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August 5, 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: 201 KAR 28:240E. Occupational Therapy Licensure Compact.

Dear Co-Chairs West and Lewis:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 201 KAR 28:240E, the Kentucky Board of Licensure for Occupational Therapy proposes the attached amendment to 201 KAR 28:240E.

Sincerely,

Lilly Jean Coiner

Board Counsel

Kentucky Board of Licensure for  
Occupational Therapy

Final, 7-29-2025  
SUGGESTED SUBSTITUTE

BOARDS AND COMMISSIONS  
Board of Licensure for Occupational Therapy

**201 KAR 28:240E. Occupational Therapy Licensure Compact.**

EFFECTIVE: June 13, 2025

RELATES TO: KRS 319A.310

STATUTORY AUTHORITY: KRS 319A.070(1), (3), 319A.310

CERTIFICATION STATEMENT:

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319A.310, Section 15.B.1. requires the Board of Licensure for Occupational Therapy to review any rule adopted by the Occupational Therapy Compact Commission pursuant to Section 10 of the Compact 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 Occupational Therapy Compact Commission.

Section 1. The Board of Licensure for Occupational Therapy shall comply with all rules of the Occupational Therapy Compact, which includes the Occupational Therapy Compact Rules as of April 16, 2025~~[March 20, 2024]~~.

Section 2. Incorporation by Reference.

(1) The following material is incorporated by reference: "The Occupational Therapy Compact Rules", April 16, 2025~~[March 20, 2024]~~, and as revised.

(a) ~~[Chapter 1.]~~[Rule on] Definitions, adopted March 20, 2024;~~[-and]~~

(b) ~~[Rule on]~~[Chapter 2.] Data System Reporting Requirements, adopted March 20, 2024;~~[-]~~

(c) Implementation of Federal Bureau of Investigations~~[Rule on FBI]~~ Criminal Background Check (FBI CBC) Requirement~~[Checks]~~, adopted April 16, 2025;~~[-]~~

(d) ~~[Rule on]~~ Member State Implementation, adopted April 16, 2025;~~[-]~~

(e) Occupational Therapy Compact~~[Rule on OTC]~~ Fees (~~[-]~~Administrative and~~[&]~~ State), adopted April 16, 2025; and~~[-]~~

(f) ~~[Rule on]~~ Occupational Therapy National Exam~~[-Definition]~~, adopted April 16, 2025.

(2)

(a) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Licensure for Occupational Therapy, 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 Licensure for Occupational Therapy Web site at <https://bot.ky.gov/>.

(3) This material may also be obtained at:

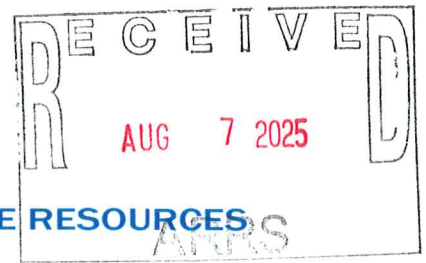
(a) The Occupational Therapy Compact Commission, 201 Park Washington Court, Falls Church, Virginia 22046; or

(b) <https://otcompact.gov/ot-compact-commission/governance-documents/>  
<https://otcompact.org/ot-compact-commission/governance-documents/>.

CONTACT PERSON: Lilly Jean Coiner, Executive Advisor, Department of Professional Licensing, Office of Legal Services, 500 Mero Street, 2 NC WK#4, phone (502) 262-5065 (office), fax (502) 564-4818, email Lilly.Coiner@ky.gov. Link to public comment portal: [https://ppc.ky.gov/reg\\_comment.aspx](https://ppc.ky.gov/reg_comment.aspx).

**MATERIAL INCORPORATED BY REFERENCE**

Note to Compiler: MIR not filed. Only technical changes were made, including changes to the Rule titles.



**KENTUCKY DEPARTMENT OF FISH & WILDLIFE RESOURCES**

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Deputy Commissioner

**Gabe Jenkins**  
Deputy Commissioner

August 7, 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 3:001**. Definitions for 301 KAR Chapter 3., 301 KAR 3:010. Public use of Wildlife Management Areas., 301 KAR 4:120., 301 KAR 4:120. Wildlife disease reporting.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 301 KAR 3:001, 3:010, and 301 KAR 4:120. Kentucky Department of Fish and Wildlife Resources proposes the attached amendment to 301 KAR 3:001, 3:010, and 301 KAR 4:120.

Sincerely,

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 3:001. Definitions for 301 KAR Chapter 3.**

RELATES TO: KRS 150.010, 150.025, 189.010

STATUTORY AUTHORITY: 150.025(1)(i)~~(h)~~

CERTIFICATION STATEMENT: The Kentucky Department of Fish and Wildlife Resources, pursuant to statutory authority to promulgate administrative regulations to carry out the provisions of KRS Chapter 150 as established in KRS 150.025 and as an independent department of state government within the meaning of KRS Chapter 12 as established in KRS 150.021(1), promulgated by the Commissioner with approval of the Commission in accordance with KRS 150.010(1), does hereby certify this administrative regulation is promulgated in compliance with Section 8 of 2025 RS HB6.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1)(i) **authorizes**~~(h)requires~~ the department to promulgate administrative regulations to carry out the purpose of the chapter. This administrative regulation establishes definitions for terms used in 301 KAR Chapter 3.

Section 1. Definitions.

(1) "Adult" means a person who is at least eighteen (18) years of age.

(2) "Aircraft" means a device that is used or intended to be used for flight in the air.

**(3) "Air gun" means a pneumatic gun fired by a charge of compressed air.**

~~(4)(3)~~ "ATV" is as defined in KRS 189.010(24).

~~(5)(4)~~ "Bait":

(a) Means a substance composed of grains, minerals, salt, fruits, vegetables, hay, or any other food materials, whether natural or manufactured, that could lure, entice, or attract wildlife; and

(b) Does not mean the establishment and maintenance of plantings for wildlife, foods found scattered solely as the result of normal agricultural planting or harvesting practices, foods available to wildlife through normal agricultural practices of livestock feeding if the areas are occupied by livestock actively consuming the feed on a daily basis, or standing farm crops under normal agricultural practices.

~~(6)(5)~~ "Baiting" means to place, deposit, tend, distribute, or scatter bait.

~~(7)(6)~~ "Camp Piomingo" means a designated area within Otter Creek Outdoor Recreation Area that is leased from the department for an outdoor summer camp.

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

~~(9)(7)~~ "Club-operated shooting range" means a facility that is:

(a) Operated by a department-authorized entity for target shooting; and

(b) Open to the public during club events.

~~(10)(8)~~ "Commercial purposes" means taking nuisance wildlife in exchange for payment, trade, or associated with job duties as part of employment.

~~(11)~~~~(9)~~ "Conservation camp" means a tract of land:

(a) Controlled by the department through ownership, lease, license, or cooperative agreement;  
and

(b) That is utilized to host conservation camps.

**(12) "Crossbow" means a bow with a string designed or fitted with a device to hold an arrow at full or partial draw without aid from the archer.**

**(13) "CWD Surveillance Zone" means an area, designated and listed on the department's website at fw.ky.gov, as being under special cervid requirements, as established in 301 KAR 2:172, due to a CWD positive cervid detection.**

~~(14)~~~~(10)~~ "Department" is defined in KRS 150.010~~(10)~~~~(8)~~.

