

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

February 5, 2025

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

Re: 30 KAR 2:011. Repeal of 30 KAR 2:010

Dear Co-Chairs West and Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 30 KAR 2:011, the Office of the Secretary of State proposes the attached amendment to 30 KAR 2:011

Sincerely,

Jennifer Scutchfield
Assistant Secretary of State

Final, 1-27-2025

SUGGESTED SUBSTITUTE

CABINET FOR GENERAL GOVERNMENT
Department of State
Office of Elections

30 KAR 2:011. Repeal of 30 KAR 2:010.

RELATES TO: KRS 14.025, 118.105

STATUTORY AUTHORITY: KRS 13A.120, 13A.310, 118.105

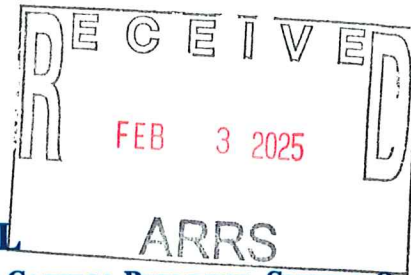
NECESSITY, FUNCTION, AND CONFORMITY: The administrative regulation repealed herein has been superseded by **KRS 118.105[statute]**. KRS 13A.310(1) establishes a duty to repeal an ordinary administrative regulation if it is desired that it no longer be effective.

Section 1. 30 KAR 2:010. Certification of vacancy in nominations, is hereby repealed.

CONTACT PERSON: Jennifer Scutchfield, Assistant Secretary of State, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 564-3490, fax (502) 564-5687, email jscutchfield@ky.gov.



**COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL**



**RUSSELL COLEMAN
ATTORNEY GENERAL**

**CAPITOL BUILDING, SUITE 118
700 CAPITAL AVENUE
FRANKFORT, KY 40601
(502) 696-5300
FAX: (502) 564-2894**

February 3, 2025

Senator Stephen West
Representative Derek Lewis
Legislative Research Commission
083 Capitol Annex
702 Capitol Avenue
Frankfort, Kentucky 40601

Dear Co-Chairs:

After consideration of the issues raised by 40 KAR 5:010, the Office of Administrative Hearings proposes the attached suggested substitute to this ordinary regulation.

Sincerely,

J. Christopher Bowlin

Executive Director
Office of Administrative Hearings

SUGGESTED SUBSTITUTE

**OFFICE OF ATTORNEY GENERAL
Department of Law
Office of Administrative Hearings**

40 KAR 5:010. Hearing officer required training.

RELATES TO: KRS 13B.030(4), **15.111**

STATUTORY AUTHORITY: KRS 13B.030(4)

NECESSITY, FUNCTION, AND CONFORMITY: ~~[This administrative regulation is necessary to comply with—]~~KRS 13B.030(4) ~~[which—]~~requires the ~~office~~[division] to establish by administrative regulation,~~regulations~~ minimum standards concerning length of training, course content, and instructor qualifications for initial training and continuing education of hearing officers. ~~[The function of—]~~This administrative regulation ~~establishes~~[is to establish] education requirements for hearing officers.

Section 1. Definitions. (1) "Agency" is defined by KRS 13B.010(1).

(2) "Approved training" means initial instruction or continuing education that has been approved by the office in accordance with this administrative regulation.

(3) "Credit" means a unit equal to one (1) instructional hour used for measuring initial training requirements and continuing education requirements.

(4) "Educational year" means the reporting period for mandatory continuing education requirements beginning on July 1 of each year and ending on June 30 of the successive year for which satisfaction of the continuing education training requirements is being calculated.

~~[(1)] ["Classroom hour" means fifty (50) minutes of actual classroom instruction.]~~

~~(5)[(2)] "Hearing officer" is defined by KRS 13B.010(5)[KRS 13B.010(7)].~~

(6) "Instructional hour" means fifty (50) minutes of instruction. The instruction can be presented in person or by other technological transmission methods including video recording, DVD, audio recording, CD-ROM, computer online services, internet live-stream, internet video-on-demand service, or other appropriate technology. The instruction can be live or pre-recorded.

(7) "Office" is defined by KRS 13B.010(6).

(8) "Sponsor" means the person or entity presenting the training course. The sponsor and the instructor can be one in the same.

(9) "Training course" means initial hearing officer instruction or a continuing education that is in accordance with this administrative regulation.

Section 2. Training Requirements. In addition to any agency-specific training or requirements, an individual shall complete the initial training requirements and satisfy the continuing training requirements of this administrative regulation in order to serve as a hearing officer.~~[Section 2.] [A person shall not serve as a hearing officer unless he has completed eighteen (18) classroom hours, including agency specific training, of initial hearing officer instruction, and six (6) classroom hours of continuing education instruction as provided by Sections 3 and 5 of this administrative regulation.]~~

Section 3. Initial Training Requirements. The initial hearing officer training requirement shall be **at least** eighteen (18) instructional hours of ~~[approved—]~~training **approved as established in Sections 5 and 6 of this administrative regulation.**

Section 4. Continuing Education Training Requirements. (1) A hearing officer shall earn a minimum of six (6) credits of ~~[approved]~~ training, **approved as established in Sections 5 and 6 of this administrative regulation**, each educational year.

(2) A hearing officer who earns more than six (6) credits for an educational year may carry forward up to twelve (12) credits to satisfy the continuing education requirements for the next two (2) educational years.

(3) Any excess credits earned in an educational year greater than twelve (12) credits shall not be carried forward.

(4) Credits shall not be carried forward more than two (2) years.

Section 5. Qualifying Standards for Training Courses. Training courses shall consist of a topic or topics that contribute to the skills necessary to serve as a competent hearing officer such as:

- (1) Adequate notice;
- (2) Administrative law and procedure;
- (3) Application of KRS Chapter 13B;
- (4) Case management;
- (5) Conduct and control of hearings;
- (6) Credibility of witnesses;
- (7) Decision writing;
- (8) Due process;
- (9) Ethics;
- (10) Evidence;
- (11) Findings and evidence;
- (12) Intervention;
- (13) Mediation; and
- (14) Prehearing conferences and discovery.

Section 6. Approvals and Instructor Qualifications. (1) A training course shall only qualify for credit if **the course[~~it~~]** is approved by the office as **established in~~[meeting the standard of]~~** Section 5 of this administrative regulation.

(2) Any person, entity, or sponsor of a training course seeking to qualify **the course[~~it~~]** for credit shall provide to the office for evaluation:

- (a) An outline of the course in sufficient detail to disclose the pertinent material that is to be taught;
- (b) The work experience, credentials, and educational background of the training course instructor; and
- (c) Any other information requested by the office to determine the appropriateness of the course.

(3) A hearing officer training course shall be conducted substantially as submitted for approval by the office.

(4) Training course instructor. **The instructor shall have:**

(a) ~~[The instructor shall have]~~ Substantial, recent experience and demonstrated ability in offering the training for which credit is sought; and

(b) ~~[The instructor shall have]~~ the education, training, or experience to provide training in the subject matter of the presentation. For example, appropriate education, training, or experience **relevant to administrative hearings or the practice of administrative law** may be demonstrated by having:

1. Taught or conducted an approved training course within the past two (2) years;
2. ~~[;]~~ Academic credentials or qualifications;
3. ~~[;]~~ Writings or publications authored by the individual; ~~[;]~~ or
4. Public speaking or panel presentations **[involving subject matters relevant to administrative hearings or the practice of administrative law]**.

(5) It shall be the responsibility of the individual seeking credit for the satisfaction of training requirement to **verify[ensure]** that the course has been approved by the office. The individual seeking credit shall bear the risk of seeking approval for courses already taken without pre-approval.

Section 7, Compliance.

(1) An individual shall not serve as a hearing officer in an administrative hearing unless compliant with the training requirements of this administrative regulation.

(2) If the agency utilizes a hearing officer not provided by the office, the agency shall ensure that the hearing officer is **at a minimum** compliant with the training requirements of this administrative regulation[, **at a minimum**].~~[Section 3.] [Approved Instruction. Approved instruction for hearing officers shall be the administrative hearings subjects established by this section.]~~

~~[(1)] [Instruction in the conduct of administrative hearings in each of the following areas:]~~

~~[(a)] [Administrative law and procedure. The course shall cover the:]~~

~~[1.] [History, origin, source, and limitations of agency authority to act;]~~

~~[2.] [Role of hearing officials;]~~

~~[3.] [Adjudicatory function as opposed to and differentiated from the regulatory and enforcement functions of an agency; and]~~

~~[4.] [Regulatory and enforcement processes of agencies.]~~

~~[(b)] [Due process. The course shall cover the fundamentals of constitutional due process concepts of adequate notice and a reasonable opportunity to be heard, and shall emphasize constitutional restrictions on notice and a hearing.]~~

~~[(c)] [Conduct and control of hearings. The course shall cover the following items and include applicable documentary samples:]~~

~~[1.] [The role of prehearing conferences and discovery;]~~

~~[2.] [Opening a hearing;]~~

~~[3.] [The conduct of a hearing;]~~

~~[4.] [The order of proof;]~~

~~[5.] [Marking and handling exhibits;]~~

~~[6.] [Ruling on objections;]~~

~~[7.] [Swearing in of witnesses;]~~

~~[8.] [Proper demeanor, dress, formality, and decorum;]~~

~~[9.] [Making the hearing accessible to handicapped persons; and]~~

~~[10.] [Closing a hearing.]~~

~~[(d)] [Credibility. The course shall cover:]~~

~~[1.] [Judging demeanor and forthrightness of witnesses, appearance and body language;]~~

~~[2.] [Sexual, racial and cultural bias, and prejudice; and]~~

~~[3.] [Judging common sense of answers, consistency, context and flow.]~~

~~[(e)] [Ethics. The course shall include:]~~

~~[1.] [The principles of:]~~

~~[a.] [Conflict of interest;]~~

~~[b.] [Ex parte contact;]~~

~~[2.] [Ethical standards to which hearing officers, judges and lawyers are held; and]~~

~~[3.] [A review of the ethical code applicable to hearing officers, judges and lawyers.]~~

~~[(f)] [Case file and docket management. The course shall cover the principles of:]~~

~~[1.] [Case file composition, handling, docketing and tracking;]~~

~~[2.] [Keeping exhibit and witness lists;]~~

- [3.] [Motion practice;]
 - [4.] [Setting discovery deadlines;]
 - [5.] [Continuances;]
 - [6.] [Reviewing the record, hearing decision time limitations and extensions thereof.]
- [(g)] [Evidence in administrative proceedings. The course shall include a review of the following items, and applicable samples of documentary and testimonial evidence;]
- [1.] [Competency;]
 - [2.] [Documentary evidence;]
 - [3.] [Demonstrative evidence;]
 - [4.] [Hearsay;]
 - [5.] [Privileges;]
 - [6.] [Work product rule;]
 - [7.] [Oaths and swearing;]
 - [8.] [Establishing a foundation;]
 - [9.] [Cumulative, proffered, and confidential evidence;]
 - [10.] [Official notice;]
 - [11.] [Handling evidence; and]
 - [12.] [Standards and burdens of proof applicable in administrative proceedings.]
- [(h)] [Decision writing. The course shall cover the following items and include written samples;]
- [1.] [The function and purpose of the written decision;]
 - [2.] [The basic administrative decision format;]
 - [3.] [How to differentiate between factual findings and legal conclusions;]
 - [4.] [How to identify and establish jurisdiction over subject matter and parties;]
 - [5.] [How to establish the procedural history;]
 - [6.] [How to use an appropriate format; and]
 - [7.] [A review of writing style, tone and organization.]
- [(2)] [The course shall include training in the application of KRS Chapter 13B, and shall consist of instruction in each of the following areas;]
- [(a)] [Conflict of interest. The course shall cover conflicts of interest as addressed in KRS 13B.040 including;]
- [1.] [Who is governed;]
 - [2.] [What kind of contact is prohibited;]
 - [3.] [Prohibited actions or conduct, including serving as, or assisting or advising a hearing officer;]
 - [4.] [The mechanics of withdrawal;]
 - [5.] [Determination of who is an investigator or prosecutor who acted in the same proceeding, or the preadjudicative stage of an administrative hearing; and]
 - [6.] [The standard to be applied.]
- [(b)] [Ex parte contact. The course shall cover improper ex parte contact as defined in KRS 13B.100 including;]
- [1.] [The concept of "substantive" as opposed to "procedural" inquiries and a determination of the "merits" of an administrative action;]
 - [2.] [Who is prohibited from making ex parte inquiries;]
 - [3.] [Under what circumstances hearing officials and assistants may talk ex parte with "parties" and other "interested persons";]
 - [4.] [Specific instruction on how to handle ex parte contact, how to train support staff and the method required to document ex parte contact in the record;]

~~[5.] [Contacts by agency and outside counsel, contacts by the hearing officer and contacts with the agency head or other agency personnel;]~~

~~[6.] [Case studies and written materials, including ethical opinions from the Bar, relevant case decisions, and the relevant judicial canons and rules of professional conduct applicable to judges and attorneys.];]~~

~~[(c)] [Adequate notice. The course shall cover the contents and effect of the notice of hearing required by KRS 13B.050, including:]~~

~~[1.] [Scheduling and time limits;]~~

~~[2.] [Improper mailing;]~~

~~[3.] [Incomplete or improper notice content; and]~~

~~[4.] [The effect of violation of KRS 13B.050 and remedies therefore.]]~~

~~[(d)] [Intervention. The course shall cover intervention under KRS 13B.060 and include sample petitions and orders:]~~

~~[1.] [Mandatory and permissive intervention;]~~

~~[2.] [Statutory rights to intervention;]~~

~~[3.] [The standard for permissive intervention;]~~

~~[4.] [The procedure for petitioning to intervene;]~~

~~[5.] [Structuring the intervention; and]~~

~~[6.] [Writing the order permitting or denying intervention.]]~~

~~[(e)] [Prehearing conferences and discovery. The course shall cover the nature, scope and purpose of a prehearing conference under KRS 13B.070 including:]~~

~~[1.] [Its relation to settlement, alternative dispute resolution, discovery and the hearing process;]~~

~~[2.] [Methods of managing and scheduling prehearing conferences that will promote the orderly and prompt conduct of a hearing, including the filing of motions, prehearing memorandums, witness and exhibit lists, briefs, proposed findings, conclusions, and recommended orders;]~~

~~[3.] [Discovery available under KRS 13B.050, 13B.080 and 13B.090;]~~

~~[4.] [Discovery orders and problems;]~~

~~[5.] [Issuance, quashing and enforcement of subpoenas and the standards therefore;]~~

~~[6.] [The obligation to reveal documentary or tangible evidence and exculpatory evidence in the agency's possession, and the consequences of the failure to do so; and]~~

~~[7.] [Written samples of prehearing conference orders, motions and subpoenas.]]~~

~~[(f)] [Hearing procedures and compiling the record. The course shall cover and include material relating to the following items:]~~

~~[1.] [Methods to ensure the orderly and prompt conduct of the hearing under KRS 13B.080;]~~

~~[2.] [The obligation to have testimony given under oath, and the swearing of witnesses;]~~

~~[3.] [Briefs;]~~

~~[4.] [Argument;]~~

~~[5.] [Testimony;]~~

~~[6.] [Marking and admission of evidence;]~~

~~[7.] [Granting defaults, and the procedures and standards for rendering defaults;]~~

~~[8.] [The meaning and composition of the record under KRS 13B.130; and]~~

~~[9.] [The method of compiling the record for review, including submission in writing, and proffers of evidence.]]~~

~~[(g)] [Findings and evidence. The admissibility of hearsay and standards therefor. The course shall:]~~

~~[1.] [Cover the basic evidentiary standard for all types of evidence;]~~

~~[2.] [Constitutional, statutory grounds for exclusion and privileges recognized in Kentucky law;]]~~

- [3.] [Ruling on and memorializing objections; and]
- [4.] [Taking "official notice" of facts.]
- [(h)] [The recommended order and writing for judicial review. The course shall cover the following items and include samples of written findings, conclusions and recommended orders:]
 - [1.] [The nature, scope, and function of findings and conclusions under KRS 13B.110;]
 - [2.] [The interrelation with evidentiary rulings under KRS 13B.050 and 13B.090;]
 - [3.] [Compilation of the record under KRS 13B.130;]
 - [4.] [The standards for judicial review under KRS 13B.150;]
 - [5.] [The obligation to base findings only upon the evidence in the record, under KRS 13B.090(1); and]
 - [6.] [Time limits, extensions, and the consequences of the failure to file a recommended order within statutory time periods.]
- [(3)] [Agency specific training. Instruction shall include agency specific training that:]
 - [(a)] [Covers the specific federal and state authorizing statutes and regulations under which a hearing officer will conduct hearings; and]
 - [(b)] [Has been approved by the agency head and the division.][Section 4.]
- [(1)] [An initial hearing officer instruction or continuing education course shall:]
 - [(a)] [Comply with the provisions of Sections 3 and 5 of this administrative regulation;]
 - [(b)] [Consist of topics that will enable a hearing officer to:]
 - [1.] [Acquire, maintain, and improve his skills as a hearing officer; and]
 - [2.] [Serve the public; and]
 - [(c)] [Consist of a minimum of two (2) hours.]
- [(2)][(a)] [Credit shall be granted for completion of an initial hearing officer instruction or continuing education course that has been approved by the division.]
 - [(b)] [A sponsor of an education course shall submit for approval by the division:]
 - [1.] [An outline of the course in sufficient detail to disclose the pertinent material that is to be taught; and]
 - [2.] [The work experience, credentials, and education background of the instructor of the course.][Section 5.] [Continuing Education.]
- [(1)] [An education year shall begin on July 1, and end on June 30 of the next calendar year.]
- [(2)] [Credit shall be given for continuing education courses that have been completed on or before June 30.]
- [(3)] [For each education year, a person certified as a qualified hearing officer pursuant to KRS Chapter 13B shall complete a minimum of six (6) credit hours of continuing education courses that have been approved by the division.]
- [(4)] [A hearing officer who earns more than six (6) credits of continuing education may carry forward a total twelve (12) credits.]
- [(5)] [A total of six (6) of the continuing education credits earned in an education year may be credited toward satisfaction of the continuing education requirement for each of the two (2) continuing education years following the education year in which they were earned.]
- [(6)] [Continuing education credits earned in an education year in excess of twelve (12) credits shall:]
 - [(a)] [Not be carried forward; and]
 - [(b)] [Remain on the hearing officer's record.]
- [(7)] [On or before July 1 of each year, a person certified as a qualified hearing officer under KRS Chapter 13B in this Commonwealth, shall certify to the director the number of credit hours of continuing education hours completed.]

