a violation of KRS 217B.120(11);
- (l) \$200 for a violation of KRS 217B.120(12);
- (m) \$200 for a violation of KRS 217B.120(13);
- (n) \$200 for a violation of KRS 217B.120(14);
- (o) \$200 for a violation of KRS 217B.120(15);
- (p) \$200 for a violation of 302 KAR 26:080, Section 6(1);
- (q) \$200 for a violation of 302 KAR 26:080, Section 6(2);
- (r) \$100 for a violation of 302 KAR 26:080, Section 6(3);
- (s) \$200 for a violation of 302 KAR 31:040;
- (t) \$200 for a violation of 40 C.F.R. 170; and
- (u) \$200 for a violation of any **administrative** regulation promulgated pursuant to KRS 217B.050, not otherwise designated in this section.

(2) For a second violation, which is the same as the first violation in subsection (1) of this section and occurring within sixty (60) days of assessment of the first violation, the fine shall be doubled.

(3) For a third violation, which is the same as the first violation in subsection (1) of this section and occurring within ninety (90) days of assessment of the first violation, the fine shall be tripled.

(4) A fourth violation, which is the same as the first violation in subsection (1) of this section and occurring within 120 days of assessment of the first violation, may result in the suspension, revocation, or modification of a license pursuant to KRS 217B.120.

(5) Penalties shall not be assessed or enhanced pursuant to this section if the licensee or certificate holder abates the violation within the period **stated[set]** by the department pursuant to KRS 217B.193.

(6) (a) Nothing in this section shall prohibit the department from suspending or revoking a license, permit, registration, or certification at any time pursuant to KRS 217B.120.

(b) The department shall review for possible denial, suspension, or revocation, the license or certification of any person if that person has been convicted or is subject to a final order imposing a civil or criminal penalty pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 et seq.

Section 3. **In lieu of[Notwithstanding]** the monetary penalty **established[provided]** in Section 2(1)(a) of this administrative regulation, a violation of KRS 217B.120(1) for each application of products containing Additional Training Dicamba shall result in a fine of \$100 per acre based on the acres where the application was made, with a maximum administrative fine of \$1,000 for the first offense.

Section 4. Failure to pay any fine, within thirty (30) days of the end of the time period established in Section 1 of this administrative regulation, shall result in a suspension or revocation of a license, permit, registration, or certification pursuant to KRS 217B.120.

Section 5. (1) Each office or branch office shall be treated as a separate entity for the purposes of enforcing the fine and penalty-enhancing provisions established in Section 2 of this administrative regulation.

(2) The fines or penalties shall not be enhanced unless the subsequent violations in Section 2 of this administrative regulation are committed in the same branch or office in which the first violation occurred.

Section 6. (1) Administrative fines for a first violation of KRS 217B.550 and any other **requirement of 302 KAR Chapter 26**~~**[administrative regulation promulgated by the department]**~~ shall be:

- (a) \$200 for a violation of KRS 217B.550(1);
- (b) \$200 for a violation of KRS 217B.550(2);
- (c) \$200 for a violation of KRS 217B.550(3);
- (d) \$100 for a violation of KRS 217B.550(4);
- (e) \$100 for a violation of KRS 217B.550(5);
- (f) \$300 for a violation of KRS 217B.550(6);
- (g) \$200 for a violation of KRS 217B.550(7);
- (h) \$200 for a violation of KRS 217B.550(8);
- (i) \$200 for a violation of KRS 217B.550(9);
- (j) \$200 for a violation of KRS 217B.550(10);
- (k) \$100 for a violation of KRS 217B.550(11);
- (l) \$200 for a violation of KRS 217B.550(12);
- (m) \$100 for a violation of KRS 217B.550(13);
- (n) \$100 for a violation of KRS 217B.550(14);
- (o) \$100 for a violation of KRS 217B.550(15);
- (p) \$200 for a violation of KRS 217B.550(16);
- (q) \$200 for a violation of KRS 217B.550(17); and
- (r) \$200 for a violation of any administrative regulation promulgated pursuant to KRS 217B.050, not otherwise designated in this section.

(2) For a second violation, which is the same as the first violation in subsection (1) of this section and occurring within sixty (60) days of assessment of the first violation, the fine shall be doubled.

(3) For a third violation, which is the same as the first violation in subsection (1) of this section and occurring within ninety (90) days of assessment of the first violation, the fine shall be tripled.

(4) A fourth violation, which is the same as the first violation in subsection (1) of this section and occurring within 120 days of assessment of the first violation, may result in the suspension, revocation or modification of a license pursuant to KRS 217B.545.

(5) Penalties shall not be assessed or enhanced pursuant to this section if the licensee or certificate holder abates the violation within the period **stated**~~**[set]**~~ by the department pursuant to KRS 217B.193.

(6)(a) Nothing in this section shall prohibit the department from suspending, revoking, or modifying a license or certificate at any time pursuant to KRS 217B.545.

(b) The department shall review for possible denial, suspension, or revocation, the license or certification, whether issued as a result of qualification by examination or reciprocity, of any person if that person has been convicted or is subject to a final order imposing a civil or criminal penalty pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 et seq.

Section 7. Failure to pay any fine within thirty (30) days of the end of the time period **established**~~**[prescribed]**~~ in Section 1 of this administrative regulation shall result in a suspension, revocation, or modification of a license or certification pursuant to KRS 217B.545.

Section 8. (1) Each office or branch office shall be treated as a separate entity for the purposes of enforcing the fine and penalty-enhancing provisions **established**~~**[contained]**~~ in Section 6 of this administrative regulation.

(2) The fines or penalties shall not be enhanced unless the subsequent violations in Section 6 of this administrative regulation are committed in the same branch or office in which the first violation occurred.

Section 9. Incorporation by Reference.

(1) "Enforcement Response Policy", June 2022, is incorporated by reference.

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



Andy Beshear
Governor

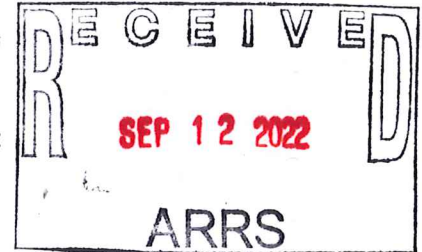
KENTUCKY STATE POLICE

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Custodian of Records Fax (502) 573-1636

Kerry Harvey
Secretary

Col. Phillip Burnett, Jr.
Commissioner

September 8, 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: **502 KAR 11:010** Application for license to carry concealed deadly weapon
502 KAR 11:060 License denial and reconsideration process
502 KAR 11:070 License revocation and suspension notice and reinstatement process

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 502 KAR 11:010, 502 KAR 11:060, and 502 KAR 11:070, the Justice and Public Safety Cabinet, Department of Kentucky State Police proposes the attached amendments to 502 KAR 11:010, 502 KAR 11:060, and 502 KAR 11:070.

Sincerely,

Angela Parker, Staff Assistant
Kentucky State Police

Cc: Brenn Combs

Revised: 9/12/22

SUGGESTED SUBSTITUTE

JUSTICE AND PUBLIC SAFETY CABINET Department of State Police

502 KAR 11:010. Application for license to carry concealed deadly weapon.

RELATES TO: KRS 237.110

STATUTORY AUTHORITY: KRS 16.080(1), 237.110(7)(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.110(7)(e) requires the department [~~Department of Kentucky State Police~~] to **promulgate an administrative regulation establishing**~~establish~~ the application form for a license to carry a concealed deadly weapon. This administrative regulation establishes the application form and procedures.

Section 1. Definitions. (1) "Application form" means the "Commonwealth of Kentucky Carry Concealed Deadly Weapons/LEOSA: Application for License."

(2) "Department" means the Department of [~~Kentucky~~] State Police.

Section 2. (1) Application forms shall not be stored in an area accessible to the public.

(2) Except as permitted by Section ~~11~~~~40~~ of this administrative regulation, an application form shall not be removed from the office of the sheriff.

Section 3. An application form shall be identified by a unique number that shall be:

- (1) Expressed on the application form as a bar code that contains the application number;
- (2) Used as the identifying number for the applicant; and
- (3) Machine and human readable.

Section 4. Applicants shall submit an application **form, and** documents, **and fee** as required by KRS 237.110 to the department either:

~~(1)(a)~~ Electronically, using the portal provided and according to the procedures as described on the department's Web site;~~7~~ or

~~(2)(b)~~ As prescribed in Sections 5 – 11 of this administrative regulation.

Section 5. A sheriff shall issue an application form to an applicant and accept an application fee if:

- (1) An applicant meets the requirements established by KRS 237.110(4)(b), (c), and (i);
- (2) Unless exempted by KRS 237.110(6) and (7), an applicant has submitted the material required by KRS 237.110(7);
- (3) Verification that an applicant is a resident is made by:
 - (a) Submission of a valid Kentucky operator's license or personal identification card issued by the Transportation Cabinet [~~a circuit court clerk~~] pursuant to KRS 186.412;
 - (b) Personal knowledge of the sheriff; or
 - (c) Confirmation by another governmental agency;
- (4) Verification of an applicant's Social Security number is made by the submission of:
 - (a) The applicant's Social Security card; or
 - (b) A governmental agency document that contains an applicant's name and Social Security number;
- (5) Verification of an applicant's age is made by submission of:
 - (a) An item specified by subsection (3) of this section; or

- (b) A birth certificate or other evidence of birth issued by a governmental agency; and
- (6) Verification of an applicant's U.S. immigration status is made by submission of a completed CCDW License Citizenship/Immigration Status Affidavit (KSP 131) if the applicant has indicated on the application form that the applicant is not a U.S. citizen.

Section 6.~~[Section 5.]~~ An applicant who is exempt from the training requirement established by KRS 237.110(4)(i) shall submit documentation establishing that he or she:

- (1)(a) Was a peace officer on the date of his or her retirement; and
- (b) Is a member of a retirement system specified by KRS 237.110(6)(a);
- (2) Is currently certified as a peace officer by the Kentucky Law Enforcement Council pursuant to KRS 15.380 to 15.404;~~[or]~~
- (3) Is a current or retired peace officer of one (1) of the federal agencies listed in KRS 237.110(6)(b);

(4) Is a current or retired corrections officer who was employed by and received the prescribed training from the agencies listed in KRS 237.110(6)(c); or

(5) Is an active or honorably discharged service member of the branches listed in KRS 237.110(6)(d) and completed handgun training from that branch.

Section 7.~~[Section 6.]~~ Completion of Application Form. An applicant shall:

- (1) Complete an application at a sheriff's office;
- (2) Sign the application in the applicant signature block of the application form in ink in the presence of a sheriff;
- (3) Provide the information required by KRS 237.110(7)(a) through (e) on the application form;
- (4) Not fold or tear the form;
- (5) Use a black ink pen to complete the form;
- (6) Not mark or otherwise make an entry in the "For Sheriff's Dept. Use Only" portion;
- (7) Fill each bubble completely;
- (8) Fill in or enter information, as appropriate, within a column block or bubble;
- (9) Write within the constrained areas; and
- (10) Use upper case (capital) letters.

Section 8.~~[Section 7.]~~ The sheriff shall complete the lower right hand portion of the application form titled "For Sheriff's Dept. Use Only" by:

- (1) Completing the ORI Number;
- (2) Filling in the date of application;
- (3) Indicating if the applicant is an active or retired peace officer or a judicial officer in accordance with KRS 527.020(5)(a)1. to 7.~~4.~~;
- (4) Indicating if the applicant is an active or honorably discharged service member; and**
- (5)~~(4)~~ Signing in the portion labeled "Authorizing Official Signature."**

Section 9.~~[Section 8.]~~ If an applicant fails to follow the instructions for completion of an application, the sheriff shall:

- (1) Destroy the improperly completed application; and
- (2) Require the applicant to complete a new application form.

Section 10.~~[Section 9.]~~ The sheriff shall place the following material in a single applicant packet:

- (1) The applicant's completed application form;
- (2) A photograph of the applicant complying with the provisions of 502 KAR 11:020;
- (3) The CCDW License Citizenship/Immigration Status Affidavit (KSP 131) if the applicant has indicated on the application form that the applicant is not a U.S. citizen;

(4)(a) A photocopy of the certificate of completion,~~[or notarized affidavit of completion,]~~ of the training or safety course or class required by KRS 237.110(4)(i); or

(b) Material provided by an applicant to the sheriff establishing that the applicant is exempt from the training requirement on the grounds that he or she is:

1. Currently certified as a peace officer by the Kentucky Law Enforcement Council pursuant to KRS 15.380 to 15.404;

2. A current or retired peace officer of one of the federal agencies listed in KRS 237.110(6)(b) and successfully completed the basic law enforcement training course required by that agency; or

3. A retired peace officer and is a member of a retirement system specified in KRS 237.110(6)(a)~~[(c), and (d)]~~;

4. A current or retired corrections officer who was employed by and received the prescribed training from the agencies listed in KRS 237.110(6)(c); or

5. An active or honorably discharged service member of the branches listed in KRS 237.110(6)(d) and completed handgun training from that branch; and

(5) Material provided by an applicant to the sheriff establishing that the applicant is exempt from payment of the application fee pursuant to KRS 237.110(7).

Section 11.~~[Section 10.]~~ (1) The sheriff shall mail single applicant packets to the department in a bulk mailer.:

(a) In a bulk mailer; and

(b) On dates established by the "CCDW – LEOSA Application Mailing Schedule for Sheriffs."

(2) The sheriff shall pay the cost of mailing a bulk mailer.

Section 12.~~[Section 11.]~~ (1) If the department issues an original license pursuant to KRS 237.110(4), it shall:

(a) Transmit the license to the sheriff; and

(b) Send a notice~~[an Issuance Notice]~~ to the applicant:

1. [i] Informing him or her that the license is being conveyed to the sheriff of the county where the applicant resides and what date the license will be available from the sheriff; and

2. Including a section that the applicant may sign in the presence of the sheriff or the sheriff's designee.

(2) The sheriff shall issue the license to the applicant upon:

(a) Verification of the identity of the applicant by:

1. Submission of a valid Kentucky operator's license or personal identification card issued by **the Transportation Cabinet**~~[a circuit court clerk]~~ pursuant to KRS 186.412; or

2. Personal knowledge of the sheriff; and

(b) Signature on the **notice of** issuance~~[Notice]~~ by the applicant in the presence of the sheriff or the sheriff's designee.

Section 13.~~[Section 12.]~~ Incorporation by Reference. (1) The following material is incorporated by reference:

(a) **"Commonwealth of Kentucky Carry Concealed Deadly Weapons/LEOSA: Application for License", September 2022; and**

~~(b) "Commonwealth of Kentucky Carry Concealed Deadly Weapons/LEOSA: Application for License", November 2009;~~

~~(b) "CCDW – LEOSA Application Mailing Schedule for Sheriffs", July 2006;~~

~~(c) KSP Form 131, "CCDW License Citizenship/Immigration Status Affidavit", [KSP 131, January] 2011~~**[edition]**; and

~~(d) "Issuance Notice," December 2008].~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Kentucky State Police, Criminal Identification and Records Branch, 1266 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material is also available on the department's Web site at <https://kentuckystatepolice.org/ccdw/ccdw-home/forms/>.

CONTACT PERSON: Brenn Combs, Staff Attorney, 919 Versailles Road, Frankfort, Kentucky 40601, phone (502) 782-1800, fax (502) 573-1636, email brenn.combs@ky.gov.

Changes to Material Incorporated by Reference:

Page 1

"For Sheriff's Dept. Use Only" Box

Insert line to indicate if an active or honorably discharged service member.

Page 1

Revision Date

After "Revision Date", insert "September 2022".

Delete "January 2019".

Page 2

"If qualifying under KRS 237.110(6)(d)" paragraph

Insert statement required by KRS 237.110(7)(e)3 regarding service member documentation.

Page 2

Revision Date

After "Rev.", insert "09/22".

Delete "01/19".



Andy Beshear
Governor

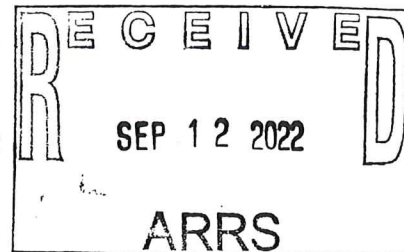
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Custodian of Records Fax (502) 573-1636

Kerry Harvey
Secretary

Col. Phillip Burnett, Jr.
Commissioner

September 8, 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: 502 KAR 11:010 Application for license to carry concealed deadly weapon
502 KAR 11:060 License denial and reconsideration process
502 KAR 11:070 License revocation and suspension notice and reinstatement process

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 502 KAR 11:010, 502 KAR 11:060, and 502 KAR 11:070, the Justice and Public Safety Cabinet, Department of Kentucky State Police proposes the attached amendments to 502 KAR 11:010, 502 KAR 11:060, and 502 KAR 11:070.

Sincerely,

Angela Parker, Staff Assistant
Kentucky State Police

Cc: Brenn Combs

9/12/22

SUGGESTED SUBSTITUTE

JUSTICE AND PUBLIC SAFETY CABINET Department of State Police

502 KAR 11:060. License denial and reconsideration process.

RELATES TO: KRS 237.110

STATUTORY AUTHORITY: KRS 16.080(1), ~~[17.080,]~~ 237.110(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.110(9) requires the department to deny an application for a license to carry a concealed deadly weapon if an applicant fails to meet the statutory requirements for licensure and to reconsider its denial of an application upon the applicant's submission of documentation relating to the application. **KRS 16.080(1) authorizes the commissioner to promulgate administrative regulations necessary for the governing and operation of the department.** This administrative regulation establishes the procedures for denial, notification of denial, and reconsideration.

Section 1. **(1)** If the department determines that it will deny an application for a license because an applicant fails to meet criteria specified in KRS 237.110(3) or (4), the department shall notify the applicant **of the denial.**

(2) The denial notice shall include:

(a) The reason the license is denied;

(b) A section that the applicant may sign to request reconsideration of the denial; and

(c) A statement~~[on a Denial Notice]~~;

(1) Of The reason the license is denied; and

(2)] that the applicant may request reconsideration by the department by signing the request for reconsideration section, as provided in the notice of denial~~[completing the "Request for Reconsideration" Section of the Denial Notice]~~ in the presence of the sheriff within thirty (30) days of the date of the notice of denial of license~~[Denial Notice]~~.

Section 2. If an applicant submits a request for reconsideration of the denial of a license~~[completes the Request for Reconsideration Section of the Denial Notice]~~, the sheriff shall:

(1) Place the signed notice of denial~~[completed Denial Notice]~~ and related material, if applicable, in a single applicant packet; and

(2) Transmit the completed single applicant packet to the department~~[on the date established by the CCDW-LEOSA Application Mailing Schedule For Sheriffs]~~.

Section 3. The department may require the applicant to submit any of the following in support of his or her request for reconsideration:

(1) Certified copies of records from a court clerk or law enforcement agency showing the disposition of criminal charges against the applicant;

(2) A certificate or statement from a court clerk or law enforcement agency showing that the applicable records have been destroyed or are otherwise unavailable;

(3) A certificate or statement from the appropriate department of the Armed Forces or other government agency showing the disposition of charges against the applicant;

(4) A certificate or statement from the appropriate department of the Armed Forces showing the nature of the applicant's discharge or separation from the Armed Forces;

(5) A notarized statement by the applicant setting forth the disposition of criminal charges against the applicant;

(6) A notarized statement by the applicant setting forth the nature of the applicant's discharge or separation from the Armed Forces;

(7) A notarized statement by the applicant setting forth the identity of the victim of the criminal offense, the nature of the applicant's relationship to the victim at the time of the offense, and whether or not the applicant and the victim shared a child in common at the time of the offense; or

(8) Any other documentation relevant to evaluating the request for reconsideration.

Section 4. If the department determines that the request for reconsideration is valid and that the applicant is not disqualified from being issued a license, it shall issue a license as set forth in 502 KAR 11:010, Section 12[11].

Section 5. If the department determines that the request for reconsideration of the denial of the application should be denied, the department shall notify the applicant of the denial by mail.[]

~~Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "Denial Notice", 1/9/07; and~~

~~(b) "CCDW-LEOSA Application Mailing Schedule For Sheriffs", July 2006.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of State Police, 1250 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

CONTACT PERSON: Brenn Combs, Staff Attorney, 919 Versailles Road, Frankfort, Kentucky 40601, phone (502) 782-1800, fax (502) 573-1636, email brenn.combs@ky.gov.



Andy Beshear
Governor

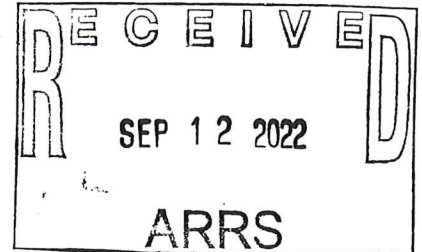
KENTUCKY STATE POLICE

919 Versailles Road
Frankfort, Kentucky 40601
www.kentuckystatepolice.org
Custodian of Records Phone (502) 782-1873
Custodian of Records Fax (502) 573-1636

Kerry Harvey
Secretary

Col. Phillip Burnett, Jr.
Commissioner

September 8, 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: 502 KAR 11:010 Application for license to carry concealed deadly weapon
502 KAR 11:060 License denial and reconsideration process
502 KAR 11:070 License revocation and suspension notice and reinstatement process

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 502 KAR 11:010, 502 KAR 11:060, and 502 KAR 11:070, the Justice and Public Safety Cabinet, Department of Kentucky State Police proposes the attached amendments to 502 KAR 11:010, 502 KAR 11:060, and 502 KAR 11:070.

Sincerely,

Angela Parker, Staff Assistant
Kentucky State Police

Cc: Brenn Combs

9/12/22

SUGGESTED SUBSTITUTE

**JUSTICE AND PUBLIC SAFETY CABINET
Department of State Police.**

502 KAR 11:070. License revocation and suspension notice and reinstatement process.

RELATES TO: KRS 237.110

STATUTORY AUTHORITY: KRS 16.080(1), ~~[17.080,]~~ 237.110(13)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 237.110(13)(a) requires the commissioner of the department to revoke a license to carry a concealed firearm or other deadly weapon if ~~a~~the licensee becomes permanently ineligible to be issued a license or have a license renewed under the criteria established by KRS 237.110. KRS 237.110(13)(b) requires the commissioner of the department to suspend a license to carry a concealed firearm or other deadly weapon if the licensee becomes temporarily ineligible to be issued a license or have a license renewed under the criteria established by KRS 237.110. **KRS 16.080(1) authorizes the commissioner to promulgate administrative regulations necessary for the governing and operation of the department.** This administrative regulation establishes the procedures for the revocation or suspension of a license to carry a concealed deadly weapon and for reinstatement of a revoked or suspended license.

Section 1. **(1)** If the department determines that it will revoke a license, the department shall notify the licensee~~[on a Revocation Notice]~~ of the **revocation.**~~[following:]~~

(2) The revocation notice shall include:

(a)~~[(1)]~~ The~~[Of the]~~ reason for the revocation;

(b)~~[(2)]~~ That the licensee is required to surrender his or her license to the sheriff of his or her county of residence within two (2) business days of the receipt of the revocation notice;

(c)~~[(3)]~~ That failure of the licensee to surrender a revoked license is a Class A misdemeanor;

(d) A section that the licensee may sign to request reconsideration of the revocation;
and

(e) A statement~~[(4)]~~ that the licensee may request reconsideration of the revocation by the department by signing the request for reconsideration section, as provided in the notice of revocation~~[completing the Request for Reconsideration Section of the Revocation Notice]~~ in the presence of the sheriff within thirty (30) days of the date of the notice of revocation~~[Revocation Notice]~~.

Section 2. **(1)** If the department determines that it will suspend a license, the department shall notify the licensee~~[on a Suspension Notice]~~ of the **suspension.**~~[following:]~~

(2) The suspension notice shall include:

(a)~~[(1)]~~ The~~[Of the]~~ reason for the suspension;

(b)~~[(2)]~~ That the licensee is required to surrender his or her license to the sheriff of his or her county of residence within two (2) business days of the receipt of the suspension notice;

(c)~~[(3)]~~ That failure of the licensee to surrender a suspended license is a Class A misdemeanor;

(d) A section that the licensee may sign to request reconsideration of the suspension;
and

(e) A statement~~[(4)]~~ that the licensee may request reconsideration of the suspension by the department by signing the request for reconsideration section, as provided in the notice of

suspension~~[completing the Request for Reconsideration Section of the Suspension Notice]~~ in the presence of the sheriff within thirty (30) days of the notice of suspension~~[date of the Suspension Notice]~~.

Section 3. If a licensee signs~~[completes]~~ the request for reconsideration section~~[Request for Reconsideration Section]~~ of the revocation notice~~[Revocation Notice]~~ or the notice of suspension~~[Suspension Notice]~~, the sheriff shall:

- (1) Place the signed revocation notice or notice of suspension~~[completed Revocation Notice or the Suspension Notice]~~ and related material, if applicable, in a single applicant packet; and
- (2) Transmit the completed single applicant packet to the department~~[on the date established by the CCDW-LEOSA Application Mailing Schedule For Sheriffs]~~.

Section 4. The department may require the licensee to submit any of the following in support of his or her request for reconsideration:

- (1) Certified copies of records from a court clerk or law enforcement agency showing the disposition of criminal charges against the licensee;
- (2) A certificate or statement from a court clerk or law enforcement agency showing that the applicable records have been destroyed or are otherwise unavailable;
- (3) A certificate or statement from the appropriate department of the Armed Forces or other government agency showing the disposition of charges against the licensee;
- (4) A certificate or statement from the appropriate department of the Armed Forces showing the nature of the licensee's discharge or separation from the Armed Forces;
- (5) A notarized statement by the applicant setting forth the disposition of criminal charges against the licensee;
- (6) A notarized statement by the licensee setting forth the nature of the licensee's discharge or separation from the Armed Forces;
- (7) A notarized statement by the licensee setting forth the identity of the victim of the criminal offense, the nature of the licensee's relationship to the victim at the time of the offense, and whether or not the licensee and the victim shared a child in common at the time of the offense; or
- (8) Any other documentation relevant to evaluating the request for reconsideration.

Section 5. If the request for reconsideration of the revocation or suspension is denied, the department shall:

- (1) Notify the licensee by mail; and
- (2) Inform the licensee of his or her right to petition the commissioner of the Kentucky State Police for reinstatement by requesting an administrative hearing pursuant to KRS Chapter 13B within thirty (30) days of the date of the denial letter.

Section 6. License Expiration Date. If a license is revoked or suspended, the date of its expiration shall not be extended.

Section 7. Reinstatement. (1) A revoked or suspended license shall be reinstated by the department upon:

- (a) Receipt of an order from the appropriate court to terminate the revocation or suspension;
 - (b) Determination by the department to reinstate the license after a request for reconsideration of the revocation or suspension; or
 - (c) Receipt of an order from the appropriate KRS Chapter 13B hearing officer to return the license and abrogate the suspension or revocation.
- (2) If a license is reinstated, the department shall notify the applicant. [

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

(a) "Revocation Notice", 1/9/07;

(b) "Suspension Notice", 1/9/07; and

(c) "CCDW-LEOSA Application Mailing Schedule For Sheriffs," 07/06.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of State Police, 1250 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

CONTACT PERSON: Brenn Combs, Staff Attorney, 919 Versailles Road, Frankfort, Kentucky 40601, phone (502) 782-1800, fax (502) 573-1636, email brenn.combs@ky.gov.



COMMONWEALTH OF KENTUCKY
CARRY CONCEALED DEADLY WEAPONS/LEOSA:
APPLICATION FOR LICENSE

APPLICANT FIRST NAME

MI

APPLICANT DATE OF BIRTH

APPLICANT LAST NAME

SAMPLE

FILIAL

STREET #

STREET NAME

SUFFIX

STATE CITY

ZIP CODE

K Y

APARTMENT NUMBER

POST OFFICE BOX

SEX

SOCIAL SECURITY NUMBER

☐ MALE ☐ FEMALE

U.S. CITIZEN?

PLACE OF BIRTH (City, State, Country)

☐ YES ☐ NO

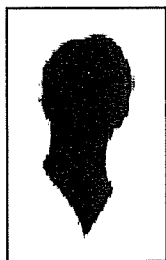
PHONE NUMBER

SAMPLE

POLICE AGENCY RETIRED FROM

(LEOSA APPLICATIONS ONLY)

IF NOT A U.S. CITIZEN, KSP FORM 131 IS REQUIRED.