**(15)~~(11)~~ "Enhanced Rabies Surveillance Zone" means the counties designated by the United States Department of Agriculture as current rabies surveillance counties listed at <http://fw.ky.gov/Wildlife/Pages/Rabies.aspx>~~[Bell, Boyd, Bracken, Carter, Clay, Elliot, Fleming, Floyd, Greenup, Harlan, Johnson, Knott, Knox, Laurel, Lawrence, Leslie, Letcher, Lewis, Martin, Mason, McCreary, Pike, Perry, Robertson, and Whitley counties]~~.**

~~(16)~~~~(12)~~ "Event" means a planned activity conducted by the department or a group for the purpose of boating, fishing, hunting, shooting, trapping, or other recreational activity.

~~(17)~~~~(13)~~ "Exotic wildlife " means wildlife species that have never naturally existed in the wild in Kentucky, including species introduced by man that have become naturalized.

~~(18)~~~~(14)~~ "Federally protected wildlife " means any wildlife species listed by the U.S. Fish and Wildlife Service as threatened or endangered, and any birds protected under the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act.

~~(19)~~~~(15)~~ "Field trial" means an organized event where unleashed hunting dogs are worked and judged.

**(20) "Firearm" means a breach or muzzle-loading rifle, shotgun, or handgun.**

**(21) "Firing line" means the area where a weapon is shot or discharged, as designated by:**

**(a) Signage;**

**(b) A shooting bench; or**

**(c) A range officer.**

~~(22)~~~~(16)~~ "Fishing outfitter" means the holder of a valid license, issued by the department, which authorizes a person to solicit for guiding services or provide guiding services for clients in the taking or attempting to take fish and which may have fishing guides authorized to assist clients on behalf of the license holder.

~~(23)~~~~(17)~~ "Fishing guide" means the holder of a valid license, issued by the department, which authorizes a person to assist a fishing outfitter license holder's clients in taking or attempting to take fish and is employed by or contracted with a fishing outfitter license holder.

~~(24)~~~~(18)~~ "Fishing helper" means a person who assists a fishing outfitter or fishing guide and is in the same boat or is directly alongside of the fishing outfitter or fishing guide if standing on a stream or riverbank while guiding others in the taking or attempting to take of fish.

~~[(19) "Firing line" means the area where a weapon is shot or discharged, as designated by:~~

~~**(a) Signage;**~~

~~**(b) A shooting bench; or**~~

**~~(c) A range officer.]~~**

**~~(25)[(20)]~~** "Group" means:

- (a) A club, society, or association;
- (b) Ten (10) or more persons who gather to conduct an event; or
- (c) A field trial.

**~~(26)[(21)]~~** "Harass" means any action that creates the likelihood of injury to wildlife by annoying it with aircraft or unmanned aircraft to such an extent as to significantly disrupt normal behavior patterns, which include breeding, feeding, or sheltering.

**~~(27)[(22)]~~** "Horse" means a horse, pony, mule, donkey, llama, or similar beast of burden.

**~~(28)[(23)]~~** "Hunting outfitter" means the holder of a valid license, issued by the department, which authorizes a person to solicit for guiding services or provide guiding services for clients in the taking or attempting to take wildlife and which may have hunting guides authorized to assist clients on behalf of the license holder.

**~~(29)[(24)]~~** "Hunting guide license" means the holder of a valid license, issued by the department, which authorizes a person to assist a hunting outfitter license holder's clients in taking or attempting to take wildlife and is employed by or contracted with a hunting outfitter license holder.

**~~(30)[(25)]~~** "Injurious substance" means a substance which may be harmful to wildlife, or wildlife habitat.

**~~(31)[(26)]~~** "Mechanized vehicle" means a motor vehicle, bicycle, or other human conveyance except a wheelchair.

**~~(32)[(27)]~~** "Mentee" means an individual who is participating or going to participate in a mentored event to receive guidance and instruction from a mentor to learn the lawfully compliant methods and techniques for engaging in the activity being performed in the mentored event.

**~~(33)[(28)]~~** "Mentor" means an adult who:

- (a) Has previously participated in a particular activity; ***and***
- (b) Is well versed in the techniques, equipment, and safety concerns related to the activity that is to occur at an event.

**~~(34)[(29)]~~** "Mentored event" means an event during a statewide season in which mentors accompany mentees.

**~~(35)[(30)]~~** "Mobility-impaired" means an individual who meets the requirements of 301 KAR 3:026 Section 2(1).

**~~(36)[(31)]~~** "Motor vehicle" ***is [as]*** defined in KRS 189.010(19).

**~~(37)[(32)]~~** "Novice" means a person who has not:

- (a) Held the applicable license for an event activity for more than two (2) license years in total;
- (b) Held the applicable license for an event activity within the past three (3) years;
- (c) Successfully harvested the targeted species for an event within the past three (3) years; or
- (d) For shooting and boating activities, participated in the activity more than five (5) times within the past three (3) years.

**~~(38)[(33)]~~** "Nuisance wildlife" means vertebrate wildlife that causes or may cause damage or threat to agriculture, human health, safety, or property.

**~~(39)[(34)]~~** "Nuisance wildlife control operator" or "NWCO" means the holder of a valid permit, issued by the department, which authorizes the taking of nuisance wildlife for commercial purposes.

**(40)[(35)]** "Participant" means an individual who engages in boating, fishing, hunting, shooting, or trapping, as part of an event.

**(41)[(36)]** "Pistol pit" means a shooting range that is established for target shooting with pistols.

**(42)[(37)]** "Qualified assistant" means an individual who is participating in the activity with the mobility-impaired individual and designated by the mobility-impaired individual.

**(43)[(38)]** "Rabies vector species" means a:

- (a) **Bat[Bats]** of any species (order Chiroptera);
- (b) Coyote (*Canis latrans*);
- (c) Gray fox (*Urocyon cinereoargenteus*);
- (d) Raccoon (*Procyon lotor*);
- (e) Red fox (*Vulpes vulpes*);
- (f) Spotted skunk (*Spilogale putorius*);
- (g) Striped skunk (*Mephitis mephitis*); or
- (h) **[Any]** Hybrid of paragraphs (a) through (g) **of** this subsection.

**(44)[(39)]** "Range officer" means an individual designated as a National Rifle Association range officer, a National Shooting Sports Foundation range officer, a department hunter education instructor, or a law enforcement range officer, responsible for supervising a shooting range and ensuring compliance with this administrative regulation.

**(45)[(40)]** "Ride" means to ride, drive, or lead a horse.

**(46)[(41)]** "Rural habitat" means an area of the state not included within the boundaries of an incorporated or unincorporated city, village, or borough, and having a population in excess of 1,500 inhabitants.

**(47)[(42)]** "Safety zone" means an area downrange of a firing line where all public access is prohibited as designated by department signs.

**(48)[(43)]** "Self-service trap shooting range" means a shooting range that is established for people to shoot at moving targets with a shotgun.

**(49)[(44)]** "Shooting station" means a location on the firing line for one (1) person to shoot, as designated by:

- (a) Signage;
- (b) A shooting bench; or
- (c) A concrete pad.

**(50)[(45)]** "Shooting range" or "range" means a public facility on lands owned or managed by the department through ownership, lease, license, or cooperative agreement, or a facility owned or managed by an affiliated partner of the department that is designated for the shooting of firearms or archery equipment.

**(51)[(46)]** "Special Use Wildlife Management Area" or "Special Use WMA" means a Wildlife Management Area that is subject to special restrictions due to safety concerns or recorded deed restrictions on the subject property prohibit.