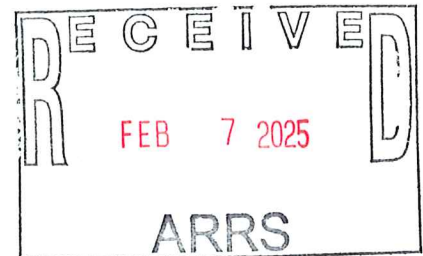
~~[(8)][(a)] [Certification may be submitted to the director upon completion of the continuing education activity at any time during the education year.]~~

~~[(b)] [Certification shall not be submitted later than the July 15th immediately following the education year in which the activities were completed.]~~

~~[(9)][(a)] [If a hearing officer fails to comply with the provisions of this section, the division director shall notify him as soon as practicable on or after August 1 of the same year calendar year.]~~

~~[(b)] [The authority to hear administrative actions under KRS Chapter 13B shall be suspended until such time as the continuing education requirements are met.]~~

CONTACT PERSON: J. Christopher Bowlin, Executive Director, Office of Administrative Hearings within the Department of Law, Office of Attorney General, 700 Capital Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax (502) 564-2894, email christopher.bowlin@ky.gov.



Andy Beshear
GOVERNOR

Jacqueline Coleman
LIEUTENANT GOVERNOR

PUBLIC PROTECTION CABINET
Kentucky Department of Professional Licensing
Kentucky Board of Speech-Language Pathology and Audiology
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Ray A. Perry
SECRETARY

DJ Wasson
DEPUTY SECRETARY

Kristen Lawson
COMMISSIONER

February 4, 2025

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

RE: Staff Suggested Amendments
201 KAR 17:120E

Dear Co-Chairs West and Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 17:120E, the Kentucky Board of Speech-Language Pathology and Audiology proposes the attached amendments to 201 KAR 17:120E.

Sincerely,

Sara Boswell Janes

Sara Boswell Janes
Staff Attorney III
Public Protection Cabinet
Department of Professional Licensing
as Board Counsel on behalf of the Kentucky
Board of Licensed Professional Counselors
500 Mero Street
Frankfort, Kentucky 40601

Final, 1-28-2025

SUGGESTED SUBSTITUTE

BOARDS AND COMMISSIONS

Board of Speech-Language Pathology and Audiology

201 KAR 17:120E. Audiology and Speech-Language Pathology Interstate Compact.

EFFECTIVE: November 26, 2024

RELATES TO: KRS 334A.188

STATUTORY AUTHORITY: KRS 334A.080(3), 334A.188

NECESSITY, FUNCTION, AND CONFORMITY: KRS 334A.188, Section 15.B.1. requires the Board of Speech-Language Pathology and Audiology to review any rule adopted by the Audiology and Speech-Language Pathology Interstate Compact pursuant to Section 10 of KRS 334A.188 within sixty (60) days of adoption for the purpose of filing the rule as an emergency administrative regulation pursuant to KRS 13A.190 and for filing the rule as an accompanying ordinary administrative regulation pursuant to KRS Chapter 13A. This administrative regulation incorporates by reference the rules adopted by the **Audiology and Speech-Language Pathology Interstate[Counseling]** Compact.

Section 1. The Board of Speech-Language Pathology and Audiology shall comply with all rules of the Audiology and Speech-Language Pathology Interstate Compact, which includes the Audiology and Speech-Language Pathology Interstate Compact Rules as of **October 7, 2023[April 17, 2023]**.

Section 2. Incorporation by Reference.

(1) The following material is incorporated by reference: "The Audiology and Speech-Language Pathology Interstate Compact Rules", October 7, 2023, and as revised.

(a) Chapter 1 – Rule on Definitions, adopted April 17, 2023;

(b) Chapter 2 – Rule on Data System Reporting Requirements, adopted April 17, 2023; and

(c) Chapter 3 – Rule on Implementation of Criminal Background Check Requirement, adopted October 7, 2023.

(2)

(a) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board **of** Speech-Language Pathology and Audiology, 500 Mero Street, 2 SC 32, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(b) This material may also be obtained on the Board of Speech-Language Pathology and Audiology Web site at <https://slp.ky.gov/>.

(3) This material may also be obtained at:

(a) The Audiology and Speech-Language Pathology Interstate Compact Commission, 1776 Avenue of the States, Lexington, Kentucky 40511; or

(b) <https://aslpcompact.com/commission/commission-governance-documents/>.

CONTACT PERSON: Sara Boswell Janes, Staff Attorney III, Department of Professional Licensing, Office of Legal Services, 500 Mero Street, 2 NC WK#2, phone (502) 782-2709 (office), fax (502) 564-4818, email Sara.Janes@ky.gov, Link to public comment portal: https://ppc.ky.gov/reg_comment.aspx.

FISCAL IMPACT STATEMENT

At the time that the agency files this staff amendment, it needs to file one (1) clean copy of the Fiscal impact Statement that includes an answer to Question 4 that was missing.

FISCAL IMPACT STATEMENT

Regulation No. KAR 17:120E

Contact Person: Sara Boswell Janes

Phone Number: (502) 782-2709 (office)

Email: sara.janes@ky.gov

(1) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 334A.080(3), 334A.188. Interstate compacts are specifically authorized under the federal constitution (Article 1, Section 10, Clause 3- the Compacts Clause) and take precedence over any conflicting state law pursuant to the Compacts Clause and the Contracts Clause, U.S. Constitution, Article 1, Section 10, Clause 1.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The Kentucky Board of Speech-Language Pathology and Audiology is the promulgating agency and the only affected state unit, part or division.

(a) Estimate the following for the first year:

Expenditures: The compact may become operational in 2025, however, the expenditures needed in the first year are currently indeterminable. There will likely be some state expenditures necessary for data system programming, administering applications for compact privileges within and without the Commonwealth, as well as administering complaint and enforcement actions for those with the privilege to practice in Kentucky, and possibly for Kentucky licensees with the privilege to practice in other states.

Revenues: If the compact becomes operational in Kentucky during the first year, the Board may require imposition of a fee to cover the cost of administration. However, at this time potential revenues are indeterminable.

Cost Savings: Indeterminable.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? The compact may become operational in 2025, however, the expenditures, revenue and cost savings in subsequent years, if any, are currently indeterminable.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts):
None anticipated.

(a) Estimate the following for the first year:

Expenditures: None.

Revenues: None.

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no difference in expenditures, revenues or cost savings to local entities in subsequent years.

(4) Identify additional regulated entities not listed in questions (2) or (3): There are no additional regulated entities.

(a) Estimate the following for the first year:

Expenditures: None

Revenues: None

Cost Savings: None.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There are none anticipated.

(5) Provide a narrative to explain the:

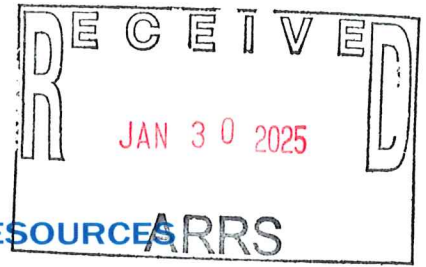
(a) Fiscal impact of this administrative regulation: There is minimal anticipated fiscal impact to this administrative regulation in the first year. It is possible there will be a fiscal impact of administering applications for compact privileges for in-state licensees who apply for the privilege to practice in another state, and for out of state licensees who apply for the privilege to practice in Kentucky. The Audiology and Speech-Language Pathology Interstate Compact Commission remains in its infancy and the work to be conducted by the state board on behalf of the compact is yet to be determined.

(b) Methodology and resources used to determine the fiscal impact: Methodology and resources are currently indeterminable since there are no known duties outlined for the state in relation to the compact.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate). This administrative regulation will not have an overall negative or adverse major economic impact to the entities identified.

(b) The methodology and resources used to reach this conclusion: Methodology and resources are currently indeterminable since there are no known duties outlined for the state in relation to the compact; however, given the number of licensees, current budget and anticipated number of applications for out of state licensees to obtain the privilege to practice in Kentucky, no major economic impact is anticipated.



KENTUCKY DEPARTMENT OF FISH & WILDLIFE RESOURCES

Rich Storm
Commissioner

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Brian Clark
Deputy Commissioner

Gabe Jenkins
Deputy Commissioner

January 30, 2025

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

Re: 301 KAR 2:041 Shooting areas, dog training areas, commercial foxhound training enclosures, and bobwhite shoot-to-train season.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 301 KAR 2:041., Kentucky Department of Fish and Wildlife Resources proposes the attached amendment to 301 KAR 2:041.

Sincerely,

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

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

Subcommittee Substitute

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (As Amended at ARRS)

301 KAR 2:041. Shooting areas, dog training areas, commercial and noncommercial~~[commercial]~~ foxhound training enclosures, and bobwhite shoot-to-train season.

RELATES TO: KRS 150.010, 150.170, 150.180, 150.280, 150.630, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.175(28), 150.240(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations establishing hunting seasons, bag limits, and methods of taking wildlife, and to make these requirements apply to a limited area or to the entire state. KRS 150.175(28) authorizes the issuance of a special license for residents and nonresidents for the purpose of hunting on licensed shooting areas. KRS 150.240(2) authorizes the department to promulgate administrative regulations governing public or commercial shooting areas. This administrative regulation establishes a bobwhite shoot-to-train season and other requirements to ensure uniform operation of shooting areas, dog training areas, and commercial and noncommercial foxhound training enclosures.

Section 1. Definitions.

(1) "Commercial foxhound training enclosure" means a fenced area where red fox (*Vulpes vulpes*), coyote (*Canis latrans*), or both species are to be held for the purposes of dog training and for which business transactions occur to accumulate compensations, payments, or profits.

~~(2)~~~~(4)~~ "Dog training area permit" means a permit that designates an area to allow dog training and shooting of captive-reared bobwhite quail.

~~(3)~~~~(2)~~ "Hoofed animal" means ungulate wildlife except wild hogs and javelinas.

(4) "Noncommercial foxhound training enclosure" means a fenced area where red fox (*Vulpes vulpes*), coyote (*Canis latrans*), or both species are to be held for the purposes of dog training but for which no compensations or payments are received or profits earned in any way.

~~(5)~~~~(3)~~ "Shooting area" means a place where animals are held or propagated in captivity and released to be taken by hunters.

Section 2. Seasons.

(1) The dog training area season and the dog training area hunting season shall be year-round for:

(a) Captive-reared bobwhite quail; **[and]**

(b) Pheasant and chukar, pursuant to 301 KAR 3:030; **and[:]**

(c) Commercial and noncommercial foxhound training enclosures for chase but not to kill red fox or coyote.

(2) The shooting area hunting seasons shall be as follows:

(a) Bobwhite quail: August 15 through April 15;

- (b) Mallard ducks: year-round;
 - (c) Hoofed animals: September 1 through May 15; and
 - (d) All other species: the statewide season in effect where the shooting area is located.
- (3) The bobwhite shoot-to-train season shall be from August 15 through May 15.

Section 3. Bobwhite Shoot-to-Train Requirements.

- (1) A person shall only shoot on private land.
- (2) Prior to shooting, a person shall:
 - (a) Apply on the Bobwhite Quail Shoot-to-Train Application provided by the department;
 - (b) Submit the completed application to the department;
 - (c) Possess a valid Kentucky hunting license or be license-exempt pursuant to KRS 150.170;
 - (d) Possess:
 - 1. Proof of purchase of captive-reared bobwhite quail; or
 - 2. A captive wildlife permit;
 - (e) Band all captive-reared bobwhite quail with:
 - 1. Aluminum, #7 leg bands; or
 - 2. Department-issued, aluminum leg bands;
 - (f) Walk and examine the entire area to be hunted to ensure that no wild bobwhite quail are present; and
 - (g) Release banded birds immediately prior to dog training or shooting.
- (3) A person shall contact the department to update an application that is no longer accurate.
- (4) The number of leg bands on the dog training or shooting site shall not exceed the number of captive-reared bobwhite present on the site.
- (5) A person shall comply with the holding and permit requirements established in 301 KAR 2:081 if:
 - (a) Captive-reared bobwhite quail are possessed for more than ten (10) days; or
 - (b) More than 100 captive-reared bobwhite quail are possessed.

Section 4. Permits, Applications, and Transfers.

- (1) A person shall obtain a permit from the department before operating the following:
 - (a) A shooting area for birds;
 - (b) A dog training area; or
 - (c) A commercial or noncommercial foxhound training enclosure, except *that*:-]
 - 1. A commercial or noncommercial foxhound training enclosure permit shall not be issued after January 1, 2026 for a new enclosure occurring within the Enhanced Rabies Surveillance Zone defined in 301 KAR 2:081;:-]
 - 2. An enclosure within the Enhanced Rabies Surveillance Zone that is permitted prior to January 1, 2026 may remain permitted so long as the permit coverage is continuously maintained; *and*:-]
 - 3. A permitted enclosure within the Enhanced Rabies Surveillance Zone may expand acreage upon existing enclosures but may not create a new, separate enclosure within the Enhanced Rabies Surveillance Zone.
- (2) A new shooting area permit shall not be issued for hoofed animals.
- (3) The following permits shall be valid from July 1 through June 30:
 - (a) Dog training area permit;

(b) Shooting area permit for birds; and

(c) **For hoofed animals, a** shooting area permit ~~[for hoofed animals]~~ in existence prior to March 8, 2002.

(4) A commercial or noncommercial foxhound training enclosure permit shall be valid for one (1) year from the date of issuance.

(5) A person shall apply using the appropriate form provided by the department:

(a) Shooting Area Permit Application;

(b) ~~[Commercial]~~ Foxhound Training Enclosure Permit Application and Checklist; or

(c) Dog Training Area Permit Application.

(6) Applications~~[An application]~~ for ~~[a]~~ dog training areas~~[area]~~ and commercial and noncommercial foxhound training enclosures shall not be approved until ~~[a]~~ department law enforcement personnel~~[conservation officer or biologist]~~ inspect~~[inspects]~~ the area to determine if it meets the requirements established in Sections~~[Section]~~ 6 and 8 of this administrative regulation.

(7) An applicant for a shooting area, dog training area, or commercial or noncommercial foxhound training enclosure shall provide documentation proving:~~[the applicant is the:]~~

(a) The applicant is the owner~~[Owner]~~ of the land where the facility is to be located;~~[-or]~~

(b) The applicant is the lessee~~[Lessee]~~ of the land where the facility is to be located; and~~[-]~~

(c) The acreage meets the requirements of a commercial or noncommercial foxhound training enclosure by providing:

1. A plat that lists the acreage of the commercial or noncommercial foxhound training enclosure boundaries completed by a licensed surveyor; or

2. Arial imagery to scale with marked boundaries and acreage of the commercial or noncommercial foxhound training enclosure subject to verification by the department.

(8) A commercial or noncommercial foxhound training enclosure within the Enhanced Rabies Surveillance Zone that is permitted prior to January 1, 2026 may be transferred if:

(a) A currently permitted facility is sold to another entity;

(b) The facility is inspected by law enforcement personnel prior to transfer;

(c) The seller of the facility is compliant with the provisions of this administrative regulation; and

(d) The purchaser of the facility:

1. Obtains a commercial or noncommercial foxhound training enclosure permit; and

2. Establishes the acreage meets the minimum requirements of a commercial or noncommercial foxhound training enclosure by providing:

a. A plat that lists the acreage of the commercial or noncommercial foxhound training enclosure boundaries completed by a licensed surveyor; or

b. Arial imagery to scale with marked boundaries and acreage of the commercial or noncommercial foxhound training enclosure subject to verification by the department.

(9) If ownership or lessee of a commercial or noncommercial foxhound training enclosure changes, the new owner or lessee shall be responsible for applying for a new permit.