TAPE OR GLUE PICTURE HERE
(ALL PHOTOGRAPHS MUST ADHERE TO 502 KAR 11:020)

APPLICANT SIGNATURE

COMPLETION INSTRUCTIONS

- A) USE UPPER CASE CAPITAL LETTERS
- B) USE BLACK PEN ONLY
- C) WRITING IS REQUIRED TO STAY WITHIN THE CONSTRAINED AREA

FOR SHERIFF'S DEPT. USE ONLY

ORI NUMBER **0 0 0 0**

DATE OF APPLICATION

LEOSA? ☐ YES

ACTIVE KY PEACE OFFICER? ☐ YES

RETIRED KY PEACE OFFICER? ☐ YES

KY JUDICIAL OFFICER? ☐ YES

MILITARY? ☐ YES

AUTHORIZING OFFICIAL SIGNATURE

* By my signature above, I certify that:
I have read and agree to the certification on the back of this application; and
I understand that this application is executed under oath, and that a materially false answer
to any question or the submission of any materially false document subjects me to criminal
prosecution under KRS 523.030.

Revision Date: September 2022

SAMPLE
APPLICATION NUMBER 0905050

• I. Carry Concealed Deadly Weapons/LEOSA License Applicant Certification

As an applicant for a license to carry a concealed deadly weapon, I hereby certify that:

SAMPLE

I have read, and am familiar with, 18 U.S.C. 922, KRS 237.110, and KRS 527.040;

I understand that if I have any questions concerning state and federal firearms laws, including but not limited to, the statutes cited on this application, or my eligibility to apply for a new or renewal Carry Concealed Deadly Weapons license, it is my responsibility to seek legal counsel to answer those questions to my satisfaction;

I understand that it is not the responsibility of the Department of Kentucky State Police, or the sheriff of my county of residence, to provide me with legal advice;

I am not prohibited from the purchase, receipt, or possession of firearms, ammunition, or both pursuant to 18 U.S.C. 922(g), 18 U.S.C. 922(n), KRS 527.040, or other applicable federal or state law;

To the best of my knowledge, I am in compliance with the criteria contained in subsections (3) and (4) of KRS 237.110;

I have been furnished a copy of KRS 237.110 and am knowledgeable about its provisions;

I have been furnished a copy of, have read, and understand, KRS Chapter 503 as it pertains to the use of deadly force for self-defense in Kentucky.

SAMPLE

I have read and understand the Department of Criminal Justice Training's concealed carry deadly weapons legal handout (handout), located at <https://docit.ky.gov/CCDW.html>, which includes information on the justifiable use of force, and by completing this certification, I authorize the Department of Kentucky State Police to attach a copy of the handout to my application;

If qualifying under KRS 237.110(6)(d), I have provided the documents required by KRS 237.110(7)(e)(3). I have been provided information on, and a copy of laws relating to, possession and carrying of firearms, as set forth in KRS Chapters 237 and 527, and the laws relating to the use of force, as set forth in KRS Chapter 503.

II. Additional Instructions to Complete the Application

- Use original forms only. Copies will NOT be accepted.
- USE PRINTED CAPITAL OR UPPERCASE LETTERS.
- The application cannot be folded, torn, or stapled.
- Sign, date, and complete all required information.

SAMPLE

III. General Instructions for Sheriff's Office

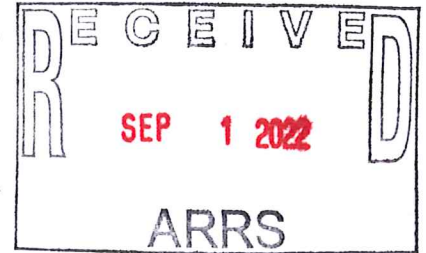
- The applicant is required to provide a Photo ID, Training Certificate (or documentation of grounds for training exemption), and an original photograph. An image produced by a copier cannot be used.
- The photograph must comply with 502 KAR 11:020.
- Attach the applicant's photograph to fit in the designated box on the CCDW Application.
- Administer oath to the applicant.
- Place form, photograph, and training certificate, into a single applicant packet.
- Each application must be accompanied by a check or money order from the applicant for forty dollars (the fee allocated to the Department of Kentucky State Police and the Administrative Office of the Courts by statute) payable to the Kentucky State Treasurer. One payment for multiple applications will not be accepted.

110 Cleveland Drive
Paris, KY 40361



(800) 782-6823
kyfirecommission.kctcs.edu

September 1, 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: 739 KAR 2:070. Volunteer fire department loan fund.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 739 KAR 2:070, the Kentucky Fire Commission proposes the attached agency amendment to 739 KAR 2:070.

Sincerely,

Ricky King, Chair
Kentucky Fire Commission
110 Cleveland Drive
Paris, KY 40361

Final, 8-26-2022

AGENCY AMENDMENT

**KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM
Kentucky Fire Commission**

739 KAR 2:070. Volunteer fire department loan fund.

NOTE TO COMPILER: Make these changes after the Staff Suggested Substitute changes.

Page 6

Section 5(2)

Lines 12-13

After "exceed", delete the following:
seventy-five (75) percent of the total cost of the construction of the facility or

Line 13

After "\$125,000", delete ", whichever is less".

Page 7

Section 6(1)(a)

Line 12

After "\$125,000", delete the following:
or seventy-five (75) percent of the total cost, whichever is less

Page 7

Section 6(1)(b)

Lines 20-21

After "\$125,000", delete the following:
or seventy-five (75) percent of the cost of repair or rehabilitation, whichever is less

Page 9

Section 7(3)

Line 16

After "exceed", delete "the lesser of".

Lines 17-18

After "\$125,000", delete the following:
or seventy-five (75) percent of the total cost price quote accepted by the borrower
and submitted by the borrower as the accepted quote for purchase

Page 11

Section 10(1)

Line 12

After "Application", insert "September".
Delete "April".

MATERIAL INCORPORATED BY REFERENCE

At the time that it files this agency amendment the agency needs to file one (1) clean copy of a "Low Interest Loan Application" with the September 2022 edition date that:

- **Makes updates for consistency with the maximum loan amount**



LOW INTEREST LOAN APPLICATION

Please print clearly or type.

AMOUNT OF LOAN REQUESTED: \$ _____ (The amount of a loan request shall not exceed \$125,000.)

LOAN PURPOSE: Apparatus () Building () Equipment ()

FIRE DEPARTMENT: _____ FIRE DEPARTMENT #: _____

CONTACT PERSON: _____ TITLE: _____

STREET ADDRESS: _____ PHONE #: (_____) _____ - _____

CITY: _____ COUNTY: _____ ZIP CODE: _____

E-MAIL ADDRESS: _____

POPULATION: _____ SQUARE MILES: _____ YEARS OF OPERATION: _____

- Average number of HOUSEHOLD RUNS: _____, INDUSTRIAL RUNS: _____, in your area.
- Do you respond to first alarm EMS calls: YES () NO ()
 - If so, total # per year: _____
- Has your department received state aid for the past 3 years? YES () NO ()

DOES LOAN REQUEST INCLUDE ANY OF THE FOLLOWING?:

- | | |
|---|----------------|
| A. acquisition of existing facilities | YES () NO () |
| B. operating expenses | YES () NO () |
| C. reduction of debt or other legal obligations | YES () NO () |
| D. for payment of planning or designing fees | YES () NO () |
| E. preparation fees for application or permits | YES () NO () |
| F. investment or reinvestment | YES () NO () |

If any question, A through F, is answered yes, please explain on a separate piece of paper and attach to this form.

The undersigned is the authorized agent of the _____ Volunteer Fire Department, and as such, does hereby represent that it is understood and agreed that this fire department shall repay the loan at the annual interest rate of three percent (3%) of the unpaid balance and that the principal will be prepaid pro rata over the life of the loan. The fire department further understands and agrees that failure to make timely annual interest or principle payments shall result in the loss of state aid, and/or forfeit of property mortgaged. The statements made herein are for the purpose of obtaining a loan. The applicant fully understands that it is a criminal offense punishable by fine or imprisonment, or both, to knowingly make a material false statement of any of the facts stated above, pursuant to KRS 523.100.

APPLICANT'S SIGNATURE

TITLE

DATE



Current Assets: (Attach a list of major equipment, vehicles owned, year of apparatus, & the year purchased by your fire department)

Present Property Status: Own: _____ Rent: _____ Monthly Payment: \$ _____ Year Built: _____

Landlord/Mortgage Holder: _____ **Estimated Value:** \$ _____

ATTACH A LIST OF ALL APPARATUS; INCLUDE THE YEAR, MAKE & TYPE OF APPARATUS.

Income: (List sources and amount of annual income; list any additional entries to the back of this form.)

1. State Aid Annual Amount: \$ _____
2. _____ Annual Amount: \$ _____
3. _____ Annual Amount: \$ _____
4. _____ Annual Amount: \$ _____

Disclose all bank accounts:

	FINANCIAL INSTITUTION:	ACCOUNT #:	BALANCE:
1.	_____	_____	\$ _____
2.	_____	_____	\$ _____
3.	_____	_____	\$ _____
4.	_____	_____	\$ _____

Current obligated expenses: (If none, list places you have had credit.)

	CREDITOR:	ACCOUNT #:	BALANCE:	PAYMENT:
1.	_____	_____	\$ _____	\$ _____
2.	_____	_____	\$ _____	\$ _____
3.	_____	_____	\$ _____	\$ _____
4.	_____	_____	\$ _____	\$ _____



GIVE A DESCRIPTION OF THE PURPOSE OF THIS LOAN

VIN # _____

APPARATUS: _____

Make: _____ Year: _____ Model: _____

GPM of Pump: _____ Capacity of Booster Tank: _____

Brand of Pump: _____ Date of last Pump Test: _____

List additional equipment to be purchased with the apparatus:

MANDATORY FOR THE PROCESSING OF LOAN:

*****VEHICLE INSPECTION REPORT REQUIRED*****

*****CURRENT PUMP TEST REQUIRED FOR ALL USED PUMPERS*****

BUILDING: New: _____ Addition: _____ Remodel: _____

Dimensions: _____ X _____ Type of Material: _____

Give Description:

EQUIPMENT / OTHER PURPOSES:

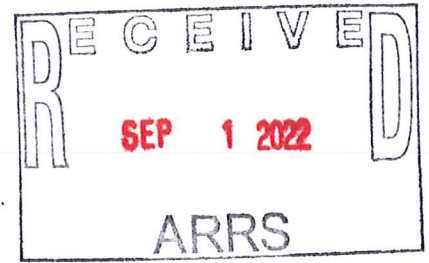
Give Description:

110 Cleveland Drive
Paris, KY 40361



(800) 782-6823
kyfirecommission.kctcs.edu

September 1, 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: 739 KAR 2:070. Volunteer fire department loan fund.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 739 KAR 2:070, the Kentucky Fire Commission proposes the attached suggested amendment to 739 KAR 2:070.

Sincerely,

Ricky King, Chair
Kentucky Fire Commission
110 Cleveland Drive
Paris, KY 40361

Final, 8-24-2022

SUGGESTED SUBSTITUTE

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM
Kentucky Fire Commission

739 KAR 2:070. Volunteer fire department loan fund.

RELATES TO: KRS 95A.262(4), (5), (13), (14)

STATUTORY AUTHORITY: KRS 95A.240, **95A.262**

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 95A.240 authorizes the Kentucky Fire Commission to promulgate administrative regulations to facilitate the administration of the fund and further the purposes of KRS 95A.200 to 95A.300.** KRS 95A.262 authorizes the Kentucky Fire Commission ~~[on Fire Protection Personnel Standards and Education]~~ to make low interest loans for the purchase of major equipment and construction of facilities to properly trained volunteer fire departments which do not have other sources of funds at rates which are favorable given their financial resources. This administrative regulation **establishes**~~[is necessary to establish the]~~ criteria for qualifying for the loan and the mandatory procedures to be followed in obtaining and repaying the loan.

Section 1. Definitions.

(1) "Accessory equipment" means ladders, hoses, self-contained breathing apparatus, portable pump and hard suction hoses, nozzles, power extrication tools, and protective equipment necessary to carry out the ordinary functions of supporting firefighting activities.

(2) "Apparatus equipment" means NFPA-complaint pumpers, rescue pumpers, tankers, aerial equipment, rescue equipment, specialty fire apparatus equipment, and other large equipment used for firefighting operations.~~[fighting fires and emergencies. This equipment is more specifically categorized as follows:]~~

[~~(a)~~] ["Pumper" means any pumper which can pump 500, 750, 1,000, 1,250 or 1,500 gallons per minute at 150 pounds per square inch net pumping pressure.]

[~~(b)~~] ["Tanker" means a mobile water supply fire apparatus with a water capacity of 1,000 gallons or more and a minimum flow rate to pump connection of 500 gallons per minute except when a booster pump is provided.]

[~~(c)~~] ["Rescue pumper" means an apparatus capable of pumping a minimum of 250 gallons per minute at 150 PSI net pumping pressure, carrying a minimum of 500 gallons of water.]

(3) "Approved" means approved by the commission or its authorized designee for a particular purpose.

(4) "Commission" **is**~~[means commission as]~~ defined by KRS 95A.210**(1)**.

(5) "Committee" means the loan committee of the Kentucky Fire Commission~~[on Fire Protection Personnel Standards and Education].~~

(6) "Communications equipment" means equipment or system, or both, necessary for the transmission and reception of signals, by voice, required to support the operations of the volunteer fire department.

(7) "Eligible" means a volunteer fire department that has met the training requirements and is in good standing for receipt of state aid pursuant to 739 KAR 2:050 and the loan request requirements of this administrative regulation.

(8) "Emergency" means fire department equipment, apparatus, or facilities have been damaged, destroyed or rendered inoperable and established firefighting capacity is reduced to a level affecting public safety.

(9) "Facilities" means any structure or portion of a structure intended for storage or protection of firefighting equipment including rooms or spaces designed and used for firefighting training.

(10) "Local government" **is**~~[as]~~ defined by KRS 95A.210**(5)**~~[(3)]~~.

(11) "NFPA" means the National Fire Protection Association.

(12) "Protective equipment" means clothing or equipment used by firefighters which affords protection from injury to the wearer or user including **items such as**~~[, but not limited to,]~~ fire coats, boots, helmets, and turnout pants meeting current NFPA standards.

(13) "Specialty fire apparatus equipment" means command, chief, first response, and other specialty equipment used for firefighting equipment.

(14)[(13)] ["UL" means Underwriters Laboratories.

(15)[(14)] "Volunteer fire department" means a fire department recognized by the Kentucky Fire Commission [en Fire Protection Personnel Standards and Education] as having a membership of more than fifty (50) percent of its members being full-time volunteer firefighters.

(15)[(16)][(15)] "Volunteer fire department loan fund" means the fund established pursuant to KRS 95A.262(14).

Section 2. Eligibility.

(1) A volunteer fire department may apply to the commission to receive low interest loans for the purchase of major equipment and facility construction pursuant to the requirements of this administrative regulation.

(2) Eligibility to participate in the loan fund shall be limited to those volunteer fire departments meeting the training requirements of KRS 95A.262(2) and that continue to be in good standing to receive state aid[, and which the commission finds are unable to obtain loans from conventional financial institutions at the rate of three (3) percent].

(3) A loan shall be considered from only one (1) fire department when more than one (1) department resides at the same physical location.

Section 3. Loan Purposes and Prohibitions.

(1) Purposes. The commission shall consider a loan for the following purposes:

- (a) The acquisition of apparatus equipment;
- (b) The acquisition of communication equipment;
- (c) The acquisition of accessory equipment or protective equipment;
- (d) The construction of new facilities;
- (e) The modernization of existing facilities; and
- (f) The repair or rehabilitation of apparatus equipment where it has been determined that existing apparatus equipment no longer meets the standards of the NFPA and where the repair or rehabilitation, or both, of the equipment will bring it in compliance with NFPA standards.

(2) Prohibitions. A loan granted under this administrative regulation shall not be used for the following:

- (a) Operating expenses;
- (b) For payment of fees for the designing or planning of facilities or preparation of application; or
- (c) For investment or reinvestment.

Section 4. General Loan Requirements.

(1) Loan period. A loan period shall not exceed fifteen (15)[twelve (12)] years. The period of time for repayment of the loan shall depend upon the amount of the loan and shall be set forth in the loan agreement.~~[Except in the case of approved emergency loans, the minimum amount of a loan shall be \$5,000.]~~

(2) Title of property. Any apparatus equipment or facilities financed by a loan from the fund shall be titled in the name of the volunteer fire department or in the name of the political subdivision with the commission as lien holder for the property. ~~If [in the event]~~ the commission is supplying secondary funding, the commission shall become holder of a secondary encumbrance.

~~[(3)] [Fire department matching funds. A prerequisite to obtaining a loan for facilities, vehicles, or rehabilitation of facilities, vehicles, or equipment, the volunteer fire department shall verify the availability of unobligated funds in the amount of twenty five (25) percent of the total cost of the facility, vehicle, or equipment or rehabilitation of the facility, vehicle, or equipment.]~~

(3)[(4)] Financial responsibility. A copy of the last twelve (12) monthly bank statements **shall[must]** accompany the loan application.

(4)[(5)] Repayment of loans.

- (a) Interest on the principal amount of the loan shall accrue at the rate of three (3) percent per annum and shall be due and payable on the unpaid balance annually.

- (b) The principal of the loan shall be repaid proportionally over the period of the loan. The principal may be reduced at any time through advanced payment.
- (c) The principal and interest of the loan shall be payable at the office designated on the loan approval form, with the payment being deducted from the state aid allotment for that year with any additional payment due or desired be made by check made payable to the Kentucky Fire Commission~~[State Treasurer]~~.
- (d) A payment shall be made before the close of business on the due date or it shall be considered delinquent.
- (e) Delinquent accounts shall not receive further loans or grants for state aid or training facilities until the delinquency is cured. If the delinquency of the account extends beyond three (3) months of distribution of the state aid check, foreclosure or repossession procedures shall begin.
- (f) The volunteer fire department shall make yearly payments equal to its full state-aid allotment unless otherwise requested and approved by the commission.~~[A portion of future state aid grants may be committed by the volunteer fire department to satisfy its loan agreement.]~~
- (g) Insurance. The volunteer fire department shall provide to the commission proof of insurance~~[collateral protection insurance]~~ for the apparatus, equipment, and facility construction sufficient to secure and protect the loan.
- ~~(5)~~~~(6)~~ Emergency loans. An eligible volunteer fire department may be granted an approved emergency loan pursuant to this administrative regulation.

Section 5. Loan Requirements for Fire Department Facility Construction. A request for a construction loan for fire department facilities shall meet the requirements of this section and other applicable requirements of this administrative regulation.

- (1) A facility loan shall be granted for establishing or modernizing those facilities that house firefighting equipment.
- (2) A facility loan shall not exceed seventy-five (75) percent of the total cost of the construction of the facility or \$125,000~~[\$75,000]~~, whichever is less.
- (3) A facility loan shall not be used for land acquisition.
- (4) Land title. The title to the land upon which facilities are to be constructed or modernized under the loan shall be in the name of the volunteer fire department or the local government which the volunteer fire department serves.
- (5) Clear title. The volunteer fire department or the political subdivision for which the volunteer fire department provides service shall have clear title to the land upon which the facility is to be constructed or modernized.
- (6) Real property liens. Concurrent with the receipt of the loan, the volunteer fire department shall provide a copy of the deed and execute a lien document to be filed in the county court clerk's office in which the property is located.
- (7) Plans approval. Final plans for construction shall be submitted for approval to the Department of Housing, Buildings and Construction or to an authorized local building official with a copy to the commission. The volunteer fire department shall be responsible for complying with the Kentucky Building Code, 815 KAR 7:120, the Americans with Disabilities Act, 42 U.S.C. 12101 et seq., and other applicable laws. If any change to the plans or specifications is desired or required, the volunteer fire department shall furnish all additional labor and materials necessary to complete the project and the improvements in compliance with the changes to the plans and specifications.
- (8) A certificate of occupancy shall be submitted to the commission by the volunteer fire department upon completion of construction~~[prior to release of loan funds]~~.

Section 6. Apparatus Equipment.

- (1) Loan limits.
 - (a) The amount of a loan for the purchase of a single apparatus equipment shall not exceed \$125,000~~[\$75,000]~~ or seventy-five (75) percent of the total cost, whichever is less. The volunteer fire department shall submit to the commission:
 - 1. A completed vehicle inspection report from a mechanic with an Automotive Service Excellence (ASE) or Emergency Vehicle Technician (EVT) certification; and

~~2. A [The apparatus being purchased with the loan funding shall not be more than twenty (20) years old and a] copy of a pump test conducted within the last year [must accompany necessary documentation for the loan].~~

(b) The amount of a loan for the repair or rehabilitation for a single apparatus equipment shall not exceed \$125,000~~[\$35,000]~~ or seventy-five (75) percent of the cost of repair or rehabilitation, whichever is less. The volunteer fire department shall submit to the commission a completed vehicle inspection report from a mechanic with an Automotive Service Excellence (ASE) or Emergency Vehicle Technician (EVT) certification.~~[, and the apparatus shall not be more than twenty (20) years old.]~~

(2) Apparatus loans. An apparatus loan shall be for the purpose designated in the loan request and approved by the commission for the following purposes:

- (a) The purchase of firefighting apparatus equipment;
- (b) The rehabilitation of existing apparatus equipment for the purpose of upgrading the apparatus to meet applicable National Fire Protection Association standards; and
- (c) Repair of existing apparatus.

(3) Mandatory description or specification of equipment.

(a) New apparatus. The volunteer fire department shall submit one (1) complete set of specifications of the new apparatus.

(b) Repairs and rehabilitation. For the repair or rehabilitation of existing apparatus equipment, the volunteer fire department shall submit one (1) complete set of specifications along with one (1) estimate~~[three (3) estimates]~~ from a qualified manufacturer~~[manufacturers]~~ for the repair or rehabilitation. ~~[If less than three (3) estimates are available, a statement shall be submitted explaining the reason why there are less than three (3).]~~

(c) Purchase of used apparatus equipment. For used apparatus equipment, the volunteer fire department shall submit documentation of the type and quality of the equipment.

(d) Refurbished fire apparatus. For refurbished fire apparatus, the volunteer fire department shall submit the following:

- 1. Certification of refurbished equipment;~~[.]~~
- 2. Pump test at time of purchase;and[.]
- 3. Any additional information which the committee~~[loan committee]~~ may request.

~~[(e)] [Loans will only be granted on repairable equipment and apparatus which are not more than twenty (20) years old and a pump test shall be submitted upon completion of repairs and must meet NFPA pump test requirements and acceptance.]~~

(4) Compliance with National Fire Codes. The apparatus shall have met the NFPA 1901 standard at the time it was manufactured.~~[The volunteer fire department shall submit to the commission verification that the new equipment is NFPA 1901-91 equipment.]~~

(5) Prerequisite materials. The volunteer fire department shall record a lien on the affected vehicle title documents in the local county court clerk's office.

Section 7. Protective, Accessory, and Communication Equipment.

(1) An equipment loan shall be used for the purchase of protective, accessory, or~~[and]~~ communication equipment.

(2) Equipment compliance.

(a) A volunteer fire department shall select protective and accessory equipment that shall be labeled as having been tested and listed by an approved nationally recognized testing agency.

(b) A volunteer fire department shall select communications equipment identified as meeting Federal Communications Commission regulations, [Title 47 C.F.R. Part 0 et seq of the Code of Federal Regulations]~~[5 C.F.R. Part 89].~~

(3) The amount of a loan for the purchase of equipment shall not exceed the lesser of \$125,000~~[\$75,000]~~ or seventy-five (75) percent of the total cost price quote accepted by the borrower and submitted by the borrower as the accepted quote for purchase.

(4) Security interest. The commission shall retain a security interest in the property for the life of the loan.

Section 8. Loan Request Procedure.

- (1) An applicant seeking a low interest loan shall submit a Low Interest Loan Application~~[Form FPPSE-4, April, 1993,]~~ to the commission.
- (2) The commission administrator shall review the application and status of the volunteer fire department to determine if the minimum criteria for obtaining the loan has been met.
- (3) The commission administrator shall notify the volunteer fire department of the disposition of the loan application, forwarding final forms to those eligible volunteer fire departments whose applications are satisfactory.

~~[Section 9.] [Establishing Priorities.]~~

- ~~[(1)] [A loan shall be reviewed for the applicant's stated purpose in the following order of preference:]~~
- ~~[(a)] [A request for replacement or repairs of unsafe or unusable fire apparatus, equipment or facilities.]~~
 - ~~[(b)] [A request for replacement of outmoded fire apparatus, equipment or facilities.]~~
 - ~~[(c)] [A request for additional apparatus, equipment or facilities because of unusual demands or present service.]~~
- ~~[(2)] [Priority shall first be given to applicants establishing the greatest need, utilizing the following criteria, not excluding other considerations:]~~
- ~~[(a)] [Financial need.]~~
 - ~~[(b)] [Low economic base.]~~
 - ~~[(c)] [Unusual fire hazards.]~~
 - ~~[(d)] [County fire death rate.]~~
 - ~~[(e)] [Population over sixty five (65).]~~
 - ~~[(f)] [Population growth.]~~
 - ~~[(g)] [Tax exempt properties.]~~
 - ~~[(h)] [New construction.]~~
 - ~~[(i)] [Natural disaster.]~~
 - ~~[(j)] [High mileage/usage.]~~
 - ~~[(k)] [Existing equipment.]~~
- ~~[(3)] [Approval shall be granted in order of need and availability of funds for each qualifying volunteer fire department.]~~

~~Section 9.~~~~[Section 10.]~~ Formal Application and Qualification Procedure.

- (1) To qualify for a loan, an eligible volunteer fire department shall submit a Low Interest Loan Application~~[Form FPPSE-2, April, 1993,]~~ to the commission.
- (2) The commission shall render its decision at its next regularly scheduled meeting. Approved emergency loans may be granted prior to the regularly scheduled meeting.
- (3) An eligible volunteer fire department aggrieved by a decision of the commission, may petition the commission, in writing, for reconsideration and the commission, upon receiving the request, shall provide the applicant with an opportunity to be heard at its next meeting.

~~Section 10.~~~~[Section 11.]~~ Incorporation by Reference.

- (1) "Low Interest Loan Application", April 2022, is incorporated by reference.~~[The following material is incorporated by reference:]~~
 - ~~[(a)] [Form FPPSE-1, April, 1993, Loan Application Request Form.]~~
 - ~~[(b)] [Form FPPSE-2, April, 1993, Low Interest Loan Application.]~~
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Fire Commission~~[on Fire Protection Personnel Standards and Education], 110 Cleveland Drive, Paris, Kentucky 40361~~~~[118 James Court, Lexington, Kentucky 40505], Monday through Friday, 8:30 a.m. to 4:30 p.m.~~ **This material is also available on the agency's Web site at https://kyfirecommission.kctcs.edu/about/forms_and_regulations.aspx.**

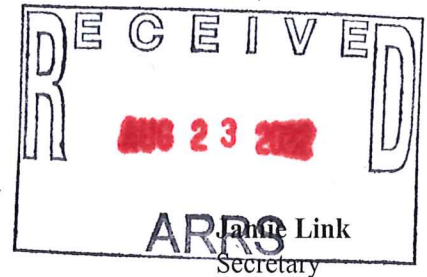
CONTACT PERSON: Jonathan L. Gay, Board Counsel, 163 E. Main Street, Suite 200, Lexington, Kentucky 40507, phone (859) 225-4714, fax (859) 225-1493, email administrativeregulations@wgmfirm.com.



EDUCATION AND LABOR CABINET

Andy Beshear
Governor

Office of General Counsel
Workforce Development
Legal Division
500 Mero Street, 3rd Floor
Frankfort, Kentucky 40601
(502) 564-3070



August 23, 2022

Senator Stephen West and Representative David Hale
c/o Emily Caudill, Regulations Compiler
Legislative Research Commission
029, Capitol Annex
702 Capitol Avenue
Frankfort, Kentucky 40601

Dear Ms. Caudill:

After discussion with the Administrative Regulation Review Subcommittee, staff, and interested individuals of the issues raised by 787 KAR 2:040, the Education and Labor Cabinet proposes the attached Agency Amendment to 787 KAR 2:040.

Thank you.

Oran S. McFarlan, III

Oran S. McFarlan, III
Deputy General Counsel
Kentucky Education and Labor Cabinet
500 Mero Street, 3rd Floor
Frankfort, KY 40601

TEAM
KENTUCKY

Agency Amendment

Final Version: 8/15/2022 12:41 PM

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Department of Workforce Investment

787 KAR 2:040. Local workforce development area governance.

RELATES TO

After "3101 et seq.", insert "**20 C.F.R. 679.130**".