**(52)[(47)]** "Tube range" means a shooting range established for target shooting through designated steel tubes.

**(53)[(48) (3)]** "Unmanned aircraft" means an aircraft operated without the possibility of direct human intervention from within or on the aircraft.

**(54) "WCO Permit" means the wildlife control operator's permit issued pursuant to Title**

**301 KAR 3:120.**

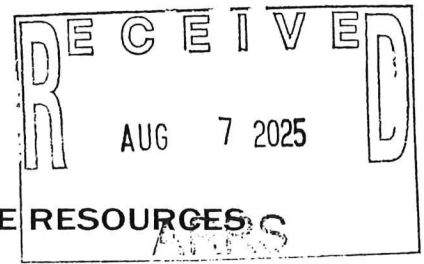
**(55) "Wildlife control operator" or "WCO" means the holder of a valid permit, issued by the department, which authorizes the taking of nuisance wildlife for commercial purposes.**

**(56)[(49)]** "Wildlife management area" or "WMA" means a tract of land:

- (a) Controlled by the department through ownership, lease, license, or cooperative agreement; and
- (b) Having "Wildlife Management Area" or "WMA" as part of its official name.

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](mailto:fwpubliccomments@ky.gov).





**KENTUCKY DEPARTMENT OF FISH & WILDLIFE RESOURCES**

**Rich Storm**  
Commissioner

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Frankfort, Kentucky 40601  
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**Brian Clark**  
Deputy Commissioner

**Gabe Jenkins**  
Deputy Commissioner

August 7, 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 3:001. Definitions for 301 KAR Chapter 3., 301 KAR 3:010. Public use of Wildlife Management Areas., 301 KAR 4:120., 301 KAR 4:120. Wildlife disease reporting.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 301 KAR 3:001, 3:010, and 301 KAR 4:120. Kentucky Department of Fish and Wildlife Resources proposes the attached amendment to 301 KAR 3:001, 3:010, and 301 KAR 4:120.

Sincerely,

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 3:010. Public use of Wildlife Management Areas.**

RELATES TO: KRS 13B, 150.025, 150.620, 150.640

STATUTORY AUTHORITY: KRS 150.025, 150.620

CERTIFICATION STATEMENT: The Kentucky Department of Fish and Wildlife Resources, pursuant to statutory authority to promulgate administrative regulations to carry out the provisions of KRS Chapter 150 as established in KRS 150.025 and as an independent department of state government within the meaning of KRS Chapter 12 as established in KRS 150.021(1), promulgated by the Commissioner with approval of the Commission in accordance with KRS 150.010(1), does hereby certify this administrative regulation is promulgated in compliance with Section 8 of 2025 RS HB6.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the Kentucky Department of Fish and Wildlife Resources [department] to promulgate administrative regulations necessary to carry out the purposes of KRS Chapter 150. KRS 150.620 authorizes the department to impose and enforce special administrative regulations on lands acquired for public hunting, fishing, and related recreational uses. This administrative regulation prohibits certain actions inconsistent with the intended purpose of Wildlife Management Areas, establishes requirements for other uses, and stipulates the procedure for obtaining group use permits on these areas.

Section 1. ~~[Definitions.~~

~~(1) "Bait" means a substance composed of grains, minerals, salt, fruits, vegetables, hay or any other food materials, whether natural or manufactured, which may lure, entice, or attract wildlife.~~

~~(2) "Baiting" means to place, deposit, tend, distribute, or scatter bait.~~

~~(3) "Event" means:~~

~~(a) An activity conducted by a group;~~

~~(b) A commercial activity; or~~

~~(c) A field trial.~~

~~(4) "Field trial" means an event where unleashed dogs are worked and judged.~~

~~(5) "Group" means:~~

~~(a) A club, society or association;~~

~~(b) Ten (10) or more persons who gather to conduct an event; or~~

~~(c) A field trial.~~

~~(6) "Horse" means a horse, pony, mule, donkey, llama, or similar beast of burden.~~

~~(7) "Injurious substance" means a substance which may be injurious to aquatic life, wildlife, or wildlife habitat.~~

~~(8) "Mechanized vehicle" means a motor vehicle, bicycle, or other human conveyance except a wheelchair.~~

~~(9) "Motor vehicle" means a motor-driven conveyance, whether or not licensed for use on a public highway.~~

~~(10) "Ride" means to ride, drive, or lead a horse.~~

~~(11) "Special Use Wildlife Management Area" or "Special Use WMA" means a Wildlife Management Area that is subject to special restrictions due to safety concerns or recorded deed restrictions on the subject property prohibit.~~

~~(12)[(11)] "Wildlife management area" or "WMA" means a tract of land:~~

~~(a) Controlled by the department through ownership, lease, license, or cooperative agreement; and~~

~~(b) Having "Wildlife Management Area" or "WMA" as part of its official name.~~

**Section 2.]** While upon a WMA~~[-, a person]~~:

(1) **A person** shall observe the hunting dates, limits, and other requirements that apply to the county in which the WMA is located, unless otherwise specified in:

(a) This administrative regulation;

(b) 301 KAR 2:049;

(c) ~~301 KAR 2:132~~[301 KAR 2:178];

(d) 301 KAR 2:140;

(e) 301 KAR 2:142;

(f) 301 KAR 2:144;

(g) ~~301 KAR 2:178;~~

~~(h)[(g)] 301 KAR 2:222;[or]~~

~~(i)[(h)] 301 KAR 2:225; or[.]~~

(j) 301 KAR 2:300.

(2) Except for waterfowl or dove hunting, or legal hunting at night, a person who is hunting any species, or a person who is accompanying a hunter, shall wear hunter orange clothing pursuant to 301 KAR 2:172 while:

(a) On a WMA that is open for modern gun or muzzleloader deer seasons, pursuant to 301 KAR 2:178;

(b) Hunting within the sixteen (16) county elk zone when a firearms elk season is open, pursuant to 301 KAR 2:132; or

(c) Hunting within the bear zone during a bear firearms season, pursuant to 301 KAR 2:300.[Shall wear hunter orange garments as required in 301 KAR 2:172 when deer hunting with firearms is allowed.]

(3) **A person** may hunt small game, furbearers, or turkey by archery during the modern gun deer season, including the first two (2) days, if the statewide modern gun deer season is closed on that area.

(4) Unless specified otherwise in 301 KAR 2:049, **a person** shall not allow an unleashed dog from March 1 until the third Saturday in August, except when participating in:

(a) A department-authorized field trial;

(b) The spring squirrel season; or

(c) Training a retriever or other water dog, if:

1. The activity is authorized by a sign at the body of water; and

2. The dog remains leashed except while actively training in or within 100 feet of the body of water.

(5) **A person** shall not:

(a) Hunt:

1. On a WMA or portion of a WMA designated by a sign as closed to hunting; or
2. At an established access point, launching ramp, or recreation area.

(b) Enter a portion of a Wildlife Management Area designated by a sign as closed to public access.

(c) Discharge a firearm within 100 yards of a residence or occupied building, whether or not the building is on a WMA.

(d) Camp, except in a designated area.

(e) Place or distribute bait or otherwise participate in baiting wildlife on a Wildlife Management Area. Bait shall not include the establishment and maintenance of plantings for wildlife, foods found scattered solely as the result of normal agricultural planting or harvesting practices, foods available to wildlife through normal agricultural practices of livestock feeding if the area is occupied by livestock actively consuming the feed on a daily basis, or standing farm crops under normal agricultural practices.