(10)~~(8)~~ A shooting area permit shall be transferable if:

(a) A currently permitted facility is sold to another entity;

(b) The facility is inspected by department law enforcement personnel~~[a conservation officer or biologist]~~ prior to transfer;

(c) The seller of the facility is compliant with the provisions of this administrative regulation;
and

(d) The purchaser of the facility:

1. Completes a Shooting Area Permit Transfer Application [~~provided by the department~~]; and
2. Provides a plat of the shooting area boundaries completed by a licensed surveyor.

~~(11)[(9)]~~ A transferred shooting area permit shall only be valid for the land that was permitted prior to the time of transfer.

~~[(10) If ownership of a commercial foxhound training enclosure changes, the new owner shall be responsible for applying for a new permit.]~~

~~(12)[(11)]~~ A person hunting on a shooting area shall:

- (a) Possess a valid Kentucky hunting license;
- (b) Possess a valid shooting area hunting license;
- (c) Possess a shoot-to-retrieve field trial permit; or
- (d) Be hunting license exempt pursuant to KRS 150.170.

~~(13)[(12)]~~ A shooting area hunting license shall be valid for only one (1) specific shooting area.

Section 5. Shooting Area Requirements.

(1) The boundary of a shooting area shall be marked with signs:

- (a) At least eight (8) inches by twelve (12) inches;
- (b) Having a white background with contrasting letters at least one (1) inch high;
- (c) That read "Shooting Area"; and
- (d) Placed no more than 500 feet apart.

(2) A person shall check in at a designated check station or with the operator of a shooting area before hunting.

(3) A permit holder shall maintain a daily record of people using the area which includes each person's:

- (a) Name; ~~;~~
- (b) Address; and
- (c) Hunting license number.

(4) A permit holder shall:

(a) Obtain a bill of sale or receipt for each purchase that contains the number of:

1. Game birds purchased; or
2. Game bird eggs purchased; and

(b) Retain previous year's records and receipts for at least one (1) full year.

(5) A permit holder shall possess a commercial captive wildlife permit, if applicable, pursuant to 301 KAR 2:081.

(6) A field trial may be held on a shooting area year-round.

Section 6. Dog Training Area Requirements.

(1) A dog training area shall be between ten (10) and seventy-five (75) acres in size.

(2) The dog training area shall:

(a) Be contiguous;

(b) Consist of at least ninety (90) percent mowed or cut grass no greater than ten (10) inches in height; and

(c) Have a marked boundary with signs:

1. At least eight (8) inches by twelve (12) inches high;
2. Having a white background with contrasting letters at least one (1) inch high;
3. That read "Dog Training Area"; and
4. Placed no more than 150 feet apart.

(3) A permit holder shall maintain a daily record of people using the area which includes each person's:

- (a) Name;
 - (b) Address; and
 - (c) Hunting license number.
- (4) A permit holder shall retain previous year's records and receipts for at least one (1) full year.
- (5) A person using a dog training area shall possess:
- (a) A bill of sale or receipt for any bobwhite quail released on the area; and
 - (b) A captive wildlife permit, if applicable, pursuant to 301 KAR 2:081.
 - (6) A field trial may be held on a dog training area year-round.

Section 7. Hoofed Animals.

(1) A shooting area permit holder shall not import or release a hoofed animal.

(2) A shooting area permit holder who legally holds hoofed animals shall:

- (a) Keep a record of the:
 1. Total number of each hoofed species taken;
 2. Name of each hunter; ~~;~~
 3. Address of each hunter;
 4. Hunting license number of each hunter; and
 5. Species taken by each hunter; and
- (b) Submit to the department all records each month from September through May.
- (3) A permit holder shall not import, possess, release, or hunt any member of the family Suidae.

Section 8. Commercial and Noncommercial Foxhound Training Enclosures.

(1) A commercial foxhound training enclosure shall:

(a) Be at least 200 acres; and

~~[(b) Be fenced to enclose foxes; and]~~

~~[(b) [(c)] Not be divided by an interior fence that restricts the range of red fox and coyote [foxes] to less than 200 acres.~~

(2) A noncommercial foxhound training enclosure shall:

(a) Be at least **forty (40) [40]** acres; and

(b) Not be divided by an interior fence that restricts the range of red fox and coyote to less than **forty (40) [40]** acres.

(3) [(2)] Multiple enclosures of the same type and under the same ownership or management may be listed under the same permit if: [Two (2) or more enclosures under the same ownership or management may be licensed under the same permit if:]

(a) Each enclosure is at least the minimum acreage required for the permit; and [200 acres in size; and]

(b) The enclosures share a common fence.

(4) Commercial and noncommercial training enclosures shall:

(a) Have an exterior fence that completely encloses the commercial or noncommercial foxhound training enclosure and is at least five (5) feet above ground level for its entire length;

(b) Have a fence consisting of woven wire, chain link, or equivalent strength material capable of preventing escape by red fox and coyote;

(c) Have at least one (1) strand of electric wire inside at the bottom of the fence capable of preventing red fox and coyote from digging out of or climbing over the fence;

(d) Have a minimum of twelve (12) inches of additional fence bent inward at a ninety (90) degree angle or at least one (1) strand of electric wire at the top of the fence capable of preventing red fox and coyote from climbing out;

(e) Have modifications in place at gates, creeks, and similar weaknesses to prevent escape of red fox or coyote; and

(f) Maintain fences and electric wire to be in working order at all times and free of debris or vegetation that enable red fox or coyote to escape.

(5)[(3)] A commercial or noncommercial foxhound training permit holder shall:[The permit holder shall provide for the foxes:]

(a) Limit the number of dogs to no more than one (1) dog per two (2) acres for enclosures 100 acres or greater and no more than one (1) dog per three (3) acres for enclosures less than 100 acres.

(b) Limit the number of red fox and coyote combined to no more than one (1) animal per five (5) acres maximum at any time.

(c) Only obtain red fox or coyote:

1. From a licensed trapper who has a noncommercial captive wildlife permit as established in 301 KAR 2:081;

2. During the furbearer trapping season; and

3. Within the county of the permitted commercial or noncommercial foxhound training enclosure.

(d) Quarantine red fox and coyote:

1. In a separate quarantine enclosure from the training enclosure where animals in quarantine cannot come in contact with free ranging wildlife or red fox and coyote within the training enclosure;

2. Within a separate quarantine enclosure that meets or exceeds the minimum size requirements for red fox and coyote as specified in 301 KAR 2:081; and

3. For a minimum of seven (7) days. [;]

(e) Acclimate newly introduced red fox and coyote within the commercial or noncommercial foxhound training enclosure for a minimum of an additional seven (7) days following quarantine prior to dog training.

(f) Only release healthy and unaltered red fox and coyote that have not been physically altered in any way into commercial and noncommercial foxhound training enclosures.

(g) Only maintain red fox and coyote in captivity in a sanitary and safe condition and in a manner that does not result in the maltreatment or neglect of wildlife.

(h) Only allow dog training within an enclosure for a maximum of sixteen (16) hours within a twenty-four (24) hour period.

(i) Provide red fox and coyote with the following:

1. A diet that meets the nutritional needs of the animals;

~~[(a) Food;]~~

2. [(b)] Clean water;

3. [(c)] Shelter from inclement weather; and

4. [(d)] At least one (1) escape den per forty (40) acres and at least one (1) escape den per red fox or coyote [of the following], which are[is] sufficient to prevent capture of red fox and coyote by dogs as follows:[foxhounds, per every fifty (50) acres:]

a. [1.] Natural den;

b. [2.] Constructed den;

c. [3.] Box; or

d. [4.] Hollow log.

~~[(4) A fox held for release into an enclosure shall be confined pursuant to 301 KAR 2:081.]~~

[(6) [(5)] A person shall not [intentionally] engage in an activity which would cause foxhounds to injure or kill a red fox or coyote in an enclosure at any time.

[(7) [(6)] Chasing red fox or coyote in [Fox chasing on] permitted commercial and noncommercial foxhound training enclosures [areas] shall be considered an authorized field trial and no hunting license shall be required [if a fox is not captured or killed].

~~[(7) A person shall not take any wildlife within an enclosure except under legal statewide seasons and methods.]~~

[(8) The take of any species other than chase of red foxes or coyotes is prohibited within a commercial or noncommercial foxhound training enclosure.

[(9) A person shall not possess or release any native or exotic wildlife in a commercial or noncommercial foxhound training enclosure with the exception of red fox and coyote.

[(10) A commercial and noncommercial foxhound training enclosure operator shall abide by the following disease prevention and control measures:

[(a) Without damaging the head, dispatch diseased or sick acting red fox and coyote, retain carcass, and report to the department veterinarian within twenty-four (24) hours for proper disposition of the carcass;

[(b) Report escaped red fox or coyotes to department veterinarian within twenty-four (24) hours; and

[(c) Allow the department to inspect a commercial or noncommercial foxhound training enclosure when reportable diseases are suspected or confirmed and take the following actions when necessary: [:-]

1. Quarantine and prohibit introduction or removal of red fox and coyote to or from an enclosure until the department determines there is no longer a threat of disease exposure to humans, wildlife, or domestic animals;

2. Dispatch animals for diagnostic testing;

3. Require disinfection of the enclosure by the training enclosure operator; and

4. Examination of records for disease exposure notification.

[(11) Permits **shall [do]** not confer ownership, wildlife remains under the stewardship of the Department and may be confiscated, relocated, or euthanized.

[(12) Hunting or take of any species other than chase of red fox or coyote is prohibited within a commercial or noncommercial foxhound training enclosure.

(13)(8) A commercial or noncommercial foxhound training enclosure owner or operator shall;~~The owner or operator of an enclosure shall;~~

(a) Allow department law enforcement personnel~~[a conservation officer]~~ to inspect the facility at any reasonable time;~~and~~

~~(b) Comply with all permitting requirements, if applicable, pursuant to 301 KAR 2:081.]~~

(b) Maintain a registry of names, addresses, phone numbers, and dates hunted for one (1) year of all participants engaging in foxhound training activities or field trials to be provided to department staff upon request for purposes of disease response; and

(c) Maintain the following records and report to the department annually by submitting a Foxhound Training Enclosure Annual Report form:

1. The number of all red foxes and coyotes trapped for release into the enclosure;

2. The name, address, phone number, trapping license number, and noncommercial captive wildlife permit number of the trapper associated with each red fox and coyote;

3. The county of origin for each red fox and coyote;

4. The capture and release dates for each red fox and coyote; and

5. All missing, escaped, or killed red fox and coyote.

(d) Report **shall [must]** be provided to the department within thirty (30) days of the expiration date of the permit.

Section 9. Revocation for Dog Training Area, Shooting Area, and Bobwhite Quail Shoot to Train Permits.~~[Revocation of Permits.]~~

(1) Revocation. A person who is convicted of a fish and wildlife violation, including KRS Chapter 150, KAR Title 301, or any federal fish and wildlife laws, shall have his or her permit revoked for a period of one (1) year.

(2) Appeal Procedures. An individual whose request for a permit has been denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B.

Section 10. Permit Denial and Revocation for Commercial and Noncommercial Foxhound Training Enclosures.

(1) Denial. The department shall deny the issuance of a new permit, deny a renewal of an existing or lapsed permit, and may confiscate wildlife of a person who:

(a) Is convicted of a violation of any provisions of:

1. KRS Chapter 150;

2. KAR Title 301; or

3. Any federal statute or regulation related to hunting, fishing, or wildlife;

(b) Provides false information on a commercial or noncommercial foxhound training enclosure permit application, captive wildlife permit application, reports, facility inspection, or records;

(c) Acquires red fox or coyote prior to receiving an approved commercial or noncommercial foxhound training enclosure permit;

(d) Acquires red fox or coyote from an illegal source, location, or outside the legal season;

(e) Fails a facility inspection;

(f) Fails to comply with any provision of this administrative regulation, 301 KAR 2:081, 301 KAR 2:230, or 301 KAR 2:251; or

(g) Is located within the rabies surveillance zone and has previously had their permit revoked.

(2) Facility Inspections.

(a) A permit holder shall allow a game warden to inspect the foxhound training enclosure facilities and property prior to approval of any application and if permitted, at any reasonable time and frequency.

(b) The game warden shall immediately notify the applicant or permit holder and the Wildlife Division director if a facility inspection reveals that the facility is not in compliance with this administrative regulation and shall provide a completed Training Enclosure Inspection form to the appropriate Wildlife Division personnel within three (3) business days.

(c) If an inspection determines that a facility is not in compliance with [a] KRS Chapter 150 or [and] KAR Title 301, the game warden shall make a second inspection after ten (10) calendar days, and the permit application shall be denied or the permit shall be revoked and all wildlife may be confiscated if the non-compliant conditions have not been corrected.

(3) Revocations.

(a) The department shall revoke the permit and may confiscate wildlife, of a person who:

1. Is convicted of a violation of any provisions of:

a. KRS Chapter 150;

b. KAR Title 301; or

c. Any federal statute or regulation related to hunting, fishing, or wildlife;

2. Provides false information on a commercial or noncommercial foxhound training enclosure permit application, captive wildlife permit application, reports, facility inspection, or records;

3. Acquires red fox or coyote prior to receiving an approved commercial or noncommercial foxhound training enclosure or captive wildlife permit;

4. Acquires red fox or coyote from an illegal source, location, or outside the legal season;

5. Fails a second facility inspection; or

6. Fails to comply with any provision of this administrative regulation, 301 KAR 2:081, 301 KAR 2:230, or 301 KAR 2:251.

(b) If a person's commercial or noncommercial foxhound training enclosure is revoked for one (1) enclosure, permits for all other enclosures in their name shall be revoked and the enclosures may not be permitted for the applicable denial period.

(c) A fee shall not be refunded for a permit that is revoked.

(4) Denial period. An applicant for a commercial or noncommercial foxhound training enclosure permit or captive wildlife permit that has been revoked or denied for the grounds established in this section shall be ineligible to reapply, and all applications denied:

(a) Permanently for commercial and noncommercial foxhound training enclosures within the rabies surveillance zone; and

(b) For commercial and noncommercial foxhound training enclosures outside the rabies surveillance zone: [;]

1. The initial denial period, for one (1) year;

2. A second denial period, for three (3) years; and

3. A third or subsequent denial period, for five (5) years.

(5) Confiscated wildlife.

(a) All red fox and coyote may be confiscated if a commercial and noncommercial foxhound training enclosure permit is revoked or denied or if a person possesses red fox or coyote without a valid commercial or noncommercial foxhound training enclosure permit.

(b) Confiscated wildlife shall be released, transferred, or dispatched as ordered by the department.

(c) Wildlife shall not be returned to the person, entity, or facility from which they were confiscated.

(d) Wildlife shall be surrendered to the department, for processing and disposition pursuant to this administrative regulation, upon being presented with a written order by the commissioner.

(6) Administrative hearings.

(a) An individual whose permit has been denied or revoked may request an administrative hearing, which shall be conducted pursuant to KRS Chapter 13B.

(b) A request for a hearing shall be in writing and postmarked or delivered in person to the department no later than thirty (30) days after notification of the denial or the revocation.

(c) Upon receipt of the request for a hearing, the department shall proceed according to the provisions of KRS Chapter 13B.

(d) The hearing officer's recommended order shall be considered by the commissioner, and the commissioner shall issue a final order, pursuant to KRS Chapter 13B.

Section 11. [~~Section 10.~~] Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Bobwhite Quail Shoot-to-Train Application", July 2012 edition; ~~;~~

(b) "Dog Training Area Permit Application", July 2012 edition;

(c) "Foxhound Training Enclosure Permit Application and Checklist", 2024 edition;

(d) "Foxhound Training Enclosure Permit Annual Report", 2024 edition;

(e) "Shooting Area Permit Application", July 2012 edition; and

(f) "Shooting Area Permit Transfer Application", July 2012 edition.

[~~(a) "Shooting Area Permit Application", July 2012 edition;~~

~~(b) "Commercial Foxhound Training Enclosure Permit Application", July 2012 edition;~~

~~(c) "Dog Training Area Permit Application", July 2012 edition;~~

~~(d) "Shooting Area Permit Transfer Application", July 2012 edition; and~~

~~(e) "Bobwhite Quail Shoot-to-Train Application", July 2012 edition.]~~

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

(a) <https://fw.ky.gov/Licenses/Documents/CommercialFoxhoundTrainingApp2024.pdf> for the "Foxhound Training Enclosure Permit Application and Checklist"; **or**

(b) <https://fw.ky.gov/Licenses/Documents/CommercialFoxhoundTrainingAnnualReport2024.pdf> for the "Foxhound Training Enclosure Permit Annual Report".

CONTACT PERSON: Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, (502) 564-3400, fax: (502) 564-0506, email: fwpubliccomments@ky.gov.



Andy Beshear
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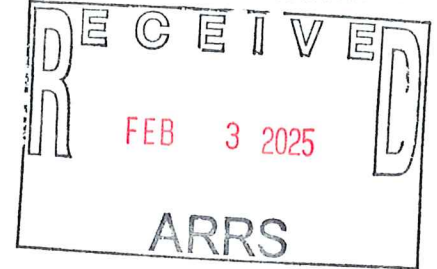
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COMMISSIONER

February 3, 2025



Senator West, Co-Chair
Representative Lewis, Co-Chair
Legislative Research Commission
083, Capitol Annex
702 Capitol Avenue
Frankfort KY 40601

Re: 401 KAR 47:110,
Dear Co-Chairs:

After consideration of the issues raised by 401 KAR 47:110, the Division of Waste Management proposes the attached suggested substitutes to this regulation.