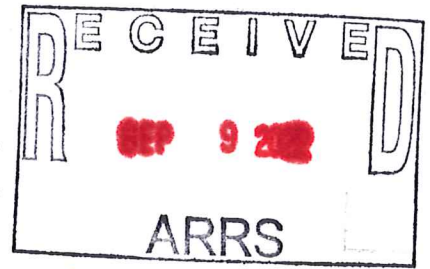
Section 8

After "Opportunity Act and", insert the following:

20 C.F.R. 679.130. Nothing in this section shall be construed to prohibit coordination between the Kentucky Workforce Innovation Board and the Kentucky Education Workforce Collaborative

Delete the following:

Accompanying Code of Federal Regulations



EDUCATION and LABOR CABINET
Kentucky Commission on Proprietary Education

Andy Beshear
Governor

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Frankfort, Kentucky 40601
Phone (502) 564-4185
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Jamie Link
Secretary

Jacqueline Coleman
Lieutenant Governor

Misty N. Edwards
Executive Director

September 7, 2022

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill, Regulation Compiler
Administrative Regulation Review Subcommittee Legislative Research Commission 083,
Capitol Annex Frankfort KY 40601

Re: 791 KAR 1:010, Applications, permits and renewals

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 791 KAR 1:010, the Kentucky Commission on Proprietary Education proposes the attached amendment to 791 KAR 1:010.

Sincerely,

Misty N. Edwards
Executive Director

Final, 8-29-2022

SUGGESTED SUBSTITUTE

EDUCATION AND ~~LABOR~~WORKFORCE DEVELOPMENT CABINET
Kentucky Commission on Proprietary Education

791 KAR 1:010. Applications, permits, and renewals.

RELATES TO: KRS 165A.330, 165A.350(3), 165A.360(1), (2), (7), (9), 367.110-367.360

STATUTORY AUTHORITY: KRS 165A.340(6), 165A.350(3), 165A.360(2), 165A.400

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.340(6) and 165A.400 authorize the Kentucky Commission on Proprietary Education to promulgate administrative regulations to administer and enforce the provisions of KRS Chapter 165A. KRS 165A.350(3) and 165A.360(2) require the commission to establish forms. This administrative regulation establishes the application requirements and incorporates forms by reference.

Section 1. Initial Licensure Application and Student Protection Fund Contribution for Schools.

- (1) A school residing in and doing business in Kentucky shall submit:
 - (a) Form PE-15, Application for Resident School; and
 - (b) The initial contribution to the student protection fund required by 791 KAR 1:025, Section 2.
- (2) A school not residing in Kentucky, but seeking to do business in Kentucky, shall submit:
 - (a) Form PE-16, Application for Non-Resident School; and
 - (b) The initial contribution to the student protection fund required by 791 KAR 1:025, Section 2.

Section 2. Annual Renewal License Application for Schools. (1) The annual renewal license application for a school residing in and doing business in Kentucky shall be the Form PE-17, Application for License Renewal Resident School.

(2) The annual renewal license application for a school not residing in Kentucky, but doing business in Kentucky, shall be the Form PE-18, Application for License Renewal Non-Resident School.

(3) Each school shall:

- (a) List each program for which it is approved, including the Classification of Instructional Programs (CIP) code, the number of contact or credit hours for the program, the length of the program, and the cost of the program;
- (b) Provide a copy of:
 1. Its enrollment agreement noting each item that is required by KRS Chapter 165A;
 2. a. Its most recent audited financial statement, if the school is accredited; or
 - b. Its most recent financial income statement certified by an independent accountant, if the school is not accredited;
 3. Its faculty and personnel handbook;
 4. Its current catalog, certified, true, and correct in content;
 5. Any advertising and marketing materials utilized by the school;
 6. Its occupational license and current fire inspection report;
 7. Its organizational chart for each school; and
 8. Its certificate of accreditation, if accredited; and
- (c) Submit a Form PE-11, Form for Instructional Staff and Key Administrative Personnel.

Section 3. Permit Application for Agents. The permit application for each agent of a school licensed by the commission shall be the Form PE-19, Application for Permit to Act as an Agent, to seek initial approval with the commission, and the Form PE-20, Application for Renewal of Permit to Act as an Agent, to seek renewal with the commission annually.

Section 4. Transfer of Ownership of a School. The application for recording a transfer of ownership of a school licensed by the commission shall be the Form PE-21, Application to Transfer Ownership of a School.

Section 5. Change of Name of a School. The application for approval of a change of name of a school shall be the Form PE-22, Application to Change the Name of a School.

Section 6. Change of Location of a School. The application for approval of a change of location of a school shall be the Form PE-23, Application to Change the Location of a School.

Section 7. Application to Award an Associate Degree. The application to award an associate degree shall be the Form PE-10, Application to Award an Associate Degree.

Section 8. New Program. The application for approval of a new certificate or diploma program shall be the Form PE-14, Application for a New Program.

Section 9. Request for Transcript. The request for a transcript from a closed school shall be the Form PE-28, Request for Transcript.

Section 10. Revision of an Existing Certificate, Diploma, or Associate Degree Program. (1)(a) The school shall submit written notification detailing cumulative curriculum changes in contact hours, credit hours, courses offered, or program length of a currently approved program, totaling less than twenty-five (25) percent within a twelve (12) month period to the commission on a Form PE-12, Notification to Revise an Existing Program for Less Than 25%.

(b) A change in the name of an existing program that does not change the overall objective of the program shall not be considered in the computation of the cumulative curriculum changes.

(2)(a) A school shall submit a Form PE-13, Application to Revise an Existing Program for 25% or More, to the commission if cumulative curriculum changes in contact hours, credit hours, courses offered, or program length of a currently approved program total twenty-five (25) percent or more within a twelve (12) month period.

(b) A change in the name of an existing program that changes the overall objective of the program shall be considered in the computation of the cumulative curriculum changes.

(3) A school shall notify the commission in writing of the program name changes, course name changes, or course description changes.

Section 11. (1) Beginning in 2016 and every year thereafter, the school shall report its job placement rate per licensed program to the commission by January 15, and shall be the Form PE-39, Job Placement Reporting.

(2) The job placement rate in the field of study for the program shall be calculated as follows:

(a) Determine the total number of students who, during the immediately preceding July 1-June 30 period, graduated from the program;

(b) Of the total number determined under paragraph (a) of this subsection, determine the number of graduates who the school has documented as not available for employment due to health-related issues for individual or family member, death, active military duty, spouse or de-

pendent of military personnel relocated due to military transfer, incarceration, visa restrictions, or continuing education at least half-time;

(c) Subtract the total number of graduates not available for employment in paragraph (b) of this subsection from the total number of graduates under paragraph (a) of this subsection. This difference shall be the denominator for the equation;

(d) Of the total number determined under paragraph (c) of this subsection, determine the number of graduates who obtained job placement in a position in the field of study, in accordance with subsections (10) and (11) of this section. This shall be the numerator for the equation; and

(e) Divide the number of students determined under paragraph (d) of this subsection by the difference found in paragraph (c) of this subsection. This quotient converted to a percentage shall be the job placement rate.

(3) For purposes of the job placement rate calculation, the school shall obtain the placement data by contacting employers or graduates to obtain the relevant information under the definitions in subsections (10) and (11) of this section. This contact and information shall be documented in writing, and shall include:

(a) Name of the employer;

(b) Name of the graduate;

(c) Addresses and telephone numbers of graduate and employer;

(d) Title of employment;

(e) Duties of employment;

(f) Length of employment;

(g) Total hours worked per pay period;

(h) Name and title of the person or persons[person(s)] providing the information to the school;

(i) Name and title of the person or persons[person(s)] at the school who received and recorded the information;

(j) The date the information was provided; and

(k) Statement whether the school designated the graduate as placed in field or not.

(4) If the school obtains the relevant information by telephone or personal contact, as opposed to a written document, the school shall send a confirming letter to the provider of the information setting forth in specific detail the information provided and the date it was provided. The school shall maintain a copy of the confirming letter and evidence it was sent.

(5) All data and information used by a school to support the job placement rate, including any information that the graduate is not available for employment, shall be reliable, verifiable, and documented in writing.

(6) Documentation supporting job placement rates for each applicable period for each program shall be maintained by the school in a retrievable and well-organized manner.

(7) The job placement rates calculated by the school and the underlying documentation shall be subject to review and audit by the commission, and the school shall pay any costs for a review and audit. This may include requiring the school to:

(a) Submit graduate data to the Kentucky Center for [~~Education and Workforce~~] Statistics to include a graduate's name, date of birth, Social Security number, gender, ethnicity, residency at point of graduation, and the CIP code and level of the program from which the student graduated; and

(b) Have a certified public accountant report on the school's calculation based on performing an attestation engagement in accordance with the Statements on Standards for Attestation Engagements of the American Institute of Certified Public Accountants (AICPA) available at www.aicpa.org.

(8) Another state agency shall not be prevented from investigating, reviewing, or auditing the underlying documentation and the rates provided. [~~pursuant to 791 KAR Chapter 1, KRS Chapter 165A, or the Kentucky Consumer Protection Act, KRS 367.110-367.360.~~]

(9) A school that operates a program that is intended to and only provides continuing education courses to attendees for the purpose of the attendee maintaining current licensure shall so certify to the commission. The school shall also obtain written statements from all attendees affirming that the person's purpose in attending courses offered by the school is to maintain current licensure. The school's certification to the commission and underlying written affirmations shall suffice for the calculation of job placement rates for that continuing education program.

(10) The conditions described in this subsection shall be required to qualify as job placement in a position in field of study.

(a) Within 180 days of graduating from the program, the graduate shall have been employed for at least thirty (30) days with the employer in a full-time paid position in the field of study and the school shall document this employment.

(b) If a license or certification is required or generally requested for positions in the occupation, then within 180 days after the results are available from the first exam that the graduate would have been able to take after completing the program, the graduate shall have been employed for at least thirty (30) days with the employer in a full-time paid position in the field of study.

(c) In addition to paragraph (a) or (b) of this subsection, for a part-time position in the field of study to be considered job placement, the school shall possess a handwritten statement from the graduate at time of completion that part-time employment is the graduate's objective for employment including a general explanation for this objective.

(d) For self-employment to be considered as job placement, the school shall possess a handwritten statement from the graduate describing:

1. The work and demonstrating that it is in a position in the field of study;
2. That the graduate has received compensation in return for services provided in connection with the self-employment; and
3. That the graduate has completed at least 675 hours of work in connection with the graduate's self-employment, including time spent marketing the business, cultivating clients, negotiating contracts, and initiating or completing the work.

(11) The conditions described in this subsection shall be required to qualify as a position in field of study.

(a) The graduate's employment shall be a position included in the most recent National Center for Education Statistics and U.S. Bureau of Labor Statistics CIP-SOC Crosswalk for the program studied identified by the six (6) digit U.S. Department of Education classification of instructional program code, and the routine work shall predominantly require using the core skills and knowledge expected to have been taught in the program and the position shall require education beyond high school level.

(b) If graduates are continuing in prior employment, the graduate's prior employment position shall be reasonably related to the program training and the graduate shall attest in the graduate's handwriting when enrolling in the program and upon completion of the program, with reference to a specific written policy of the employer, to the benefit of the training as a catalyst for maintaining or advancing in a position.

(12) Failure to comply with this section shall be grounds for denial of a license, or suspension or revocation of an existing license.

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

(a) Form PE-15, "Application for Resident School", as provided in EDvera software version 2.1, edition **May 2022**~~[2021]~~~~[Form PE-15, 2017]~~;

(b) Form PE-16, "Application for Non-Resident School", as provided in EDvera software version 2.1, edition ~~May 2022~~**[2021]**[Form PE-16, 2017];

(c) Form PE-17, "Application for License Renewal Resident School", as provided in EDvera software version 2.1, edition ~~May 2022~~**[2021]**[Form PE-17, 2017];

(d) Form PE-18, "Application for License Renewal Non-Resident School", as provided in EDvera software version 2.1, edition ~~May 2022~~**[2021]**[Form PE-18, 2017];

(e) Form PE-11, "Form for Instructional Staff and Key Administrative Personnel", as provided in EDvera software version 2.1, edition ~~May 2022~~**[2021]**[Form PE-11, 2017];

(f) Form PE-19, "Application for Permit to Act as an Agent", as provided in EDvera software version 2.1, edition ~~May 2022~~**[2021]**[Form PE-19, 2017];

(g) Form PE-20, "Application for Renewal of Permit to Act as an Agent", as provided in EDvera software version 2.1, edition ~~May 2022~~**[2021]**[Form PE-20, 2017];

(h) Form PE-21, "Application to Transfer Ownership of a School", as provided in EDvera software version 2.1, edition ~~May 2022~~**[2021]**[Form PE-21, 2017];

(i) Form PE-22, "Application to Change the Name of a School", as provided in EDvera software version 2.1, edition ~~May 2022~~**[2021]**[Form PE-22, 2017];

(j) Form PE-23, "Application to Change the Location of a School", as provided in EDvera software version 2.1, edition ~~May 2022~~**[2021]**[Form PE-23, 2017];

(k) Form PE-10, "Application to Award an Associate Degree", as provided in EDvera software version 2.1, edition ~~May 2022~~**[2021]**[Form PE-10, 2017];

(l) Form PE-14, "Application for a New Program", as provided in EDvera software version 2.1, edition ~~May 2022~~**[2021]**[Form PE-14, 2017];

(m) Form PE-28, "Request for Transcript", ~~May 2022~~**[as provided in EDvera software version 2.1, edition 2021]**[PE-28, 2017];

(n) Form PE-12, "Notification to Revise an Existing Program for Less Than 25%", as provided in EDvera software version 2.1, edition ~~May 2022~~**[2021]**[Form PE-12, 2017];

(o) Form PE-13, "Application to Revise an Existing Program for 25% or More", as provided in EDvera software version 2.1, edition ~~May 2022~~**[2021]**[Form PE-13, 2017]; and

(p) Form PE-39, "Job Placement Reporting", as provided in EDvera software version 2.1, edition ~~May 2022~~**[2021]**[Form PE-39, 2017].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Commission on Proprietary Education, 500 Mero Street, ~~4th Floor~~**[300 Sewer Boulevard]**, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. **This material is also available on the commission's Web site at www.kcpe.ky.gov.**

CONTACT PERSON: Misty Edwards, Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-564-4185, email kcpe@ky.gov.

MATERIAL INCORPORATED BY REFERENCE

At the time that it files this staff suggested substitute, the agency needs to file one (1) clean copy of each of the following that contains an Edition date to distinguish it from previous versions (May 2022):

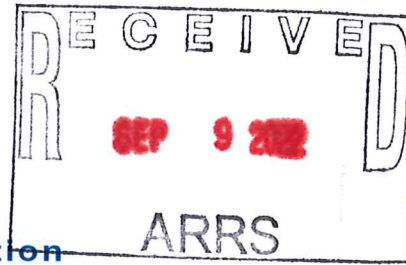
***Updated Forms filed to reflect what is submitted electronically in EDvera or otherwise:

- Form PE-15, "Application for Resident School"
- Form PE-16, "Application for Non-Resident School"
- Form PE-17, "Application for License Renewal Resident School"
- Form PE-18, "Application for License Renewal Non-Resident School"

- Form PE-11, "Form for Instructional Staff and Key Administrative Personnel"
- Form PE-19, "Application for Permit to Act as an Agent"
- Form PE-20, "Application for Renewal of Permit to Act as an Agent"
- Form PE-21, "Application to Transfer Ownership of a School"
- Form PE-22, "Application to Change the Name of a School"
- Form PE-23, "Application to Change the Location of a School"
- Form PE-10, "Application to Award an Associate Degree"
- Form PE-14, "Application for a New Program"
- Form PE-28, "Request for Transcript"
- Form PE-12, "Notification to Revise an Existing Program for Less Than 25%"
- Form PE-13, "Application to Revise an Existing Program for 25% or More"
- Form PE-39, "Job Placement Reporting"



EDUCATION and LABOR CABINET
Kentucky Commission on Proprietary Education



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Jamie Link
Secretary

Jacqueline Coleman
Lieutenant Governor

Misty N. Edwards
Executive Director

September 7, 2022

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill, Regulation Compiler
Administrative Regulation Review Subcommittee Legislative Research Commission 083,
Capitol Annex Frankfort KY 40601

Re: 791 KAR 1:020, Standards for licensure

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 791 KAR 1:020, the Kentucky Commission on Proprietary Education proposes the attached amendment to 791 KAR 1:020.

Sincerely,

Misty N. Edwards
Executive Director

Final, 8-9-2022

SUGGESTED SUBSTITUTE

EDUCATION AND ~~LABOR/WORKFORCE DEVELOPMENT~~ CABINET
Kentucky Commission on Proprietary Education

791 KAR 1:020. Standards for licensure.

RELATES TO: KRS 165A.310(5), 165A.330, 165A.340, 165A.350, 165A.360, 165A.370(1), 165A.390, 165A.450

STATUTORY AUTHORITY: KRS 165A.340(6), 165A.360(2), (7), 165A.400

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.340(6) and 165A.400 authorize the Kentucky Commission on Proprietary Education to promulgate administrative regulations to administer the provisions of KRS Chapter 165A. KRS 165A.360(2) requires the commission to establish application forms and fees. KRS 165.360(7) authorizes the commission to promulgate administrative regulations requiring supporting documentation to accompany application. This administrative regulation establishes the application requirements and licensure standards~~[incorporates forms by reference]~~.

Section 1. A school shall meet the requirements and standards established in this section in order to be licensed. (1) Financial requirements. The school shall adhere to generally accepted accounting practices and present evidence of financial stability, including the following:

- (a) Financial statements required by 791 KAR 1:010;
- (b) The name and contact information of the bank or other financial institution used by the school as a reference;
- (c) Good standing with the Kentucky Higher Education Assistance Authority related to programs administered by that agency and from the U.S. Department of Education related to programs administered by that department; and
- (d) A school surety bond or other collateral, in accordance with KRS 165A.360 and 791 KAR 1:150, and agent surety bond or other collateral, in accordance with KRS 165A.350 and 791 KAR 1:150.

(2) Accreditation.

(a) If a school is accredited by an accrediting agency recognized by the U.S. Department of Education, it shall furnish information regarding its accreditation status.

(b) If a school is not accredited by an accrediting agency recognized by the U.S. Department of Education, it shall furnish a statement indicating if, when, and from whom the school will seek accreditation.

(c) A school shall not:

- 1. Be the subject of an interim action by a state agency potentially leading to the suspension, revocation, or termination of the institution's legal authority to provide postsecondary education;
- 2. Have had its state license suspended, revoked, or terminated, even if the required due process procedures have not been completed;
- 3. Have been denied candidacy or accreditation by an accrediting agency;
- 4. Have voluntarily withdrawn its candidacy or accreditation while not in good standing from an accrediting agency;
- 5. Have had its candidacy or accreditation withdrawn or been placed on public probation by an accrediting agency;
- 6. Be the subject of an interim action by an accrediting agency potentially leading to the suspension, revocation, or withdrawal of candidacy or accreditation; or

7. Have been notified of the loss of any agency's accreditation even if the due process procedures have not been completed.

(3) Agents. A school shall be responsible for the actions of its agent when the agent is acting on behalf of the school. An agent shall have an agent permit and agent bond, in accordance with KRS 165A.350 and 791 KAR 1:150 and shall comply with KRS 165A.330.

(4) Personnel requirements.

(a) The school shall furnish information regarding the administrative officer, the directors, the owners, and the instructors on the Form PE-11, Form for Instructional Staff and Key Administrative Personnel, incorporated by reference in 791 KAR 1:010.

(b) The chief administrator shall be qualified pursuant to KRS 165A.370(1)(d).

(c) Each qualifying degree possessed by personnel shall be from an institution accredited by an accrediting agency recognized by the U.S. Department of Education or the Council for Higher Education Accreditation.

(d) Verification of credentials. A school shall maintain official transcripts for credentials that qualify instructors to teach their assigned courses and for those credentials that are listed in the catalog. All these credentials shall be on file in the administrative offices at the campus location nearest to where the instructor is primarily employed.

(e) A principal party, owner, or administrator involved with the school shall not have had a felony conviction involving moral turpitude, fraud, or a capital crime.

(f) Instructor qualifications. To teach, an instructor shall comply with KRS 165A.370(1)(e). Appropriate training or experience related to the responsibilities of the position shall include a high school diploma or GED along with one (1) or more of the following:

1. Completed a training or degree program in the applicable occupational area;
2. Demonstrated outstanding professional experience;
3. Demonstrated outstanding professional contributions to the discipline being taught; or
4. Professional licensure or certification in the field.

(g) Teaching loads of instructors shall be consistent with recognized educational practices and shall be appropriate to the field, the variety of courses assigned, class size, and other related factors.

(h) Instructor development.

1. A school shall establish instructor development plans including both in-service and professional growth activities to enhance instructor expertise.

2. There shall be documented evidence on an annual basis of these development plans and their implementation.

3. A school shall establish plans that are appropriate given each instructor's training, education, and related work experience and that provide the proper mix of in-service training and professional growth based on the academic and experiential background of the instructor.

(5) Facilities and equipment.

(a) Enrollment shall not exceed the design characteristics of the facilities.

(b) A school shall have facilities and equipment that are:

1. Maintained and operated in compliance with the safety and health requirements set forth in local, city, and county ordinances, and federal and state law; and

2. Adequate and appropriate for instruction in classrooms and laboratories.

(c) If a school has an expansion of a school facility, it shall comply with 791 KAR 1:160.

(d) If a school has multiple campuses, it shall comply with 791 KAR 1:150.

(e) If a school is only seeking licensure with the commission to offer a course or courses not for college credit, and it will not conduct its course or courses at a permanent location, but rather will utilize the facilities of hotels or other public buildings, it shall:

1. Notify the commission in writing, at least thirty (30) days in advance of the location where any course will be offered;

2. Receive prior approval of the Kentucky Real Estate Commission, the Kentucky Insurance Commission, the Kentucky Bar Association, or other appropriate official agency or group authorized to approve the course or courses; and

3. Not advertise or promote the course or courses until the commission has received in writing the course content, name and qualification of the instructor, and a copy of the approval to offer the course from an authorizing agency.

(6) Library resources. The library shall be appropriate to support the programs offered by the school in accordance with this subsection.

(a) A school, through ownership or formal agreements, shall provide and support student and instructor access to adequate library collections, and to other learning and information resources where courses and programs are offered. Library resources shall be appropriate to the program level offered by the school, and shall be sufficient to support all educational, research, and public service programs at the school.

(b) A school that does not provide its own library facilities, but instead relies on another institution, shall demonstrate that it has permission to utilize the resources of the other institution, by providing a copy of the written agreement to the commission with the license application, and prior to the offering of any courses.

(c) A school that is dependent on another school or library for library resources shall make the extent of the dependence and the details of the agreements clear both to the commission and to students and instructors.

(d) Library expenditures, expressed as a percentage of the total educational and general budget, shall be consistent with the percentage of library expenditures commonly observed in accredited schools of similar types.

(e) Library staff shall be qualified as required for accredited schools of similar types.

(f) The school shall have sufficient seating and work space for a reasonable proportion of the instructors and students to be accommodated at one (1) time.

(g) The physical environment of the library shall be conducive to reflective intellectual pursuits common to institutions of higher learning.

(7) Curriculum.

(a) A course offered in a degree program shall be consistent with a course that is generally transferable for credit among accredited schools if the program is at a corresponding degree level, or for credit toward the baccalaureate degree if a program is at the associate degree level. A course may be offered that is not transferable based on the uniqueness of a program that is occupational in nature.

(b) A school shall have a systematic program of curriculum revision in order to maintain the general standards of accredited schools with similar programs.

(c) A school shall have a program of evaluation that includes a periodic assessment of the changes in student achievement.

(d) A school shall offer with sufficient frequency the courses required for each program for the student to complete the program within publicized time frames.

(8) Program supervision and instructional support. Regardless of location, type of program, method of instruction, or other characteristics, an instructional program shall include:

(a) Adequate supervision by the school; and

(b) Other instructional support necessary to maintain the program.

(9) Truth in advertising. A school shall meet the requirements established in this subsection regarding advertising.

(a) Advertisements, announcements, or other materials produced by or on behalf of the school which are distributed in Kentucky shall not contain any statements that are untrue, deceptive, or misleading with respect to the school, its personnel, its services, the content, accreditation status, or transferability of its courses or degree programs.

(b) Advertisements, announcements, or other materials produced by or on behalf of the school shall not indicate that the school is "supervised", "recommended", "endorsed", or "accredited" by the Commonwealth of Kentucky, by the Kentucky Commission on Proprietary Education, or by any other state agency. A statement using the name of the Kentucky Commission on Proprietary Education, if any, shall be in exactly the following form: "(Name of School) is licensed by the Kentucky Commission on Proprietary Education."

(c) A school shall:

1. Publicly disclose, both in print and Web-based materials, information about its student enrollment, degrees conferred, and job placement rate of program graduates in the field of study as reported to the commission, in accordance with 791 KAR 1:010 and KRS 165A.340(6); and

2. Use numbers most recently reported to the commission in its advertising.

(d) A school shall publicly disclose information about articulation agreements and transfer of credits, in accordance with KRS 165A.340(6)(a)2.c., and shall furnish copies of the articulation agreements and rights and responsibilities of students regarding transfer of credits to the commission.

(e) The commission staff may require that a school furnish proof to the commission of any of its advertising claims. If proof cannot be furnished, a retraction of the advertising claims published in the same format as the claims themselves shall be published by the school and the continuation of the advertising shall be grounds for denial, suspension, or revocation of the school's license.

(10) Recruitment and enrollment procedures. A school shall furnish the following to each prospective student prior to enrollment, and shall require that the student sign and date the school's form to be placed in the student's file, which shall either be part of the enrollment contract or a pre-enrollment checklist verifying that the student received:

(a) The school's most recent catalog including policies on grades, attendance, and conduct;

(b) A description of the instructional program;

(c) A detailed schedule of all charges, rentals, and deposits;

(d) The schedule of refunds of all charges, rentals, and deposits;

(e) The complaint procedures available to students, including the process for filing a complaint with the commission;

(f) Notice of the existence of the student protection fund created in KRS 165A.450; and

(g) The student enrollment application, contract, or agreement.

(11) Student affairs.

(a) Students admitted to the school shall have completed a state-approved secondary school program or its equivalent.

(b) The school shall provide academic advising by instructors or staff to each student at the time of admission and throughout the program.

(c) The school shall make assistance and advising available to each student who completes a technical or vocational program for the purpose of assisting the student with relevant job placement or with transfer.

(d) The school shall maintain sufficient records for each student to provide an understanding of his or her background, to record progress through the instructional program, and for reference purposes.

(e) The school shall comply with recordkeeping requirements, in accordance with KRS 165A.370 and 791 KAR 1:027.

(f) Administrative officers of the school shall be knowledgeable of the federal and state laws and administrative regulations concerning the disclosure of student information and shall comply with those laws and administrative regulations.

(g) A school shall make provision for the maintenance of student records if the school ceases operations. The location of student records shall be approved in advance by the commission in accordance with KRS 165A.390(5). A school shall comply with KRS 165A.450.

(12) School policies.

(a) The school shall maintain records in an orderly manner and make them available for inspection by the commission or its designated representative.

(b) A catalog shall be published and distributed at least every two (2) years and shall include general information, administrative policies, and academic policies of the school including:

1. General information:

a. Official name and address of the school, name of the chief administrative officers, members of the governing body, and names of principal owners;

b. The school's calendar for the period covered by the catalog including beginning and ending dates of each term or semester, registration and examination dates, legal holidays, and other important dates;

c. Names of instructors, including relevant education and experience; and

d. Full disclosure of the philosophy and purpose of the school;

2. Administrative policies:

a. Admissions policies and procedures, applicable to the various programs, including policies regarding granting of credit for previous education;

b. Policies and procedures regarding student conduct and behavior and the process for dealing with cases which culminate in probation or dismissal;

c. Schedules for all tuition and instructional charges refund policy, and schedules for the tuition and instructional charges;

d. Statement of financial aid available to students; and

e. Procedures for obtaining transcripts in a timely fashion and at reasonable cost; and

3. Academic policies:

a. Policy on class attendance;

b. Description of grading system;

c. Description of the degree, diploma, certificate, or other programs, including the course requirements and the time normally required to complete each degree, diploma, certificate, or other program; and

d. Full description of the nature and objectives of all programs offered.

(13) Site visits.

(a) The commission shall conduct site visits in accordance with KRS 165A.370(1) and (2).

(b) The costs of the site visit shall be paid in accordance with 791 KAR 1:025.

(c) The commission may conduct an announced or unannounced site visit of a licensed school during reasonable business hours to inspect the files, facilities, and equipment, as well as conduct interviews to determine the school's compliance with this administrative regulation and KRS Chapter 165A.

(d) Within ninety (90) working days of receipt of a complete application or annual report, the commission may conduct a site visit.

(e) The purpose of a site visit shall be to make an assessment of a school using the standards for licensure as set forth in this administrative regulation.