(f) Hunt over bait.

(g) Place trail cameras on WMAs or public hunting areas unless the trail camera is externally labeled with the owner's Fish and Wildlife customer identification number.

Section **2[3]**. Horseback Riding. A person shall not:

(1) Ride a horse on a WMA except:

- (a) On a trail or area specifically marked for horseback riding;
- (b) **On** a maintained public road open to public vehicular traffic;

(c) During an event where a horse is allowed under a permit issued under the provisions of Section **5 [6]** of this administrative regulation; or

(d) While engaged in a legal hunting activity.

(2) Allow a horse to roam or graze on department property.

(3) Tether a horse in a way that would cause damage to a tree or shrub.

(4) Participate in horseback riding during firearms seasons for turkey, deer, and elk unless participating or assisting in a legal elk hunt. Any persons legally riding horses during an elk hunt shall abide by the hunter orange requirements found in 301 KAR 2:132, Section 5(5).

Section **3[4]**. Prohibited Activities. Except as authorized by the department, on a WMA a person shall not:

- (1) Damage a tree or shrub;
- (2) Dump trash or litter;
- (3) Set fires, except for an attended campfire;
- (4) Leave a campfire unattended;
- (5) Cut or damage a fence or gate;
- (6) Deface or destroy a sign;
- (7) Destroy, harvest, or glean a crop;
- (8) Allow livestock to roam freely;

(9) Dump the contents of a holding tank, portable toilet, or other container holding human waste;

(10) Deface or collect artifacts from historical or archeological sites;

(11) Ignite fireworks or rockets;

(12) Collect or remove plants;

(13) Place or cause to be placed an injurious substance on land or water;

(14) Engage in an activity which:

(a) Is commercial in nature and intent unless specified in Section **5 [6]**(3) of this administrative regulation; or

(b) Could:

1. Unreasonably interfere with other uses or users of the area;

2. Pose a risk to persons or property; or

3. Damage facilities, roads, trails, or ecosystems of the area.

Section **4[5]**. Use of Mechanized Vehicles. Except as specifically authorized by the department in this administrative regulation, on a WMA, a person shall not:

(1) Use a mechanized vehicle except:

(a) On a maintained road open to public use; or

(b) In a designated parking area;

(2) Park in a way that would:

(a) Block a road or gate; or

(b) Prevent access to a portion of the area.

Section **5[6]**. Group Permits.

(1) A group shall not conduct an event upon department property without obtaining a permit at least thirty (30) days before the date of the event.

(2) An applicant shall use the "Wildlife Management Area Use Permit Application".**[7]**

(3) The department shall deny a permit for an event that involves:

(a) The use of mechanized vehicles, except for travel to and from the area; or

(b) An activity prohibited in Section **3 [4]** of this administrative regulation except that a commercial activity may be permitted if it is:

1. An informational booth;

2. A food vendor;

3. For collecting registration or entrance fees;

4. A similar ancillary activity authorized by the event permit; or

5. An ecotourism event approved by the department.

(4) The department may:

(a) Require the group to reschedule an event to avoid user conflicts;

(b) Restrict an event to a specified location within the WMA;

(c) Cancel a scheduled event if flooding, fire danger, or other unforeseen circumstances render the WMA unsafe or unsuitable for the event; or

(d) Require the group to provide portable sanitary toilet facilities if existing facilities on the WMA are inadequate for the expected size of the group.

(5) A group that holds a valid WMA use permit for an event on a shooting range shall:

(a) Maintain a sign-in sheet with participants required to sign-in prior to participating in the event; and

(b) Submit the sign-in sheet to the department within **thirty (30) [30]** days of the event by any method indicated on the application incorporated by reference in 301 KAR 3:015.

(6)[(5)] The department shall revoke the permit and cancel an event if the group's behavior:

- (a) Is rude, obnoxious, disruptive, or disorderly;
- (b) Creates a danger to the health or safety of other users;
- (c) Results in damage to the area; or
- (d) Violates a state or federal law.

(7)[(6)] The department may deny a permit to a group which has had a previous event canceled under subsection (5) of this section.

Section **6[7]**. Appeal of Permit Denial.

(1) A person who wishes to appeal the denial of a permit shall request a hearing in writing, postmarked or delivered in person to the department no later than ten (10) days after notification of denial.

(2) Upon receipt of the request for a hearing, the department shall:

(a) Appoint a hearing officer qualified to conduct hearings under the provisions of KRS Chapter 13B; and

(b) Schedule a hearing to be held **[either]**:

1. Prior to the next regularly scheduled meeting of the commission, if the request for a hearing is received more than thirty (30) days before the scheduled commission meeting; or

2. Within thirty (30) days, if the request for a hearing is received within thirty (30) days of the next scheduled commission meeting.

(3) The hearing officer shall conduct the hearing and present his recommendation at the commission meeting immediately following the hearing date.

(4) The department may present evidence and call witnesses to support the suspension or revocation.

(5) The commission shall make its decision by majority vote.

(6) A person may appeal a decision of the commission in accordance with the provisions of KRS Chapter 13B.

Section **7[8]**. On Wildlife Management Areas not owned by the department, provisions of this administrative regulation shall not apply if:

(1) An activity prohibited by this administrative regulation is allowed by the entity owning the property; or

(2) An activity allowed by this administrative regulation is prohibited by the entity owning the property.

Section **8[9]**. Special Use Wildlife Management Areas.

(1) Special Use Wildlife Management Areas shall be established by the Department when safety concerns arising from the size of the property or the area surrounding the property are prevalent or due to recorded deed restrictions on the subject property.

(2) When safety concerns necessitate an area be designated a Special Use Wildlife Management Area, the area shall be subject to the following restrictions:

(a) The use of rimfire rifles, centerfire rifles, pistols, or single-projectile shotgun ammunition for hunting or target shooting shall be prohibited; and

(b) The use of air rifles shall be prohibited except .177-.25 caliber air rifles shall be allowed for small game hunting.

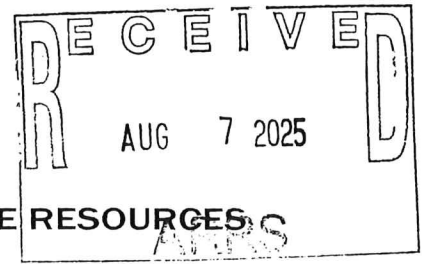
(3) Special Use Wildlife Management Areas established due to deed restrictions shall have restrictions consistent with those established in the recorded deeds for the area.

Section ~~9[10]~~[Section 9.] Incorporation by Reference.

(1) "Wildlife Management Area Use Permit Application", 2025 Edition~~[1998 Edition]~~, is incorporated by reference.

(2) It may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601 from 8 a.m. to 4:30 p.m. Monday through Friday or online at:  
<https://fw.ky.gov/Licenses/Documents/WMAUserPermitApp.pdf>.

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](mailto:fwpubliccomments@ky.gov).



**KENTUCKY DEPARTMENT OF FISH & WILDLIFE RESOURCES**

**Rich Storm**  
Commissioner

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

**Brian Clark**  
Deputy Commissioner

**Gabe Jenkins**  
Deputy Commissioner

August 7, 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 3:001. Definitions for 301 KAR Chapter 3., 301 KAR 3:010. Public use of Wildlife Management Areas., 301 KAR 4:120., 301 KAR 4:120. Wildlife disease reporting.