Sincerely,

Tyler Shields, Environmental Control Supervisor
Department for Environmental Protection
Division of Waste Management

SUGGESTED SUBSTITUTE – to Amended After Comments Version

**ENERGY AND ENVIRONMENT CABINET
Department Of Environmental Protection
Division Of Waste Management**

401 KAR 47:110. Registered permit-by-rule.

RELATES TO: KRS ~~224.1-010~~~~[224.01-010]~~, 224.10-100, 224.10-105, 224.40-100, 224.40-110, 224.40-120, 224.40-305, 24.40-310, 224.40-315, 224.40-320, 224.40-325, 224.40-330, 224.40-340, 224.40-605, 224.40-650, 224.43-010, 224.43-020, ~~[224.43-070,]~~224.43-310, 224.43-315, 224.43-330, 224.43-340, 224.43-345, 224.43-350, 224.70-100, 224.70-110, 224.99-010, 224.99-020

STATUTORY AUTHORITY: KRS 224.10-100(19)(c)~~;~~~~and~~~~[;]~~ (24), 224.40-100, 224.40-305

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(19)(c) and~~[;]~~ (24)~~[;]~~ and 224.40-305 authorize the cabinet to promulgate administrative regulations for the management, processing, and disposal of wastes. KRS 224.40-305 requires that persons engaging in the management, processing, and disposal of waste obtain a permit. This administrative regulation establishes requirements for registered permits-by-rule and the standards for the certification program.

Section 1. Issuance of Registered Permit-by-rule.

(1) Before accepting waste, the owner or operator of a solid waste site or facility established~~[specified]~~ in 401 KAR 47:080, Section 2(6), shall notify the cabinet by submitting a notarized registration as established in subsection (2) of this section, along with any supporting documentation, such as maps or specifications.

~~(a) [For solid waste sites or facilities other than medical waste transfer stations,] The registration shall become effective thirty (30) calendar~~~~[five (5) business]~~ days after the cabinet receives it unless the cabinet determines the registration complies with this administrative regulation~~[approves]~~ or denies the registration within that time. A registration shall be denied if the registration is incomplete or the registration fails to demonstrate compliance with the requirements established in 401 KAR 47:120 and 401 KAR 48:320~~[Chapters 47 and 48]~~.~~[For medical waste transfer stations, the registration shall become effective thirty (30) days after the cabinet receives it unless the cabinet denies the registration within that time.]~~

~~(b) The cabinet shall hold a public hearing in accordance with 401 KAR 47:140, Section 10, prior to accepting or denying the registration,~~ upon the request of any individual.

~~(c) The owner or operator of a registered permit-by-rule facility shall comply with the environmental performance standards in 401 KAR 30:031 in order for the registered permit-by-rule to remain effective.~~

~~(2) The registration for a registered permit-by-rule facility shall be submitted to the cabinet on~~~~[one (1) of the following registration forms]:~~

- ~~(a) DEP 7059; Solid Waste Transfer Station, Convenience Center, and Recycling Center;~~
- ~~(b) DEP 7059-A; Solid Waste Composting Facility;~~
- ~~(c) DEP 7059-E; Class I Solid Waste Landfarm;~~
- ~~(d) DEP 7059-H; Less-than-one-acre Construction/Demolition Debris (CDD) Landfill; or~~
- ~~(e) DEP 7059-J; Solid Waste Incinerator.~~

~~(3) [A registration that is determined to be administratively incomplete may be denied within five (5) business days after receiving the registration. Thereafter,] If the cabinet determines that a registration~~

that is not approved or denied pursuant to subsection ~~(1)(f)~~ of this section fails to include all of the information required, the cabinet shall notify the operator that the registration is deficient.

(a) The owner or operator shall submit the requested information within thirty (30) calendar days of the date of the notice of deficiency.

(b) The cabinet shall review the registration ~~[cabinet's review shall be conducted]~~ in accordance with the requirements of 401 KAR 47:025.

(4) Prior to submission of the registration, the owner or operator shall prepare a groundwater protection plan in accordance with 401 KAR 5:037.

(5) The owner or operator shall publish a notice two (2) weeks prior to submission of the registration in a daily or weekly newspaper of general circulation where the proposed facility is located.

(a) Public notices shall be of a size to include not less than two (2) column widths for advertising and shall be in a display format.

(b) The public notice shall contain ~~[the following]~~:

1. ~~(a)~~ Name and address of the owner or operator;

2. ~~(b)~~ The type of facility;

3. ~~(c)~~ A brief description of the business to be conducted; and

4. ~~(d)~~ Name and address of the facility.

Section 2. Operating Requirements for Registered Permit-by-rule Facilities.

(1) The owner or operator of a facility operating under a registered permit-by-rule, except as ~~established~~ ~~[provided]~~ in Section 3 of this administrative regulation, shall not:

(a) Store, treat, or dispose of solid waste not ***included*** ~~[specified]~~ in the registration; or

(b) Exceed the design capacities ***stated*** ~~[specified]~~ in the registration.

(2) The owner or operator of a facility operating under a registered permit-by-rule shall comply with the environmental performance standards in 401 KAR 30:031.

(3) The owner or operator of a registered permit-by-rule facility shall keep records as ~~established~~ ~~[provided]~~ in this section.

(a) The owner or operator of a less-than-one (1) acre ~~or expanded less-than-two (2) acre~~ construction ~~or~~ ~~[]~~ demolition debris landfill or solid waste incinerator shall report quarterly pursuant to KRS 224.43-330. In addition, the owner or operator shall submit DEP 7046, Annual Waste Quantity Report, to the cabinet annually and upon closure of the facility.

(b) The owner or operator of a composting facility shall report quarterly pursuant to KRS 224.43-330. In addition, the owner or operator shall submit DEP 7108, Annual Report for a Solid Waste Composting Facility, to the cabinet annually and upon closure of the facility.

(c) The owner or operator of a landfarming facility shall report quarterly pursuant to KRS 224.43-330. In addition, the owner or operator shall submit DEP 7064, Annual Report for a Class I Solid Waste Landfarm, to the cabinet annually and upon closure of the facility.

(d) The owner or operator of a registered permit-by-rule convenience center, transfer station or commercial recycling center shall document records on DEP 7046, Annual Waste Quantity Report. Records shall be kept on site and available for inspection for at least three (3) years.

(4) The owner or operator of a solid waste incinerator shall conduct the Toxicity Characteristic Leaching Procedure (TCLP) test ~~established~~ ~~[described]~~ in 401 KAR **39:060, Section 2** ~~[31:030, Section 5]~~, before the initial disposal of any ash and ~~if~~ ~~[whenever]~~ the characteristics of the waste accepted by the incinerator significantly change.

(a) The owner or operator shall keep a record of the current TCLP laboratory analysis report required by this section available for inspection by the cabinet for at least three (3) years.

(b) The owner or operator of a solid waste incinerator shall report the volume of ash generated to the cabinet annually and upon closure of the facility. The report shall be submitted no later than January 31 for the preceding calendar year.

Section 3. Changes to a Registered Permit-by-rule.

(1) A revised registration shall be submitted as established in paragraphs (a) through (c) of this subsection~~[follows].~~**;**

(a) Solid wastes not previously identified in the registration may be stored, treated, or disposed at a facility operating under a registered permit-by-rule if the owner or operator submits a revised registration to the cabinet prior to that change.

(b) The owner or operator of a facility operating under a registered permit-by-rule shall submit a revised registration to the cabinet prior to increasing the design capacity of processes used at a facility.

(c) The owner or operator of a facility operating under a registered permit-by-rule shall submit a revised registration to the cabinet prior to changing the processes for the storage, treatment, or disposal of solid waste, using additional processes, or changing the owner or operator.

(2) The revised registration shall become effective thirty (30) calendar~~[five (5) business]~~ days after the cabinet receives it, unless the cabinet approves or denies the registration within that time. The cabinet shall review the registration in accordance with Section 1 of this administrative regulation.

Section 4. Revocation of a Registered Permit by Rule. The cabinet may revoke a registered permit-by-rule for ~~[the following causes]:~~

(1) Noncompliance by the owner or operator with a condition of the registration;

(2) ~~[The] Owner, operator, or key personnel~~ **failure**~~[fail]~~~~[owners, operator's, or key personnel's failure during the registration process]~~ to disclose all information required by the cabinet during the registration process;

(3) ~~[The] Owner, operator, or key personnel~~ **misrepresentation of**~~[misrepresent]~~~~[owner's, operator's, or key personnel's misrepresentation of]~~ any information required by the cabinet ~~[at any time]~~;

(4) **A cabinet determination**~~[The cabinet determines]~~~~[cabinet's determination]~~ that the operation endangers human health, safety, or the environment;

(5) ~~[The] Owner, operator, or key personnel~~ **violation of**~~[violate]~~~~[owner's, operator's or key personnel's violation of]~~ any requirement of KRS Chapter 224 or 401 KAR Chapters 30 through 49~~[the administrative regulations promulgated pursuant thereto]~~; or

(6) A change to the registered-permit-by-rule that was made without complying with Section 3 of this administrative regulation.

Section 5. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) DEP 7059; "Solid Waste Transfer Station, Convenience Center, and Recycling Center", November 2016;

(b) DEP 7059-A; "Solid Waste Composting Facility", November 2016;

(c) DEP 7059-E; "Class I Solid Waste Landfarm", November 2016;

(d) DEP 7059-H; "Less-than-one-acre Construction/Demolition Debris", July 2024~~[November 2016]~~;

(e) DEP 7059-J; "Solid Waste Incinerator", November 2016;

(f) DEP 7064; "Annual Report for a Class I Solid Waste Landfarm", November 2016;

(g) DEP 7108; "Annual Report for a Solid Waste Composting Facility", November 2016; and

(h) DEP 7046; "Annual Waste Quantity Report", November 2016.

(2) This material may be inspected, copied, or obtained at the Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., or at any of the

division's field offices Monday through Friday, 8 a.m. to 4:30 p.m.; 2642 Russellville[~~Russelville~~] Road, Bowling Green, Kentucky 42101; 2751 Campbellsville Road, Columbia, Kentucky 42728; 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042; 1332 State Highway 15, Hazard, Kentucky 41701; 875 South Main Street, London, Kentucky 40741; 9116 Leesgate Road, Louisville, Kentucky 40222-4925; Madisonville State Office Building, 625 Hospital Drive, Madisonville, Kentucky 42431; 525 Hecks Plaza Drive, Morehead, Kentucky 40351; 130 Eagle Nest Drive, Paducah, Kentucky 42003.

(3) This material is also available at the division Web site at eec.ky.gov/environmental-protection/waste.

CONTACT PERSON: Tyler Shields, Environmental Control Supervisor, Department for Environmental Protection, Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 782-5325, fax (502) 564-4245, email Tyler.Shields@ky.gov.



Andy Beshear
GOVERNOR

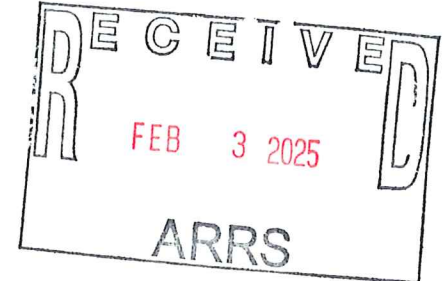
ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

300 Sower Boulevard
Frankfort, Kentucky 40601
Phone: (502) 564-2150
Fax: 502-564-4245

Rebecca Goodman
SECRETARY

Anthony R. Hatton
COMMISSIONER

February 3, 2025



Senator West, Co-Chair
Representative Lewis, Co-Chair
Legislative Research Commission
083, Capitol Annex
702 Capitol Avenue
Frankfort KY 40601

Re: 401 KAR 48:320
Dear Co-Chairs:

After consideration of the issues raised by 401 KAR 48:320, the Division of Waste Management proposes the attached suggested substitutes to this regulation.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tyler Shields".

Tyler Shields, Environmental Control Supervisor
Department for Environmental Protection
Division of Waste Management

SUGGESTED SUBSTITUTE

**ENERGY AND ENVIRONMENT CABINET
Department Of Environmental Protection
Division Of Waste Management**

401 KAR 48:320. Operating requirements for less than one (1) acre or expanded less than two (2) acre construction or [X]demolition debris landfills.

RELATES TO: KRS ~~224.1-010~~~~[224.01-010]~~, 224.10-100, 224.10-105, 224.40-100, 224.40-110, 224.40-120, 224.40-305, 224.40-310, 224.40-315, 224.40-320, 224.40-325, 224.40-330, 224.40-340, 224.40-605, 224.40-650, 224.43-010, 224.43-020, ~~[224.43-070,]~~224.43-310, 224.43-315, 224.43-330, 224.43-340, 224.43-345, 224.43-350, 224.70-100, 224.70-110, 224.99-010, 224.99-020, **322.040**

STATUTORY AUTHORITY: KRS 224.10-100(19)(c), ~~[and]~~~~[r]~~ (24), 224.40-100, 224.40-120, 224.40-305, 224.40-330, 224.40-605

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(19)(c) and~~[r]~~ (24), 224.40-120, 224.40-305, 224.40-330, and 224.40-605 authorize the cabinet to promulgate administrative regulations for the management, processing, and disposal of wastes. KRS 224.40-305 requires that persons engaging in the management, processing, and disposal of waste obtain a permit. This administrative regulation establishes the technical requirements for less than one (1) acre or expanded less than two (2) acre construction or [X]demolition debris landfills.

Section 1. Applicability. This administration regulation shall apply~~[applies]~~ to owners and operators of less than one (1) acre or expanded less than two (2) acre construction or [X]demolition debris landfills. The owner or operator of a less than one (1) acre or expanded less than two (2) acre construction or [X]demolition debris landfill shall operate the facility in accordance with the requirements of this administrative regulation.

Section 2. Requirement to Obtain a Registered Permit-by-rule. The owner or operator of a less than one (1) acre or expanded less than two (2) acre construction or [X]demolition debris landfill shall not begin construction or accept waste until the registered permit-by-rule for the facility has become effective as established~~[specified]~~ in 401 KAR 47:110.

Section 3. Construction Requirements. The owner or operator of a less than one (1) acre or expanded less than two (2) acre construction or [X]demolition debris landfill located inside a "wellhead protection area", as defined ~~by~~~~[in]~~ 401 KAR 5:002, Section 1, shall construct and maintain a liner and leachate collection system.

(1) The liner shall:

(a) Be constructed of soil:

1. With a minimum thickness of twelve (12) inches; and
2. That includes a low permeability soil component with a minimum of twelve (12) contiguous inches of 1×10^{-7} centimeters per second maximum permeable material, or its equivalent; and

(b) Cover the bottom and sidewalls of the facility, with the bottom liner sloped toward a leachate collection system that complies with subsection (3) of this section.

(2) A professional engineer, licensed in Kentucky pursuant to KRS 322.040, shall supervise~~[oversee]~~ the design and installation of the liner, including moisture and density tests, and shall certify that the liner

meets the compaction requirements. The certification shall be submitted to the cabinet within ten (10) days of completion of the liner.

(3) The leachate collection system shall:

(a) Have a minimum of a twelve (12) inch layer of gravel, or a layer of equivalent performance, and a toe-drain; and

(b) Be discharged into a collection tank with a minimum capacity of 1000 gallons.

(4) A professional engineer licensed in Kentucky, pursuant to KRS 322.040, shall ~~supervise~~oversee the design and installation of the leachate collection system, and shall certify that the collection tank meets the capacity requirement. The certification shall be submitted to the cabinet within ten (10) days of completion of the liner.

Section 4. Operating Requirements. (1) The owner or operator of a less than one (1) acre or expanded less than two (2) acre construction or [A]demolition debris landfill shall comply with~~the following operating requirements~~:

(a) The environmental performance standards of 401 KAR 30:031;

(b) The siting requirements of 401 KAR 48:050, Sections 1 ~~through [2, and]~~ 3;

(c) The liner and a leachate collection system as ~~established~~specified in Section 3 of this administrative regulation, if the landfill is to be located in a wellhead protection area;

(d) The groundwater protection plan requirements of 401 KAR 5:037;

(e) The requirements of KRS 224.40-120;

(f) The operator certification requirements established pursuant to KRS 224.40-605; and

(g) The annual report requirement of 401 KAR 47:110, Section 2(3).

(2) The owner or operator of a less than one (1) acre or expanded less than two (2) acre construction or [A]demolition debris landfill shall:

(a) Dispose only of "construction or [A]demolition waste" or construction material as defined ~~by~~in 401 KAR 48:005, Section 1(18);

(b) Not dispose of electrical fixtures containing hazardous liquids, such as fluorescent light ballasts or transformers;

(c) ~~Properly~~ Dispose of any non-construction or [A]demolition debris landfill waste at a ~~properly~~ permitted disposal facility;

(d) During operation, clearly delineate the horizontal boundary with slats, stakes, or other types of easily identifiable permanent markers to show that the constructed boundary is within the permitted boundary;

(e) Install silt fencing, hay bales, or other appropriate best management practices to prevent sediment from leaving any area disturbed by construction, including stockpiled soil and borrow pit areas. The sediment controls shall be kept in good operating order;

(f) Only accept cabinet-approved waste from sources listed in the registration ~~and approved by the cabinet~~. Wastes may be added by submitting a revised registration pursuant to 401 KAR 47:110, Section 3~~(3)~~;

(g) Place the waste in layers, two (2) feet thick or smaller, and compact each layer thereafter;

(h) Cover each ten (10) foot lift with a minimum of six (6) inches compacted soil;

(i) Maintain a buffer zone of 750 yards from any other less than one (1) acre or expanded less than two (2) acre construction or [A]demolition debris landfill permitted boundary;

(j) Remove landfill debris, mud, and waste from off-site roadways; ~~and~~

(k) ~~Limit the~~The maximum capacity of a less than one (1) acre or ~~and~~ demolition debris landfill ~~shall~~ not to exceed 40,000 cubic yards of waste; and;

(l) Limit the maximum capacity of a less than one (1) acre construction or demolition debris landfill that has been expanded to a less than two (2) acre construction or demolition debris landfill not to exceed a total combined volume of 110,000 cubic yards of waste.