(f) Failure to provide full access to the school's files, facilities, and equipment, or prevention of interviews, shall be grounds for:

1. Denial of a license; or

2. Suspension or revocation of an existing license.

Section 2. General Standards for Approval of Associate Degree Programs. (1) In addition to meeting the requirements and standards in Section 1 of this administrative regulation, a school requesting consideration for approval to award an associate degree shall:

(a) Have been in operation and licensed in Kentucky or in another jurisdiction whose standards substantially meet or exceed those contained in this administrative regulation, for a continuous period of at least two (2) years immediately preceding the application;

- (b) Be accredited by an accrediting agency recognized by the United States Department of Education;
 - (c) Meet the standards set forth in KRS 165A.370 and this administrative regulation;
 - (d) File with the commission a completed, signed, and dated **Form PE-10**, Application to Award an Associate Degree ~~[(Form PE-10)]~~, incorporated by reference in 791 KAR 1:010;
 - (e) Pay the fee for application to award an associate degree set forth in 791 KAR 1:025, Section 8;
 - (f) Ensure that marketing techniques and advertisements shall not guarantee employment;
 - (g) Not offer to the public, advertise, or enroll students in a new associate degree program until all necessary forms have been submitted to the commission office for review, and written approval of the application is received from the commission; and
 - (h) Be inspected by a member of the commission, or commission designee, with prior notification to the school of the date and time of the inspection to determine compliance with KRS 165A.370 and this administrative regulation.
- (2) A class in the program shall not commence before the inspection report evidences that the program is in compliance.

Section 3. Associate of Arts Degree or Associate of Science Degree. (1) The granting of an associate of arts degree or associate of science degree shall be limited to a school accredited by an accrediting agency recognized by the U.S. Department of Education.

(2) The associate of arts degree or associate of science degree shall be awarded to a student who has successfully completed a degree program comprised of a minimum of sixty (60) semester credit hours or ninety (90) quarter credit hours of study.

(a) Of the total credit hours, a minimum of thirty (30) semester credit hours or forty-five (45) quarter credit hours, shall be in the appropriate business, technical, or other major field of study as indicated in the program title and description.

(b)1. A minimum of fifteen (15) semester credit hours or twenty-two and one-half (22 1/2) quarter credit hours, shall be required in general education studies.

2. General education studies shall include courses other than the core major offering, including science, mathematics, social and behavioral sciences, and humanities, and shall offer balance to the total program.

Section 4. Specialized Associate Degree. (1) The granting of a specialized associate degree designated as an associate of applied science degree or associate of occupational studies degree is limited to schools accredited by an accrediting agency recognized by the U.S. Department of Education, as a business or specialized school.

(2)(a) The associate of applied science degree or associate of occupational studies degree shall be awarded to a student who has successfully completed a degree program comprised of a minimum of sixty (60) semester credit hours or ninety (90) quarter credit hours.

(b) The degrees shall have at least nine (9) semester hours, thirteen and one-half (13 1/2) quarter hours, or its recognized clock hour equivalent in general education or applied general education studies. General education studies shall include courses other than the core major offering, including science, mathematics, social and behavioral sciences, and humanities. Applied general education studies shall include courses that apply to a specific occupation (e.g., technology, medication math, psychology for health professionals, and business math) and also satisfy general education requirements.

Section 5. Additional Standards. (1) An associate degree granting school approved by this commission shall follow the additional standards established in this section.

(a) The library or learning resource center items shall include relevant periodical subscriptions or computer data bases and shall contain professionally accepted references in the field or fields of study which shall be appropriate for the program offered.

(b) The library or learning resource center shall be accessible for all students to use the items and shall provide access to materials at hours other than times classes are being taught.

(c)1. A designated staff member shall be responsible for the library or learning resource center, and sufficient funds for support of the facility and acquisition of library or learning resource center items shall be provided.

2. In determining whether sufficient funds are provided, current student enrollment shall be considered.

(d) All equipment and training aids shall be relevant to the program offered and shall be in sufficient quality and quantity to accommodate the current student enrollment.

(e) The school shall provide a listing of the program requirements and prerequisites for the degrees offered.

(f)1. A catalog shall be printed containing a description for each course that is required or which may be taken to meet the requirements for the degree.

2. The catalog shall include all prerequisites.

(g) All promotional literature and advertising shall appropriately identify the degree offered.

(h)1. The school shall submit a completed **Form PE-11**, Form for Instructional Staff and Key Administrative Personnel [~~(Form PE-11)~~] for each instructor, incorporated by reference in 791 KAR 1:010, to the commission before classes listed on the application begin.

2. Official transcripts, and if applicable, copies of certifications, licenses, and other designations for each instructor in the degree program shall be maintained on file at the school.

(i) The school shall maintain on file a current course syllabus for each course taught.

(j) The school shall maintain on file for the commission or its designee a copy of its last accreditation self-study and correspondence with accrediting agencies.

(2) The school shall make the following materials available to a member of the commission or its designee at the on-site visit:

(a) Promotional literature;

(b) School catalog;

(c) Course syllabi;

(d) Inventory of classroom equipment;

(e) Student files;

(f) Faculty files;

(g) Staff files;

(h) A list of all personnel by position indicating part-time and full-time employees; and

(i) A current organizational chart.

(3)(a) The school shall provide a Statement of Quality Assurance as determined by the Commission **that is placed on school letterhead, signed, notarized, and uploaded electronically to EDvera.**

(b) The Statement of Quality Assurance shall certify that:

1. The school is currently in compliance and shall remain in compliance with KRS Chapter 165A and KAR Title 791, and all applicable state, federal, and local laws; and

2. The school shall adhere to the standards required for schools licensed by the Kentucky Commission on Proprietary Education.

(c) The Statement of Quality Assurance shall include that the school shall maintain the following and make these available to the commission upon request:

1. A listing of each program for which the school is approved, including the Classification of Instructional Programs (CIP) code, the number of contact or credit hours for the program, the length of the program, and the cost of the program;

2. A copy of:

a. The school's enrollment agreement noting each item that is required by KRS Chapter 165A;

b. (i.) Its most recent audited financial statement, if the school is accredited; or

(ii.) Its most recent financial income statement certified by an independent accountant, if the school is not accredited;

c. Its faculty and personnel handbook;

d. Its current catalog, certified, true, and correct in content;

e. Any advertising and marketing materials utilized by the school;

f. Its occupational license and current fire inspection report;

g. Its organizational chart for each school;

h. Its certificate of accreditation, if accredited; and

3. Form PE-11, Form for Instructional Staff and Key Administrative Personnel, as incorporated by reference in 791 KAR 1:010.

Section 6. Failure to Meet Standards for Licensure. (1) A school's failure to meet the standards for licensure set forth in this administrative regulation shall be grounds for:

(a) Denial of a license; or

(b) Suspension or revocation of an existing license.

(2) The commission shall notify the school by registered mail, return receipt, of the denial, suspension, or revocation of the school's license.

CONTACT PERSON: Misty Edwards, Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-564-4185, email kcpe@ky.gov.



EDUCATION and LABOR CABINET
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Executive Director

September 7, 2022

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill, Regulation Compiler
Administrative Regulation Review Subcommittee Legislative Research Commission 083,
Capitol Annex Frankfort KY 40601

Re: 791 KAR 1:025, Fees

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 791 KAR 1:025, the Kentucky Commission on Proprietary Education proposes the attached amendment to 791 KAR 1:025.

Sincerely,

Misty N. Edwards
Executive Director

Final, 8-9-2022

SUGGESTED SUBSTITUTE

EDUCATION AND ~~LABOR~~WORKFORCE DEVELOPMENT CABINET
Kentucky Commission on Proprietary Education

791 KAR 1:025. Fees.

RELATES TO: KRS 165A.350(3), 165A.360(1), (2), (9), 165A.370(1), (2), 165A.380, 165A.475(3), (4), 165A.420

STATUTORY AUTHORITY: KRS 165A.340(6), (10), 165A.390, 165A.400, 165A.450

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.340(6) and (10), 165A.400, and 165A.450 authorize the commission to promulgate administrative regulations to administer and enforce the provisions of KRS Chapter 165A, including establishment of fees and other charges. This administrative regulation establishes the fees for the Kentucky Commission on Proprietary Education.

Section 1. Definitions. (1) "Actual cost" means the amount sufficient to reimburse the commission for all travel and expenses incurred, including the expense of contract labor, consultant fees, or other miscellaneous expenses necessitated by a site visit or inspection.

(2) "Gross revenue" means the total amount of tuition earned by a school less any tuition refunds to the students during the immediate past school year, July 1 through June 30.

(3) "Transfer of ownership" means any change or transfer in ownership whether or not the change results in a change of ~~the~~ control.

Section 2. Initial Licensure Fee and Student Protection Fund Contribution. (1) The fee for initial licensure as a school residing in and doing business in Kentucky shall be \$500.

(2) The initial contribution to the student protection fund for a school residing in and doing business in Kentucky shall be \$500.

(3) The fee for initial licensure as a school not residing in Kentucky, but doing business in Kentucky, shall be \$1,250.

(4) The initial contribution to the student protection fund for a school not residing in Kentucky, but doing business in Kentucky, shall be \$1,250.

(5) At any time the balance in the student protection fund falls below \$500,000, each licensed school shall make an additional contribution to the fund. The amount of the additional contribution shall be determined by the commission pursuant to KRS 165A.450(2)(a) and (b). The commission shall calculate the amount due per school, pursuant to Section 3(1) and (2) of this administrative regulation, and shall use a percentage appropriate to replenish the fund. The additional contribution shall be paid on a quarterly basis until the fund is replenished.

(6) For initial and annual renewal license application fees for resident and non-resident commercial driver license training schools refer to 791 KAR 1:050, ~~to~~ 791 KAR 1:060, ~~to~~ and, 791 KAR 1:070.

Section 3. Annual Renewal License Fee for Schools. (1)(a) Except as provided in paragraph (b) of this subsection, the annual renewal license fee for a school residing in and doing business in Kentucky shall be \$500.

(b) If the school's gross revenue exceeds \$50,000, the annual renewal license fee for a school residing in and doing business in Kentucky shall be \$500 plus twenty-five (25) dollars for each additional \$10,000 of gross revenue in excess of \$50,000, not to exceed \$3,000.

(2)(a) Except as provided in paragraph (b) of this subsection, the annual renewal license fee for a school not residing in Kentucky, but doing business in Kentucky, shall be \$1,250.

(b) If the school's gross revenue exceeds \$50,000, the annual license fee for a school not residing in Kentucky, but doing business in Kentucky, shall be \$1,250 plus twenty-five (25) dollars for each additional \$10,000 of gross revenue for Kentucky residents in excess of \$50,000, not to exceed \$3,000.

(3) Late fees for a resident or nonresident school's annual renewal license shall be:

(a) Ten (10) percent of the total application fee if received after the due date, May 15, up to and including the fifth business day;

(b) Twenty (20) percent of the total application fee if received after the fifth business day, up to and including the tenth business day;

(c) Thirty (30) percent of the total application fee if received after the tenth business day, up to and including the fifteenth business day;

(d) Forty (40) percent of the total application fee if received after the fifteenth business day, up to and including the twentieth business day;

(e) Fifty (50) percent of the total application fee if received after the twentieth business day, up to and including the twenty-fifth business day;

(f) Seventy-five (75) percent of the total application fee if received after the twenty-fifth business day, up to and including the thirtieth business day; and

(g) 100 percent of the total application fee if received after the thirtieth business day.

Section 4. Annual Permit Fees for Agents. The annual permit fee for each agent working for a school licensed by the commission shall be \$175.

Section 5. Transfer of Ownership of a School. The fee for recording a transfer of ownership of a school licensed by the commission shall be \$500.

Section 6. Change of Name of a School. The fee for approval of a change of name of a school shall be \$150.

Section 7. Change of location of a school. The fee for approval of a change of location of a school shall be \$500.

Section 8. Application to Award an Associate Degree. The fee for an application to award an associate degree shall be \$750 per degree.

Section 9. New Program. The fee to apply for a new certificate or diploma program shall be \$200.

Section 10. Program Revisions. [~~;- Certificate, Diploma, and Degree.-~~] (1) The fee to apply for approval to revise twenty-five (25) percent or more of any existing program shall be \$200.

(2) The fee to apply for approval to revise less than twenty-five (25) percent of any program shall be \$100.

Section 11. Transcript Requests from a Closed School. The fee for requesting a transcript from a closed school shall be five (5) dollars.

Section 12. Actual cost of site visits. (1) Actual costs connected with a site visit conducted in accordance with KRS 165A.370[~~(1) and (2)~~], such as travel, meals, lodging, and consultant honoraria, shall be paid by the school.

(2) The estimated cost of the site visit shall be paid by the school prior to the site visit.

(3) The final settlement regarding actual ~~costs~~expenses incurred shall be paid by the school no later than thirty (30) days after receipt of the invoice.

(4) Failure to pay these actual costs shall be grounds for:

(a) Denial of a license; or

(b) Suspension or revocation of an existing license.

(5) This section shall not apply to visits conducted in accordance with KRS 165A.475(3) and (4).

Section 13. Proration or Refund of Fees and Contributions. A fee paid to the commission or contribution to the student protection fund shall not be prorated or refunded.

Section 14. Penalties. A school shall have a license suspended or revoked, be directed to take specific corrective actions, or submit to additional inspections, with and without notice for failure to pay fees or contribute to the student protection fund in accordance with this administrative regulation.

CONTACT PERSON: Misty Edwards, Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-564-4185, email kcpe@ky.gov.



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September 7, 2022

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill, Regulation Compiler
Administrative Regulation Review Subcommittee Legislative Research Commission 083,
Capitol Annex Frankfort KY 40601

Re: 791 KAR 1:027, School record keeping requirements

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 791 KAR 1:027, the Kentucky Commission on Proprietary Education proposes the attached amendment to 791 KAR 1:027.

Sincerely,

Misty N. Edwards
Executive Director

Final, 8-9-2022

SUGGESTED SUBSTITUTE

EDUCATION AND ~~LABOR~~WORKFORCE DEVELOPMENT CABINET
Kentucky Commission on Proprietary Education

791 KAR 1:027. School record keeping requirements.

RELATES TO: KRS 165A.370(1)

STATUTORY AUTHORITY: KRS 165A.340~~(6) [(7)]~~, 165A.370(1)(h), (i), 165A.400

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.370(1)(h) and (i) set forth the types of records which shall be maintained by a proprietary school. KRS 165A.340~~(6) [(7)]~~ and 165A.400 authorize the commission to promulgate necessary administrative regulations to promote efficiency of operations relating to proprietary schools. This administrative regulation specifies the manner in which documents shall be maintained and submitted to the commission.

Section 1. Minimum Record Keeping Requirements. Each licensed proprietary school shall maintain a separate file for each student, including, at a minimum:

- (1) Student application for admission;
- (2) Enrollment agreement;
- (3) Transcript or other academic record;
- (4) Student account;
- (5) Placement record; and
- (6) Attendance record.

Section 2. Annual Renewal Record Keeping Requirements. (1)(a) Effective with the 2008 annual license renewal, all proprietary schools shall submit electronic copies of all students' transcripts and student accounts of each student who has attended the school since the end of the immediately preceding renewal period.

(b) The electronic copies shall be identified on the Application for License Renewal Resident School (PE-17) or the Application for License Renewal Nonresident School (PE-18), incorporated in **791 KAR 1:010, Section 12**~~791 KAR 1:025, Section 3~~, and shall be submitted in conjunction with the annual renewal application and shall be organized alphabetically according to the students' last names.

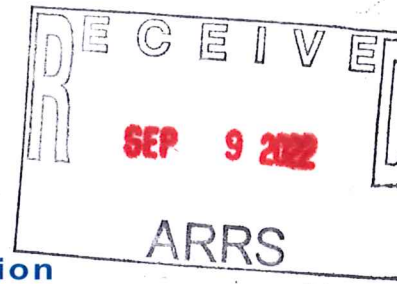
(c) Acceptable electronic formats shall be pdf [~~Microsoft Office 97 or later versions, tif, pdf, jpg, jpeg,~~] or other generally accepted electronic formats.

(2) If there is a change of ownership or a school closure, electronic copies of all students' transcripts and student accounts, in a generally accepted electronic format, shall be submitted to the commission within thirty (30) days of the transfer or closure.

CONTACT PERSON: Misty Edwards, Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-564-4185, email kcpe@ky.gov.



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September 7, 2022

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill, Regulation Compiler
Administrative Regulation Review Subcommittee Legislative Research Commission 083,
Capitol Annex Frankfort KY 40601

Re: 791 KAR 1:030, Procedures for hearings

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 791 KAR 1:030, the Kentucky Commission on Proprietary Education proposes the attached amendment to 791 KAR 1:030.

Sincerely,

Misty N. Edwards
Executive Director

Final, 8-29-2022

SUGGESTED SUBSTITUTE

EDUCATION AND ~~LABOR/WORKFORCE DEVELOPMENT~~ CABINET

Kentucky Commission on Proprietary Education

791 KAR 1:030. Procedures for hearings.

RELATES TO: KRS Chapter 13B, 165A.350(4)(b), 165A.360(3)(b), 165A.370(2)-(4), 165A.390, 165A.990

STATUTORY AUTHORITY: KRS 165A.340(6), 165A.400

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.340(6) and 165A.400 authorize the commission to promulgate administrative regulations for the administration of KRS Chapter 165A. This administrative regulation establishes hearing procedures.

Section 1. Definitions. (1) "Charge" means a specific allegation contained in a formal pleading, as established in Section 5(3) of this administrative regulation, issued by the commission alleging a violation of a specified provision of KRS Chapter 165A or the requirements established in 791 KAR Chapter 1.

(2) "Complaint" means a written allegation of misconduct by an agent or school, or other allegation of a violation of KRS Chapter 165A, the requirements established in 791 KAR Chapter 1, or another state or federal statute or administrative regulation applicable to an agent or school.

(3) "Complaint committee" means the committee appointed pursuant to KRS 165A.340.

(4) "Formal pleading" means a formal administrative statement authorized by the commission which sets forth charges against a licensed school or agent and commences a formal disciplinary proceeding, pursuant to KRS Chapter 13B, or requests a court to take action.

(5) "Informal proceeding" means a proceeding instituted during the disciplinary process with the intent of reaching a disposition of a matter without further recourse to formal disciplinary procedures under KRS Chapter 13B.

(6) "Investigator" means an individual designated by the commission to assist the commission in the investigation of a complaint or an investigator employed by the Attorney General for the commission.

Section 2. Complaint Committee. In accordance with KRS 165A.340(12), the complaint committee shall:

(1) Be appointed by the chair of the commission to:

(a) Review complaints and investigative reports;

(b) Participate in an informal proceeding to resolve complaints; and

(c) Make recommendations for disposition of complaints to the full commission including the dismissal of a complaint or the issuance of a formal pleading; and

(2) Consist of three (3) persons who may be assisted by the commission staff and counsel to the commission.

Section 3. Receipt of Complaints. (1) A complaint may be submitted by an individual, organization, or entity.

(2)(a) A complaint shall be in writing and shall be filed on Form PE-24, Form to File a Complaint, accompanied, if applicable, by Form PE-25, Authorization for Release of Student Records.

(b) The Form PE-24 shall be signed and certified as to its truth by the person offering the complaint.

(3)(a) Upon receipt of a complaint, a copy of the complaint shall be sent to the agent or school named in the complaint along with a request for a written response to the complaint and the time and place of the complaint committee hearing, once established.

(b) The agent or school shall file a written response with the commission within ten (10) days from the date of receipt.

(4) Upon receipt of the written response of the agent or school named in the complaint, a copy of the response shall be sent to the complainant, along with the time and place of the complaint committee hearing, once established.

(5) Upon receipt of the agent or school's response, the complaint committee may request an additional response from the complainant, agent, or school if additional issues are raised or clarification is needed.

Section 4. Initial Review. (1) After the receipt of a complaint or the expiration of the period for the response, the complaint committee shall consider the complaint, response, and other relevant material available.

(2)(a) The complaint committee may take steps to enter into informal proceedings with the agent or school which is the subject of the complaint for the purpose of resolving the matter.

(b) An agreed order or settlement reached through this process shall be approved by the commission.

(c) The complaint committee may employ mediation, persuasion, or conciliation, as methods of resolving the matter informally.

(3) If the complaint committee determines a complaint warrants an investigation against either an agent or school, the complaint committee shall authorize an investigator to investigate the matter and make a report to the complaint committee at the earliest opportunity.

Section 5. Results of Initial Review. (1) After a complete review of the complaint, and implementation of any actions available to the complaint committee as set forth in Section 4 of this administrative regulation, a recommendation shall be made by the complaint committee to the commission.

(2) If the commission determines a complaint does not warrant further action or the issuance of a formal pleading against an agent or school, then the commission shall dismiss the complaint and shall notify both the complainant and the agent or school of the commission's decision.

(3) If the commission determines a violation of a statute or administrative regulation may have occurred or has occurred, then the commission shall:

(a) Direct the complaint committee or commission staff to undertake further action as established in KRS Chapter 165A or Section 4 of this administrative regulation;

(b) Direct the issuance of a formal pleading against either an agent or school by commission staff; or

(c) Review the formal pleading and, if approved, it shall be signed by the chairman and served upon the agent or school as required by KRS 13B.050.

Section 6. Operating without Appropriate License or Agent Permit. If the commission receives a complaint that an individual or school may be operating without the appropriate agent permit or license, the commission shall:

(1) Authorize commission staff to send a letter to the individual or school advising of a possible need for a permit or license, and enclose the appropriate application package;

(2) Authorize commission staff to issue a letter ordering the individual or school to cease and desist from operating the school;

(3) Forward information to the county attorney of the county of residence of the individual or school allegedly acting without appropriate permit or license, or the county where the alleged violation occurred, with a request that appropriate action be taken under KRS 165A.990; or

(4) Initiate action in Franklin Circuit Court for injunctive relief.

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

(a) **Form PE-24**, "Form to File a Complaint", **May 2022**~~[Form PE-24, 2017]~~[edition]; and

(b) **Form PE-25**, "Authorization for Release of Student Records", **May 2022**~~[Form PE-25, 2017]~~[edition].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Commission on Proprietary Education, 500 Mero Street, **4th Floor**,~~[3rd Floor, Capital Plaza Tower,~~ Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. **This material is also available on the commission's Web site at www.kcpe.ky.gov.**

CONTACT PERSON: Misty Edwards, Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-564-4185, email kcpe@ky.gov.

MATERIAL INCORPORATED BY REFERENCE

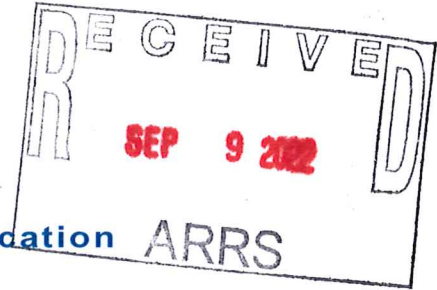
At the time that it files this staff suggested substitute, the agency will need to file one (1) clean copy of each of the following forms that contains an Edition date to distinguish it from previous versions (May 2022) and includes updating the agency's address:

*****Updated Forms filed to reflect what is submitted:**

- Form PE-24, "Form to File a Complaint"
- Form PE-25, "Authorization for Release of Student Records"



EDUCATION and LABOR CABINET
Kentucky Commission on Proprietary Education



Andy Beshear
Governor

500 Mero Street, 4th Floor
Frankfort, Kentucky 40601
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Jamie Link
Secretary

Jacqueline Coleman
Lieutenant Governor

Misty N. Edwards
Executive Director

September 7, 2022

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill, Regulation Compiler
Administrative Regulation Review Subcommittee Legislative Research Commission 083,
Capitol Annex Frankfort KY 40601

Re: 791 KAR 1:035, Student Protection Fund

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 791 KAR 1:035, the Kentucky Commission on Proprietary Education proposes the attached amendment to 791 KAR 1:035.

Sincerely,

Misty N. Edwards
Executive Director

Final, 8-10-2022

SUGGESTED SUBSTITUTE

EDUCATION AND ~~LABOR~~WORKFORCE DEVELOPMENT CABINET
Kentucky Commission on Proprietary Education

791 KAR 1:035. Student protection fund.

RELATES TO: KRS 165A.450

STATUTORY AUTHORITY: KRS 165A.340(6), 165A.400, 165A.450

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.340(6) and 165A.400 authorize the Kentucky Commission on Proprietary Education to promulgate administrative regulations to administer the provisions of KRS Chapter 165A. KRS 165A.450 requires the commission to promulgate administrative regulations to ensure there is a renewable student protection fund, impose fees when the balance of the fund drops below the minimum, and establish other requirements related to the fund. This administrative regulation establishes standards for distribution of the funds.

Section 1. Definitions. (1) "Commission" means the Kentucky Commission on Proprietary Education.

(2) "Schools" means all schools, resident and nonresident, licensed by the commission.

(3) "Sponsor" means the original source of funds, whether student or entity, used to pay student charges for tuition, books, and fees.

(4) "~~Student~~enrolled" means a student currently enrolled and attending classes on a regular basis.

Section 2. Student Protection Fund Notice. Schools shall include on the student enrollment agreement, in 14-point type font:

(1) A statement notifying students of the existence of the student protection fund; and

(2) The process for filing a claim against the fund.

Section 3. Standards for Fund Distribution. (1) The commission shall manage the student protection fund ("the fund"). The fund shall be used in accordance with KRS 165A.450.

(2) Each fund distribution for restitution shall be made payable to the appropriate sponsor, as determined by the commission and shall be made upon the presentation of ~~[[a signed~~ Form PE-38, Form for Claims Against the Student Protection Fund~~],~~ Form PE-38, and supporting documentation, verifying the student's enrollment and regular attendance at the time of the school or program closure. The commission may require supporting documentation, such as canceled checks, loan documents, or other documentation that supports the student's entitlement to restitution.

(3) The amount to be refunded shall equal the actual amount of loans and cash that have been applied to tuition, books, and fees on behalf of the student's attendance at the school. If the claims resulting from a school closing exceed the balance in the fund, the commission shall provide for a pro rata distribution of the fund balance.

(4) If restitution is paid by the fund, the fund shall be subrogated to the amount of the restitution.

(5) In order to be considered, a claim for restitution from the student protection fund shall be made within one (1) year of the date of the school or program closure.

(6) An applicant for payment from the student protection fund who is dissatisfied with the decision of the commission may ask for reconsideration of the commission's determination regarding eligibility for restitution from the student protection fund.

(7) The request for reconsideration shall be submitted by the applicant to the commission within thirty (30) calendar days of the mailing date of the commission's decision.

(8) The request for reconsideration shall be signed by the student and explain the reasons in support of a different decision.

(9) Within forty-five (45) days of receipt of the request for reconsideration, the commission shall make a final determination and provide notice to the applicant.

(10) **Each student/Students** eligible for reimbursement ~~shall~~**will** receive funds from the surety bond or other collateral before filing a claim against the Student Protection Fund.

Section 4. Incorporation by Reference. (1) **Form PE-38, "Form for Claims Against the Student Protection Fund", May 2022, is incorporated by reference**~~[Form PE-38]~~, January 2017, is incorporated by reference].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor~~[300 Sewer Boulevard]~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. **This material is also available on the commission's Web site at www.kcpe.ky.gov.**

CONTACT PERSON: Misty Edwards, Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-564-4185, email kcpe@ky.gov.

MATERIAL INCORPORATED BY REFERENCE

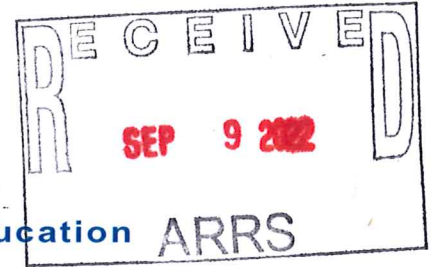
At the time that it files this staff suggested substitute, the agency needs to file one (1) clean copy of the following form that contains an edition date to distinguish it from the previous version (May 2022):

****Updated Form that includes the updated address of the agency for this form that is not in EDvera

- Form PE-38, "Form for Claims Against the Student Protection Fund"



EDUCATION and LABOR CABINET
Kentucky Commission on Proprietary Education



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Lieutenant Governor

Misty N. Edwards
Executive Director

September 7, 2022

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill, Regulation Compiler
Administrative Regulation Review Subcommittee Legislative Research Commission 083,
Capitol Annex Frankfort KY 40601

Re: 791 KAR 1:040, Commercial driver license training school curriculum and refresher course

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 791 KAR 1:040, the Kentucky Commission on Proprietary Education proposes the attached amendment to 791 KAR 1:040.

Sincerely,

Misty N. Edwards
Executive Director

Final, 8-10-2022

SUGGESTED SUBSTITUTE

EDUCATION AND ~~LABOR/WORKFORCE DEVELOPMENT~~ CABINET
Kentucky Commission on Proprietary Education

791 KAR 1:040. Commercial driver license training school curriculum and refresher course.

RELATES TO: KRS 165A.330(1), 165A.370, 165A.460(1), 49 C.F.R. 382

STATUTORY AUTHORITY: KRS 165A.340~~(6)~~~~(3)~~, 332.095(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.460(1) requires that the Kentucky Commission on Proprietary Education establish a curriculum for commercial driver license training schools in consultation with the Kentucky State Police and the Kentucky Community and Technical College System. This administrative regulation establishes the curriculum regarding standards for commercial driver license training schools.