Dear Co-Chairs:

After discussions with Administrative Regulation Review Subcommittee staff of the issues raised by 301 KAR 3:001, 3:010, and 301 KAR 4:120. Kentucky Department of Fish and Wildlife Resources proposes the attached amendment to 301 KAR 3:001, 3:010, and 301 KAR 4:120.

Sincerely,

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 4:120. Wildlife disease reporting.

RELATES TO: KRS 150.015, ~~[KRS]~~ 150.105, ~~[KRS]~~ 150.720, ~~[KRS]~~ 150.722, ~~[and KRS]~~ 150.740  
STATUTORY AUTHORITY: KRS 150.015, 150.025

CERTIFICATION STATEMENT: The Kentucky Department of Fish and Wildlife Resources, pursuant to statutory authority to promulgate administrative regulations to carry out the provisions of KRS Chapter 150 as established in KRS 150.025 and as an independent department of state government within the meaning of KRS Chapter 12 as established in KRS 150.021(1), promulgated by the Commissioner with approval of the Commission in accordance with KRS 150.010(1), does hereby certify this administrative regulation is promulgated in compliance with Section 8 of 2025 RS HB6.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.015 requires the Kentucky Department of Fish and Wildlife Resources ~~[with the duty]~~ to protect, preserve, and conserve the fish and wildlife resources of the Commonwealth. KRS 150.025 (1) ~~(i)(h)~~ authorizes the Department to promulgate administrative regulations necessary to carry out the purposes of KRS Chapter 150. Because of the impact of certain diseases found in livestock and poultry to the native fish and wildlife populations, the Department believes it is necessary to establish a listing of all reportable diseases which can be transmitted to fish and wildlife and set out the conditions under which the diseases shall be reported. This administrative regulation establishes a comprehensive list of reportable diseases and the conditions under which the diseases shall be reported.

#### Section 1. Definitions.

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

(2) "Euthanasia" means the act of putting an animal to death in a humane manner using a lethal injection adhering to American Veterinary Medical Association Guidelines for the Euthanasia of Animals.

(3) "Exotic wildlife" means wildlife species that have never naturally existed in the wild in Kentucky, including species introduced by man that have become naturalized.

(4) "Fish" **means** all wild and propagated finfish, mollusks, crustaceans, and other forms of aquatic animals, excluding aquatic mammals and birds, ~~[and]~~ including any part, spawn, or ovum of those animals.

(5) "Native wildlife" means wildlife species that have historically existed, currently exist, or have naturally expanded their range:

- (a) In the wild into Kentucky;
- (b) Without introduction by humans; and
- (c) Regardless of:
  1. Origin or location of an individual animal; and

2. Being captive-bred or taken from the wild.
- (6) "Rabies vector species" means a:
  - (a) **Bat [Bats]** of any species (order Chiroptera);
  - (b) Coyote (*Canis latrans*);
  - (c) Gray fox (*Urocyon cinereoargenteus*);
  - (d) Raccoon (*Procyon lotor*);
  - (e) Red fox (*Vulpes vulpes*);
  - (f) Spotted skunk (*Spilogale putorius*);
  - (g) Striped skunk (*Mephitis mephitis*); or
  - (h) **[Any]** Hybrid of paragraphs (a) through (f) **of** this subsection.
- (7) "Veterinarian" is defined by KRS 321.181 ~~(69)~~ **(67)**.

Section 2. Duty to Notify. Every veterinarian, veterinary practice and personnel; veterinary diagnostic laboratory and personnel; laboratory providing diagnostics for native or exotic wildlife and fish for Kentucky; holder of captive wildlife; persons associated with any wildlife or fish sales or event establishment and personnel; transportation provider; commercial wildlife services, facility and personnel; or any other person or entity having knowledge of the existence of any reportable disease, as established in Section (3) of this administrative regulation, shall report the disease or condition to the KDFWR Wildlife Veterinarian.

### Section 3. Diseases to be Reported.

- (1) The following diseases and conditions shall be reported to the KDFWR Wildlife Veterinarian:
  - (a) Algal toxicosis;
  - (b) Anaplasmosis;
  - (c) Anthrax;
  - (d) *Batrachochytrium dendrobatidis* (Chytridiomycosis);
  - (e) *Batrachochytrium salamandrivorans* (Chytridiomycosis);
  - (f) Bluetongue;
  - (g) Botulism;
  - (h) Brucellosis;
  - (i) Canine Distemper Virus;
  - (j) Chronic Wasting Disease (CWD);
  - (k) *Clostridium piliforme* (Tyzzer's Disease);
  - (l) Duck virus enteritis (Duck Plague);
  - (m) *Echinococcus* spp. (Echinococcosis);
  - (n) Epizootic **Hemorrhagic [Hemorrhagic]** Disease;
  - (o) Hantaviruses;
  - (p) Highly Pathogenic Avian Influenza;
  - (q) Histomoniasis (Blackhead disease);
  - (r) Lead Toxicosis;
  - (s) *Leptospira interrogans* ssp. (Leptospirosis);
  - (t) *Mycoplasma gallisepticum*;
  - (u) *Mycoplasma agassizii*;
  - (v) Mycotoxicosis (aflatoxins and fusariotoxins);

- (w) *Ophidiomyces ophiodiicola* (Snake fungal disease);
  - (x) Paratuberculosis (Johne's disease);
  - (y) Plague (*Yersinia pestis*);
  - (z) *Pseudogymnoascus destructans* (White-nose Syndrome);
  - (aa) Pseudorabies;
  - (bb) Rabies;
  - (cc) Rabbit Hemorrhagic Disease Virus;
  - (dd) Ranavirus;
  - (ee) Salmonellosis (*Salmonella enterica*, all serovars);
  - (ff) SARS-CoV-2;
  - (gg) *Sarcoptes scabiei* (Sarcoptic Mange);
  - (hh) Theileriosis;
  - (ii) Trichinellosis;
  - (jj) Tuberculosis;
  - (kk) Tularemia;
  - (ll) Virulent Newcastle Disease;
  - (mm) Vesicular Stomatitis;
  - (nn) West Nile Virus (WNV);
  - (oo) Any additional diseases or conditions listed by the World Organization for Animal Health (WOAH) Listed Diseases including the Terrestrial Animal and Aquatic Animal disease list; and
  - (pp) Any disease or condition listed in the United States Department of Agriculture National List of Reportable Animal Diseases (NLRAD).~~./~~
- (2) Conditions of any etiology that meet any of the following criteria shall be reported immediately:
- (a) Chemical poisoning in wildlife and fish involving anticoagulant rodenticides, heavy metals, and pesticides;~~./~~
  - (b) Encephalitis or other central nervous system disease;
  - (c) Unusual morbidity or mortality event in free-ranging wildlife, captive wildlife, and fish; or
  - (d) Highly infectious conditions of any etiology, known or unknown.

#### Section 4. Notification Requirements for Reportable Diseases.

(1) The notification shall be given to the Wildlife Veterinarian, Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601; telephone 502-892-4584 or [wildlifehealth@ky.gov](mailto:wildlifehealth@ky.gov) within forty-eight (48) hours of confirmation of a reportable disease defined in Section 3 of this **administrative** regulation.

(2) The person reporting shall submit:

- (a) Name, address, and telephone number of the submitter of wildlife or fish;
- (b) The wildlife or fish species, age, sex, number of animals affected, and clinical signs;
- (c) A location address or GPS coordinates for wildlife and fish tested or affected;
- (d) The name, address, and telephone number of the veterinarian submitting the case; and
- (e) If different from submitter, name, address, and telephone number of the person reporting or holder of captive wildlife.