(3) Interim cover period. The owner or operator:

(a) Shall place interim soil cover in a manner to eliminate protruding waste over an area that will not receive at least twelve (12) cubic yards of waste within ninety (90) calendar days of the last waste placement;

(b) Shall not have more than one (1) acre of exposed waste at any given time;

(c) Shall not remove the interim cover until the day of waste placement;

(d) Shall place, compact, and grade the interim cover to promote positive drainage; and

(e) Shall apply temporary erosion controls at the time of placing interim cover.

Section 5. Closure Requirements. The owner or operator of a less than one (1) acre or expanded less than two (2) acre construction or ~~[A]~~demolition debris landfill shall close the facility as established in the section.~~[follows:]~~

(1) The landfill shall be covered with a soil cap, two (2) feet thick, and the entire disturbed area shall be vegetated within thirty (30) days of ceasing to accept waste. The cabinet may approve an alternative cover ~~[of equivalent performance-]~~proposed by the owner or operator ***if the alternative cover is of equivalent performance.***

(a) The vegetation shall consist of:

1. A minimum of two (2) legumes;

2. One (1) annual grass; and

3. One (1) perennial grass, in sufficient poundage to provide at least ninety (90) percent ground coverage for the disturbed area.

(b) The grass seed shall be covered with at least one and one-half (1.5) tons of straw mulch or an alternative that delivers equivalent performance per acre.

(c) The straw mulch or its alternative shall be stabilized with netting on slopes that exceed fifteen (15) percent.

(d) The final cap shall have a slope of between five (5) percent and twenty-five (25) percent upon completion of the final grading.

(2) The owner or operator of a less than one (1) acre or expanded less than two (2) acre construction or ~~[A]~~demolition debris landfill shall record a notice, with the property deed, on which the less than one (1) acre or expanded less than two (2) acre construction or ~~[A]~~demolition debris landfill is located.

(a) The notice shall notify, in perpetuity, any potential purchaser of the property of the landfill's location and dates of operation, the nature of the waste disposed, and impose a restriction against any disturbance of the cap.

(b) The notice shall be recorded in accordance with KRS Chapter 382, and proof of recording shall be submitted to the cabinet prior to the cabinet's approval of closure.

(3) The owner or operator of a less than one (1) acre or expanded less than two (2) acre construction or ~~[A]~~demolition debris landfill shall, upon completion of closure of the facility, contact the cabinet for a closure inspection and release of the bond, ***as established[described]*** in 401 KAR 48:310.

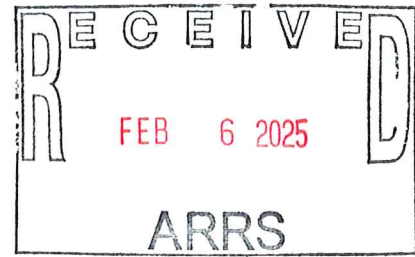
(4) Closure shall be completed no later than thirty (30) days after final[~~last~~] receipt of waste.

Section 6. Corrective Action Requirements ***(1)*** If the cabinet determines that a threat to human health, safety, or the environment exists, the owner or operator of a less than one (1) acre or expanded less than two (2) acre construction or ~~[A]~~demolition debris landfill shall conduct corrective action in accordance with 401 KAR 48:300, Section 8.

(2) The owner or operator shall certify to the cabinet that corrective action has been completed [~~in accordance with this section~~].

(3) The cabinet shall determine that corrective action has been completed before releasing the bond.

CONTACT PERSON: Tyler Shields, Environmental Control Supervisor, Department for Environmental Protection, Division of Waste Management, 300 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 782-5325, fax (502) 564-4245, email Tyler.Shields@ky.gov (Subject line: "401 KAR 48:320").



Andy Beshear
GOVERNOR

JUSTICE AND PUBLIC SAFETY CABINET

Keith L. Jackson
SECRETARY

125 Holmes St.
Frankfort, Kentucky 40601
Phone: (502) 564-7554
Fax: (502) 564-4840

February 6, 2025

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

Re: 502 KAR 10:120. Hazardous materials endorsement requirements.

Dear Co-Chairs West and Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 502 KAR 10:120. Hazardous materials endorsement requirements, the Justice and Public Safety Cabinet, Department of Kentucky State Police accepts the suggested amendments from the ARRS staff and proposes the attached substitute to 502 KAR 10:120. Hazardous materials endorsement requirements.

Sincerely,

A handwritten signature in black ink, appearing to read "N. Goens".

Nathan Goens, Attorney
Justice and Public Safety Cabinet
125 Holmes Street, 2nd Floor
Frankfort, Kentucky 40601

enclosure

SUGGESTED SUBSTITUTE

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police**

502 KAR 10:120. Hazardous materials endorsement requirements.

RELATES TO: KRS 281A.120, 281A.130, 281A.150, 281A.160, 281A.170, 49 U.S.C. 5103a, 49 C.F.R. Parts 383, 1515, 1572

STATUTORY AUTHORITY: KRS 281A.040

NECESSITY, FUNCTION, AND CONFORMITY: KRS 281A.040 authorizes any state agency vested with a specific responsibility to have the necessary power and authority to promulgate administrative regulations to reasonably carry out the provisions of KRS Chapter 281A. 49 C.F.R. Part 1572 requires fingerprint verified criminal background checks on all persons obtaining or renewing a hazardous materials endorsement for a commercial driver's license. This administrative regulation establishes the necessary procedures for conducting fingerprint verified criminal background checks and establishing the location of the fingerprinting centers where the Kentucky State Police shall take fingerprints and transmit them to the federal government.

Section 1. Definitions.

- (1) "CDL" or "Commercial Driver's License" is defined by KRS 281A.010(5) and 49 C.F.R. 383.5.
- (2) "CDL testing location" means the department's regional CDL testing offices.
- (3) "Determination of no security threat" is defined by 49 C.F.R. 1572.15(d)(1).
- (4) "DOT" means the federal Department of Transportation.
- (5) "Final Determination of Threat Assessment" is defined by 49 C.F.R. 1572.15(d)(4).
- (6) "HME" means hazardous materials endorsement.
- (7) "Initial Determination of Threat Assessment" is defined by 49 C.F.R. 1572.15(d)(2).
- (8) "KSP" means the Kentucky State Police.
- (9) "Proper identification" means:
 - (a) A driver's license issued by the applicant's state where they will obtain or have obtained a commercial driver's license; or
 - (b) With respect to non-United States citizens applying for a hazardous materials endorsement for a commercial driver's license, proper identification means valid and unrestricted documentation establishing lawful nonimmigrant alien, asylee, or refugee status.
- (10) "TSA" means the federal Transportation Security Administration.

Section 2. Initial Applications for HME.

(1) An applicant applying for a hazardous materials endorsement shall first obtain a commercial driver's instruction permit or CDL prior to requesting a security threat assessment from the TSA. ~~**[The applicant shall submit application information in accordance with 49 C.F.R. 1572.9. The applicant shall further submit to a fingerprint verified criminal background check conducted by KSP.]**~~

(2) To begin the process, an applicant shall contact KSP at the following phone number to make an appointment: 1-888-655-9655.

(3) An applicant shall bring proper identification, be prepared to provide the information required by 49 C.F.R. 1572.9, and submit to a fingerprint verified criminal background check at the appointment~~[and a completed "Transportation Security Administration Application for a Hazardous Materials Endorsement," OMB No. 1652].~~

(4) An applicant shall pay a ~~[\$115 fee for a fingerprint-based background check until December 1, 2024. Beginning December 2, 2024, an applicant shall pay a]~~\$138.25 fee for a fingerprint-based background check. The fee may be paid by:

- (a) Certified check;
- (b) Cashier's check;
- (c) Money order; or

(d) Electronically before the appointment at https://secure.kentucky.gov/formservices/KSP/hazmat_FP.

(5) An applicant shall be fingerprinted by KSP at a regional CDL testing location. KSP shall send the fingerprints to the Federal Bureau of Investigation for a fingerprint-verified criminal background check and send the biographical information sheet to the TSA.

(6) If TSA informs the Commonwealth of a finding of Determination of No Security Threat, then the applicant shall be notified by the Transportation Cabinet that he or she is eligible to take the knowledge test required to qualify for the HME.

(7) If TSA informs the Commonwealth of a finding of Initial Determination of Threat Assessment, the applicant shall not be issued a HME. The applicant may appeal the TSA's determination in accordance with 49 C.F.R. 1515.5 or 1515.9. Following appeal, if the applicant receives a Final Determination of Security Threat Assessment, the applicant may seek a waiver from the TSA in accordance with 49 C.F.R. 1515.7.

(8) Within fifteen (15) days after the TSA has notified the Commonwealth of a Determination of No Security Threat or of a finding of Final Determination of Security Threat Assessment, the Transportation Cabinet shall update the applicant's permanent record to reflect the results of the security threat assessment, the issuance or denial of an HME, and the new expiration date of the HME.

Section 3. Renewal Applications for HME.

(1) The Transportation Cabinet shall send persons holding a HME notice of renewal at least sixty (60) days prior to expiration.

(2) Persons wishing to renew their HME shall begin the renewal process at least thirty (30) days prior to expiration.

(3) To begin the renewal process, a renewal applicant shall contact KSP at the following phone number to make an appointment: 1-888-655-9655.~~[A renewal applicant shall submit to fingerprinting and further complete the "Transportation Security Administration Application for a Hazardous Materials Endorsement," OMB No. 1652-0027, containing all information necessary for the TSA to complete the required assessment as described in 49 C.F.R. 1572.9 no later than thirty (30) days prior to the expiration of the HME endorsement.]~~

(4) A renewal applicant shall bring to the appointment proper identification, be prepared to provide the information required by 49 C.F.R. 1572.9, and submit to a fingerprint verified criminal background check at the appointment~~[a completed "Transportation Security Administration Application for a Hazardous Materials Endorsement," OMB No. 1652-0027].~~

(5) A renewal applicant shall pay a ~~[\$115 fee for a fingerprint-based background check until December 1, 2024. Beginning December 2, 2024, a renewal applicant shall pay a]~~\$138.25 fee for a fingerprint-based background check. The fee may be paid by:

- (a) Certified check;

(b) Cashier's check;

(c) Money order; or

(d) Electronically before the appointment at https://secure.kentucky.gov/formservices/KSP/Hazmat_FP.

(6) A renewal applicant shall be fingerprinted by KSP at a regional CDL testing location. KSP shall send the fingerprints to the Federal Bureau of Investigation for a fingerprint verified criminal background check and send the biographical information sheet to the TSA.

~~(7) [If the Commonwealth has not received notification from TSA of the results of the security threat assessment prior to the expiration of the renewal applicant's HME, the Transportation Cabinet may extend the expiration date of the HME for a period of up to ninety (90) days. Any additional extension shall be approved by TSA.]~~

~~(8)~~ If TSA informs the Commonwealth of a finding of Determination of No Security Threat, then the renewal applicant shall be notified by the Transportation Cabinet that he or she is eligible [to take the knowledge test required to qualify for the HME.

~~(8)~~~~(9)~~ If TSA informs the Commonwealth of a finding of Initial Determination of Threat Assessment, the renewal applicant shall not be issued ~~an~~~~a~~ HME. The renewal applicant may appeal the TSA's determination under the procedures set forth in 49 C.F.R. 1515.5 or 1515.9. Following appeal, if the renewal applicant receives a Final Determination of Security Threat Assessment, the applicant may seek a waiver from TSA in accordance with 49 C.F.R. 1515.7.

~~(9)~~~~(10)~~ Within fifteen (15) days after the TSA has notified the Commonwealth of a Determination of No Security Threat or of a finding of Final Determination of Security Threat Assessment, the Transportation Cabinet shall update the applicant's permanent record to reflect the results of the security threat assessment, the issuance or denial of an HME, and the new expiration date of the HME.

~~(10)~~~~(11)~~ An applicant who has received a passing score on the HME test and is applying for a Class C CDL with a hazardous materials endorsement shall drive a Class C placarded vehicle for the skills test.

Section 4. Transfer Applications For HME. ~~(4)~~ In accordance with 49 C.F.R. 1572.13(e), an applicant who applies to transfer an existing HME from another state to the Commonwealth shall not be required to undergo a new security threat assessment until the security threat assessment renewal period established in the preceding issuing state, not to exceed five (5) years, expires.

CONTACT PERSON: Nathan Goens, Staff Attorney, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8216, fax (502) 564-6686, email Justice.RegContact@ky.gov.



Andy Beshear
GOVERNOR

JUSTICE AND PUBLIC SAFETY CABINET

Keith L. Jackson
SECRETARY

125 Holmes St.
Frankfort, Kentucky 40601
Phone: (502) 564-7554
Fax: (502) 564-4840

February 6, 2025

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

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

Dear Co-Chairs West and Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 502 KAR 12:010. Sexual assault forensic-medical examination protocol, the Justice and Public Safety Cabinet, Department of Kentucky State Police accepts the suggested amendments from the ARRS staff and proposes the attached substitute to 502 KAR 12:010. Sexual assault forensic-medical examination protocol.

Sincerely,

Nathan Goens, Attorney
Justice and Public Safety Cabinet
125 Holmes Street, 2nd Floor
Frankfort, Kentucky 40601

enclosure

SUGGESTED SUBSTITUTE

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police**

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

RELATES TO: KRS 15A.160, 16.132, Chapter 49, 72.020, 209.020(4), 209.030, 209A.020, 209A.030, [209A.030,]209A.100, 209A.110, 209A.130, 211.600, 216B.015(27), 216B.400, 216B.990(3), 314.011(14), 403.707, 421.570, 510.010-510.140, 524.140, 529.010(3), 529.010(14)[~~529.010(2), 529.010(13)~~], 529.100, 530.020, 530.064(1)(a), 531.310, 600.020, 620.030, 34 U.S.C. 10449, 45 C.F.R. 164.512

STATUTORY AUTHORITY: KRS 15A.160, 216B.400

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 authorizes the Justice and Public Safety Cabinet to promulgate administrative regulations for the administration of all laws and functions ~~that~~*[which]* are vested in the cabinet, except laws and functions vested in the Department of Public Advocacy. KRS 216B.400 requires the cabinet to promulgate administrative regulations developing a statewide medical protocol for sexual assault examinations. This administrative regulation establishes the procedures to be followed by medical staff before, during, and after the examination of a victim of a sexual assault.

Section 1. Definitions.

- (1) "Basic treatment" means basic medical care provided to victims of sexual offenses, including a medical screening, an examination for medical injuries, treatment for sexually transmitted infections, and, if appropriate, delivery of postexposure HIV prophylaxis.
- (2) "Designated storage facility" means an examination facility, local law enforcement agency, or other agency that has an agreement with an examination facility to provide secure storage for samples collected during sexual assault forensic-medical examinations that are not immediately reported to law enforcement.
- (3) "Examination Facility" means a sexual assault examination facility, as defined ~~by~~*[in]* KRS 216B.015(27).
- (4) "Qualified medical professional" means any physician's assistant or advanced practice registered nurse whose training and scope of practice include performance of speculum examinations.
- (5) "Rape crisis center advocate" means a victim advocate who:
 - (a) Has met the requirements of KRS 421.570; and
 - (b) Works or volunteers for a rape crisis center regulated by the Cabinet for Health and Family Services, pursuant to KRS 211.600 and 922 KAR 8:010.[]
- (6) "Victim" means a person who may have suffered direct, threatened, or attempted physical or emotional harm from the commission or attempted commission of:
 - (a) A sexual offense, pursuant to KRS 510.010 to 510.140;
 - (b) Incest, pursuant to KRS 530.020; or
 - (c) An offense relating to:
 1. The use of a minor in a sexual performance, pursuant to KRS 531.310;
 2. An unlawful transaction with a minor, pursuant to KRS 530.064(1)(a); or
 3. Human trafficking for commercial sexual activity, pursuant to KRS 529.010(3), 529.010(14)[~~529.010(2), 529.010(13)~~], and 529.100.

Section 2. Preforensic-Medical Examination Procedure. If a person seeking treatment as a victim arrives at an examination facility, the appropriate staff at the facility prior to conducting the forensic-medical examination shall comply with the following requirements: []

(1) Reporting to the Rape Crisis Center Advocate. The examination facility staff shall:

- (a) Contact the rape crisis center to inform the on call advocate that a victim has arrived at the examination facility for an examination; and
- (b) Upon arrival of the advocate, ask if the victim wishes to have a rape crisis center advocate present for the examination or otherwise available for consultation.