Section 1. A commercial driver license training school shall adhere to the curriculum contained in the General Curriculum Standards for Kentucky Licensed Commercial Driving Schools, incorporated by reference in 791 KAR 1:070, Section 6.

Section 2. A commercial driver license training school may offer a refresher course, pursuant to~~per~~ KRS 332.095(3), for persons with a valid Class A commercial driver's license and shall maintain records of all persons taking the refresher course. The commercial driver license training school shall assess the person's qualifications and skill level to determine the appropriate course of study as contained in the General Curriculum Standards for Kentucky Licensed Commercial Driving Schools, incorporated by reference in 791 KAR 1:070, Section 6.

Section 3. A commercial driver license training school shall comply with drug testing of students in accordance with the United States Department of Transportation, Federal Motor Carrier Safety Administration Rule 49 C.F.R. 382.

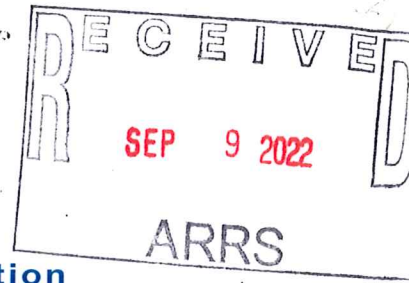
~~[Section 4. Incorporation by Reference. (1) "General Curriculum Standards for Kentucky Licensed Commercial Driving Schools", June 2014 [2010] edition ["", is incorporated by reference].~~

~~—(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Commission on Proprietary Education, 500 Mero Street [300 Sower Boulevard], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30.]~~

CONTACT PERSON: Misty Edwards, Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-564-4185, email kcpe@ky.gov.



EDUCATION and LABOR CABINET
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September 7, 2022

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill, Regulation Compiler
Administrative Regulation Review Subcommittee Legislative Research Commission 083,
Capitol Annex Frankfort KY 40601

Re: 791 KAR 1:050, Application for license for commercial driver license training school

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 791 KAR 1:050, the Kentucky Commission on Proprietary Education proposes the attached amendment to 791 KAR 1:050.

Sincerely,

Misty N. Edwards
Executive Director

Final, 8-10-2022

SUGGESTED SUBSTITUTE

EDUCATION AND ~~LABOR/WORKFORCE DEVELOPMENT~~ CABINET
Kentucky Commission on Proprietary Education

791 KAR 1:050. Application for license for commercial driver license training school.

RELATES TO: KRS 165A.330(1), 165A.370, 165A.450, 165A.465, 165A.470, 165A.475, 165A.480(1)

STATUTORY AUTHORITY: KRS 165A.340(6), 165A.400, 165A.465(3), 165A.475, 165A.510

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.340(6) and 165A.400 authorize the Kentucky Commission on Proprietary Education to promulgate administrative regulations to administer the provisions of KRS Chapter 165A. KRS 165A.465, 165A.475, and 165A.510 require the commission to promulgate administrative regulations establishing standards and an application procedure for commercial driver license training schools. This administrative regulation establishes the application procedures for commercial driver license training schools.

Section 1. Application for Kentucky Resident Commercial Driver License Training School. (1) Prior to establishment of a commercial driver license training school residing in Kentucky, the school owner shall:

- (a) Complete and submit to the commission Form PE 30, Application for Resident Commercial Driver License Training School, with supporting documentation as listed on the form;
 - (b) Pay the nonrefundable application fee of \$200 established in KRS 165A.475(2);
 - (c) Pay the nonrefundable license fee for a commercial driver license training school residing in and doing business in Kentucky of \$500;
 - (d) Pay the nonrefundable contribution to the Student Protection Fund of \$500; and
 - (e) Meet the requirements of Section 4 of this administrative regulation.
- (2) All fees shall be submitted by certified check or money order payable to the "Kentucky State Treasurer".

Section 2. Application for ~~[Non-Kentucky]~~ Non-resident Commercial Driver License Training School. (1) Prior to establishment of a commercial driver license training school not residing in Kentucky but recruiting, advertising, or otherwise doing business in Kentucky, the school's owner shall:

- (a) Complete and submit to the commission Form PE 31, Application for Non-Resident Commercial Driver License Training School with supporting documentation as listed on the form;
 - (b) Pay the nonrefundable application fee of \$200 established in KRS 165A.475(2);
 - (c) Pay the nonrefundable license fee for a commercial driver license training school not residing in and doing business in Kentucky of \$1,250;
 - (d) Pay the nonrefundable contribution to the Student Protection Fund of \$1,250; and
 - (e) Meet the requirements of Section 4 of this administrative regulation.
- (2) All fees shall be submitted by certified check or money order payable to the "Kentucky State Treasurer".

Section 3. Annual Renewal License Fee for Commercial Driver License Training Schools. (1)(a) Except as provided in paragraph (b) of this subsection, the annual renewal license fee for a school residing in and doing business in Kentucky shall be \$500.

(b) If the school's gross revenue exceeds \$50,000, the annual renewal license fee for a commercial driver license training school residing in and doing business in Kentucky shall be \$500 plus twenty-five (25) dollars for each additional \$10,000 of gross revenue in excess of \$50,000, not to exceed \$3,000.

(2)(a) Except as provided in paragraph (b) of this subsection, the annual renewal license fee for a commercial driver license training school not residing in Kentucky, but doing business in Kentucky, shall be \$1,250.

(b) If the school's gross revenue exceeds \$50,000, the annual license fee for a school not residing in Kentucky, but doing business in Kentucky, shall be \$1,250 plus twenty-five (25) dollars for each additional \$10,000 of gross revenue earned from Kentucky resident students in excess of \$50,000, not to exceed \$3,000.

Section 4. (1) Evidence of Liability Insurance Coverage. Each application to operate a commercial driver license training school shall be accompanied by verification of liability insurance coverage for the commercial driver license training school from a Kentucky-licensed insurance carrier, as mandated by KRS 165A.475(1)(d).

(2) Verification of liability insurance coverage from the school's insurance carrier shall include on the policy complete listing of all equipment, serial numbers, vehicle identification numbers covered by the liability insurance with subsequent liability insurance coverage changes filed with the commission in writing within thirty (30) days of the subsequent change.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form PE 30, "Application for Resident Commercial Driver License Training School", as provided in EDvera software version 2.1, edition **May 2022/2021**[2017 edition]; and

(b) Form PE 31, "Application for Non-Resident Commercial Driver License Training School", as provided in EDvera software version 2.1, edition **May 2022/2021**[2017 edition].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor~~[300 Sewer Boulevard]~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. ***This material is also available on the commission's Web site at www.kcpe.ky.gov***.

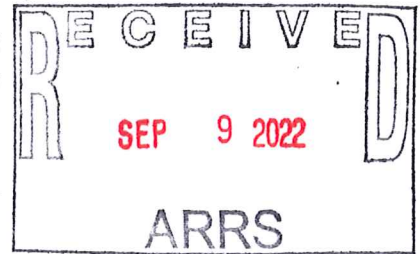
CONTACT PERSON: Misty Edwards, Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-564-4185, email kcpe@ky.gov.

MATERIAL INCORPORATED BY REFERENCE

At the time that it files this staff suggested substitute, the agency needs to file one (1) clean copy of each of the following that contains an Edition date to distinguish it from previous versions (May 2022):

*****Updated Forms filed need to reflect what is submitted electronically in EDvera.**

- Form PE 30, "Application for Resident Commercial Driver License Training School"
- Form PE 31, "Application for Non-Resident Commercial Driver License Training School"



EDUCATION and LABOR CABINET
Kentucky Commission on Proprietary Education

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September 7, 2022

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill, Regulation Compiler
Administrative Regulation Review Subcommittee Legislative Research Commission 083,
Capitol Annex Frankfort KY 40601

Re: 791 KAR 1:060, Application for renewal of license for commercial driver license training school

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 791 KAR 1:060, the Kentucky Commission on Proprietary Education proposes the attached amendment to 791 KAR 1:060.

Sincerely,

Misty N. Edwards
Executive Director

Final, 8-10-2022

SUGGESTED SUBSTITUTE

EDUCATION AND ~~LABOR~~WORKFORCE DEVELOPMENT CABINET
Kentucky Commission on Proprietary Education

791 KAR 1:060. Application for renewal of license for commercial driver license training school.

RELATES TO: KRS 165A.330(1), 165A.370, 165A.460-165A.515, 49 C.F.R. Part 383~~[325]~~

STATUTORY AUTHORITY: KRS 165A.340(6), 165A.400, 165A.485

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.340(6) and 165A.400 authorize the Kentucky Commission on Proprietary Education to promulgate administrative regulations to administer the provisions of KRS Chapter 165A. KRS 165A.485 requires that the Kentucky Commission on Proprietary Education establish application forms for license renewal of commercial driver license training schools. This administrative regulation establishes the renewal procedures for commercial driver license training schools.

Section 1. Renewal Application for Kentucky Commercial Driver License Training School. (1) On or before forty-five (45) days prior to the expiration date ~~[May 15 of each year]~~, a licensed Kentucky resident commercial driver license training school shall:

(a) Complete and submit to the commission Form PE 32, Renewal Application to Operate a Resident Commercial Driver License Training School, with supporting documentation as listed on the form;

(b) Pay the nonrefundable renewal application fee of \$200 established in KRS 165A.475(2);

(c) Pay the nonrefundable renewal licensure fee required by 791 KAR 1:050, Section 3; and

(d) Meet the requirements of Section 3 of this administrative regulation.

(2) All fees shall be paid by check or money order payable to the Kentucky State Treasurer.

Section 2. Renewal Application for Non-Resident ~~[Non-Kentucky Resident]~~ Commercial Driver License Training School. (1) On or before forty-five (45) days prior to the expiration date ~~[May 15 of each year]~~, a licensed non-resident ~~[non-Kentucky resident]~~ commercial driver license training school not residing in Kentucky, but recruiting, advertising, or otherwise doing business in Kentucky shall:

(a) Complete and submit to the commission Form PE 33, Renewal Application to Operate a Non-Resident Commercial Driver License Training School, with supporting documentation as listed on the form;

(b) Pay the nonrefundable renewal application fee of \$200 established in KRS 165A.475(2);

(c) Pay the nonrefundable renewal licensure fee required by 791 KAR 1:050, Section 3; and

(d) Meet the requirements of Section 3 of this administrative regulation.

(2) All fees shall be paid by check or money order made payable to the Kentucky State Treasurer.

Section 3. Evidence of Liability Insurance Coverage. (1) Each renewal application to operate a commercial driver license training school shall be accompanied by verification of liability insurance coverage for the commercial driver license training school from a Kentucky-Licensed insurance carrier, as mandated by KRS 165A.475(1)(d).

(2) Verification of liability insurance coverage from the school's insurance carrier shall include on the policy a complete listing of all equipment, serial numbers, and vehicle identification num-

bers covered by the liability insurance with subsequent liability insurance coverage changes filed with the commission in writing within thirty (30) days of the subsequent change.

Section 4. Denial of Renewal Application. (1) The commission shall deny a renewal application to operate a commercial driver license training school for:

- (a) Failure to comply with the requirements of KRS 165A.460-165A.515;
 - (b) Failure to comply with 791 KAR 1:040 to 791 KAR 1:160, governing the application and operation of a commercial driver license training school;
 - (c) Failure to comply with KRS 165A.475(1)(d) regarding persons connected in any capacity with commercial driver license training schools; or
 - (d) Failure to maintain all training vehicles in a safe operating condition, pursuant to 49 C.F.R. Part 383[325], as enforced by the Kentucky State Police.
- (2) The commission may deny a renewal application to operate a commercial driver license training school for lack of good moral character, as determined by KRS 165A.475(7).

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form PE 32, "Renewal Application to Operate a Resident Commercial Driver License Training School", as provided in EDvera software version 2.1, edition May 2022[2021][2017 edition]; and

(b) Form PE 33, "Renewal Application to Operate a Non-Resident Commercial Driver License Training School", as provided in EDvera software version 2.1, edition May 2022[2021][2017 edition].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor[300 Sewer Boulevard], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. ***This material is also available on the commission's Web site at www.kcpe.gov.***

CONTACT PERSON: Misty Edwards, Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-564-4185, email kcpe@ky.gov.

MATERIAL INCORPORATED BY REFERENCE

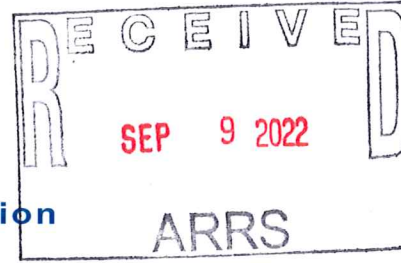
At the time that it files this staff suggested substitute, the agency needs to file one (1) clean copy of each of the following and that contains an Edition date to distinguish it from the previous versions (May 2022):

*****Updated Forms filed need to reflect what is submitted electronically in EDvera.**

- Form PE 32, "Renewal Application to Operate a Resident Commercial Driver License Training School"
- Form PE 33, "Renewal Application to Operate a Non-Resident Commercial Driver License Training School"



EDUCATION and LABOR CABINET
Kentucky Commission on Proprietary Education



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Governor

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September 7, 2022

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill, Regulation Compiler
Administrative Regulation Review Subcommittee Legislative Research Commission 083,
Capitol Annex Frankfort KY 40601

Re: 791 KAR 1:070, Commercial driver license training school instructor and agent application and renewal procedures

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 791 KAR 1:070, the Kentucky Commission on Proprietary Education proposes the attached amendment to 791 KAR 1:070.

Sincerely,

Misty N. Edwards
Executive Director

Final, 8-10-2022

SUGGESTED SUBSTITUTE

EDUCATION AND ~~LABOR/WORKFORCE DEVELOPMENT~~ CABINET
Kentucky Commission on Proprietary Education

791 KAR 1:070. Commercial driver license training school instructor and agent application and renewal procedures.

RELATES TO: KRS 165A.310, 165A.330(1), 165A.350, 165A.370, 165A.380, 165A.460, 165A.465, 165A.470, 165A.475, 165A.480, 165A.485, 332.095

STATUTORY AUTHORITY: KRS 165A.340, (6), (10), 165A.400, 165A.465, 165A.510

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.340(6) and (10), 165A.400, 165A.465, and 165A.510 require the Kentucky Commission on Proprietary Education to promulgate administrative regulations for the administration of KRS Chapter 165A and to establish standards for instructors and agents of commercial driver licensing schools, including application and renewal procedures. This administrative regulation establishes the standards for instructors and agents, including application and renewal procedures regarding commercial driver license training schools.

Section 1. Definitions. (1) "Classroom instructor" means a commercial driver license school instructor whom the school owner has qualified to perform classroom instruction only for the classroom sections of the General Curriculum Standards for Kentucky Licensed Commercial Driving Schools.

(2) "Skills Instructor" means a commercial ~~driver's~~[drivers] license school instructor who instructs the Range and Street sections of the General Curriculum Standards for Kentucky Licensed Commercial Driving Schools and has met the licensing requirements of Section 2 of this administrative regulation.

Section 2. An applicant for a Commercial Driver License Training School Skills Instructor license shall:

(1) Complete and submit Form PE 34, Application for Licensure as a Commercial Driver License Training School **Skills** Instructor;

(2) Submit two (2) recent passport-size photographs, electronically provided to the commission;

(3) Pay the nonrefundable application fee of twenty (20) dollars established in KRS 165A.475(6);

(4) Pay the nonrefundable initial licensure fee of \$200;

(5) Provide a copy of the applicant's valid Class A CDL license;

(6) Provide proof of at least two (2) years of verifiable commercial over the road driving experience; and

(7) Provide proof of receiving a passing score on the written examination and skills examination administered by the Kentucky State Police as required by 502 KAR 10:030 and 10:035.

Section 3. Application for Renewal of Commercial Driver License Training School Instructor. On or before May 15 of each year, a licensed commercial driver license training school instructor, or a licensed commercial driver license training school on behalf of the skills instructor, shall:

(1) Complete and submit Form PE 35, Renewal Application for Licensure as a Commercial Driver License Training School Instructor;

(2) Submit two (2) recent passport-size photographs, electronically provided to the commission;

(3) Pay the nonrefundable application fee of twenty (20) dollars established in KRS 165A.475(6); and

(4) Pay the nonrefundable renewal fee of \$200.

Section 4. Classroom Instructors. The CDL school shall submit a Form PE 11, Form for Instructional Staff and Key Administrative Personnel, incorporated by reference in 791 KAR 1:010, to the commission upon qualifying an individual as a classroom instructor.

Section 5. Conditional ~~Temporary~~ License for CDL Skills Instructor. (1) The commission shall issue to an applicant who has completed the requirements of Sections 2 and 3 of this administrative regulation a temporary permit, by way of letter, for the performance of skills instructor duties while the license application is being processed.

(2) The commission shall provide the applicant and the licensed school a letter stating the applicant's application is in order and is being processed for applicant licensing.

(a) The commission shall provide this letter within ten (10) business days of receipt of a properly completed application.

(b) This letter shall serve as the applicant's conditional ~~temporary~~ license until a regular license is issued.

(c) A copy of the commission's letter shall be maintained by the applicant and be available for review upon request by the commission's inspector or the Kentucky State Police.

(d) If the applicant is denied a license, the commission shall issue a notice to the applicant and the applicant's school rescinding the applicant's conditional ~~temporary~~ license for a skills instructor.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "General Curriculum Standards for Kentucky Licensed Commercial Driving Schools", June 2014 edition;

(b) Form PE 34, "Application for Licensure as a Commercial Driver License Training School Skills Instructor", as provided in EDvera software version 2.1, edition May 2022[2021][2017 edition]; and

(c) Form PE 35, "Renewal Application for Licensure as a Commercial Driver License Training School Instructor", as provided in EDvera software version 2.1, edition May 2022[2021][2017 edition].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor~~[300-Sewer Boulevard]~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the commission's Web site at www.kcpe.ky.gov.

CONTACT PERSON: Misty Edwards, Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-564-4185, email kcpe@ky.gov.

MATERIAL INCORPORATED BY REFERENCE

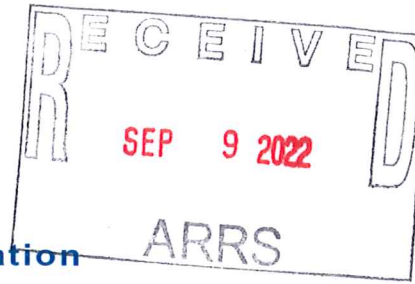
At the time that it files this staff suggested substitute, the agency needs to file one (1) clean copy of each of the following and that contains an edition date to distinguish it from the previous versions (May 2022):

*****Updated Forms filed need to reflect what is submitted electronically in EDvera.**

- **Form PE 34, "Application for Licensure as a Commercial Driver License Training School Skills Instructor"**
- **Form PE 35, "Renewal Application for Licensure as a Commercial Driver License Training School Instructor"**



EDUCATION and LABOR CABINET
Kentucky Commission on Proprietary Education



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Executive Director

September 7, 2022

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill, Regulation Compiler
Administrative Regulation Review Subcommittee Legislative Research Commission 083,
Capitol Annex Frankfort KY 40601

Re: 791 KAR 1:080, Maintenance of student records, schedule of fees charged to students, contracts and agreement involving licensed commercial driver training schools, advertising and solicitation of students by commercial driver license training schools

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 791 KAR 1:080, the Kentucky Commission on Proprietary Education proposes the attached amendment to 791 KAR 1:080.

Sincerely,

Misty N. Edwards
Executive Director

Final, 8-10-2022

SUGGESTED SUBSTITUTE

EDUCATION AND ~~LABOR~~WORKFORCE DEVELOPMENT CABINET
Kentucky Commission on Proprietary Education

791 KAR 1:080. Maintenance of student records, schedule of fees charged to students, contracts and agreements involving licensed commercial driver training schools, advertising and solicitation of students by commercial driver license training schools.

RELATES TO: KRS 165A.330(1), 165A.370, 165A.390, 165A.475, 165A.500, 165A.510, 189.125

STATUTORY AUTHORITY: KRS 165A.340~~(6)~~(3), 165A.510

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.500 and 165A.510 re-~~quire~~authorize the Kentucky Commission on Proprietary Education to establish the standards for maintenance of student records, schedule of fees charged to students and refund policy, contracts and agreements involving licensed commercial driver license training schools, advertising and solicitation of students by commercial driver license training schools. This administrative regulation establishes these standards for commercial driver license training schools.

Section 1. Maintenance of Student Records and Student Roster. (1)(a) Each licensed commercial driver license training school shall maintain a permanent record of instruction given to each student to include the student instructional training progress report cards or sheets, transcripts, student written examination results, and yard and street student skills examination scores for so long as the commercial driver license training school holds a license or conducts business.

(b) If the commercial driver license training school discontinues operation, then the school shall comply with KRS 165A.390(5) and 791 KAR 1:155.

(2) The records to be maintained by the commercial driver license training school shall contain the following:

- (a) Name and address of the commercial driver license training school;
- (b) Name and address of the student;
- (c) A photocopy of, or the number of the student's Kentucky CDL instruction permit license;
- (d) A photocopy of, or the number of the student's CDL class A driver's~~(drivers)~~ license after completion of course requirements and successful completion of license examination requirements administered by the Kentucky State Police;
- (e) The type and date of instruction given, whether classroom, yard, street, or behind-the-wheel, including the duration of instruction;
- (f) The printed name and signature of the instructor on the student instruction card or progress record sheet or equivalent training record forms;[
- ~~(g) Student's completed enrollment application;]~~
- (g)~~(h)~~ Student's completed application, student contract or enrollment agreement, including the student's signature and authorized school official's signature properly dated;
- (h) ~~(i)~~ Financial documents signed by the student including the student's completed loan agreement and accurate record of all fees paid to the school and government agencies;
- (i)~~(j)~~ Student's attendance record;
- (j)~~(k)~~ Student's progress report;
- (k)~~(l)~~ Student's transcript including all examination grades and skills proficiency competency scores, or evaluation received during course of instruction;
- (l)~~(m)~~ Written examination and skills examination, including grade; and

~~(m)~~~~(n)~~ Results of medical fitness examination and DOT-required drug test.

(3) The school shall furnish each commercial driver license training student upon the student's request a copy of his or her student instruction record if he or she ceases taking instruction at the school.

(4) All student records, school facilities, and school equipment are subject to inspection by the commission and its representatives upon request and without prior notice to the school.

Section 2. Schedule of Fees Charged to Students and Refund Policy. (1) Each licensed commercial driver license training school shall publish a schedule of fees charged to students for instruction to include as applicable:

- (a) Administrative fee;
- (b) Registration and/application fee;
- (c) Tuition for instruction;
- (d) Commercial driver license permit fee;
- (e) Off-the-road and on-the-road training fees;
- (f) Room and commission costs; and
- (g) Department of Transportation drug test and medical fitness examination.

(2) The schedule of fees shall be published:

- (a) In the school's catalog, brochure, and Web site;
- (b) In the student contract or enrollment agreement; and
- (c) Within the school's facility by being conspicuously displayed at the school.

(3) Each licensed commercial driver license training school shall establish and adhere to a refund policy to be published:

- (a) In the school's catalog;
- (b) In the student contract or enrollment agreement; and
- (c) Within the school's facility by being conspicuously displayed at the school.

(4) At least five (5) days before a prospective student signs a contract or enrollment agreement, the commercial driver license school shall provide to the prospective student:

- (a) The school catalog;
- (b) The student contract or enrollment agreement; and
- (c) The student loan agreement, if any.

Section 3. Contracts and Agreements Involving Licensed Commercial Driver License Training Schools. (1) Each licensed commercial driver license training school shall:

(a) File and maintain with the commission an accurate and current list of those persons authorized by the school to execute student enrollment contracts and student tuition loan agreements on behalf of the licensed commercial driver license training school including a sample of each person's signature;

(b) Provide to each student who enters a contract or agreement with a licensed commercial driver training school a copy of the signed contract or enrollment agreement; and

(c) File the original of each student contract or enrollment agreement in the permanent student record maintained by the school.

(2) All contracts or enrollment executed by the licensed commercial driver license training schools and its students shall contain the following information:

(a) The name and address of the school. If the school is conducted under an assumed name or is operated by a corporation, partnership, or association, the contract or enrollment agreement shall contain the name of the individual owners or names of the officers of the corporation, association, or members of the partnership;

(b) A statement containing the following text in at least fourteen (14) point font: "This constitutes the entire agreement between the school and the student. No verbal agreements or promises shall be recognized by either the school or the student.";

- (c) The school refund policy;
- (d) A signature and date line for the student and an authorized school official;
- (e) A complete description of all fees charged as set forth in Section 2 of this administrative regulation; and
- (f) A statement containing the following text in at least fourteen (14) point font: "The Kentucky Revised Statutes and Kentucky Administrative Regulations governing licensed commercial driver training schools shall be available at the facility upon request."

Section 4. Advertising and Solicitation of Students by Commercial Driver License Training Schools. (1) A person, school, institution, organization, company, association, or partnership shall not advertise or advertise to recruit students unless licensed by the commission.

(2) A licensed commercial driver license training school shall not use any name other than its licensed name, nor shall it advertise or imply that it is "supervised," "recommended," "accredited," or "endorsed" by the Kentucky Commission on Proprietary Education. A school may state "Licensed by the Kentucky Commission on Proprietary Education" in its advertisements.

(3) A licensed commercial driver training school shall not:

- (a) Claim nor imply that it guarantees employment upon successful completion of the program;
- (b) Guarantee or imply that it guarantees the student will receive a commercial driver license training permit or commercial driver license;
- (c) Make any false, misleading, or deceptive claims or guarantees of expected annual income or employee benefits;
- (d) Hold itself out as being any type of establishment other than an educational or training establishment;
- (e) Use a name that is like or deceptively similar to a name used by another commercial driver license training school;
- (f) Advertise or imply that instruction may be given to students who fail the program or examinations without charge to the student unless that instruction without examination is contained in the student contract or enrollment agreement; or
- (g) Advertise or solicit in the "help wanted" section of any newspaper or periodical.

(4) A licensed commercial driver license training school shall submit a copy of all advertisements and directory listings to the commission at least thirty (30) days prior to the scheduled publishing date.

Section 5. Inspections of Commercial Motor Vehicles Used by Commercial Driver License Training Schools, Including Mandatory Equipment and Out-of-Service Criteria. (1) Annual inspection. The school shall maintain a copy of the results of the Kentucky State Police's annual inspections of the school's vehicle inventory, as listed with the commission.

- (2) In order to be approved, the vehicle shall be:
 - (a) Owned or leased by the licensed school;
 - (b) In safe operating condition;
 - (c) Included on the school's liability insurance policy as mandated by KRS 165A.475(1)(d);
 - (d) Equipped with seat belts for each vehicle occupant as established by KRS 189.125;
 - (e) Equipped with functioning side-view and rear-view mirrors;
 - (f) Identified and clearly displayed on the front, sides, and rear of the vehicle, in letters not smaller than six (6) inches in height and in a color vividly contrasting with the color of the vehicle, the following:
 - 1. Name of the commercial driver license training school; and
 - 2. Words "Student Driver."
- (3) Expiration of safety inspection and notification of vehicle changes. The commercial driver license training school shall:

(a) Maintain proof that the vehicle is inspected by the Kentucky State Police annually and passes the inspection;

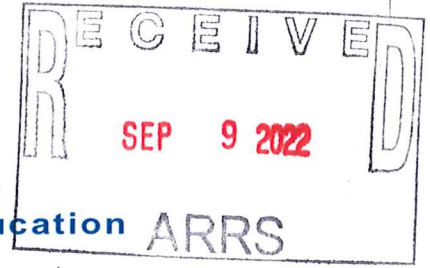
(b) Remove from use any vehicle that has not passed the inspection by the Kentucky State Police; and

(c) File with the commission written notice if a vehicle has been added or deleted from the school's motor vehicle fleet and have submitted to the commission a revised insurance policy as mandated by KRS 165A.475(1)(d) no later than five (5) business days from the date that the vehicle was added or deleted from the school's motor vehicle fleet.

CONTACT PERSON: Misty Edwards, Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-564-4185, email kcpe@ky.gov.



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September 7, 2022

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill, Regulation Compiler
Administrative Regulation Review Subcommittee Legislative Research Commission 083,
Capitol Annex Frankfort KY 40601

Re: 791 KAR 1:100, Standards for Kentucky resident commercial driver training school facilities

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 791 KAR 1:100, the Kentucky Commission on Proprietary Education proposes the attached amendment to 791 KAR 1:100.