(3) A report submitted to the KDFWR Wildlife Veterinarian by a diagnostic laboratory of a condition suspected or diagnosed by a test result or other laboratory procedure shall constitute

notification on behalf of the laboratory and the submitting veterinarian or holder.

#### Section 5. Euthanasia of Wildlife for Reportable Diseases.

(1) Individuals with the following qualifications may euthanize wildlife presented to them suspected of having a reportable disease as identified in Section 3 of this **administrative** regulation.

(a) KDFWR staff or representative of the department who is engaged in wildlife activities in an official capacity; or

(b) Licensed Veterinarian authorized to practice veterinary medicine in Kentucky under KRS Chapter 321.

(2) Public Health Officials, acting in their official capacity, whose duties include euthanasia for reportable disease testing, may euthanize wild mammal species that bites a person, or wild mammal species that shows symptoms of a rabies infection, as established in 902 KAR 2:070, Section 5 and KRS 258.085(1)(c) except bats found in non-living spaces with no known contact with humans **shall [may]** not be euthanized.

(3) Animal control officers that hold a valid Animal Euthanasia Specialist (AES) certification, pursuant to KRS 321.207(4) and 201 KAR 16:560, and who have completed an approved Wildlife Chemical Immobilization training may be authorized to euthanize rabies vector species, excluding bats, that are presented to them at a permitted facility and are suspected of having a reportable disease.

(a) To qualify for this authorization, the certified AES shall submit to the Department:

1. Proof they possess a valid Animal Euthanasia Specialist Certificate; and

2. Proof they completed and passed a San Diego Zoo Wildlife Alliance Academy (SDZWAA) Safe Capture Training course in Chemical Immobilization of Wildlife.

(b) Wildlife euthanized by certified Animal Euthanasia Specialist for reportable disease conditions **shall [must]** be presented to authorized personnel at permitted facilities and **shall not [cannot]** be trapped or taken from the environment without a valid Nuisance Wildlife Control Operator permit **pursuant to [per]** 301 KAR 3:120 or with a valid trapping license during a legal trapping season for that species **pursuant to** KRS 150.175 and 301 KAR **2:251 [2-251]**.

(c) Reporting Requirements for certified Animal Euthanasia Specialists:

1. In addition to the standard wildlife disease reporting requirements found in Section 4 of this **administrative** regulation, certified Animal Euthanasia Specialists shall submit an annual report of total number euthanized wildlife (species, county, date, disease) submitted within **thirty (30)** days of December 31<sup>st</sup> each year in which wildlife were euthanized.

2. A wildlife carcass not submitted for testing shall be:

a. Retained in cold storage; and

b. Reported to the Department Veterinarian within forty-eight (48) hours for proper disposition (phone 502-892-4584 or email at [wildlifehealth@ky.gov](mailto:wildlifehealth@ky.gov)).

Section 6. Approved Euthanasia Methods for Certified Animal Euthanasia Specialist. Certified Animal Euthanasia Specialists euthanizing wildlife at an animal control facility certified pursuant to KRS 321.207 and 201 KAR 16:550 and 552 shall comply with approved methods for euthanasia as established in 201 KAR 16:562.

## Section 7. Carcass Disposal.

(1) Any cervids euthanized for reportable disease conditions shall be disposed of in accordance with 301 KAR 4:090 as established for taxidermists and shall not be transported outside of CWD surveillance zones for disposal in accordance with 301 KAR 2:172.

(2) Certified Animal Euthanasia **Specialists [Specialist]** shall dispose of carcasses in a way to prevent accidental exposure to other wildlife. Acceptable means of disposal include the following, if in accordance with 201 KAR 16:562, KRS 257.160 and local county and municipality waste disposal laws:

(a) Burying the carcass or parts in an opening in the earth at least four (4) feet deep and covered with at least three (3) feet of earth; or

(b) Depositing the carcass or parts in a contained landfill, as established in KRS Chapter 224 and meeting liner requirements **pursuant to[per]** 401 KAR 48:080.

## Section 8. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "American Veterinary Medical Association Guidelines for the Euthanasia of Animals", 2020 Edition;**[.]**

(b) "Certified Animal Euthanasia Specialist Annual Wildlife Euthanasia Report", 2025 Edition;

(c) "The World Organization for Animal Health (WOAH) Listed Diseases and Non-Listed Affecting Wildlife", 2023 Edition; **and[.]**

(d) "United States Department of Agriculture National List of Reportable Animal Diseases (NLRAD)", 2023 Edition.

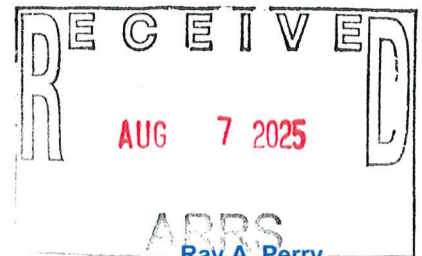
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. or online at:

(a) <https://www.avma.org/sites/default/files/2020-02/Guidelines-on-Euthanasia-2020.pdf> for the "American Veterinary Medical Association Guidelines for the Euthanasia of Animals";

(b) <https://fw.ky.gov/Wildlife/Documents/CertAnimalEuthanasiaSpecialistAnnualReport.pdf> for the "Certified Animal Euthanasia Specialist Annual Wildlife Euthanasia Report"; **and**

(c) <https://fw.ky.gov/Wildlife/Pages/reportablewildlifedisease.aspx> for the "The World Organization for Animal Health (WOAH) Listed Diseases and Non-Listed Affecting Wildlife,"; and <https://fw.ky.gov/Wildlife/Pages/reportablewildlifedisease.aspx> for the "United States Department of Agriculture National List of Reportable Animal Diseases (NLRAD),".

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](mailto:fwpubliccomments@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

August 7, 2025

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

RE: 806 KAR 9:360 Pharmacy Benefit Manager License

Dear Co-Chairs West and Lewis:

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

Sincerely,

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

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 [ef 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, 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](mailto:shaun.orme@ky.gov).



For Office Use Only	
Amt. Rec'd	_____
Date Rec'd	_____
Tracking No.	_____
Cashier:	_____

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](mailto:DOI.LicensingMail@ky.gov)  
<https://insurance.ky.gov>  
Ph. 502-564-6004 Fax 502-564-6030  
(PLEASE PRINT OR TYPE)

**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](mailto: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. **Please note, if the PBM provides services limited to workers' compensation plans, the PBM will only need to submit a \$1,000 non-refundable fee 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

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

806 KAR 9:360

Contact Person: Shaun T. Orme

Phone: 502-782-1698

Email: shaun.orme@ky.gov

Subject Headings: Insurance, Fees, Health and Medical Services

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes an annual registration fee for pharmacy benefit managers, pursuant to 2024 Regular Session Senate Bill 188.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide the additional funds to support the new requirements of 2024 Regular Session Senate Bill 188.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.9-054(7) allows the Department to impose a fee, in addition to a license fee, to cover the costs of the statute's implementation. 2024 Regular Session Senate Bill 188 requires the regulation to provide for additional programs and administrative review that will result in increased expense to the Department, which may be offset by the licensees. This amendment provides the amount required by the statutory requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment provides funding for the agency to implement the new statutory requirements.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment establishes an annual registration fee.

(b) The necessity of the amendment to this administrative regulation: This amendment is required to offset the expenses resulting from the implementation of 2024 Regular Session Senate Bill 188.