(2) Limited Mandatory Reporting to the Cabinet for Health and Family Services.

(a) If the victim is less than eighteen (18) years old, the examination facility ~~staff~~ [staff] shall:

1. Assess whether the victim may be an abused, neglected, or dependent child, as defined in KRS 600.020. If child abuse, neglect, or dependency is suspected, medical personnel shall immediately report the incident to the Cabinet for Health and Family Services, a local or state law enforcement agency, or the Commonwealth's attorney or county attorney in accordance with KRS 620.030; and
2. If a report is made, consult with the Cabinet for Health and Family Services or law enforcement to determine whether referral to a regional children's advocacy center or other specialized treatment facility is in the best interest of the child.

(b) If the victim is eighteen (18) years old or older, the examination facility staff shall:

1. Not contact law enforcement or release any information to law enforcement without the victim's authorization.
2. If the victim may be an adult as defined in KRS 209.020(4), immediately report the incident to the Cabinet for Health and Family Services and notify the victim of the report.

(3) Optional Reporting to Law Enforcement. The examination facility staff shall:

(a) Ask if the victim wants to report the incident to law enforcement; [] []

(b) If the victim chooses to report the incident to law enforcement, obtain the victim's consent for treatment and authorization for release of information, and contact law enforcement; and

(c) If the victim chooses not to report to law enforcement, keep information or samples from release to law enforcement, unless the victim has specifically authorized the release of information or samples.

(4) Mandatory Reporting to Law Enforcement. Any professional, as defined by KRS 209A.020, who learns of the death of a victim with whom he or she had a professional interaction, shall immediately notify law enforcement if the professional believes domestic or dating violence or abuse caused, contributed, or is related to the victim's death, in accordance with KRS 209A.110.

(5) Examination facility staff shall:

(a) Inform the victim that all statements made during the interview and the sample collection process to physicians, nurses, ~~or~~ other hospital personnel, or law enforcement officers are not privileged and may be disclosed;

(b) Provide a detailed explanation of the forensic-medical examination, the reasons for conducting the forensic-medical examination, and the effect on a criminal prosecution if a forensic examination is not performed or reported to law enforcement;

(c) Advise the victim that photographs and other documentation, if released to law enforcement, may be used as evidence and that the photographs may include the genitalia;

(d) Advise the victim that the forensic-medical examination, including basic treatment, shall be conducted free of charge, but costs related to additional medical treatment may be incurred; [] []

(e) Inform the victim that consent for the forensic sample collection process may be withdrawn at any time during the examination;

- (f) Inform the victim of the need for a physical examination due to the risk of sexually transmitted infections, including HIV, pregnancy, injury, or other medical problems whether or not the victim chooses to have the evidence collected;
- (g) Obtain documented consent from the victim prior to conducting the forensic-medical examination; and
- (h) Document that the procedures established in this section are completed.

Section 3. The Forensic-Medical Examination.

- (1) A physical examination may be conducted for basic treatment and to collect samples in all cases of sexual assault, regardless of the length of time that may have elapsed between the time of the assault and the examination itself.
- (2) If the reporting patient is a child, examination facility staff shall refer to the "Kentucky Medical Protocol for Child Sexual Assault/Abuse Evaluation" developed by the Sexual Assault Response Team Advisory Committee for guidance in conducting the forensic evidence ~~exam~~team [exam].
- (3) If the sexual assault occurred within ninety-six (96) hours prior to the forensic-medical examination, a Kentucky State Police Sexual Assault Evidence Collection Kit shall be used. The examination facility shall enter the kit information into the sexual assault forensic evidence kit tracking portal, as prescribed by KRS 16.132.
- (4) Personnel in attendance during the forensic examination shall be limited to the following persons:
 - (a) Examining physician, sexual assault nurse examiner, as defined in KRS 314.011(14), or qualified medical professional;
 - (b) Attending nurse and additional nursing personnel;
 - (c) Rape crisis center advocate; and
 - (d) Other persons who are:
 - 1. Dictated by the health needs of the victim; or
 - 2. Requested by the victim.
- (5) Photographs, including photographs of the genitalia, may be taken if the appropriate equipment is available at the examination facility, precautions are taken to ensure confidential storage, and the victim has consented to having photographs taken.
- (6) The following types of samples may be collected during the examination:
 - (a) Hairs from the head or ~~pubic~~public [pubic] region;
 - (b) Fingernail cuttings, swabs, or scrapings;
 - (c) Clothing fibers, or other trace evidence;
 - (d) Bodily fluids, including:
 - 1. Semen;
 - 2. Blood;
 - 3. Sweat; and
 - 4. Saliva;
 - (e) Clothing; and
 - (f) Other samples that may be presented as evidence at a trial.
- (7) Samples shall not be collected if the victim is unconscious unless the collection is consistent with appropriate and necessary medical treatment.
- (8) The collection of samples shall cease immediately if the victim dies during the process.
- (9) The coroner shall be contacted if the victim dies during the sexual assault medical-forensic examination, and the samples processed and the evidence collected up to that time shall be delivered

to the coroner or the coroner's designee. Collection of samples may be completed by medical personnel if requested by the coroner.

(10) The coroner shall be notified in accordance with KRS 72.020 and samples shall not be collected if the victim is deceased upon arrival at the examination facility.

Section 4. Postforensic Examination Procedures. At the conclusion of the forensic-medical examination the appropriate personnel at the examination facility shall provide the victim with:

(1) Information regarding follow-up procedures and appointments concerning:

- (a) ~~Sexually~~~~Sexual~~[Sexually] transmitted infections, including HIV;
- (b) Pregnancy;
- (c) Urinary tract or other infections; and
- (d) Similar assault related health conditions;

(2) Information regarding the availability of follow-up counseling and support services available from a rape crisis center or other mental health agency;

(3) Information from the law enforcement officer regarding who to contact about the prosecution of the offense in cases reported to law enforcement;

(4) A garment or other appropriate ~~clothing~~~~clothing~~[clothing] to wear in leaving the examination facility, or assistance in obtaining other personal ~~clothing~~~~clothing~~[clothing];

(5) Information about:

- (a) The Office of Claims and Appeals[], as established in KRS Chapter 49; and
- (b) The following administrative regulations providing aid to a crime victim:
 - 1. 802 KAR 3:010; ~~and~~
 - 2. 802 KAR 3:020;[~~and~~]

(6) The appropriate educational materials, as described in KRS 209A.130, if it has been determined that the patient may be a victim of dating or domestic violence and abuse, as defined in KRS 209A.020; ~~and~~[-]

(7) If the victim chooses not to report to law enforcement, information about:

- (a) Length of time samples will be stored;
- (b) Whom the victim may contact to file a report or authorize the release of samples; and
- (c) Whether the samples will be automatically destroyed or transferred for extended storage if the victim does not request release of samples to law enforcement within the specified period.

Section 5. Storage and Transfer of Samples.

(1) Chain of custody documentation shall be maintained throughout all storage and transfer procedures.

(2) All samples shall be stored under circumstances that restrict access to reduce the likelihood of tampering and protect the chain of custody. The number of individuals with access to the storage area shall be limited to the minimum number possible.

(3) The following information shall be maintained for each sample stored:

- (a) Patient identifier;
- (b) Date collected;
- (c) Description of sample;
- (d) Signature of the collecting medical professional;
- (e) Date and time entered into storage and signature of person receiving; and
- (f) Date and time removed from storage, signature of person removing, and purpose of removal.

(4) If the victim chooses to report the incident to law enforcement as a crime or has authorized the release of samples to local law enforcement for secure storage, the appropriate law enforcement agency

shall be notified of the report within twenty-four (24) hours of the examination. The examination facility shall transfer samples to local law enforcement officials within five (5) days.

(5) Law enforcement officials shall comply with the storage requirements prescribed within KRS 524.140.

(6) Law enforcement officials shall submit the kit for analysis to the Kentucky State Police Forensics Laboratories within thirty (30) days.

(7) If the victim chooses not to report the incident to law enforcement as a crime when the examination is performed, the examination facility shall arrange for the samples to be stored securely for at least a period of one (1) year. An agency that elects to maintain custody of an unreported kit shall continue to maintain custody of the kit for at least one (1) year from the collection date.

(8) The examination facility may either store samples or transfer samples to a designated storage facility.

(9) The examination facility shall maintain documentation regarding ~~transfers~~~~[transfer]~~~~[transfers]~~ of ~~the~~ samples.

(10) Facilities or agencies ~~providing~~~~[procuri~~~~ng]~~~~[providing]~~ secure storage of samples under this section shall assure compliance with this section and ensure that samples are stored within a locked or otherwise secure container in a limited-access location.

(11) Storage agreements:

(a) May be long-term or case specific; and

(b) Shall designate sending and receiving facilities and certify compliance with subsections (1) through (9) of this section.

(12) If the victim chooses not to report the incident to law enforcement as a crime when the examination is performed, samples shall not be released to a law enforcement agency, except if:

(a) The local law enforcement agency receiving samples has entered into an agreement to serve as a designated storage facility;

(b) The victim later chooses to file a delayed report; or

(c) Pursuant to a court order.

Section 6. Removal of Samples from Secure Storage. Samples shall not be permanently removed from storage except if:

(1) The victim authorizes release of samples to a law enforcement agency or other entity;

(2) The time frame for storage has lapsed, as established by Section ~~5(7)~~~~[5(g)]~~~~[(6)]~~ of this administrative regulation;

(3) The victim authorizes the destruction of the samples; or

(4) A court order has been issued for release or destruction.

Section 7. Destruction of Samples.

(1) One (1) []year after the sample was collected, the examination facility or designated storage facility may destroy the sample at any time in accordance with ~~the~~~~[that]~~~~[the]~~ facility's policy.

(2) Destruction shall be conducted using biohazard precautions.

(3) Destruction shall be documented by the examination facility or designated storage facility that stored the samples.

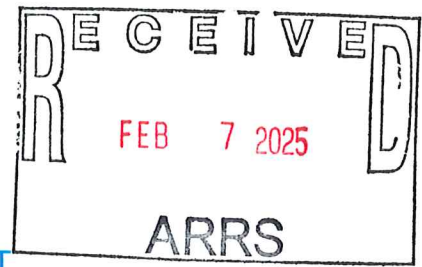
(4) Samples may be destroyed upon ~~the~~~~[the-]~~request of a victim. The victim's request for destruction shall be documented by the examination facility and designated storage facility, if used.

Section 8. Incorporation by Reference.

(1) Sexual Assault Response Advisory Committee Guidance "Kentucky Medical Protocol for Child Sexual Assault-Abuse Evaluation", 2024~~[2024]~~ edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Association of Sexual Assault Programs, Inc., 83 C.[83-C] Michael Davenport Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Children's Advocacy Centers of Kentucky Web site at <https://cackentucky.org/>.

CONTACT PERSON: Nathan Goens, Staff Attorney, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8216, fax (502) 564-6686, email Justice.RegContact@ky.gov.



Andy Beshear
GOVERNOR

Jacqueline Coleman
LIEUTENANT GOVERNOR

PUBLIC PROTECTION CABINET
Kentucky Department of Insurance

500 Mero Street, 2SE11
Frankfort, KY 40601
Phone: (502) 564-3630
Toll Free: (800) 595-6053

Ray A. Perry
SECRETARY

DJ Wasson
DEPUTY SECRETARY

Sharon P. Clark
COMMISSIONER

February 7, 2025

Senator Stephen West
Representative Derek Lewis
c/o Emily Caudill, Regulation Compiler
Administrative Regulation Review Subcommittee
Legislative Research Committee
083 Capitol Annex
702 Capitol Avenue
Frankfort, KY 40601

Dear Co-Chairs West and Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 806 KAR 9:360, the Department of Insurance proposes the attached amendment to 806 KAR 9:360.

Sincerely,

Shaun T. Orme, Executive Advisor
Kentucky Department of Insurance
Public Protection Cabinet
500 Mero St, 2 SE 11
Frankfort, KY 40601

Final, 2-3-2025

SUGGESTED SUBSTITUTE

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Health, Life, Managed Care

806 KAR 9:360. Pharmacy Benefit Manager License.

RELATES TO: KRS 14A.4-010, 304.1-050, 304.2-290, 304.2-310, 304.9-020, 304.9-053, 304.9-054, 304.9-055, 304.9-133, 304.10-030, 304.10-040, 304.17A-005, 304.17A-162, 304.17A-163, 304.17A-165, ~~304.17A-440,~~ 304.17A-535, 304.17A-607, 304.17A-617-304.17A-633, 304.99-020, 45 C.F.R. 156.122
STATUTORY AUTHORITY: KRS 304.2-110(1), 304.9-053(2), 304.9-054(3)~~[(6)]~~, 304.9-054(4), 304.9-055

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the commissioner ~~[of Insurance]~~ to promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of ~~[any provision of]~~ the Kentucky Insurance Code as defined in KRS 304.1-010. KRS 304.9-053(2) requires a person seeking a pharmacy benefit manager ~~[seeking a]~~ license to apply to the commissioner in writing on a form provided by the department. KRS 304.9-054(3) and 304.9-055(2) require~~[(6)]~~ ~~[requires]~~ the commissioner~~[department]~~ to promulgate administrative regulations that are necessary to implement and enforce the provisions of KRS Chapter 304.9, including KRS 304.9-053, 304.9-054, 304.9-055, and 304.17A-162. KRS 304.9-054(4) authorizes~~[permits]~~ the department to impose a fee upon pharmacy benefit managers, in addition to a license fee, to cover the costs of implementation and enforcement of KRS 205.647 and any provision of KRS Chapter 304 applicable to pharmacy benefit managers, including but not limited to ~~[this section and]~~ 304.9-053, 304.9-054, 304.9-055, and 304.17A-162. This administrative regulation establishes requirements for the licensure of pharmacy benefit managers.

Section 1. Definitions.

- (1) "Admitted insurer" is defined by KRS 304.10-030(1).
- (2) "Commissioner" is defined by KRS 304.1-050(1).
- (3) "Department" is defined by KRS 304.1-050(2).
- (4) "Nonadmitted insurer" is defined by KRS 304.10-030(8).
- (5) "Pharmacy benefit manager" is defined by KRS 304.9-020(15).

Section 2. Initial License and Renewal.

- (1) An applicant for a pharmacy benefit manager license or renewal license from the commissioner shall submit the following to the department in the format as outlined in the instructions on the Pharmacy Benefit Manager License Application:
 - (a) Form PBM, the Pharmacy Benefit Manager License Application;
 - (b) The fee set forth in KRS 304.9-053(3) and the penalty fee, if applicable, set forth in KRS 304.9-053~~(4)~~(5);
 - (c) The following evidence of financial responsibility:
 1. A certificate of insurance from either an admitted insurer or a nonadmitted insurer, in accordance with KRS 304.10-040, stating that the insurer has and will keep in effect on behalf of the pharmacy benefit manager a policy of insurance covering the legal liability of the licensed pharmacy benefit manager's erroneous acts or failure to act in its capacity as a pharmacy benefit manager, and payable to the benefit of any aggrieved party in the sum of not less than \$1,000,000; or
 2. A cash surety bond issued by a corporate surety authorized to issue surety bonds in this Commonwealth, in the sum of \$1,000,000, which shall be subject to lawful levy of execution by any party to whom the licensee has been found to be legally liable;

(d) The name of at least one (1) responsible individual who shall be responsible for the pharmacy benefit manager's compliance with KRS Chapter 304 and KAR Title 806 and who is:

1. Licensed as an administrator in Kentucky; and
2. Designated in accordance with KRS 304.9-133;

(e) If performing utilization review in accordance with KRS 304.17A-607, the pharmacy benefit manager's utilization review registration number;

(f) The following written policies and procedures to be used by the pharmacy benefit manager:

1. An appeals process for any pricing system used to determine the cost of a generic drug required by KRS 304.17A-162;
2. Exceptions policy required by 45 C.F.R. 156.122(c) and KRS 304.17A-535(4); and
3. Pharmacy and Therapeutics committee membership standards and duties required by 45 C.F.R. 156.122(a);

(g) Proof of a registered agent and office with the Kentucky Secretary of State in accordance with KRS 14A.4-010;

(h) ~~[Provide]~~A listing of all clients **the pharmacy benefit manager[PBM]** provides services to, including any non-ERISA self-funded or governmental plans; and

(i) ~~[Provide]~~A listing of any delegated or contracted companies that perform part of the **pharmacy benefit manager[PBM]** services.

(2)

(a) Upon receipt of a complete application as required by subsection (1) of this section, the commissioner shall review the application and:

1.
 - a. Approve the application; and
 - b. Issue the applicant the pharmacy benefit manager license;
2. Notify the applicant that additional information is needed in accordance with paragraph (b) of this subsection; or
3. Deny the application in accordance with paragraph (c) of this subsection.

(b)

1. If supplemental or additional information is necessary to complete the application, the applicant shall submit that information within thirty (30) days from the date of the notification from the commissioner.