Sincerely,

Misty N. Edwards
Executive Director

Final, 8-22-2022

SUGGESTED SUBSTITUTE

EDUCATION AND ~~LABOR~~WORKFORCE DEVELOPMENT CABINET
Kentucky Commission on Proprietary Education

791 KAR 1:100. Standards for Kentucky resident commercial driver training school facilities.

RELATES TO: KRS 165A.330(1), 165A.370, 165A.475, 165A.510(1)

STATUTORY AUTHORITY: KRS 165A.340~~(6)~~(3), 165A.510

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.510(1) ~~requires~~authorizes the commission to promulgate administrative regulations to set standards for CDL driver training school facilities. This administrative regulation establishes the commission's policy regarding standards for Kentucky resident commercial driver training school facilities.

Section 1. The following standards shall apply to Kentucky resident CDL driver training school office facilities:

(1) A Kentucky resident CDL driver training school location shall have and maintain an established place of business in the Commonwealth of Kentucky.

(2) The established place of business of each Kentucky resident CDL driver~~driver~~ training school shall:

(a) Be owned or leased by the driver training school;

(b) Regularly occupied; and

(c) Solely used by that driver training school for the business of:

1. CDL driver~~driver~~ training instructions for hire;

2. Preparing members of the public for examination for a commercial motor vehicle operator's license; and

3. Instruction of knowledge and skills for entry level tractor and trailer drivers or commercial motor vehicle operators.

(3) The established place of business of each Kentucky resident CDL driver training school shall be located in a district zoned for business or commercial purposes. The Kentucky resident CDL driver training school office shall have a permanent sign displaying the licensed school name. If the classroom or training yard is at a different address, it shall also have a permanent sign meeting the same criteria.

(4) The established place of business or advertised address of any Kentucky resident CDL driver training school shall not consist of or include a house trailer, residence, tent, temporary address, office space only, a room or rooms in a hotel, rooming house or apartment house, or premises occupied by a single or multiple unit dwelling house. Furthermore, a modular building or structure for use as a classroom or office shall be permanently affixed to the property and meet all applicable building codes.

(5) The Kentucky resident CDL driver training school, office, and classes shall be operated by responsible personnel during stated office hours and shall be open to inspection of the premises, facilities, records and vehicles by any authorized representative of the commission during this time.

(6) The Kentucky resident CDL driver training school shall have a business telephone used exclusively for the operation of the driving school and operational during the stated office hours.

(7) A Kentucky resident CDL driver training school shall not transfer its license without filing the Application to Transfer Ownership of a [Proprietary] School, Form PE-21, incorporated by

reference in 791 KAR 1:010, Section 12, for prior approval of the commission. There will be a \$500 fee for a transfer of ownership.

(8) ~~If [Should]~~ a Kentucky resident CDL driver training school ~~discontinues~~~~[discontinue]~~ operations, the license and applicable student records shall be surrendered to the commission, at the expense of the licensee, in accordance with 791 KAR 1:155.

(9) A branch or satellite Kentucky resident CDL driver training school shall be licensed as an independent Kentucky resident CDL driver training school and meet all of the requirements of the commission as provided for in KRS Chapter 165A and 791 KAR 1:040 to 791 KAR 1:100~~[791 KAR 1:090]~~.

Section 2. The following standards shall apply to Kentucky resident CDL driver training school classroom facilities:

(1) The classroom facility of each Kentucky resident CDL driver training school shall be reasonably near its office facility and within thirty (30) minutes normal driving time of that facility.

(2) The classroom shall contain sufficient space, equipment, and seating to carry on the business of classroom instruction for students enrolled in the Kentucky resident CDL ~~driv-~~~~er~~~~[driver]~~ training school, and preparation of students for examination for a commercial motor vehicle operator's license.

(3) The classroom facility shall have adequate lighting, heating, ventilation, sanitation facilities, and shall comply with all state and local laws relating to public health, safety and sanitation.

(4) The classroom facility shall contain the following equipment and supplies:

(a) Individual desks or tables with writing surfaces that, if required, ~~may~~~~[could]~~ accommodate up to thirty (30) classroom students, or the school's maximum, number, if less than thirty (30) classroom students, based on available space and occupancy limits established by applicable fire code;

(b) Adequate blackboards or whiteboards which are visible from student seating areas;

(c) Adequate visual aids, charts, and diagrams or pictures relating to the operation of commercial motor vehicles and traffic laws;

(d) Other devices that may aid in acquainting students with state and federal traffic laws and prepare them to safely operate commercial motor vehicles; ~~and~~~~[~~

(e) One (1) of the following:

1. ~~Overhead projector or multimedia projector; or~~

2. ~~A thirty five (35) millimeter slide projector and slides; or~~

3. ~~A video/audio display screen of not less than nineteen (19) inches diagonal measure, capable of operation in conjunction with electronic media for providing driver training instruction];~~
and

~~(e)~~ ~~[(f)]~~ All Kentucky Revised Statutes and administrative regulations governing CDL ~~driv-~~~~er~~~~[driver]~~ training schools, commercial motor vehicle operator license requirements and federal motor carrier rules and regulations, shall be prominently displayed so as to be accessible to applicants for enrollment and all students.

(5) In addition to the the equipment and supplies in subsection (4) of this section~~[foregoing]~~, the following are suggested teaching aids:

(a) A reaction time testing device;

(b) Peripheral vision testing device; ~~and~~

(c) Magnetic traffic boards~~;~~ ~~and~~

~~(d) Other devices that may aid in acquainting students with state and federal traffic laws and prepare them to safely operate commercial motor vehicles].~~

Section 3. Location ~~[Relocation]~~ Change of a Licensed ~~[Kentucky Resident]~~ CDL ~~driv-~~~~er~~~~[Driver]~~-Training School. Prior to relocating any ~~[Kentucky resident]~~ CDL ~~driver~~~~[driver]~~ training

school office, classroom facility, behind-the-wheel training facility or location, or equipment thereof, the ~~[Kentucky resident]~~ CDL ~~driver~~driver training school shall:

(1) Submit a completed Application to Change the Location of a ~~[Proprietary]~~ School, Form PE-23, incorporated by reference in 791 KAR 1:010, Section 12;

(2) Submit documentation indicating the new location is in compliance with all fire and safety codes;

(3) Submit the required change of school location application fee of \$500 by certified check or money order made payable to the Kentucky State Treasurer; and

(4) Complete a successful inspection by the Kentucky State Police pursuant to the procedures outlined by KRS 165A.475(4).

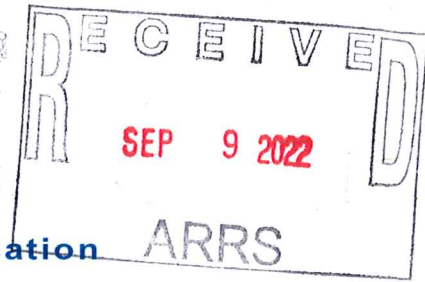
~~**[Section 4.]** [Incorporation by Reference. (1) "Application to Change the Location of a Proprietary School", 2017 edition, is incorporated by reference.~~

~~(2)] [This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Commission on Proprietary Education, 500 Mero Street [300 Sower Boulevard], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

CONTACT PERSON: Misty Edwards, Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-564-4185, email kcpe@ky.gov.



EDUCATION and LABOR CABINET
Kentucky Commission on Proprietary Education



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Misty N. Edwards
Executive Director

September 7, 2022

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill, Regulation Compiler
Administrative Regulation Review Subcommittee Legislative Research Commission 083,
Capitol Annex Frankfort KY 40601

Re: **791 KAR 1:150**, Bond requirements for agents and schools

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 791 KAR 1:150, the Kentucky Commission on Proprietary Education proposes the attached amendment to 791 KAR 1:150.

Sincerely,

Misty N. Edwards
Executive Director

Final, 8-23-2022

SUGGESTED SUBSTITUTE

EDUCATION AND ~~LABOR/WORKFORCE DEVELOPMENT~~ CABINET
Kentucky Commission on Proprietary Education

791 KAR 1:150. Bond requirements for agents and schools.

RELATES TO: KRS 165A.350(3)-(7), (10), 165A.360(2)-(5), (10)

STATUTORY AUTHORITY: KRS 165A.340~~(6) [(3)]~~, 165A.350(3), 165A.360(2), 165A.400

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.340~~(6) [(3)]~~ and 165A.400 authorize the commission to promulgate administrative regulations to administer the provisions of KRS 165A.310-165A.390, including establishment of fees and other charges. KRS 165A.350 requires all proprietary schools to maintain a surety bond for the agents and the schools. KRS 165A.360(2) sets forth the range of bonding requirements for agents and schools and requires the commission to establish the bond amounts. This administrative regulation sets the surety bond requirements to be maintained on agents and schools.

Section 1. Surety Bond. (1) A school shall:

- (a) Complete a School Surety Bond, Form PE-26; and
- (b) Maintain a school surety bond in the amount of **at least** \$20,000.

(2) In lieu of the school surety bond, the commission shall accept an irrevocable letter of credit made in favor of the Kentucky Commission on Proprietary Education from a verifiable licensed financial institution in the amount of **at least** \$20,000, or other types of collateral as approved by the commission *that meet this minimum amount of \$20,000 as established in KRS 165A.350(3).*

Section 2. Agent Surety Bond. (1) A school shall:

- (a) In accordance with KRS 165A.350(3) maintain an agent surety bond, or in the case of multiple agents, maintain a blanket agent surety bond, in the amount of **at least** \$5,000 for each agent employed by the school; and

(b) Complete a~~[Form PE-27,]~~ Blanket Agent Surety Bond, **Form PE-27.**

(2) In lieu of the agent surety bond, the commission shall accept an irrevocable letter of credit made in favor of the Kentucky Commission on Proprietary Education from a licensed financial institution equal to the amount specified **in subsection (1) of this section**~~[above]~~, ~~[made in favor of the Kentucky Commission on Proprietary Education]~~ or other types of collateral as approved by the commission *that meet the minimum amount established in subsection (1) of this section as established in KRS 165A.350(3).*

Section 3. Multiple School Campuses. (1) Each school campus for any school residing in and doing business in Kentucky for licensing and bonding purposes shall be considered a separate school and shall be required to provide a separate school surety bond and an agent surety bond.

(2) Each nonresidential school doing business in Kentucky shall be required to provide a school surety bond and an agent surety bond.

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

- (a) **Form PE-26**, "School Surety Bond", ~~[Form PE-26, 2017]~~ edition **May 2022**; and
- (b) **Form PE-27**, "Blanket Agent Surety Bond", ~~[Form PE-27, 2017]~~ edition **May 2022**.

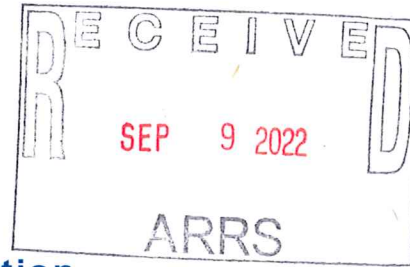
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor~~[300 Sewer Boulevard]~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. ***This material is also available on the commission's Web site at www.kcpe.ky.gov***.

CONTACT PERSON: Misty Edwards, Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-564-4185, email kcpe@ky.gov.

MATERIAL INCORPORATED BY REFERENCE

*** At the time that the agency files this staff suggested amendment the agency will need to file one (1) clean copy of each of the following forms:

- Form PE-26, "School Surety Bond", edition May 2022
- Form PE-27, "Blanket Agent Surety Bond", edition May 2022



EDUCATION and LABOR CABINET
Kentucky Commission on Proprietary Education

Andy Beshear
Governor

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Jamie Link
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Lieutenant Governor

Misty N. Edwards
Executive Director

September 7, 2022

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill, Regulation Compiler
Administrative Regulation Review Subcommittee Legislative Research Commission 083,
Capitol Annex Frankfort KY 40601

Re: 791 KAR 1:155, School Closing Process

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 791 KAR 1:155, the Kentucky Commission on Proprietary Education proposes the attached amendment to 791 KAR 1:155.

Sincerely,

Misty N. Edwards
Executive Director

Final, 8-22-2022

SUGGESTED SUBSTITUTE

EDUCATION AND LABOR~~[WORKFORCE DEVELOPMENT]~~ CABINET
Kentucky Commission on Proprietary Education

791 KAR 1:155. School closing process.

RELATES TO: KRS 61.870-61.884, 61.878(1)-(5), 165A.340~~(11)~~~~(8)~~, 165A.370, 165A.390(5)

STATUTORY AUTHORITY: KRS 165A.390(5), 165A.400

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.400 authorizes the commission ~~[Board]~~ to promulgate administrative regulations to administer the provisions of KRS 165A.310 to 165A.390. Pursuant to KRS 165A.390(5), prior to discontinuance of operations, a school shall convey student records to the commission. The commission ~~[board]~~ shall set forth which records are to be conveyed, the manner they are to be conveyed, where they shall be stored, and the length of time for storage. This administrative regulation sets forth the specific responsibilities of a licensed school if it discontinues operations in accordance with KRS 165A.390(5).

Section 1. Definitions. (1) "Academic records" means records pertaining to academic matters, including enrollment agreements, contracts, transcripts, syllabi, catalogs, course listings, and attendance records ~~[whether maintained in paper or electronic form]~~.

(2) "Discontinuance of operation" means ceasing to operate as a school in the ordinary course of business, or in accordance with the minimum standards and requirements set forth in KRS 165A.370, or in a manner that prevents a student from completing the course or program ~~[courses]~~ as scheduled.

(3) "Financial aid records" means records pertaining to financial aid matters including applications for financial aid, award notices, disbursement amounts, refunds, student accounts, and loan promissory notes.

(4) "Financial records" means records pertaining to financial matters including ledger cards to include charges, credits, disbursements, refunds, and financial information.

Section 2. Procedures for Discontinuance of Operations and Conveyance of Student Records. (1) A school shall notify the commission in writing of its intent to discontinue operations at least ten (10) business days prior to discontinuation of operations.

(2) A school shall simultaneously submit to the commission and the surety or financial institution notification of cancellation of school surety bonds, agent surety bonds, or letters of credit.

(3) If a school closes, the school shall make arrangements with the commission to forward all student transcripts, financial aid records, and financial records to the offices of the commission.

(4) If a school closes, the school shall arrange with another school or schools to provide teach-out options for students who may need that service.

Section 3. Immediate or Precipitous School Closure. In the absence of a notification of the intent to close, if the commission determines that a school has discontinued operations, a school shall submit the following records:

(1) Academic records of current and former students who attended the school within the last two (2) years prior to closure;

(2) Transcripts of former students who attended the school more than two (2) years prior to closure;

(3) Financial aid records of current and former students; and

- (4) Financial records of current and former students; and
- (5) Documents subpoenaed by the commission or the commission's designee in accordance with KRS 165A.340 ~~(11)~~ **(8)**.

Section 4. Retention of Records by the Commission. (1) The commission shall retain the original documents, or true and accurate copies, of transcripts and all other documentation received pursuant to Section 2 of this administrative regulation, in accordance with the Kentucky Commission on Proprietary Education Records Retention Schedule Recommendation developed with the Kentucky Department of Libraries and Archives.

(2) Documents obtained by the commission pursuant to Section 2 of this administrative regulation shall be state records under KRS 61.870 to 61.884 and subject to KRS 61.878(1)-(5).

Section 5. Incorporation by Reference. (1) "Kentucky Commission on Proprietary Education Records Retention Schedule Recommendation", June 14, 2012, is incorporated by reference ~~(October 18, 2007, is incorporated by reference)~~.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor ~~300 Sower Boulevard~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. **This material is also available on the commission's Web site at www.kcpe.ky.gov.**

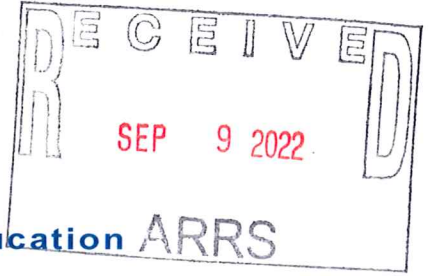
CONTACT PERSON: Misty Edwards, Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-564-4185, email kcpe@ky.gov.

MATERIAL INCORPORATED BY REFERENCE

At the time that it files this staff suggested substitute, the agency needs to file one (1) clean copy of the "Kentucky Commission on Proprietary Education Records Retention Schedule Recommendation" that was missing from its original filing and that contains the June 2012 Edition date.



EDUCATION and LABOR CABINET
Kentucky Commission on Proprietary Education ARRS



Andy Beshear
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Misty N. Edwards
Executive Director

September 7, 2022

Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
c/o Emily Caudill, Regulation Compiler
Administrative Regulation Review Subcommittee Legislative Research Commission 083,
Capitol Annex Frankfort KY 40601

Re: 791 KAR 1:160, Transfer of ownership, change of location, change of name, revision to existing programs

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 791 KAR 1:160, the Kentucky Commission on Proprietary Education proposes the attached amendment to 791 KAR 1:160.

Sincerely,

Misty N. Edwards
Executive Director

Final, 8-22-2022

SUGGESTED SUBSTITUTE

EDUCATION AND ~~LABOR/WORKFORCE DEVELOPMENT~~ CABINET
Kentucky Commission on Proprietary Education

791 KAR 1:160. Transfer of ownership, change of location, change of name, revision to existing programs.

RELATES TO: KRS 165A.360(2), (7), (9), 165A.370(1), (2)

STATUTORY AUTHORITY: KRS 165A.340~~(6)/(7)~~, 165A.360(2), (9), 165A.370(1)(b), (j), 165A.400

NECESSITY, FUNCTION, AND CONFORMITY: KRS 165A.400 authorizes the commission to promulgate administrative regulations to administer the provisions of KRS 165A.310 to 165A.390. Pursuant to KRS 165A.360(9), licenses ~~[certificates of approval]~~ issued by the commission are transferable. KRS 165A.370(1)(b) and (j) provide the commission with the authority to ensure that schools have all the necessary equipment to operate. This administrative regulation governs the procedures that a school shall follow to transfer ownership, change the location, change the name of the school, or revise an existing program for twenty-five (25) percent or more, as established in 791 KAR 1:010, Section 10 ~~[201 KAR 40:020, Section 5(2)]~~.

Section 1. Transfer of Ownership. A school which transfers ownership shall: (1) File a completed, signed and dated Application to Transfer Ownership of a School, (Form PE-21), **incorporated by reference in 791 KAR 1:010, Section 12**~~**[referenced by 791 KAR 1:025]**~~, for commission approval within ten (10) days following the effective date of transfer.

(2) Pay by check or money order a transfer fee as set forth in 791 KAR 1:025, Section 5; and
(3) Submit a copy of legal evidence showing the transfer of ownership agreement and evidence of purchase.

Section 2. Change of Location. (1) A school that changes location shall at least thirty (30) days prior to the change of location:

(a) File a completed, signed, and dated, Application to Change the Location of a School, (Form PE-23), **incorporated by reference in 791 KAR 1:010, Section 12**~~**[referenced by 791 KAR 1:025]**~~, for commission approval; and

(b) Pay by check or money order an application fee for the change of location set forth in 791 KAR 1:025, Section 7.

(2)(a) An inspection shall be conducted by a member of the commission or its designee and submitted to the commission for approval.

(b) Schools that fail to meet minimum statutory and regulatory standards shall be provided a list of corrective measures to be completed prior to operation of the school.

Section 3. Change of Name of a School. A school which changes its name shall at least (30) days prior to the change of name:

(1) File a completed, signed, and dated, Application to Change the Name of a School, (Form PE-22), **incorporated by reference in 791 KAR 1:010, Section 12**~~**[referenced by 791 KAR 1:025]**~~, for commission approval; and

(2) Pay by check or money order an application fee for a change of name as set forth in 791 KAR 1:025, Section 6.

Section 4. Revise An Existing Program. (1) A school which revises an existing program for twenty-five (25) percent or more, as established in 791 KAR 1:010, Section 10~~791 KAR 1:020, Section 5(2)~~ shall at least thirty (30) days prior to the next commission meeting:

(a) File a completed, signed, and dated, Application to Revise an Existing Program for 25% or More, (Form PE-13), incorporated by reference in 791 KAR 1:010, Section 12~~referenced by 791 KAR 1:020~~, for commission approval; and

(b) Pay by check or money order the fee as set forth in 791 KAR 1:025, Section 10.

(2) A school which revises an existing program for less than twenty-five (25) percent shall file a completed, signed, and dated, Notification to Revise an Existing Program For Less Than 25%, (Form PE-12), incorporated by reference in 791 KAR 1:010, Section 12~~referenced by 791 KAR 1:020~~, prior to the effective date of change.

Section 5. Expansion of School Facilities. (1) If a school expands the space of an approved location, the school shall notify the commission in writing at least ten (10) days prior to occupancy.

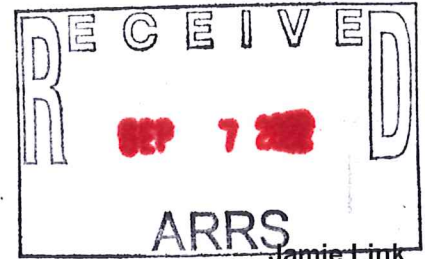
(2) If a school utilizes a space, other than an approved location, on an on-going basis, which is already approved for public use, the school shall notify the commission in writing.

Section 6. Conditional Approval. The executive director may provide conditional approval of applications until submitted to the commission for final approval.

CONTACT PERSON: Misty Edwards, Executive Director, Kentucky Commission on Proprietary Education, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-564-4185, email kcpe@ky.gov.



KENTUCKY LABOR CABINET
Department of Workers' Claims



Andy Beshear
Governor

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Scott Wilhoit
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Jamie Link
Secretary

Vickie L. Wise
Deputy Secretary

September 7, 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
702 Capitol Avenue
Frankfort Kentucky 40601

Re: **803 KAR 25:089E.** Workers' compensation medical fee schedule for physicians.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of a technical omission in 803 KAR 25:089E, the Department of Workers' Claims proposes the attached suggested amendment to 803 KAR 25:089E.

Sincerely,

B. Dale Hamblin, Jr.
Assistant General Counsel
Workers' Claims Legal Division
Mayo-Underwood Building, 3rd Floor
500 Mero Street
Frankfort, KY 40601

Suggested Amendment

Final Version: 9/6/2022 12:57 PM

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Department of Workers' Claims

803 KAR 25:089E. Workers' compensation medical fee schedule for physicians.

Page 5

Section 5(2)

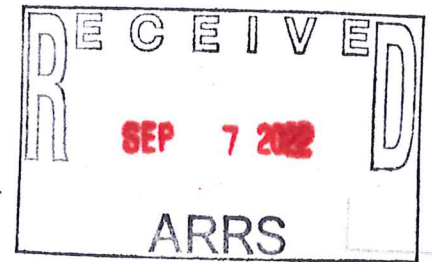
Line 16

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

(3) This material may also be obtained from or through
[https://labor.ky.gov/comp/Pages/Medical-Services.aspx#Physician Fee Schedule](https://labor.ky.gov/comp/Pages/Medical-Services.aspx#Physician%20Fee%20Schedule).



KENTUCKY LABOR CABINET
Department of Workers' Claims



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Vickie L. Wise
Deputy Secretary

September 7, 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
702 Capitol Avenue
Frankfort Kentucky 40601

Re: **803 KAR 25:195**. Utilization review, appeal of utilization review decisions, and medical bill audit.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 803 KAR 25:195, the Department of Workers' Claims proposes the attached suggested amendment to 803 KAR 25:195.

Sincerely,

B. Dale Hamblin, Jr.
Assistant General Counsel
Workers' Claims Legal Division
Mayo-Underwood Building, 3rd Floor
500 Mero Street
Frankfort, KY 40601

SUGGESTED SUBSTITUTE – ORDINARY ONLY

Final Version: 9/3/2022 3:25 PM

**LABOR CABINET
Department of Workers' Claims**

803 KAR 25:195. Utilization review, appeal of utilization review decisions, and medical bill audit.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.035(5), (6), 342.260

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260 ~~requires[provides that]~~ the Commissioner of the Department of Workers' Claims ~~to[shall]~~ promulgate administrative regulations necessary to carry on the work of the Department of Workers' Claims, and the commissioner may promulgate administrative regulations not inconsistent with the provisions of KRS Chapter 342. KRS 342.035(5) requires the commissioner to promulgate administrative regulations governing medical provider utilization review activities conducted by an insurance carrier, group self-insurer, or self-insured employer pursuant to KRS Chapter 342. KRS 342.035(5) ~~requires[provides]~~ the Commissioner of the Department of Workers' Claims ~~to[shall]~~ promulgate administrative regulations that require each insurance carrier, group self-insurer, and individual self-insured employer to certify to the commissioner the program it has ~~established to ensure[adopted to insure]~~ compliance with the medical fee schedule provisions of KRS 342.035(1) and (4). KRS 342.035(8) requires the commissioner to ~~establish[adopt]~~ or develop a pharmaceutical formulary and treatment guidelines~~[-utilization review assists in the proper implementation of the pharmaceutical formulary and treatment guidelines]~~. This administrative regulation ~~establishes provisions to ensure[ensures][insures]~~ that insurance carriers, group self-insurers, and individual self-insured employers implement a utilization review and medical bill audit program.

Section 1. Definitions. (1) "Business day" means any day except Saturday, Sunday, or any day ~~that[which]~~ is a legal holiday.

(2) "Calendar day" means all days in a month, including Saturday, Sunday and any day which is a legal holiday.

(3) "Carrier" is defined by KRS 342.0011(6).

(4) "Commissioner" is defined by KRS 342.0011(9).

(5) "Denial" means a determination by the utilization reviewer that the medical treatment, proposed treatment, service, or medication under review is not medically necessary or appropriate and, therefore, payment is not recommended.

(6) "Department" is defined by KRS 342.0011(8).

(7) "Medical bill audit" means the review of medical bills for services ~~that[which]~~ have been provided to assure compliance with adopted fee schedules.

(8) "Medically necessary" or "medical necessity" means healthcare services, including medications, that a medical provider, exercising prudent clinical judgment, would provide to a patient for the purpose of preventing, evaluating, diagnosing, or treating, an illness, injury, disease, or its symptoms, and that are:

- (a) In accordance with generally accepted standards of medical practice;
 - (b) Clinically appropriate, in terms of type, frequency, extent site and duration; and
 - (c) Considered effective for the patient's illness, injury, or disease.
- (9) "Medical payment obligor" means any **self-insured** employer, carrier, insurance carrier, self-insurer, or any person acting on behalf of or as an agent of the **self-insured** employer, carrier, insurance carrier, or self-insurer.
- (10) "Medical provider" means physicians and surgeons, psychologists, optometrists, dentists, podiatrists, osteopathic and chiropractic practitioners, physician assistants, and advanced practice registered nurses, acting within the scope of their license
- (11) "Physician" is defined by KRS 342.0011(32).
- (12) "Preauthorization" means a process whereby payment for a medical service or course of treatment is assured in advance by a carrier.
- (13) **"Same medical specialty" means a branch of medical practice focused regularly and routinely on a defined group of patients, diseases, skills, body parts[part], or types[type] of injury and performed by a physician with the same or similar qualifications.**
- (14)[(13)] "Utilization review" means a review of the medical necessity and appropriateness of medical care and services for purposes of recommending payments for a compensable injury or disease.
- (15)[(14)] "Utilization review and medical bill audit plan" means the written plan submitted to the commissioner by each medical payment obligor describing the procedures governing utilization review and medical bill audit activities.
- (16)[(15)] "Vendor" means a person or entity **that[which]** implements a utilization review and medical bill audit program for purposes of offering those services to carriers.

Section 2. Utilization Review and Medical Bill Audit Program. (1) The utilization review program shall assure that:

- (a) A utilization reviewer **has the education, training, and experience, necessary to evaluate clinical issues and services for medical necessity and appropriateness[is appropriately qualified];**
 - (b) Treatment rendered to an injured worker is medically necessary and appropriate; and
 - (c) Necessary medical services are not withheld or unreasonably delayed.
- (2) The medical bill audit program shall assure that:
- (a) A statement or payment for medical goods and services and charges for a deposition, report, or photocopy comply with KRS Chapter 342 and 803 KAR Chapter 25;
 - (b) A medical bill auditor **has the education, training, or experience, necessary to evaluate medical bills and statements[is appropriately qualified];** and
 - (c) A statement for medical services is not disputed without reasonable grounds.

Section 3. Utilization Review and Medical Bill Audit Plan Approval. (1) A medical payment obligor shall fully implement and maintain a utilization review and medical bill audit program.

(2) A medical payment obligor shall provide to the commissioner a written plan describing the utilization review and medical bill audit program. The commissioner shall approve each utilization review and medical bill audit plan **if the plan[which]** complies with the requirements of this administrative regulation and KRS Chapter 342.

(3) A vendor shall submit to the commissioner for approval a written plan describing the utilization review and medical bill audit program. Upon approval, the vendor shall receive written notice from the commissioner.

(4) A medical payment obligor who contracts with an approved vendor for utilization review or medical bill audit services shall notify the commissioner of the contractual arrangement. The contractual arrangement may provide for separate utilization review and medical bill audit vendors.