(c) How the amendment conforms to the content of the authorizing statutes: 2024 Regular Session Senate Bill 188 requires the regulation to provide for additional programs and administrative review that will result in increased expense to the Department, which will be offset by the licensees.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will help offset the increased expenses necessary for the enhanced oversight of pharmacy benefit managers (PBMs) required by 2024 Regular Session Senate Bill 188.

(3) Does this administrative regulation or amendment implement legislation from the previous five years? Yes, 2024 Regular Session Senate Bill 188.

(4) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: PBMs that obtain a PBM license or renew a PBM license will be subject to the registration fee. There are currently sixty-six (66) PBMs subject to the registration fee.

(5) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Affected PBMs will have to pay the registration fee upon obtaining or renewing a PBM license.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): \$10,000 for each PBM subject to the registration fee to obtain a or renew a PBM license.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): PBMs will be able to pay a uniform fee to share in the cost of the increased burden placed on the industry to protect consumers from regulated practices.

(6) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

- (a) Initially: (\$660,000)
- (b) On a continuing basis: (\$660,000)

(7) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation or this amendment: The \$10,000 registration fee for a PBM to obtain or renew a license.

(8) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Yes, the \$10,000 registration fee will be necessary.

(9) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Yes, the administrative regulation establishes a \$10,000 registration fee for a PBM to obtain or renew a PBM license, unless the PBM only provides services for a workers' compensation plan.

(10) TIERING: Is tiering applied? Yes, tiering is applied. 2024 Regular Session Senate Bill 188 is not applicable to workers' compensation plans. There are PBMs that only provide services to workers' compensation plans. Therefore, since the \$10,000 registration fee is necessary for the implementation of 2024 Regular Session Senate Bill 188, PBMs that only provide services to workers' compensation plans will not be required to pay the \$10,000 registration fee because the bill does not apply to them.



## 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 statute, 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), 304.9-055, and KRS 304.17A-591 et. seq.

(2) State whether this administrative regulation is expressly authorized by an act of the General Assembly, and if so, identify the act: 2024 Regular Session Senate Bill 188, now codified as KRS 304.17A-591 et. seq.

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

(b) Estimate the following for each affected state unit, part, or division identified in (3)(a):

1. Expenditures:
  - For the first year: (\$660,000)
  - For subsequent years: (\$660,000)
2. Revenues:
  - For the first year: \$660,000
  - For subsequent years: \$660,000
3. Cost Savings:
  - For the first year: None
  - For subsequent years: None

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

(b) Estimate the following for each affected local entity identified in (4)(a):

1. Expenditures:
  - For the first year: None
  - For subsequent years: None
2. Revenues:
  - For the first year: None
  - For subsequent years: None
3. Cost Savings:
  - For the first year: None
  - For subsequent years: None

(5)(a) Identify any affected regulated entities not listed in (3)(a) or (4)(a): Pharmacy Benefit Managers (PBMs) that apply for or renew a PBM license, unless the PBM only provides services for a workers' compensation plan.

(b) Estimate the following for each regulated entity identified in (5)(a):

1. Expenditures:
  - For the first year: \$10,000 per PBM
  - For subsequent years: \$10,000 per PBM
2. Revenues:
  - For the first year: None
  - For subsequent years: None
3. Cost Savings:
  - For the first year: None
  - For subsequent years: None

(6) Provide a narrative to explain the following for each entity identified in (3)(a), (4)(a), and (5)(a):

(a) Fiscal impact of this administrative regulation: This administrative regulation will increase fees paid by PBMs to obtain and renew a PBM license, unless the PBM only provides services for workers' compensation plans. An additional \$10,000 registration fee is required of PBMs, in addition to the current license fee of \$1,000.

(b) Methodology and resources used to reach this conclusion: There are currently 70 licensed PBMs in Kentucky, 4 of which only provide services for workers' compensation plans. This will result in an overall revenue increase for the Department of \$660,000.

(7) Explain, as it relates to the entities identified in (3)(a), (4)(a), and (5)(a):

(a) Whether this administrative regulation will have a "major economic impact", as defined by KRS 13A.010(13): Yes, this administrative regulation will have a major economic impact.

(b) The methodology and resources used to reach this conclusion: 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, unless the PBM only provides services for workers' compensation plans. There are currently 70 licensed PBMs in Kentucky, 4 of which only provide services to workers' compensation plans. Therefore, the overall cost imposed on the affected PBMs will be \$660,000.

Andy Beshear  
Governor

Rebecca W. Goodman  
Secretary  
Energy and Environment Cabinet



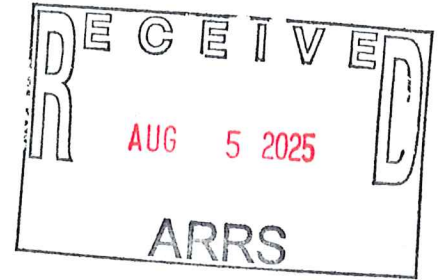
Commonwealth of Kentucky  
**Public Service Commission**  
211 Sower Blvd.  
P.O. Box 615  
Frankfort, Kentucky 40602-0615  
Telephone: (502) 564-3940  
psc.ky.gov

Angie Hatton  
Chair

Mary Pat Regan  
Commissioner

Andrew W. Wood  
Commissioner

August 5, 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 807 KAR 5:015, the Public Service Commission proposes the attached suggested substitute to this ordinary regulation.

Sincerely,

A handwritten signature in blue ink, appearing to read "J.E.B. Pinney".

John E.B. Pinney, Executive Advisor  
Public Service Commission  
211 Sower Boulevard  
Frankfort, Kentucky 40601

**SUGGESTED SUBSTITUTE – TO ORDINARY ONLY**

**ENERGY AND ENVIRONMENT CABINET  
Public Service Commission**

**807 KAR 5:015. Access and attachments to utility poles and facilities.**

RELATES TO: KRS Chapter 278, **47 C.F.R. 1.1412**, 47 U.S.C. 224(c)

STATUTORY AUTHORITY: KRS 278.030(1), ~~(2), (3)~~, 278.040(2), 278.5464(5), **47 U.S.C. 224(c)(2)(A), 224(c)(3)(A)**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) authorizes the commission to promulgate administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.040(2) requires the commission to have exclusive jurisdiction over the regulation of rates and service of utilities. KRS 278.030(1) authorizes utilities to demand, collect, and receive fair, just, and reasonable rates. KRS 278.030(2) requires every utility to **provide[furnish]** adequate, efficient, and reasonable service. KRS 278.5464(5) requires the commission to promulgate administrative regulations regarding pole attachments under its jurisdiction, including those necessary for the provision of broadband. 47 U.S.C.~~[A.]~~ 224(c) requires that state regulation of pole attachments shall only preempt federal regulation of poles under federal jurisdiction if the state regulates the rates, terms, and conditions of access to those poles, has the authority to consider and does consider the interest of the customers of attachers and the pole owning utilities, has effective rules and administrative regulations governing attachments, and addresses complaints regarding pole attachments within 180[360] days. This administrative regulation establishes the process by which the commission regulates the rates, terms, and conditions of utility pole attachments and access to other utility facilities, establishes specific criteria and procedures for obtaining access to utility poles within the commission's jurisdiction, and establishes a process by which the complaints of those seeking to access utility facilities shall be addressed within the period established by federal law.  
**~~The amendments establish an expedited complaint process to address issues pertaining to contract negotiations and amend other parts of the regulation to expedite the processing of applications for pole attachments. 2024 KY S.J.R. 175, 2024 Regular Session requires the commission to promulgate emergency regulations addressing issues pertaining to broadband attachments to utility poles.~~**

Section 1. Definitions.