2. If the missing or necessary information is not received within thirty (30) days from the date of the notification, the commissioner shall deny the application unless good cause is shown. To determine if the applicant has demonstrated good cause, the commissioner shall weigh the justification provided against any other issues, including if the applicant had submitted any prior good cause excuses for the same request. Some examples of good cause include:

- a. Personnel-related issues, including the individual responsible for responding was transferred, terminated, or became incapacitated due to illness;
- b. A need to obtain information that was not immediately available and had to be requested from other sources;
- c. A lack of sufficient resources to respond to large requests; and
- d. Information technology, operational, or equipment malfunctions causing unexpected delays.

(c) If the commissioner determines that the applicant does not meet the requirements for licensure, or if the application is denied pursuant to paragraph (b)2. of this subsection, the commissioner shall:

1. Provide written notice to the applicant that the application has been denied; and
2. Advise the applicant that a request for a hearing may be filed in accordance with KRS 304.2-310.

(3)

(a) ~~A[Except as provided in paragraph (b) of this subsection, a]~~ pharmacy benefit manager license shall:

1. Be renewed annually~~[as required by subsection (4) of this section]~~; or
2. Expire on March 31.

(b) An applicant for a pharmacy benefit manager license or renewal license shall pay a registration fee of \$10,000 and the fee set forth in KRS 304.9-053(3)[a license application fee of \$1,000] within

thirty (30) days of initial licensure and annually thereafter on or before March 31. ~~[If the license was issued on or before January 1, 2017, the license shall expire on March 31, 2018, if not renewed as required by subsection (4) of this section.]~~

(4)

~~[(a) A renewal application shall include the items required by subsection (1) of this section.~~

~~(b) If a[~~the~~] renewal application is submitted after the renewal date of March 31, but between April 1 and May 30[~~31~~], the application required by subsection (1) of this section shall be accompanied by a penalty fee of \$500 in accordance with KRS 304.9-053(4)~~(5)~~. A license approved by May 30[~~31~~] shall be considered continuously active.~~

Section 3. Notice of Changes. Within thirty (30) days of any change, a licensee shall notify the commissioner of all changes among its members, directors, officers, and other individuals designated or registered to the license, any changes to the listing of clients and delegated contractors provided in the most recent application filed by the licensee, and any changes to its written policies and procedures submitted pursuant to Section 2(1)(f) of this administrative regulation.

Section 4. Incorporation by Reference.

(1) "Pharmacy Benefit Manager License Application", Form PBM, 1/2025~~[10/2024]~~[2024], 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 p.m. This material is also available on the Web site at: <http://insurance.ky.gov/ppc/CHAPTER.aspx>.

CONTACT PERSON: Shaun T. Orme, Executive Advisor, 500 Mero Street, Frankfort, KY 40601, Phone: (502) 782-1698, Fax: (502) 564-1453, Email: shaun.orme@ky.gov.

At the time that the agency files this staff amendment, it needs to file one (1) clean copy of:

- The **"Pharmacy Benefit Manager License Application"** that:
 - Includes an updated edition date of 1/2025 on all pages of the form
 - **Page 1** - Corrects the typo at in the center header so the Web site link is <https://insurance.ky.gov>
 - **Page 3** – Change "must" to shall" in Section 5 header
 - In the First and final paragraphs change "should" to "shall"
 - **Page 4** – Change "Must" to "Shall" in Section 6 in the final sentence before the signature
- **FISCAL IMPACT STATEMENT**
 - Includes an answer to Question 3(a) not answered previously

FISCAL IMPACT STATEMENT

806 KAR 9:360

Contact Person: Shaun T. Orme

Phone: 502-782-1698

Email: shaun.orme@ky.gov

(1) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(1), 304.9-053(2), 304.9-054(6), and KRS 304.9-055.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions:
The Kentucky Department of Insurance as the implementer.

(a) Estimate the following for the first year:

Expenditures: -\$660,000

Revenues: \$570,000

Cost Savings: None

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No difference.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): No local entities affected.

(a) Estimate the following for the first year:

Expenditures: None

Revenues: None

Cost Savings: None

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No difference.

(4) Identify additional regulated entities not listed in question (2) or (3): Pharmacy Benefit Managers (PBMs) that apply for a PBM license or renew a PBM license.

(a) Estimate the following for the first year:

Expenditures: \$10,000 per PBM

Revenues: None

Cost Savings: None

(b) How will expenditures, revenues, or cost savings differ in subsequent years? No difference. Expenditures will be \$10,000 per year.

(5) Provide a narrative to explain the:

(a) Fiscal Impact of this administrative regulation: This administrative regulation will increase fees paid by PBMs to obtain and renew a PBM license. An additional \$10,000 registration fee is required of PBMs, in addition to the current license fee of \$1,000. There are currently 57 licensed PBMs in Kentucky. This will result in an overall revenue increase for the Department of \$570,000.

(b) Methodology and resources used to determine the fiscal impact.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2)-(4). (\$500,000 or more, in aggregate). Yes, this administrative regulation will have a major economic impact.

(b) The Methodology and resources used to reach this conclusion.

Yes, this administrative regulation will have major impact in the aggregate for both the Department and PBMs. SB 188 was enacted during the 2024 legislative session. SB 188 significantly increased the Department's regulatory oversight of PBMs, including requiring the Department to conduct a study, at least every two years, to determine the average dispensing fee for pharmacies in Kentucky. To properly conduct the study, the Department will need to contract with a firm that has experience conducting similar studies. The estimated cost for performing this work, along with hiring additional staff, is \$660,000. This estimate is based on similar contract work performed for the Department by contract actuaries and the cost of adding the necessary additional staff. PBMs currently pay a \$1,000 application fee to obtain or renew a PBM license. The regulation proposes to impose an additional \$10,000 registration fee for each PBM that requests a PBM license or renews a PBM license. There are currently 57 licensed PBMs in Kentucky. Therefore, the overall cost imposed on the PBMs will be \$570,000.



For Office Use Only

Check appropriate box for license requested:

- Resident License
- Non-Resident License

Identify Home State:

Identify Home State License #:
(if applicable)

**COMMONWEALTH OF KENTUCKY
DEPARTMENT OF INSURANCE**

P. O. Box 517

Frankfort, Kentucky 40602-0517

email: DOI.LicensingMail@ky.gov

<https://insurance.ky.gov>

Ph. 502-564-6004 Fax 502-564-6030

(PLEASE PRINT OR TYPE)

Amt. Rec'd _____
Date Rec'd _____
Tracking No. _____
Cashier: _____

PHARMACY BENEFIT MANAGER LICENSE APPLICATION

New License Application

Renewal Application

Section 1 – Demographic Information				
Entity Name		Incorporation/Formation Date (MM/DD/YY)		FEIN
If assigned, National Producer Number (NPN)		State of Domicile		UR Registration #:
List any other assumed, fictitious, alias or trade names under which you are doing business or intend to do business.				
Address of Home Office		City	State	ZIP Code
Business Address (Physical Street)		City	State	ZIP Code
Phone Number (include extension) () -	Fax Number () -	Business E-Mail Address		Business Website Address
Mailing Address	P.O. Box	City	State	ZIP Code
Listing of entities/individuals for which the PBM provides services (within Kentucky only):				

Applicant Background Information

Attach a full explanation and/or the requested information for questions below as an attachment to this application. Failure to provide the required attachments or any omissions may result in the denial of this application.

Has the applicant been refused a registration, license or certification to act as (or provide the services of) a Pharmacy Benefit Manager, Pharmacy Benefit Management Plan, Pharmacy Benefits Processor, Third Party Administrator, Third Party Provider, etc., or has any registration, license or certification to act as such been denied, suspended, revoked or non-renewed for any reason by any state or federal entity? (Attach specific details separately.)	<input type="checkbox"/> YES	<input type="checkbox"/> NO
Has the applicant ever been found liable in any lawsuit or arbitration proceeding involving allegations of fraud, illegal or dishonest activities in connection with the administration of pharmacy benefit management services? (Attach specific details separately.)	<input type="checkbox"/> YES	<input type="checkbox"/> NO
Has the applicant had a business relationship with an insurance company terminated for any alleged fraudulent, illegal or dishonest activities in connection with the administration of pharmacy benefit management services? (Attach specific details separately.)	<input type="checkbox"/> YES	<input type="checkbox"/> NO
Has the applicant, parent company or any company or organization controlling the operation of the Pharmacy Benefit Manager experienced any data security breaches or HIPAA security breaches? (If YES please attach all pertinent information concerning any data security breach. Any future data security breach must be reported immediately to the Kentucky Department of Insurance.)	<input type="checkbox"/> YES	<input type="checkbox"/> NO
Does the applicant own, operate or affiliate with any pharmacy located outside of Kentucky that ships, mails or delivers in any manner, controlled substances, prescription or legend drugs or devices into Kentucky?	<input type="checkbox"/> YES	<input type="checkbox"/> NO

Section 2 – Service of Process Agent for Pharmacy Benefit Manager

Name _____
Address _____ City _____ State _____ ZIP Code _____
Phone Number () _____ E-Mail Address _____

Section 3 – Licensed Administrator Acting on Behalf of the Pharmacy Benefit Manager

According to KRS 304.9-133, a business entity shall have at least one licensed individual with same line of authority and shall have at least one licensed individual designated with the commissioner at all times. List primary licensed contact person(s) responsible for regulatory compliance on behalf of the Pharmacy Benefit Manager:

Name _____ Official Title _____
Phone: _____ Email: _____ NPN or DOI ID#: _____
Name _____ Official Title _____
Phone: _____ Email: _____ NPN or DOI ID#: _____
Name _____ Official Title _____
Phone: _____ Email: _____ NPN or DOI ID#: _____

Section 4 – Individuals Responsible for the Compliance and Conduct of Affairs for Pharmacy Benefit Manager

List all individuals responsible for the compliance/conduct of affairs, including members of the board of directors, board of trustees, executive committee, other governing board or committee, the principal officers in the case of a corporation, the partners or members in the case of a partnership or association, and any other person who exercises control or influence over the affairs of the Pharmacy Benefit Manager.

1. Name _____ Official Title _____
Address _____ Professional Qualifications _____
2. Name _____ Official Title _____
Address _____ Professional Qualifications _____
3. Name _____ Official Title _____
Address _____ Professional Qualifications _____
4. Name _____ Official Title _____
Address _____ Professional Qualifications _____
5. Name _____ Official Title _____
Address _____ Professional Qualifications _____
6. Name _____ Official Title _____
Address _____ Professional Qualifications _____
7. Name _____ Official Title _____
Address _____ Professional Qualifications _____
8. Name _____ Official Title _____
Address _____ Professional Qualifications _____

(Attach additional sheets if necessary)

Section 5 - Administration and Operation: The following documentation shall be submitted with this application.

The documentation required to be submitted in this section shall be submitted as a Portable Document Format (PDF) bookmarked document in accordance with the items listed below and submitted to the Department via email to DOI.PharmacyBenefitManager@ky.gov.

1. Attach a detailed description of the generic drug pricing dispute appeal process to be used by contracted pharmacies, pharmacy services and administration organizations or group purchasing organization, including the appeals policy and procedure, pursuant to KRS 304.17A-162 (1) (b).
2. Attach the policy and procedure used for making price updates warranted as a result of an appeal granted under KRS 304.17A-162, including PBM's means of providing notification to all other contracted pharmacies in the network.
3. Identify the national drug pricing compendia or sources used to obtain drug price data for every drug for which the PBM establishes a maximum allowable cost to determine the product reimbursement, pursuant to KRS 304.17A-162(3).
4. Identify the location of PBM's comprehensive list of every drug subject to generic drug pricing, per KRS 304.17A-162(4).
5. Attach the policy and procedure to be used for updating generic drug pricing every seven days and the PBM's ability to provide notification to all contracted pharmacies (KRS 304.17A-162 (6) and (7)).
6. Attach the policy and procedure that ensures that every drug subject to generic drug pricing meets requirements set forth in KRS 304.17A-162(8) through KRS 304.17A-162(13).
7. Attach the policy and procedure relating to the resolution of generic drug pricing complaints which are filed with the Kentucky Department of Insurance, including timeframes and sample appeal response letter. Provide a contact person's name, address, email, and telephone number for complaints.
8. Attach the *Exceptions Policy* that allows an enrollee, designee, or prescribing provider to gain access to clinically appropriate drugs not otherwise covered by the plan, and includes a standard and expedited procedure. (45 CFR 156.122 and KRS 304.17A-535).
9. Provide the policy that explains the process that gives the ability to access prescriptions from an in-network retail, unless special handling or another reason proves that the prescription cannot be provided by a retail pharmacy. (45 CFR 156.122).
10. Attach the policy explaining any Pharmacy and Therapeutics committee membership standards and duties, including how often the committee meets, structure, and the decision-making process. (45 CFR 156.122)
11. Provide a listing of any delegated/contracted companies that perform part of the PBM services.
12. Attach proof of financial responsibility in the amount of one million dollars (\$1,000,000).
13. Attach proof of a registered agent and office with the Kentucky Secretary of State in accordance with KRS 14A.4-010
14. Attach \$11,000 non-refundable fee (KRS 304.9-200(4)), made payable to the Kentucky State Treasurer, or paid electronically through Kentucky eServices account.

When the PBM application is emailed, pay fees through the eServices account. When the PBM application is mailed to DOI, make check payable to Kentucky State Treasurer, and include with the mailing. Checks shall never be mailed without explanation, application, or documentation.

Section 6 - Applicant's Certification and Attestation

On behalf of the Pharmacy Benefit Manager, applicant hereby certifies, under penalty of perjury, that:

1. All of the information submitted in this application and attachments is true and complete and I am aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license or registration revocation and may subject me and the applicant to civil or criminal penalties.
2. The applicant grants permission to the Kentucky Department of Insurance or other appropriate party in the Commonwealth of Kentucky to verify any information supplied with any federal, state, or local government agency, current or former employer, or insurance company.
3. I authorize the Kentucky Department of Insurance to give any information they may have concerning me, as permitted by law, to any federal, state or municipal agency, or any other organization and I release the Kentucky Department of Insurance, and any person acting on their behalf, from any and all liability of whatever nature by reason of furnishing such information.
4. I acknowledge that I understand and shall comply with the insurance laws and regulations of Kentucky.
5. I hereby certify that I will furnish any additional information upon request.

Shall be signed by an officer, director, or partner of the entity, or member or manager of a limited liability company who has authority to act on behalf of the entity:

Signature Date

Typed or Printed Name Title

Address line 1

Address line 2

City State ZIP



Andy Beshear
GOVERNOR

Jacqueline Coleman
LIEUTENANT GOVERNOR

PUBLIC PROTECTION CABINET
Kentucky Department of Financial
Institutions

500 Mero Street, 2SW19
Frankfort, KY 40601
Phone: (502) 573-3390
KFI@ky.gov

Ray A. Perry
SECRETARY

DJ Wasson
DEPUTY SECRETARY

Marni Rock Gibson
COMMISSIONER

2/5/2025

Senator Stephen West, Co-Chair
Representative Derek Lewis, Co-Chair
c/o Ms. Emily Caudill, Regulations Compiler
Administrative Regulation Review Subcommittee
Legislative Research Commission
083, Capitol Annex
Frankfort, KY 40601

Re: 808 KAR 9:010. Deferred deposit database compliance

Dear Co-Chairs West and Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 808 KAR 9:010, the Kentucky Department of Financial Institutions proposes the attached suggested amendment to 808 KAR 9:010.

Sincerely,

^{FoA}
Marni Rock Gibson, Commissioner
Kentucky Department of Financial Institutions
500 Mero St., 2SW19
Frankfort, KY 40601

Staff-suggested Amendment

1/24/2025

**PUBLIC PROTECTION CABINET
Department of Financial Institutions
Division of Non-Depository Institutions**

808 KAR 9:010. Deferred deposit database compliance.

Page 1

NECESSITY, FUNCTION, AND CONFORMITY paragraph

Line 14

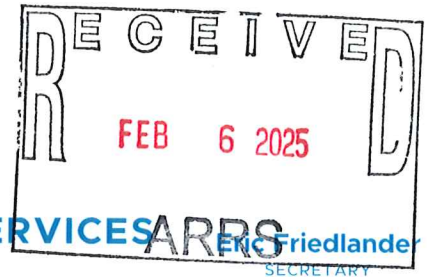
After "the commissioner to", insert "promulgate administrative regulations".
Delete "adopt rules".

Page 3

Section 2(3)

Line 7

After "electronically, or", insert "by".
Delete "via".



Andy Beshear
GOVERNOR

CABINET FOR HEALTH AND FAMILY SERVICES

275 East Main Street, 5W-A
Frankfort, Kentucky 40621
Phone: (502) 564-7042
Fax: (502) 564-7091

February 6, 2025

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

907 KAR 10:015. Payments for outpatient hospital services.

Dear Co-Chairs West and Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 907 KAR 10:015, the Department for Medicaid Services proposes the attached suggested substitutes to 907 KAR 10:015.

If you have any questions, please feel free to contact Jonathan Scott, Regulatory and Legislative Advisor with the Department for Medicaid Services at (502) 564-4321 ext. 2015.

Sincerely,

Office of Legislative and Regulatory Affairs
Executive Staff Advisor

Final, 2-3-2025

SUGGESTED SUBSTITUTE

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Fiscal Management

907 KAR 10:015. Payments for outpatient hospital services.

RELATES TO: KRS 205.520, 205.637, 205.8451, 216.380, 42 C.F.R. 400.203, 412.105, 413.70, 413.75, 438.114, 440.2, 440.20(a), 447.321, 42 U.S.C. 1395l(h), (dd)(e)(1), 1396r-8(a)(7)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, 205.637(3), 205.6310, 205.8453, 42 U.S.C. 1396a, 1396b, 1396d

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has the 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 for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the method for determining amounts payable by the Medicaid Program for outpatient hospital services.