(5) A plan shall be approved for a period of four (4) years.

(a) At least ninety (90) calendar days prior to the expiration of the period of approval, a medical payment obligor or its approved vendor shall apply for renewal of the approval.

(b) During the term of an approved plan, the commissioner shall be notified as soon as practicable of a material change in the approved plan or a change in the selection of a vendor.

(6) A **medical payment obligor or its utilization review vendor**~~[carrier who contracts with an approved vendor for utilization review services]~~ shall provide annually to the commissioner summaries of the number of utilization reviews conducted, ~~[utilization reviews waived in accordance with KRS 342.035(5)(c)]~~ utilization reviews resulting in an approval, and utilization reviews resulting in a denial, **peer-to-peer conferences requested, peer-to-peer conferences that resulted in approval of the requested treatment, and peer-to-peer conferences that resulted in denial of the requested treatment.**

(a) The medical payment obligor or its utilization review vendor shall email the summaries in the Microsoft Excel spreadsheet with rows labeled for each summary category to LaborEDI@ky.gov.

(b) The summaries shall only include data gathered from the medical payment obligor's most recent complete fiscal year that ended on or before March 31 of the year in which the summaries are due. The summaries~~[- The annual report the approved vendor]~~ shall be filed with the commissioner no later than **September 1 each year**~~[August 1 for the preceding year, including any fiscal year ending on or before June 30].~~

(c) If a utilization review vendor provides utilization review services for more than one (1) medical payment obligor, the utilization review vendor shall submit a separate spreadsheet for each medical payment obligor.

(d) If a utilization review or a peer-to-peer conference results in a portion of the treatment being approved and a portion of the treatment being denied, the result shall be reported as both an approval and a denial for reporting purposes.

Section 4. Utilization Review and Medical Bill Audit Written Plan Requirements. The written utilization review and medical bill audit plan submitted to the commissioner shall include ***[the following elements]:***

(1) A description of the process, policies, and procedures for making decisions;

(2) A statement that medical treatment guidelines adopted by the commissioner pursuant to KRS 342.035(8)(a) shall be incorporated in the plan as the standard for utilization review medical decision making;

(3) A description of the criteria by which claims, medical services, and medical bills shall be selected for review;

(4) A description of the:

- (a) Qualifications of internal and consulting personnel who shall conduct utilization review and medical bill audit; and
- (b) The manner in which the personnel shall be involved in the review process;
- (5) A description of the process to assure that a treatment plan shall be obtained for review by qualified medical personnel if a treatment plan is required by 803 KAR 25:096;
- (6) A description of the process to assure that a physician shall be designated by each injured employee as required under 803 KAR 25:096 or 803 KAR 25:110;
- (7) A description of the process for rendering and promptly notifying the medical provider and employee of the initial utilization review decision;
- (8) A description of the reconsideration process within the structure of the utilization review and medical bill audit program;
- (9) An assurance that a database shall be maintained, which shall:
 - (a) Record:
 - 1. Each instance of utilization review;
 - 2. Each instance of medical bill audit;
 - 3. The name of the reviewer;
 - 4. The extent of the review;
 - 5. The conclusions of the reviewer; and
 - 6. The action, if any, taken as the result of the review;
 - (b) Be maintained for a period of at least two (2) years; and
 - (c) Be subject to audit by the commissioner, or the commissioner's[his] agent, pursuant to KRS 342.035(5)(b); and
- (10) A description of the policies and procedures that shall be implemented to protect the confidentiality of patient information.

Section 5. Claim Selection Criteria. (1) Unless the medical payment obligor, in good faith, denies the claim as noncompensable or waives utilization review pursuant to KRS 342.035 (5)(c), medical services reasonably related or asserted to be related to the claim shall be subject to utilization review if:

- (a) A medical provider requests preauthorization of a medical treatment or procedure;
 - (b) Notification of a surgical procedure or resident placement pursuant to an 803 KAR 25:096 treatment plan is received;
 - (c) The total medical costs cumulatively exceed \$3000;
 - (d) The total lost work days cumulatively exceed thirty (30) days; or
 - (e) An administrative law judge orders a review.
- (2) Utilization review shall commence once[when] the medical payment obligor has notice that a claims selection criteria has been met. The medical payment obligor may waive utilization review pursuant to KRS 342.035(5)(c) within two (2) business days of notice that a claims selection criteria has been met **unless additional information is required, in which case, utilization review shall be waived within two (2) business days following receipt of the requested information.**
- (a) The following requirements shall apply if preauthorization has been requested and utilization review has not been waived by the medical payment obligor:
 - 1. The initial utilization review decision shall be communicated to the medical provider and employee within two (2) business days of the initiation of the utilization review process, unless

additional information is required. If additional information is required, a single request shall be made within two (2) additional business days~~;~~^[-]

2. The requested information shall be submitted by the medical provider within ten (10) business days~~;~~ **and**^[-]

3. The initial utilization review decision shall be rendered and communicated within two (2) business days following receipt of the requested information.

(b) The following requirements shall apply if retrospective utilization review occurs:

1. The initial utilization review decision shall be communicated to the medical provider and employee within **seven (7) business**~~[ten (10) calendar]~~ days of the initiation of the utilization review process, unless additional information is required. If additional information is required, a single request shall be made within two (2) additional business days~~;~~^[-]

2. The requested information shall be submitted by the medical provider within ten (10) business days~~;~~ **and**^[-]

3. The initial utilization review decision shall be rendered within two (2) business days following receipt of the requested information.

(3) A medical provider may request an expedited utilization review determination for proposed medical treatment or services, the lack of which could reasonably be expected to lead to serious physical or mental disability or death. The expedited utilization review determination shall be rendered and communicated within twenty-four (24) hours following a request for expedited review.

(4) Initiation of utilization review shall toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020(4). The thirty (30) day period for paying medical expenses shall commence on the date of the final utilization review decision.

(5) Each medical bill audit shall be initiated within **five (5) business**~~[seven (7) calendar]~~ days of receipt to assure:

(a) Compliance with applicable fee schedules, in accordance with 803 KAR Chapter 25;

(b) Accuracy; and

(c) That a physician has been designated in accordance with 803 KAR 25:096 **or 803 KAR 25:110.**

(6) A medical bill audit shall not toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020(4).

Section 6. Utilization Review and Medical Bill Audit Personnel Qualifications. (1) Utilization review personnel shall have education, training, and experience necessary for evaluating the clinical issues and services under review. The following professionals shall issue an initial utilization review approval:

(a) A physician;

(b) A registered nurse;

(c) A licensed practical nurse;

(d) A medical records technician; or

(e) Other personnel whose training and experience qualify them to issue decisions on medical necessity or appropriateness, **including a medical doctor, surgeon, psychologist, optometrist, dentist, podiatrist, and osteopathic practitioner, acting within the scope of the license or licenses required by the jurisdiction in which they are employed.**

(2) Utilization review personnel shall hold the license required by the United States' jurisdiction in which they are employed.

(3) A physician shall supervise utilization review personnel.

(4) A physician shall authorize and ratify any utilization review denial.

(5)[(2)] Only a physician may issue an initial utilization review denial. A physician shall supervise utilization review personnel in making utilization review recommendations. Personnel shall hold the license required by the jurisdiction in which they are employed.

(6)[(3)] Personnel conducting a medical bill audit shall have the education, training, or experience necessary for evaluating medical bills and statements.

Section 7. Written Notice of Denial. (1) Following initial review **of a request for preauthorization**, a written notice of denial shall:

(a) Be issued to both the medical provider and the employee in a timely manner but no more than **two (2) business days after initiation of the utilization review process unless additional information was required, in which case, the written notice of denial shall be issued no later than two (2) business days after the initial utilization review decision**~~[ten (10) calendar days from the initiation of the utilization review process]~~;

(b) Be clearly entitled "UTILIZATION REVIEW - NOTICE OF DENIAL"; and

(c) Contain:

1. A statement of the medical reasons for denial;
2. The name, state of licensure, and medical license number of the reviewer; and
3. An explanation of utilization review reconsideration rights.

(2) Payment for medical services shall not be denied on the basis of lack of information absent documentation of a good faith effort to obtain the necessary information.

Section 8. Reconsideration. (1) A reconsideration process to appeal an initial decision shall be provided within the structure of utilization review.

(a) A request for reconsideration of the initial utilization review decision shall be made by an aggrieved party within **ten (10) business**~~[fourteen (14) calendar]~~ days of receipt of a written notice of denial.

(b) Reconsideration of the initial utilization review decision shall be conducted by a different reviewer of **the same medical specialty**~~[at least the same qualifications]~~ as the medical provider whose treatment is being reconsidered.

(c) A written reconsideration decision shall be rendered within **seven (7) business**~~[ten (10) calendar]~~ days of receipt of a request for reconsideration **unless a peer-to-peer conference is requested, in which case, the written reconsideration decision shall be rendered within five (5) business days after the day on which the peer-to-peer conference was held**. The written decision shall be clearly entitled "UTILIZATION REVIEW - RECONSIDERATION DECISION." If the reconsideration decision is made by an appropriate specialist or subspecialist, the written decision shall further be entitled "FINAL UTILIZATION REVIEW DECISION."

(d) Those portions of the medical record that are relevant to the reconsideration, if authorized by the patient and in accordance with state or federal law, shall be considered and providers shall be given the opportunity to present additional information.

(2)

~~[(a) If a utilization review denial is upheld upon reconsideration and a board eligible or certified physician in the appropriate specialty or subspecialty area, or a chiropractor qualified pursuant to KRS 312.200(3) and 201 KAR 21:095 has not previously reviewed the matter, an aggrieved party may request further review by:~~

- ~~1. A board eligible or certified physician in the appropriate specialty or subspecialty; or~~
- ~~2. A chiropractor qualified pursuant to KRS 312.200(3) and 201 KAR 21:095.~~

~~(b) A written decision shall be rendered within ten (10) calendar days of the request for specialty reconsideration. The specialty decision shall be clearly entitled "FINAL UTILIZATION REVIEW DECISION".~~

~~(3)]~~ A reconsideration process to appeal an initial decision shall be provided within the structure of medical bill audit.

(a) A request for reconsideration of the medical bill audit decision shall be made by an aggrieved party within **ten (10) business**~~[fourteen (14) calendar]~~ days of receipt of that decision.

(b) Reconsideration shall be conducted by a different reviewer of at least the same qualifications as the initial reviewer.

(c) A written decision shall be rendered within **seven (7) business**~~[ten (10) calendar]~~ days of receipt of a request for reconsideration. The written decision shall be clearly entitled "MEDICAL BILL AUDIT RECONSIDERATION DECISION."

(d) A request for reconsideration of the medical bill audit decision shall not toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020(1).

Section 9. Peer-to-peer Conference. (1) If the medical payment obligor denies preauthorization following utilization review, it shall issue a written notice of denial as required in Section 7 of this administrative regulation.

(2) The medical provider whose recommendation for treatment is denied may request reconsideration~~[,]~~ and may require the reconsideration include a peer-to-peer conference with a second utilization review physician.

(3) The request for a peer-to-peer conference shall be made by electronic communication and shall provide:

(a) A telephone number for the reviewing physician to call;

(b) A date or dates for the conference not less than five (5) business days after the date of the request **unless the peer-to-peer conference request stems from a denial issued pursuant to 803 KAR 25:270, in which case, a date or dates not less than two (2) business days after the date of the request. In either case, the parties may by agreement hold the conference in a shorter time period;** and

(c) A one (1)-hour period during the date or dates specified during which the requesting medical provider, or a designee, will be available to participate in the conference between the hours of 8:00 a.m. and 6:00 p.m. (Eastern Time), Monday through Friday.

(4) The reviewing physician participating in the peer-to-peer conference shall be of the same **medical** specialty as the medical provider requesting reconsideration.

(5)~~(a)~~ **1.** Failure of the reviewing physician to participate during the date and time specified shall result in the approval of the request for preauthorization and approval of the recommended treatment unless good cause exists for the failure to participate.

2. In the event of good cause for failure to participate in the peer-to-peer conference, the reviewing physician shall contact the requesting medical provider to reschedule the peer-to-peer conference.

(b) The rescheduled peer-to-peer conference shall be held no later than two (2) business days following the original conference date.

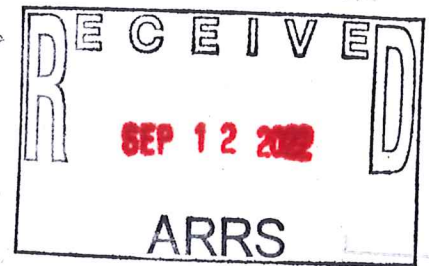
(c) Failure of the requesting medical provider or its designee to participate in the peer-to-peer conference during the time he or she specified availability may result in denial of the request for reconsideration.

(6) A written reconsideration decision shall be rendered within five (5) business days of date of the peer-to-peer conference. The written decision shall be entitled "FINAL UTILIZATION REVIEW DECISION."

(7) If a Final Utilization Review Decision is rendered denying authorization for treatment before an award has been entered by or agreement approved by an administrative law judge, the requesting medical provider or the injured employee may file a medical dispute pursuant to 803 KAR 25:012. If a Final Utilization Review Decision is rendered denying authorization for treatment after an award has been entered by or agreement approved by an administrative law judge, the employer shall file a medical dispute pursuant to 803 KAR 25:012.

(8) Pursuant to KRS 342.285(1), a decision of an administrative law judge on a medical dispute is subject to review by the workers' compensation board under the procedures **established[set out]** in 803 KAR 25:010, Section 22.

CONTACT PERSON: B. Dale Hamblin, Jr., Assistant General Counsel, Workers' Claims Legal Division, Mayo-Underwood Building, 3rd Floor, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 782-4404, fax (502) 564-0682, email dale.hamblin@ky.gov.



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Sharon P. Clark
COMMISSIONER

September 12, 2022

Ms. Emily Caudill, Regulations Compiler

Legislative Research Commission

029, Capitol Annex 702 Capitol Avenue

Frankfort, Kentucky 40601

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 806 KAR 9:025, the Department of Insurance proposes the attached amendment to 806 KAR 9:025.

Sincerely,

Abigail Gall, Executive Advisor

Department of Insurance

500 Mero Street

Frankfort, KY, 40601

SUGGESTED SUBSTITUTE

Final Version: 9/13/2022 9:33 AM

PUBLIC PROTECTION CABINET

Department of Insurance

Licensing Division

806 KAR 9:025. Licensing process.

RELATES TO: KRS ~~12.357~~, 165A.330, 304.4-010, 304.9-030, 304.9-105, 304.9-130, 304.9-150, 304.9-160, **304.9-170**, 304.9-230, 304.9-260, 304.9-270, **304.9-280**, 304.9-295, 304.9-320, 304.9-430, 304.14-642, **Pub. L. 108-264, Sect. 207**

STATUTORY AUTHORITY: KRS 304.2-110, 304.9-080, 304.9-105, ~~[304.9-133,]~~ 304.9-160, 304.9-170, 304.9-230, 304.9-270, 304.9-280, 304.9-295

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of **the Department of** Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code, **KRS Chapter 304**. KRS 304.9-080 requires the commissioner to prescribe and furnish all forms required for licenses and appointments under Subtitle 9 of the **Kentucky** Insurance Code. KRS 304.9-105 requires the commissioner to promulgate administrative regulations to **establish requirements for**~~[mandate]~~ a prelicensing course of study for all agents, except for a variable life and variable annuities line of authority and limited lines of authority. KRS 304.9-230 requires the commissioner to promulgate administrative regulations **establish requirements for**~~[regarding]~~ a prelicensing course of study for limited lines of authority. KRS 304.9-160 requires the commissioner to establish the examination process~~[, and KRS 304.9-170 provides exemptions to the examination requirement]~~. KRS 304.9-270 requires the commissioner to prescribe a form for appointment of individual and business entity agents. KRS **304.9-230 and** 304.9-295 **require**~~[requires]~~ the commissioner to establish forms and standards for the approval of prelicensing and continuing education course providers, instructors, and courses. This administrative regulation establishes the guidelines for individual agents, business entities, consultants, and adjusters to become licensed, obtain appointments, as required, in Kentucky, maintain their licenses through the completion of continuing education, and surrender their license voluntarily or have their appointment terminated by an insurer.

Section 1. Prelicensing Course Requirements.

(1) An individual applying for an agent license shall complete a prelicensing course of study approved by the commissioner for a minimum of forty (40) hours for life and health insurance, forty (40) hours for property and casualty insurance, or twenty (20) hours for

each line of authority, as applicable, for the lines of authority included in the application, unless the applicant is:

(a) Seeking a **variable life and variable annuity products line of authority or a** limited line of authority under KRS 304.9-230; or

(b) Exempt pursuant to KRS 304.9-170.

(2) (a) All prelicensing courses, providers, and instructors shall be approved by the commissioner prior to offering a course.

(b) A prelicensing course provider shall submit either in writing or electronically through the department's Web site, <http://insurance.ky.gov>:

1. A Form KYP-01, Provider Approval Application, submitted once to become an approved course provider;

2. A Form CE/PL-100, Course Approval Application, for each course the approved provider wants to offer;

3. A Form CE/PL-200, Instructor Approval Application, for each course instructor;

4. The fee, as applicable, established for provider, instructor, and course approval in 806 KAR 4:010; and

5. An outline of the content of the course of study.

(c) In approving a prelicensing course of study, the commissioner or the commissioner's designee shall consider whether the course of study covers the subject matter included in the department's current study outlines or their equivalent.

(d) A prelicensing course of study approved by the commissioner shall be renewed biennially.

(e) For renewals, the provider and instructor approval applications shall not be required to be submitted with each course.

(3) A prelicensing course of study shall be valid for one (1) year from the date of completion.

(4) The prelicensing provider shall submit proof of completion of a course of study to the department and the applicant on Form CPL-01, Certificate of Prelicensing Course Completion or electronically through the department's Web site, <http://insurance.ky.gov>, for each applicant.

Section 2. Agent Licensing.

(1) **Except as otherwise provided in this chapter,** an applicant for an individual agent license ~~[, other than a preneed funeral agent license provided under 806 KAR 9:370,]~~ shall file with the department:

(a) A completed Form 8301, NAIC Individual Insurance License Application;

(b) Documentation demonstrating successful completion of any required prelicensing course;

(c) **If the applicant is designating Kentucky as his or her home state,** a completed background check through the Kentucky Administrative Office of the Courts; and

(d) **Except as provided in KRS 12.357,** payment of the fees applicable to the license and lines of authority sought in accordance with KRS 304.4-010 and 806 KAR 4:010.

(2) If an examination is required, the documents and fees required in subsection (1) of this section shall be submitted prior to scheduling an examination.

(3) An individual applying for a line of authority identified in KRS 304.9-030(2) shall successfully complete an examination as follows:

(a) For a life line of authority, a life examination;

(b) For a health line of authority, a health examination;

(c) For a property line of authority, a property examination;

(d) For a casualty line of authority, a casualty examination;

(e) For a personal lines line of authority, a property and casualty personal lines examination;

(f) For a line of authority identified in accordance with KRS 304.9-030(2)(h), an examination appropriate for the kind of insurance; and

(g) For a variable life and variable annuity products line of authority, **an[no]** examination **shall not be[is]** required.

(4) An examination shall only be required for individual applicants applying for the following limited lines of authority identified in KRS 304.9-230:

(a) For a crop limited line of authority, a crop examination; and

(b) For a rental vehicle limited line of authority, a rental vehicle examination shall be administered or monitored by a rental vehicle agent pursuant to 806 KAR 9:265.

(5) Every applicant for a license for which an examination is required shall answer correctly seventy (70) percent of the questions to pass the examination.

(6) To retake an examination, an applicant shall submit to the department:

(a) Form 8304, Examination Retake Form; and

(b) The applicable examination **fee[retake-fees]** established in 806 KAR 4:010.

Section 3. Adjuster Licensing.

(1) An applicant for an adjuster license shall file with the department:

(a) A completed Form 8301, NAIC Individual Insurance License Application;

(b) **If the applicant is designating Kentucky as his or her home state,** a completed background check through the Kentucky Administrative Office of the Courts; and

(c) **Except as provided in KRS 12.357,** the applicable **fees[fee]** established in 806 KAR 4:010.

(2) **The documents and fees required under subsection (1) of this section shall be submitted prior to scheduling an examination.**

(3) An individual applying for an adjuster line of authority identified in KRS 304.9-430(7) shall:

(a) For a property and casualty line of authority, successfully complete a property and casualty adjuster examination;

(b) For a workers' compensation line of authority, successfully complete a workers' compensation adjuster examination; and

(c) For a crop line of authority, either:

1. Successfully complete a crop adjuster examination; or

2. Demonstrate certification through the Crop Adjuster Proficiency Program, by providing to the department a copy of a Crop Adjuster Proficiency Program certification identification card with an active status issued by the federal Risk Management Agency, an agency within the U.S. Department of Agriculture, which specifies the applicant has passed a proficiency examination to adjust multi-peril crop claims.

(4) [(3)] Every applicant for a license for which an examination is required shall answer correctly seventy (70) percent of the questions to pass the examination.

(5) [(4)] To retake an examination, an applicant shall submit to the department:

(a) Form 8304, Examination Retake Form; and

(b) The applicable examination **fee[retake-fees]** established in 806 KAR 4:010.

Section 4. Consultant Licensing.

(1) An applicant for a consultant license shall:

(a) File with the department:

1. A completed Form 8301, NAIC Individual Insurance License Application;

2. **If the applicant is designating Kentucky as his or her home state,** a completed background check through the Kentucky Administrative Office of the Courts; and

3. **Except as provided in KRS 12.357,** payment of the fees applicable to the license in accordance with KRS 304.4-010 and 806 KAR 4:010; and

(b) Successfully complete the consultant examination.

(2) The documents and fees required under subsection (1)(a) of this section shall be submitted prior to scheduling an examination.

(3) An applicant for a consultant license shall answer correctly seventy (70) percent of the questions to pass the consultant examination.

(4) To retake an examination, an applicant shall submit to the department:

(a) Form 8304, Examination Retake Form; and

(b) The applicable examination **fee[retake-fees]** established in 806 KAR 4:010.

Section 5. Continuing Education.

(1)(a) Continuing education providers, instructors, and courses shall be approved by the commissioner unless specifically exempted by KRS 304.9-295.

(b) To apply for approval as a continuing education provider, an applicant shall submit to the department:

1. A completed Form KYP-01, Provider Approval Application; and

2. For proprietary schools, documentation of licensure by the Kentucky Commission on Proprietary Education.

(c) To apply for approval as a continuing education instructor, an approved continuing education provider shall submit to the department:

1. A completed Form CE/PL-200, Instructor Approval Application; and
2. The applicable fee established in 806 KAR 4:010.

(d)

1. To apply for approval of a continuing education course, an approved continuing education provider shall submit to the department Form CE/PL-100, Course Approval Application at least sixty (60) days in advance of advertising the course, unless good cause is demonstrated by the provider for the failure to timely submit the form. If the course is offered in multiple states, the provider may, in lieu of Form CE/PL-100, submit the NAIC Uniform Continuing Education Reciprocity Course Filing Form.

2. After approval of the continuing education course and the determination of the number of credit hours assigned to the course, the continuing education provider shall pay to the department the applicable fee established in 806 KAR 4:010.

(e) The commissioner shall consider the following in determining approval of a continuing education course:

1. **Once the total credit hours are determined**, whether the applicant has remitted all fees due~~[once the total credit hours are determined]~~ pursuant to 806 KAR 4:010; and

2. Whether the continuing education course contributes directly, at a professional level, to the competence of the licensee with respect to the following subjects:

- a. Insurance, annuities, and risk management;
- b. Insurance laws and administrative regulations;
- c. Mathematics, statistics, and probability;
- d. Economics;
- e. Business law;
- f. Finance;
- g. Taxes;
- h. Agency management, including all aspects of agency operations that support the long-term stability of the agency system and encourage the service and protection of customers;
- i. Ethics; and
- j. Other topics approved by the commissioner which contribute directly at a professional level to the competence of the licensee.

(f) The continuing education course shall:

1. Include current, relevant, accurate, and valid reference materials, graphics, and interactivity;
2. Have clearly defined objectives and course completion criteria;
3. Have a written outline and study materials or texts; and
4. Include a means for evaluation.

(g) A self-study course shall require successful completion of an examination.

(h) Continuing education credit shall not be provided for:

1. Any course used to prepare for taking an examination required pursuant to KRS Chapter 304;

2. Committee service for professional organizations;

3. Computer training to develop functional skills; and

4. Motivational or self-help courses.

(i) The commissioner shall measure continuing education course credit hours by the following:

1. Each credit hour for live instruction courses, completed in a classroom, by video, teleconference, or computer, shall include at least fifty (50) minutes of continuous instruction or participation; and

2. Each credit hour for recorded self-study courses, completed online or by correspondence, shall be calculated in accordance with the Recommended Guidelines for Online Courses.

(j) Any material change in a previously approved continuing education course shall be filed with and approved by the commissioner prior to use.

(k) Biennially, a continuing education provider shall request renewal of a continuing education course and a continuing education instructor by submitting the information required by subsection (1)(c) and (d) of this section and the fee established in 806 KAR 4:010 to the department on or before June 30 of even-numbered years.

(2)

(a) A resident individual agent selling, soliciting, or negotiating insurance products that qualify under the Long-Term Care Partnership Insurance Program, as described in KRS 304.14-642, shall complete eight (8) hours of initial long-term care insurance training, and four (4) hours of additional training for each biennial continuing education compliance period.

(b) A resident individual agent who holds a property and casualty line of authority selling flood insurance under the National Flood Insurance Program shall complete three (3) hours of training in accordance with the Flood Insurance Reform Act of 2004, as set forth in Pub.L. 108-264, Section 207.

(c)

1. An individual agent who holds a life line of authority shall successfully complete four (4) hours of initial training, prior to the sale, solicitation, or negotiation of annuities, unless the agent has documented the completion of substantially similar training in another state, that shall include at a minimum information on the following topics:

a. The types of annuities and various classifications of annuities;

b. Identification of the parties to an annuity;

c. How product specific annuity contract features affect consumers;

d. The application of income taxation of qualified and non-qualified annuities;

e. The primary uses of annuities; and

f. Appropriate standard of conduct, sales practices, replacement, and disclosure requirements.

2. The training required by subparagraph 1. of this paragraph shall not include:

- a. Marketing information;
- b. Training on sales techniques; or
- c. Specific information about a particular insurer's products.

3. Except as provided in subparagraph 4. of this paragraph, an agent who has completed an annuity training course approved by the department prior to January 1, 2022 shall, within six (6) months after January 1, 2022, complete either:

a. A new four (4) credit hour training course approved by the Department of Insurance and provided by a Department of Insurance-approved education provider; or

b. An additional one-time one (1) credit hour training course approved by the Department of Insurance and provided by a Department of Insurance-approved education provider on appropriate sales practices and replacement and disclosure requirements under 806 KAR 12:120.

4. A non-resident agent who has completed a training course that is substantially similar to the training course required in subparagraph 3. of this paragraph shall meet the requirements of subparagraph 3. of this paragraph.

(3) A continuing education provider shall:

(a) Within thirty (30) days of completion of a continuing education course, submit electronically through the department's Web site, <http://insurance.ky.gov>, the Continuing Education Certificate of Completion forms and attendance roster for all licensees who satisfactorily completed the course;

(b) Issue Form CE-301, Approved Continuing Education Certificate of Completion to the licensee that successfully completed the course; and

(c) Maintain all attendance rosters and course completion certificates in hard copy or electronic format for at least five (5) years for review, as necessary, by the commissioner.

(4) A licensee shall be responsible for verifying that a continuing education provider has submitted a continuing education certificate of completion form to the department for a continuing education course that the licensee has successfully completed. If the continuing education provider has not submitted a continuing education certificate of completion form in accordance with subsection (3) of this section, the licensee shall submit the continuing education certificate of completion to the department within the timeframes established in KRS 304.9-260 and 304.9-295.

(5) A licensee may carry forward up to twelve (12) excess credit hours to the subsequent continuing education biennium.

(6)

(a) If the department does not receive proof of compliance with a licensee's continuing education requirement on or before the deadline established in KRS 304.9-260 and 304.9-295, the commissioner shall:

1. Make information of the deficiency available to the licensee; and
2. Terminate the license if proof of completion of the deficient hours is not received as prescribed by KRS 304.9-295.

(b) A licensee whose license is terminated pursuant to paragraph (a) of this subsection shall:

1. Have the license reissued within twelve (12) months of the license termination if the licensee:

- a. Satisfies the delinquent continuing education requirements;
- b. Submits a new application with required attachments included within Section 2(1) or Section 3(1) of this administrative regulation for a license; and
- c. Submits the applicable fees established in 806 KAR 4:010; or

2. Complete all licensing requirements specified in KRS Chapter 304, Subtitle 9 and this administrative regulation if the continuing education delinquency remains unsatisfied for twelve (12) months or longer.