Section 1. Definitions.

- (1) "Critical access hospital" or "CAH" means a hospital meeting the licensure requirements established in 906 KAR 1:110 and KRS 216.380.
- (2) "Department" means the Department for Medicaid Services or its designee.
- (3) "Emergency medical condition" is defined by 42 U.S.C. 1395dd(e)(1).
- (4) "Federal financial participation" is defined in 42 C.F.R. 400.203.
- (5) "Finalized" means approved or final as determined by the Centers for Medicare and Medicaid Services (CMS).
- (6) "Flat rate" means a set and final rate representing reimbursement in entirety with no subsequent cost settling.
- (7) "Lock-in recipient" means a recipient enrolled in the department's lock-in program pursuant to 907 KAR 1:677.
- (8) "Lock-in recipient's designated hospital" means the hospital designated to provide nonemergency care for a lock-in recipient pursuant to 907 KAR 1:677.
- (9) "Nonemergency" means that a condition or situation does not require an emergency service pursuant to 42 C.F.R. 438.114[447.53].
- (10) "Outpatient cost-to-charge ratio" means the ratio determined by dividing the Medicaid-adjusted costs reported on Supplemental Worksheet E-3, Part VIII[III], [Page 12]column 2, line 21[27] of the cost report by the Medicaid-adjusted charges reported on column 2, line 12[20] of the same schedule.
- (11) "Recipient" is defined by KRS 205.8451(9).

Section 2. In-State Outpatient Hospital Service Reimbursement.

- (1)
 - (a) Except for critical access hospital services, outpatient hospital laboratory services, or a service referenced in subsection (6) of this section, the department shall reimburse on an interim basis for in-state outpatient hospital services at a facility specific outpatient cost-to-charge ratio based on the facility's most recently filed cost report.
 - (b) An outpatient cost-to-charge ratio shall be expressed as a percent of the hospital's charges.
- (2) Except as established in subsection (6) of this section, a facility specific outpatient cost-to-charge ratio paid during the course of a hospital's fiscal year shall be designed to result in reimbursement, at the hospital's fiscal year end, equaling ninety-five (95) percent of a facility's total outpatient costs incurred during the hospital's fiscal year.

(3) Except as established in subsections (4) and (6) of this section:

(a) Upon reviewing an in-state outpatient hospital's as submitted cost report for the hospital's fiscal year, the department shall preliminarily settle reimbursement to the facility equal to ninety-five (95) percent of the facility's total outpatient costs, excluding laboratory services, incurred in the corresponding fiscal year; and

(b) Upon receiving and reviewing an in-state outpatient hospital's finalized cost report for the hospital's fiscal year, the department shall settle final reimbursement, excluding laboratory services, to the facility equal to ninety-five (95) percent of the facility's total outpatient costs incurred in the corresponding fiscal year.

(4)

(a) The department's total reimbursement for outpatient hospital services shall not exceed the aggregate limit established in 42 C.F.R. 447.321.

(b) If projections indicate for a given state fiscal year that reimbursing for outpatient hospital services at ninety-five (95) percent of costs would result in the department's total outpatient hospital service reimbursement exceeding the aggregate limit established in 42 C.F.R. 447.321, the department shall proportionately reduce the final outpatient hospital service reimbursement for each hospital to equal a percent of costs which shall result in the total outpatient hospital reimbursement equaling the aggregate limit established in 42 C.F.R. 447.321.

(5) In accordance with 42 U.S.C. 1396r-8(a)(7), a hospital shall include the corresponding healthcare common procedure coding (HCPC) code if billing a revenue code of 250 through 261 or 634 through 636 for an outpatient hospital service.

(6)

(a) Except for a critical access hospital, the department shall reimburse a flat rate of twenty-five (25) dollars for a screening of a lock-in recipient to determine if an emergency medical condition exists.

(b) A hospital shall use revenue code 451 to bill for a service referenced in paragraph (a) of this subsection.

(c) A service or reimbursement for a service referenced in paragraph (a) of this subsection, shall not be included:

1. With a hospital's costs for reimbursement purposes; and

2. In any cost settlement between the department and hospital.

(7) In accordance with 907 KAR 10:014:

(a) Except for a service referenced in subsection (6) of this section, the department shall not reimburse for a nonemergency service, other than a screening in accordance with 907 KAR 10:014, Section 2(6)(a), provided to a lock-in recipient if provided by a hospital other than the lock-in recipient's designated hospital.

(b) The department shall not reimburse for a nonemergency service provided to a lock-in recipient in an emergency department of a hospital.

Section 3. Out-of-State Outpatient Hospital Service Reimbursement. Excluding services provided in a critical access hospital and laboratory services, reimbursement for an outpatient hospital service provided by an out-of-state hospital shall be ninety-five (95) percent of the average in-state outpatient hospital cost-to-charge ratio.

Section 4. Critical Access Hospital Outpatient Service Reimbursement.

(1) The department shall reimburse for outpatient hospital services in a critical access hospital as established in 42 C.F.R. 413.70(b) through (d).

(2) A critical access hospital shall comply with the cost reporting requirements established in Section ~~8[6]~~ of this administrative regulation.

Section 5. Outpatient Hospital Laboratory Service Reimbursement.

(1) The department shall reimburse for an in-state or out-of-state outpatient hospital laboratory service:

(a) At the Medicare-established technical component rate for the service in accordance with 907 KAR 1:028 if a Medicare-established component rate exists for the service; or

- (b) By multiplying the facility's current outpatient cost-to-charge ratio by its billed laboratory charges if no Medicare rate exists for the service.
- (2) Laboratory service reimbursement, in accordance with subsection (1) of this section, shall be:
- (a) Final; and
 - (b) Not settled to cost.
- (3) An outpatient laboratory hospital laboratory service shall be reimbursed in accordance with this section regardless of whether the service is performed in an emergency room setting or in a nonemergency room setting.

Section 6. Direct Graduate Medical Education Costs at In-State Hospitals with Graduate Medical Education Programs.

(1) If federal financial participation for outpatient direct graduate medical education (DGME) costs is not provided to the department, the department shall not reimburse eligible in-state hospitals for outpatient DGME costs.

(2)(a) If federal financial participation for outpatient DGME costs is provided to the department, the department shall:

1. ~~(a)~~ Provide a supplemental outpatient DGME payment to in-state hospitals for the outpatient direct costs of a graduate medical education program approved by Medicare as established in this subsection.

2. ~~(1)~~ Effective for the state fiscal year beginning July 1, 2024, the department shall make an annual outpatient DGME supplemental payment for the direct costs of graduate medical education incurred by in-state hospitals with a graduate medical education program approved by Medicare.

(b) ~~(2)~~ A supplemental DGME payment shall be made:

1. ~~(a)~~ Separately from the per visit and cost settlement payment methodologies;

2. ~~(b)~~ On an annual basis; and

3. ~~(c)~~ Using the hospital's cost report period ending in the calendar year one (1) year prior to the beginning of the state fiscal year. For example, for the state fiscal year beginning July 1, 2024, the cost report period ending in calendar year 2023 shall be utilized.

(c) ~~(b)~~ The annual supplemental DGME payment shall equal the difference between the supplemental DGME amount minus any DGME payments received through outpatient cost settlements and any outpatient DGME payments received from managed care organizations.

(d) ~~(c)~~ The department shall determine a supplemental DGME amount equal to the product of:

1. Total DGME costs, obtained from Worksheet B, Part 1, Line 118, Columns 21 and 22 of the hospital's Medicare cost report **submitted pursuant to Section 8(1) of this administrative regulation**; and

2. The hospital's Medicaid outpatient net revenue, including both fee-for-service and managed care, divided by net revenue from Medicaid, obtained from Worksheet S-10, line 2 of the hospital's Medicare cost report **submitted pursuant to Section 8(1) of this administrative regulation**.

Section 7. Indirect Medical Education Payments at In-State Hospitals with Graduate Medical Education Programs.

(1) If federal financial participation for outpatient indirect medical education (IME) costs is not provided to the department, the department shall not reimburse eligible in-state hospitals for outpatient IME costs.

(2) If federal financial participation for outpatient IME costs is provided to the department, the department shall:

(a) As established in this subsection, provide a supplemental outpatient IME payment to a hospital that is owned or operated by a state university or a state university related party organization, with a state university affiliated graduate medical education program approved by Medicare.

(b) Effective for the state fiscal year beginning July 1, 2024, make an annual IME payment to state university teaching hospitals equal to:

1. **a.** The total of all outpatient hospital base payments received from fee-for-service Medicaid during the previous year multiplied by the sum of one (1) and the adjusted hospital specific IME factor determined in accordance with **paragraph (c) of this subsection**~~[subparagraph 4.]~~; and

~~b.[plus 2.]~~ The total of all outpatient hospital base payments received from managed care organizations in the previous year multiplied by the sum of one (1) and the adjusted hospital specific IME factor in accordance with **paragraph (c) of this subsection; and**

~~2. Minus[subparagraph 4., minus 3.]~~ IME payments, if any, included in the outpatient cost settlement.

~~(c)[4.]~~ The adjusted hospital-specific IME factor shall be calculated pursuant to 42 C.F.R. [§] 412.105(d), except that the count of FTE residents reported on Worksheet E, Part A, Lines 10 and 11, Column 1 of the Medicare cost report **submitted pursuant to Section 8(1) of this administrative regulation** shall be substituted for the numerator of the ratio of full-time equivalent residents to beds described in **42 C.F.R. 412.105[paragraph](d)(1)[therein]**.

~~(d)[5.]~~ The annual calculation described in this subsection shall utilize the hospital's cost report period ending in the calendar year one (1) year prior to the beginning of the state fiscal year. For example, for the state fiscal year beginning July 1, 2024, the cost report period ending in calendar year 2023 shall be utilized.

Section 8. Cost Reporting Requirements.

(1) An in-state outpatient hospital participating in the Medicaid Program shall submit to the department a copy of the Medicare cost report it submits to CMS, an electronic cost report file (ECR), the Supplemental Medicaid Schedule KMAP-1, the Supplemental Medicaid Schedule KMAP-4 and the Supplemental Medicaid Schedule KMAP-6.

(a) A cost report shall be submitted:

1. For the fiscal year used by the hospital; and
2. Within five (5) months after the close of the hospital's fiscal year.

(b) Except as provided in subparagraph 1 or 2 of this paragraph, the department shall not grant a cost report submittal extension.

1. The department shall grant an extension if an extension has been granted by Medicare. If an extension has been granted by Medicare, when the facility submits its cost report to Medicare, it shall simultaneously submit a copy of the cost report to the department.

2. If a catastrophic circumstance exists, as determined by the department (for example flood, fire, or other equivalent occurrence), the department shall grant a thirty (30) day extension.

(2) If a cost report submittal date lapses and no extension has been granted, the department shall immediately suspend all payment to the hospital until a complete cost report is received.

(3) If a cost report indicates payment is due by a hospital to the department, the hospital shall submit the amount due or submit a payment plan request with the cost report.

(4) If a cost report indicates a payment is due by the hospital to the department and the hospital fails to remit the amount due or request a payment plan, the department shall suspend future payment to the hospital until the hospital remits the payment or submits a request for a payment plan.

(5) An estimated payment shall not be considered payment-in-full until a final determination of cost has been made by the department.

(6) A cost report submitted by a hospital to the department shall be subject to departmental audit and review.

(7) Within seventy (70) days of receipt from the Medicare intermediary, a hospital shall submit to the department a printed copy of the final Medicare-audited cost report including adjustments.

(8)

(a) If it is determined that an additional payment is due by a hospital after a final determination of cost has been made by the department, the additional payment shall be due by a hospital to the department within sixty (60) days after notification.

(b) If a hospital does not submit the additional payment within sixty (60) days, the department shall withhold future payment to the hospital until the department has collected in full the amount owed by the hospital to the department.

Section 9.[Section 7.] Federal Financial Participation. A provision established in this administrative regulation shall be null and void if the Centers for Medicare and Medicaid Services:

- (1) Denies federal financial participation for the provision; or

(2) Disapproves the provision.

Section 10.~~[Section 8.]~~ Appeals. A hospital may appeal a decision by the department regarding the application of this administrative regulation in accordance with 907 KAR 1:671.

Section 11.~~[Section 9.]~~ Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "Supplemental Worksheet E-3, Part ~~VII~~~~III~~, ~~Page 12~~", ~~December 2010~~~~May 2004~~ edition[""];
- (b) "Supplemental Medicaid Schedule KMAP-1", January 2007 edition;
- (c) "Supplemental Medicaid Schedule KMAP-4", January 2007 edition; and
- (d) "Supplemental Medicaid Schedule KMAP-6", January 2007 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., or online, <https://www.chfs.ky.gov/agencies/dms/Pages/default.aspx>.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.

MATERIAL INCORPORATED BY REFERENCE

At the time that the agency files this staff suggested amendment, it needs to file one (1) clean copy of the following:

- "Supplemental Worksheet E-3, Part VII", December 2010 – This document is designed to assist hospitals in calculating net costs, prospective payment amounts, and reimbursement settlement of covered services for inpatient and outpatient hospital services.

CALCULATION OF REIMBURSEMENT SETTLEMENT		PROVIDER NO.:	PERIOD:	WORKSHEET E-3, PART VII
		COMPONENT NO.:	FROM _____	
			TO _____	
Check applicable boxes:	<input type="checkbox"/> Title V <input type="checkbox"/> Title XIX	<input type="checkbox"/> Hospital <input type="checkbox"/> Subprovider <input type="checkbox"/> SNF	<input type="checkbox"/> NF <input type="checkbox"/> ICF/MR	<input type="checkbox"/> PPS <input type="checkbox"/> TEFRA <input type="checkbox"/> Other

PART VII - CALCULATION OF REIMBURSEMENT - ALL OTHER HEALTH SERVICES FOR TITLES V OR TITLE XIX SERVICES

COMPUTATION OF NET COST OF COVERED SERVICES		Title XIX Inpatient	Title XIX Outpatient	
1	Inpatient hospital/SNF/NF services			1
2	Medical and other services			2
3	Organ acquisition (certified transplant centers only)			3
3A	KMAP-8			3A
4	Subtotal (sum of lines 1, 2 and 3)			4
4A	KMAP-1			4A
4B	Subtotal (Line 4 minus Line 4A)			4B
5	Inpatient primary payer payments			5
6	Outpatient primary payer payments			6
7	Subtotal (line 4B less sum of lines 5 and 6)			7
COMPUTATION OF LESSER OF COST OR CHARGES				
REASONABLE CHARGES				
8	Routine service charges			8
9	Ancillary service charges			9
10	Organ acquisition charges, net of revenue			10
11	Incentive from target amount computation			11
12	Total reasonable charges (sum of lines 8 through 11)			12
CUSTOMARY CHARGES				
13	Amount actually collected from patients liable for payment for services on a charge basis			13
14	Amounts that would have been realized from patients liable for payment for services on a charge basis had such payment been made in accordance with 42 CFR 413.13(e)			14
15	Ratio of line 13 to line 14 (not to exceed 1.000000)			15
16	Total customary charges (see instructions)			16
17	Excess of customary charges over reasonable cost (complete only if line 16 exceeds line 7) (see instructions)			17
18	Excess of reasonable cost over customary charges (complete only if line 7 exceeds line 16) (see instructions)			18
19	Interns and residents (see instructions)			19
20	Cost of teaching physicians (see instructions)			20
21	Cost of covered services (line 7)			21
PROSPECTIVE PAYMENT AMOUNT				
22	Other than outlier payments			22
23	Outlier payments			23
24	Program capital payments			24
25	Capital exception payments (see instructions)			25
26	Routine and ancillary service other pass through costs			26
27	Subtotal (sum of lines 22 through 26)			27
28	Customary charges (title XIX PPS covered services only)			28
29	Titles V or XIX PPS, lesser of lines 27 or 28; non-PPS enter amount from line 27			29
COMPUTATION OF REIMBURSEMENT SETTLEMENT				
30	Excess of reasonable cost (from line 18)			30
31	Subtotal (sum of lines 19 through 21 minus 29)			31
32	Deductibles			32
33	Coinsurance			33
34	Allowable bad debts (see instructions)			34
35	Utilization review			35
36	Subtotal (sum of lines 31, 34 and 35 minus the sum of lines 32 and 33)			36
37	Other adjustments (specify) (see instructions)			37
38	Subtotal (line 36 ± line 37)			38
39	Direct graduate medical education payments (from Worksheet E-4)			39
40	Total amount payable to the provider (sum of lines 38 and 39)			40
41	Interim payments			41
41A	KMAP			41A
41B	Copay/Spenddown			41B
41C	TPL			41C
41D	Laboratory payments			41D
42	Balance due provider/program (line 40 minus 41)			42
43	Protested amounts (nonallowable cost report items) in accordance with CMS Pub 15-2, section 115.2			43

FORM CMS-2552-10 (12/2010) (INSTRUCTIONS FOR THIS WORKSHEET ARE PUBLISHED IN CMS PUB. 15-II, SECTION 4033.7)