(7)(a) A licensee may seek an exemption from continuing education requirements **under KRS 304.9-295(3)(d)** by completing a Form CE AFF 304, Affidavit for Exemption from Continuing Education.

(b) An agent exempted from continuing education requirements in accordance with paragraph (a) of this subsection may withdraw the continuing education exemption and may have all restrictions against selling, soliciting, and negotiating insurance removed from the agent license by:

1. Completing the continuing education requirements for the immediate preceding continuing education biennium;
2. Providing a certification of completion of those continuing education requirements; and
3. Providing a signed, written statement withdrawing the affidavit.

(c) The false use of Form CE AFF 304, Affidavit for Exemption from Continuing Education for any reason, including for the purpose of obtaining an extension for completion of continuing education requirements for a continuing education biennium, shall be a violation of KRS 304.9-295 and shall subject the affiant to suspension or revocation of the agent license.

(8) Members of the Armed Forces who have been mobilized or deployed in support of their duties may request an extension of time for completion, or a waiver, of continuing education requirements, in accordance with KRS 304.9-260(3), by filing with the department the Form MLW-01, Request for Waiver of Renewal Procedures or Exemption from Examination or Extension for Continuing Education Due to Active Military Service Deployment.

Section 6. Business Entity Agent Application and Designation.

(1) **Except as otherwise provided in this chapter,** a business entity applying for a license in accordance with KRS Chapter 304 Subtitle 9 or Subtitle 10~~[, other than a preneed funeral agent license provided under 806 KAR 9:370,]~~ shall submit to the department:

- (a) Form 8301-BE, NAIC Business Entity Insurance License Application; and
- (b) The applicable fee established in 806 KAR 4:010.

(2) A business entity shall submit Form 8305, Business Entity Designation or Termination of Designation Form, to designate or terminate individuals authorized to act under the business entity's license or appointments.

Section 7. Agent Appointment.

(1) Each insurer shall appoint each agent acting on the insurer's behalf within fifteen (15) days of the agent contract's execution or the date on which the agent submits their first application to the insurer, whichever is earlier, in accordance with KRS 304.9-270.

(2) An insurer seeking approval of an agent's appointment shall submit to the department:

- (a) Form 8302-AP, Producer Appointment; and
- (b) The applicable filing fee established in 806 KAR 4:010.

(3) An insurer terminating an appointment pursuant to KRS 304.9-280 shall submit Form 8302-TE, Termination of Producer Appointment within thirty (30) days following the effective date of an agent's termination.

(4) The requirements of this section shall apply to both individual and business entity agent appointments.

Section 8. Record Correction. A licensee shall submit Form 8303, Record Correction Form to the department to make a change or update the licensee's:

- (1) Name;
- (2) Address;
- (3) Phone number;
- (4) Email address; and
- (5) Name in which the licensee is doing business.

Section 9. **Incorporation**~~[Material Incorporated]~~ by Reference.

(1) The following material is incorporated by reference:

- (a) Form CPL-01, "Certificate of Prelicensing Course Completion," (8/2019);
- (b) Form 8301, "NAIC Individual Insurance License Application," ~~(6/2022)~~~~(9/2021)~~;
- (c) Form 8301-BE, "NAIC Business Entity Insurance License Application," (9/2021);
- (d) Form 8302-AP, "Producer Appointment," (9/2021);
- (e) Form 8302-TE, "Termination of Producer Appointment," (9/2021);

(f) Form 8305, "Business Entity Designation or Termination of Designation Form," (9/2021);

(g) Form 8304, "Examination Retake Form," (9/2021);

(h) Form KYP-01, "Provider Approval Application," (9/2021);

(i) Form CE/PL-100, "Course Approval Application," (8/2019);

(j) Form CE/PL-200, "Instructor Approval Application," (8/2019);

(k) Form CE-301, "Approved Continuing Education Certificate of Completion," (9/2021);

(l) Form CE AFF 304, "Affidavit for Exemption from Continuing Education," (9/2021);

(m) Form 8303, "Record Correction Form," (9/2021);

(n) Form MLW-01, "Request for Waiver of Renewal Procedures or Exemption from Examination or Extension for Continuing Education Due to Active Military Service Deployment," (9/2021);

(o) "NAIC Uniform Continuing Education Reciprocity Course Filing Form," (8/2019); and

(p) "Recommended Guidelines for Online Courses", National Association of Insurance Commissioners, 3/2015.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Department's Web site at <https://insurance.ky.gov/ppc/CHAPTER.aspx>.



PUBLIC PROTECTION CABINET

Kentucky Department of Insurance

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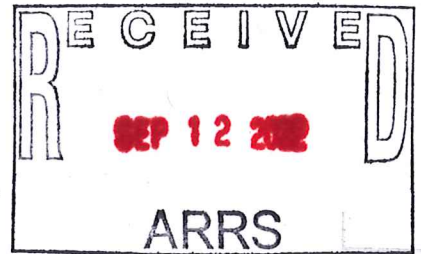
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September 12, 2022

Ms. Emily Caudill, Regulations Compiler

Legislative Research Commission

029, Capitol Annex 702 Capitol Avenue

Frankfort, Kentucky 40601

Dear Ms. Caudill:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 806 KAR 17:585, the Department of Insurance proposes the attached amendment to 806 KAR 17:585.

Sincerely,

Abigail Gall, Executive Advisor

Department of Insurance

500 Mero Street

Frankfort, KY, 40601

SUGGESTED SUBSTITUTE
(Amended After Comments version)

Public Protection Cabinet
Department of Insurance

806 KAR 17:585. Annual report mental health parity nonquantitative treatment limitation compliance.

RELATES TO: KRS 304.1-050(1), 304.17A-660, 304.17A-669, **45 C.F.R. 146.136, 45 C.F.R. 147.160, 42 U.S.C. 300gg-26**

STATUTORY AUTHORITY: KRS 304.2-110, 304.17A-661

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.17A-661 requires an insurer that issues or renews a health benefit plan to annually report to the commissioner the self-compliance with the federal Mental Health Parity and Addiction Equity Act, **42 U.S.C. 300gg-26**, related to nonquantitative treatment limitations between medical and surgical benefits and mental health substance use disorder benefits, to demonstrate that **these[such]** treatment limitations are applied comparably **and requires the commissioner to establish a form for this purpose**. This administrative regulation **establishes[sets forth]** the format and submission time frame for the data reporting requirements in KRS 304.17A-661.

Section 1. Definitions.

- (1) "Commissioner" is defined by KRS 304.1-050(1).
- (2) "Insurer" is defined by KRS 304.17A-005(29).
- (3) "Nonquantitative treatment limitations" as defined by KRS 304.17A-660(3).

Section 2. Data Reporting Requirements.

- (1) An insurer that issues or renews a health benefit plan and is authorized to write health insurance in this state shall submit an annual report containing the information described in KRS 304.17A-661 on the Nonquantitative Treatment Limitation (NQTL) Reporting Submission Form to the commissioner by April 1st of each year for the previous plan year.
- (2) **The report shall** be submitted **electronically through:**
 - (a) Email; or**
 - (b) A portal designated for this purpose[in an electronic format prescribed by the Commissioner].**

Section 3. Material Incorporated by Reference.

- (1) "Nonquantitative Treatment Limitation (NQTL) Reporting Submission Form", 5/2022 is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 pm. This material is also available on the Department's Web site at <https://insurance.ky.gov/ppc/CHAPTER.aspx>.

Nonquantitative Treatment Limitation (NQL) Reporting Submission Form

[Latest update DATE]

- Name, title, and position of persons who performed or participated in the comparative analysis
- Name, title, and position of persons who performed or participated in the comparative analysis
- Name, title, and position of persons who performed or participated in the comparative analysis

NQL Type:	
Classification(s):	
<p>Step 1 – Identify the specific plan or coverage terms or other relevant terms regarding the NQL and a description of all mental health (MH) or substance use disorder (SUD) and medical or surgical benefits (M/S) to which each such term applies in each respective benefits classification</p> <ul style="list-style-type: none"> • Provide a clear description of the specific NQL, plan terms, and policies at issue • Identify which M/S and MH/SUD benefits are subject to the NQL <p>Step 1(a): Provide a clear description of the specific NQL, plan terms, and policies at issue:</p> <p>Step 1(b): Identify the M/S benefits/services for which the NQL is required:</p>	
<p>Step 2 – Identify the factors used to determine that the NQL will apply to mental health or substance use disorder benefits and medical or surgical benefits. Include factors that were identified but ultimately rejected.</p>	<p>Step 1(b): Identify the MH/SUD benefits/services for which the NQL is required:</p>

Step 5 – Provide the specific findings and conclusions reached by the group health plan or health insurance issuer with respect to the health insurance coverage, including any results that indicate that the plan or coverage is or is not in compliance with this section

- *This discussion should include citations to any specific evidence considered and any results of analyses indicating that the plan or coverage is or is not in compliance with MHPAEA*

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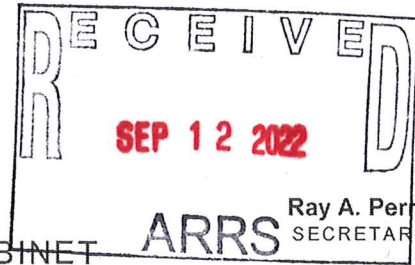


Andy Beshear
GOVERNOR

Jacqueline Coleman
LIEUTENANT GOVERNOR

PUBLIC PROTECTION CABINET

Kentucky Department of Housing,
Buildings and Construction
500 Mero Street, First Floor
Frankfort, KY 40601
Phone: (502) 573-0365



Ray A. Perry
SECRETARY

Rick Rand
COMMISSIONER

Max Fuller
DEPUTY COMMISSIONER

September 9, 2022

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

RE: **815 KAR 8:010** Licensing requirements for master HVAC contractors and
journeyman HVAC mechanics.

Dear Co-Chair West and Co-Chair Hale:

After discussions with Administrative Regulation Review Subcommittee staff of
the issues raised by 815 KAR 8:010, the Department of Housing, Buildings and
Construction proposes the attached amendment to 815 KAR 8:010.

Sincerely,

Jonathon M. Fuller
Deputy Commissioner
Department of Housing,
Buildings & Construction
500 Mero Street, 1st Floor
Frankfort, KY 40601

Staff-suggested Amendment

Final Version 8/17/2022

PUBLIC PROTECTION CABINET

**Department of Housing, Buildings and Construction
Division of Heating, Ventilation, and Air Conditioning**

815 KAR 8:010. Licensing requirements for master HVAC contractors and journeyman HVAC mechanics.

Page 2

Section 1(1)(b)

Lines 4, 5, and 6

After "Company license.", insert "If".

After "a licensee", insert "L".

After "the company,", delete "if the licensee".

After "changes,", insert "the licensee".

Page 2

Section 1(1)(b)2.

Line 8

After "information", insert "L".

Page 2

Section 1(1)(c)1.

Line 11

After "contractor's death", insert "L".

Delete "L".

Page 4

Section 3(2)(a)

Lines 14 and 15

After "Contractor License,", delete "an applicant shall".

After "administrative regulation", insert "L".

Delete "L".

Page 4

Section 3(2)(b)

Lines 16 and 17

After "mechanic license," delete "an applicant shall".

After "administrative regulation", insert "; and".

Delete ".".

Page 4

Section 3(2)(c)

Line 18

After "both licenses," insert "submit the application fee".

Delete the following:

an application fee shall be submitted

Page 7

Section 5(1)(a)3.

Line 6

After "equivalent", insert "¿".

Delete ".".

Page 7

Section 5(1)(b)

Line 12

After "the experience", insert "shown is".

Delete "show nis".

Page 7

Section 5(2)

Line 15

After "in a", insert "continuous".

Delete "contiguous".

Page 7

Section 6(1)

Line 17

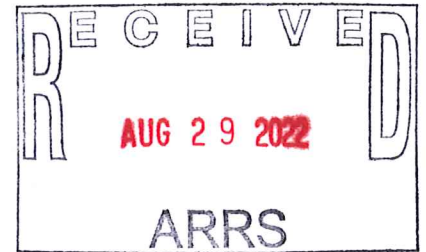
After "request that", insert "his or her".

Page 8

Section 7(1)(b)2.

Line 12

After "mechanic;", delete "and".



CABINET FOR HEALTH AND FAMILY SERVICES
Office of the Secretary

Andy Beshear
Governor

275 East Main Street, 5W-A
Frankfort, KY 40621
502-564-7042
502-564-7091
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Eric C. Friedlander
Secretary

August 29, 2022

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

Re: **902 KAR 8:120**. Leave provisions applicable to employees of local health departments.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 902 KAR 8:120, the Department for Public Health proposes the enclosed suggested amendment to 902 KAR 8:120.

If you have any questions regarding this matter, please contact Julie Brooks, Department for Public Health, at 564-3970, extension 4069.

Sincerely,

Lucie Estill
Staff Assistant
Office of Legislative and Regulatory Affairs

Final, 7-28-2022

SUGGESTED AMENDMENT

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Administration and Financial Management**

902 KAR 8:120. Leave provisions applicable to employees of local health departments.

Page 1

NECESSITY, FUNCTION, AND CONFORMITY

Line 14-15

After "KRS 211.1755(3)(a)1.", insert "requires".
Delete "authorizes".

Page 2

Section 2(1)

Line 15

After "temporary or", insert "an".

Page 3

Section 2(3)

Line 5

After "temporary or", insert "an".

Page 4

Section 2(6)

Line 1

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

Page 6

Section 4(1)

Line 13

After "except", insert "for".

Page 6

Section 4(2)

Line 21

After "except", insert "for".

Page 8

Section 5(3)

Line 13

After "dental", insert a comma.

Page 9

Section 5(5)(c)

Line 2

After "evidence", insert a comma.

Page 10
Section 6(2)
Line 13

After "unpaid family", insert "and medical".

Page 10
Section 6(2)(a)
Line 15

After "months of", insert "service".
Delete "services".

Page 12
Section 8(2)
Line 21

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

Page 16
Section 11(3)
Line 3

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



Andy Beshear
GOVERNOR

CABINET FOR HEALTH AND FAMILY SERVICES

Eric Friedlander
SECRETARY

275 East Main Street, 5W-A
Frankfort, Kentucky 40621
Phone: (502) 564-7042
Fax: (502) 564-7091



September 12, 2022

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

Re: **907 KAR 23:020**. Reimbursement for outpatient drugs.

Dear Co-Chairs West and Hale:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 907 KAR 23:020, the Department for Medicaid Services proposes the enclosed suggested substitute to 907 KAR 23:020.

If you have any questions regarding this matter, please contact Jonathan Scott, at 502-564-4321, extension 2015.

Sincerely,

Lucie Estill
Staff Assistant
Office of Legislative and Regulatory Affairs

SUGGESTED SUBSTITUTE

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations**

907 KAR 23:020. Reimbursement for outpatient drugs.

RELATES TO: KRS 205.5510 to 205.5520, 205.560, 205.561, 205.5631, 205.5632, 205.5634, 205.5636, 205.5638, 205.5639, 205.622, 205.6316(4), 217.015, 42 C.F.R. 440.120, 447.45, 447.500 - 447.520, 42 U.S.C. 256b, 1396a - 1396d, 1396r-8

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.5514(1)(b), 205.560, 205.561(2), 205.6316(4), 205.647(5), 42 U.S.C. 1396a(a)(30), 42 U.S.C. 1396r-8

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. KRS 205.561(2) and 205.6316(4) require the department to promulgate an administrative regulation to establish the professional dispensing fee for covered drugs. This administrative regulation establishes the Medicaid Program reimbursement requirements, including the professional dispensing fee, for covered outpatient drugs dispensed to all enrolled Medicaid recipients[~~who are not enrolled with a managed care organization~~].

Section 1. Reimbursement. Reimbursement to a pharmacy or medical provider participating in the Medicaid Program for a covered outpatient drug provided to an eligible recipient shall be determined in accordance with the requirements established in this section.

(1) A rebate agreement in accordance with 42 U.S.C. 1396r-8(a) shall be signed by the drug manufacturer, or the drug shall be provided based on an exemption from the rebate requirement established by 907 KAR 23:010, Section 5(3).

(2) A pharmacy claim shall meet the point of sale (POS) requirements for services in accordance with 907 KAR 1:673.

(3) Reimbursement shall not be made for more than one (1) prescription to the same recipient during the same time period for a drug with the same:

(a) National Drug Code (NDC); or

(b) Drug or active ingredient name, strength, and dosage form.

(4) A timely claim payment shall be processed in accordance with 42 C.F.R. 447.45.

(a) In accordance with 42 C.F.R. 447.45, a claim shall be submitted to the department within twelve (12) months of the date of service.

(b) The department shall not reimburse for a claim submitted to the department after twelve (12) months from the date of service unless the claim is for a drug dispensed to an individual who was retroactively determined to be eligible for Medicaid.

(c) The department shall not reimburse a claim for a drug dispensed to an individual who was retroactively determined to be eligible for Medicaid after 365 days have lapsed from the date that the department issued the notice of retroactive eligibility.

(5) Reimbursement shall be denied if:

(a) The recipient is ineligible on the date of service;

(b) The drug is excluded from coverage in accordance with 907 KAR 23:010; or

(c) Prior authorization is required by the department and the request for prior authorization has not been approved prior to dispensing the drug, except in an emergency supply situation.

(6) Pursuant to KRS 205.622, prior to billing the department, a provider shall submit a bill to a third party payer if the provider has knowledge that the third party payer may be liable for payment.

- (a) If a provider is aware that a Medicaid recipient has additional insurance or if a recipient indicates in any manner that the recipient has additional insurance, the provider shall submit a bill to the third party in accordance with KRS 205.622.
- (b) A provider who is aware that a recipient may have other insurance, but the other insurance is not identified on the medical assistance identification card or by the recipient, shall notify the department's fiscal agent of the potential third-party liability.
- (7) There shall be no copayment or cost-sharing for an outpatient drug [Drug copayment requirements and provisions shall be as established in 907 KAR 1:604].
- (8) If a payment is made for a drug that was not administered or dispensed in accordance with 907 KAR 23:010 or the payment was not appropriately reimbursed as required by this administrative regulation, the provider shall refund the amount of the payment to the department or the department may, at its discretion, recoup the amount of the payment.
- (9) Adherence to the requirements established in this section shall be monitored through an on-site audit, post payment review of the claim, a computer audit, or an edit of the claim.

Section 2. Reimbursement Methodology.

- (1) Drug cost shall be determined in the pharmacy program using drug pricing and coding information obtained from nationally recognized comprehensive drug data files with pricing based on the actual package size utilized.
- (2) Lowest of Logic. Except as provided in Section 4 of this administrative regulation, covered outpatient drug cost shall be reimbursed at the lowest of the:
- (a) National Average Drug Acquisition Cost or NADAC, plus the professional dispensing fee, as established in Section 3 of this administrative regulation;
 - (b) Wholesale acquisition cost or WAC, plus the professional dispensing fee, as established in Section 3 of this administrative regulation;
 - (c) Federal upper limit or FUL, plus the professional dispensing fee, as established in Section 3 of this administrative regulation;
 - (d) Maximum allowable cost or MAC, plus the professional dispensing fee, as established in Section 3 of this administrative regulation; or
 - (e) The provider's usual and customary charge to the public, as identified by the claim charge [price].
- (3) A clotting factor shall be reimbursed via the lowest of logic established in subsection (2) of this section and shall include the Average Sales Price plus six (6) percent, plus the professional dispensing fee, as established in Section 3 of this administrative regulation.
- (4) Pursuant to KRS 205.5510 to 205.5520:
- (a) Reimbursement methodologies for the managed care population shall be subject to the terms of the awarded contract to administer the single pharmacy benefits manager or PBM for the managed care population.
 - (b) The single PBM for the managed care population shall not discriminate against 340B contract pharmacies via any reimbursement methodologies utilized.

Section 3. Professional Dispensing Fee.

- (1) Effective April 1, 2017, the professional dispensing fee for a covered outpatient drug prescribed by an authorized prescriber and dispensed by a participating pharmacy provider in accordance with 907 KAR 23:010, and pursuant to a valid prescription shall be \$10.64 per pharmacy provider per recipient per drug per month.
- (2) The professional dispensing fee for a compounded drug shall be \$10.64 per pharmacy provider per recipient per drug reimbursed up to three (3) times every thirteen (13) days.
- (3)
- (a) As warranted by the applicable standard of care, the professional dispensing fee for a qualifying drug that is dispensed for the treatment of a substance use disorder shall be \$10.64 per pharmacy provider per recipient per drug reimbursed once every seven (7) days.
 - (b) Any additional dispenses after the first dispensing shall be warranted by the applicable standard of care.

Section 4. Reimbursement Limitations.

(1) Emergency supply. Dispensing of an emergency supply of a drug shall be made outside of the prescriber's normal business hours and as permitted in accordance with 907 KAR 23:010.

(2) Partial fill. If the dispensing of a drug results in partial filling of the quantity prescribed, including an emergency supply, reimbursement for the drug ingredient cost for the actual quantity dispensed in the partial fill and the completion fill for the remainder of the prescribed quantity shall:

(a) Utilize the lowest of logic established by Section 2 of this administrative regulation; and

(b) Include payment of only one (1) professional dispensing fee, which shall be paid at the time of the completion fill.

(3) Maintenance drugs. The department shall not reimburse for a refill of a maintenance drug prior to the end of the dispensing period established by 907 KAR 23:010 unless the department determines that it is in the best interest of the recipient.

(4) For a nursing facility resident meeting Medicaid nursing facility level of care criteria, and in accordance with 201 KAR 2:190 and 902 KAR 55:065, an unused drug paid for by Medicaid shall be returned to the originating pharmacy and the department shall be credited for the drug ingredient cost.

(5) For a Medicaid recipient participating in a hospice program, payment for a drug shall be in accordance with 907 KAR 1:340.

~~(6) [340B Pharmacy Transactions.]~~

~~[(a)] [A pharmacy dispensing drugs purchased through the 340B Program pursuant to a 340B eligible prescription from a covered entity shall bill the department no more than the actual 340B acquisition cost, plus the professional dispensing fee.]~~

~~[(b)] [For a 340B purchased drug dispensed by a pharmacy, the lowest of logic shall include the 340B ceiling price.]~~

~~[(c)] [A drug dispensed by a 340B contract pharmacy shall not be eligible as a 340B transaction and shall be reimbursed in accordance with the lowest of logic as required by Section 2 of this administrative regulation plus the professional dispensing fee.]~~

~~[(7)] Physician administered drugs (PAD).~~

~~(a) Federal rebate required. Only covered PAD products that are federally rebateable pursuant to a manufacturer rebate agreement shall be reimbursed.~~

~~(b) Non-340B purchased PAD. Reimbursement for drug cost for a drug administered by a physician or the physician's authorized agent in an office or outpatient clinic setting, not purchased through the 340B Program, and submitted for reimbursement as a medical benefit shall be reimbursed only for the drug cost by the lowest of logic required by Section 2 of this administrative regulation, which shall include the average sales price (ASP) plus six (6) percent. A professional dispensing fee shall not be paid for PAD.~~

~~(c) 340B purchased PAD. For a drug purchased through the 340B Program and administered by a physician or the physician's authorized agent in an office or outpatient clinic setting, and submitted for reimbursement as a medical benefit, the lowest of logic required by Section 2 of this administrative regulation shall include the 340B ceiling price. The covered entity shall bill no more than the actual 340B acquisition cost. A professional dispensing fee shall not be paid for PAD.~~

~~[(8)] [Non-340B hemophilia products. Clotting factors acquired outside of the 340B Program shall be reimbursed by the lowest of logic required by Section 2 of this administrative regulation, which shall include the average sales price (ASP) plus six (6) percent. The professional dispensing fee established by Section 3 of this administrative regulation shall also be paid.]~~

Section 5. 340B Pharmacy Transactions for Fee-For-Service.

(1) A pharmacy dispensing drugs purchased through the 340B Program pursuant to a 340B eligible prescription from a covered entity shall bill the department no more than the actual 340B acquisition cost, plus the professional dispensing fee.

(2) For a 340B purchased drug dispensed by a pharmacy, the lowest of logic shall include the 340B ceiling price.

(3) A drug dispensed by a 340B contract pharmacy shall not be eligible as a 340B transaction and shall be reimbursed in accordance with the lowest of logic as required by Section 2 of this administrative regulation plus the professional dispensing fee.

Section 6. 340B Pharmacy Transactions for Managed Care.

(1) A pharmacy dispensing drugs purchased through the 340B Program pursuant to a 340B eligible prescription from a covered entity shall bill the department and be reimbursed pursuant to Section 2 of this administrative regulation.

(2) A 340B covered entity pharmacy shall notify the department on its own behalf and on behalf of any contracted pharmacy if it intends to use 340B drugs to fill prescriptions for qualified pharmacy claims within the managed care Medicaid program.

(3)

(a) A covered entity that intends to use 340B drugs to fill prescriptions for qualified pharmacy claims shall submit a complete and accurate ["/"]Kentucky Medicaid 340B Participation **Notice Form**["/"].

1. A form shall be filed by the fifteenth (15th) of the last month of a quarter in order to be effective for that quarter. A form that is submitted later than the fifteenth (15th) of the last month of a quarter shall be effective for the following quarter and until revoked.

2. The form shall be effective until revoked pursuant to subsection (4) of this section.

(b) Any covered entity that no longer intends to participate and use 340B drugs to fill prescriptions for qualified pharmacy claims shall submit a complete and accurate ["/"]Kentucky Medicaid 340B Nonparticipation **Notice Form**["/"].

(4) All submissions shall be via electronic mail to an email account designated on the Kentucky Pharmacy Program website located at: <https://chfs.ky.gov/agencies/dms/dpo/ppb/Pages/default.aspx>.

(5) The following entities, as relevant, shall review each previous quarter's eligible pharmacy claims:

(a) The covered entity, or the entity's designated claims administrator; and

(b) The contract pharmacy, or the entity's designated claims administrator.

Section 7. The maximum allowable cost, or MAC, shall be determined by taking into account each drug's cost, rebate status (non-rebateable or rebateable) in accordance with 42 U.S.C. 1396r-8(a), marketplace status (obsolete, terminated, or regional availability), equivalency rating (A-rated), and relative comparable pricing. Other factors considered shall include clinical indications of drug substitution, utilization, and availability in the marketplace.

(1) Drug pricing resources used to compare estimated acquisition costs for multiple-source drugs shall include comprehensive data files maintained by a vendor under contract to the department, such as:

(a) NADAC as published by CMS;

(b) WAC, manufacturer's price list, or other nationally recognized sources;

(c) The Average Manufacturers Price for 5i Drugs as reported by CMS;

(d) ASP as published by CMS;

(e) Nationally recognized drug file vendors approved for use at a federal level and that have been approved by the department;

(f) Pharmacy providers; or

(g) Wholesalers.

(2) The department shall maintain a current listing of drugs and their corresponding MAC prices accessible through the department's pharmacy Web page.

(3) The process for a pharmacy provider to appeal a MAC price for a drug shall be as established in this subsection.

(a) The pharmacy provider shall email or fax a completed Kentucky Medicaid MAC Price Research Request Form to Kentucky's authorized agent in accordance with the instructions on the form.

(b) An appeal of a MAC price for a drug shall be investigated and resolved within three (3) business days.

(c) If available, the provider shall be supplied with the name of one (1) or more manufacturers who have a price comparable to the MAC price.

(d) The MAC price and effective date of that price shall be adjusted accordingly, retroactive to the date of service for the claim in question, if:

1. It is determined that a manufacturer does not exist in the price range referenced in paragraph (c) of this subsection; or
2. The provider is able to document that despite reasonable efforts to obtain access, he or she does not have access to the one (1) or more manufacturers supplied to the provider.

(e) If an adjusted MAC price becomes effective, the provider shall be informed that the claim may be rebilled for the price adjustment.

Section 8.~~[Section—6.]~~ Federal Approval and Federal Financial Participation. The department's reimbursement for services pursuant to this administrative regulation shall be contingent upon:

- (1) Receipt of federal financial participation for the reimbursement; and
- (2) Centers for Medicare and Medicaid Services' approval for the reimbursement.

Section 9.~~[Section—7.]~~ Incorporation by Reference.

(1) The following ~~**material is**~~~~**documents are**~~ incorporated by reference:

- (a) "Kentucky Medicaid MAC Price Research Request Form", 2012;~~[, is incorporated by reference]~~~~[.]~~
- (b) "Kentucky Medicaid 340B Participation **Notice** Form", 2022; ~~**and**~~~~[.]~~
- (c) "Kentucky Medicaid 340B Nonparticipation **Notice** Form", 2022.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at:

- (a) The Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m.; or
- (b) Online at the department's Web site at <https://chfs.ky.gov/agencies/dms/dpo/ppb/Pages/default.aspx>~~[http://www.chfs.ky.gov/dms/incorporated.htm]~~.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.