- (1) "Attachment" means any attachment by a cable television system operator, telecommunications carrier, broadband internet provider, or governmental unit to a pole owned or controlled by a utility.
- (2) "Broadband internet provider":
  - (a) Means **an entity that[a person who]** owns, controls, operates, or manages any facility used or to be used to offer internet service to the public with download speeds of at least twenty-five (25) megabits per second and upload speeds of at least three (3) megabits per second; and
  - (b) Does not mean a utility with an applicable joint use agreement with the utility that owns or controls the poles to which it is seeking to attach.
- (3) "Communications space" means the lower usable space on a utility pole, which is typically reserved for low-voltage communications equipment.
- (4) "Complex make-ready" means any make-ready that is not simple make-ready, such as the replacement of a utility pole; splicing of any communication attachment or relocation of existing wireless attachments, even within the communications space; and any transfers or work relating to the attachment of wireless facilities.

- (5) "Existing attacher" means any person or entity with equipment lawfully on a utility pole.
- (6) "Governmental unit" means an agency or department of the federal government; a department, agency, or other unit of the Commonwealth of Kentucky; or a county or city, special district, or other political subdivision of the Commonwealth of Kentucky.
- (7) "Macro cell facility" means a wireless communications system site that is typically high-power and high-sited, and capable of covering a large physical area, as distinguished from a distributed antenna system, small cell, or WiFi attachment, for example.
- (8) "Make-ready" means the modification or replacement of a utility pole, or of the lines or equipment on the utility pole, to accommodate additional facilities on the utility pole.
- (9) "New attacher":
- (a) Means a cable television system operator, telecommunications carrier, broadband internet provider, or governmental unit requesting to attach new or upgraded facilities to a pole owned or controlled by a utility; **and**
  - (b) **Does not mean** ~~[-except that a new attacher does not include]~~ a utility with an applicable joint use agreement with the utility that owns or controls the pole to which it is seeking to attach or a person seeking to attach macro cell facilities.
- (10) "**Red-tagged**~~[Red-tagged]~~ pole" means a pole that a utility that owns or controls the pole that:
- (a) Is designated for replacement based on the pole's non-compliance with an applicable safety standard;
  - (b) Is designated for replacement within two (2) years of the date of its actual replacement for any reason unrelated to a new attacher's request for attachment; or
  - (c) Would have needed to be replaced at the time of replacement even if the new attachment were not made.
- (11) "Telecommunications carrier":
- (a) Means **an entity that**~~[a person who]~~ owns, controls, operates, or manages any facility used or to be used for or in connection with the transmission or conveyance over wire, in air, or otherwise, any message by telephone or telegraph for the public, for compensation; and
  - (b) Does not mean a utility with an applicable joint use agreement with the utility that owns or controls the poles to which it is seeking to attach.
- (12) "Simple make-ready" means make-ready in which existing attachments in the communications space of a pole could be rearranged without any reasonable expectation of a service outage or facility damage and does not require splicing of any existing communication attachment or relocation of an existing wireless attachment.

## Section 2. Duty to Provide Access to Utility Poles and Facilities.

- (1) Except as established in paragraphs (a) through (c) of this subsection, a utility shall provide any cable television system operator, telecommunications carrier, broadband internet provider, or governmental unit, nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.
- (a) A utility may deny access to any pole, duct, conduit, or right-of-way on a non-discriminatory basis if there is insufficient capacity or for reasons of safety, reliability, or generally applicable engineering purposes.
  - (b) A utility shall not be required to provide access to any pole that is used primarily to support outdoor lighting.
  - (c) A utility shall not be required to secure any right-of-way, easement, license, franchise, or permit required for the construction or maintenance of attachments or facilities from a third party for or on

behalf of a person or entity requesting access pursuant to this administrative regulation to any pole, duct, conduit, or right-of-way owned or controlled by the utility.

(2) A request for access to a utility's poles, ducts, conduits or rights-of-way shall be submitted to a utility in writing, either on paper or electronically, as established by a utility's tariff or a special contract between the utility and person requesting access.

(3) If a utility provides access to its poles, ducts, conduits, or rights-of-way pursuant to an agreement that establishes rates, terms, or conditions for access not contained in its tariff:

(a) The rates, terms, and conditions of the agreement shall be in writing; and

(b) The utility shall file the written agreement with the commission pursuant to 807 KAR 5:011, Section 13.

### Section 3. Pole Attachment Tariff Required.

(1) A utility that owns or controls utility poles located in Kentucky shall maintain on file with the commission a tariff that includes rates, terms, and conditions governing pole attachments in Kentucky that are consistent with the requirements of this administrative regulation and KRS Chapter 278.

(2) The tariff may incorporate a standard contract or license for attachments if ***the tariff's[its]*** terms and conditions are consistent with the requirements of this administrative regulation and KRS Chapter 278.

(3) Standard contracts or licenses for attachments ***allowed[permitted]*** by subsection (2) of this section, shall prominently indicate that:

***(a)*** The contracts or licenses are based wholly on the utility's tariff; and

***(b)[-that]*** The tariff shall control if there is a difference ***between the tariff and the contract or license.***

(4) The tariff may include ***requirements or provisions, approved[terms, subject to approval]*** by the commission ***based on compliance with this administrative regulation and KRS Chapter 278, if the requirements or provisions[-that]*** are fair, just, and reasonable ***For example, requirements may include[-and consistent with the requirements of this administrative regulation and KRS Chapter 278, such as]*** certain limitations on liability, indemnification and insurance requirements, and restrictions on access to utility poles for reasons of lack of capacity, safety, reliability, or generally applicable engineering standards.

(5)(a) The tariff shall include the URL for a utility-maintained website; and[-]

(b) The website shall include:

1. A form ***created by the utility*** that a new attacher shall submit to the utility that shall require a new attacher to:

a. Designate appropriate personnel responsible for overseeing all attachments with the utility; and

b. Identify appropriate personnel associated with each application, who shall be responsible for coordinating with the utility and ensuring that attachment-related issues are addressed in a timely manner;

2. Pole attachment information, including the identity and contact information for contractors approved ***in accordance with Section 5 of this administrative regulation,*** to conduct surveys and make-ready self-help;

3. Construction standards for attachments; and

4. The identity and contact information for:

a. The primary utility personnel responsible for invoicing, payment, make-ready work, and escalation of disputes; and

b. The alternate utility personnel responsible for invoicing, payment, make-ready work, and escalation of disputes if the primary personnel are unavailable.

(6) Overlashing.

(a) A utility shall not require prior approval for:

1. An existing attacher that overlashes its existing wires on a pole; or
2. A third party overlashing of an existing attachment that is conducted with the permission of an existing attacher.

(b)1. A utility shall not prevent an attacher from overlashing because another existing attacher has not **resolved[fixed]** a preexisting violation.

2. A utility shall not require an existing attacher that overlashes its existing wires on a pole to **resolve[fix]** preexisting violations caused by another existing attacher, unless failing to **resolve[fix]** the preexisting violation would create a capacity, safety, reliability, or engineering issue.

(c)1. A utility shall not require more than thirty (30) days' advance notice of planned overlashing.

2. If a utility requires advance notice for overlashing, then the utility shall include the notice requirement in its tariff or include the notice requirement in the attachment agreement with the existing attacher.

3. If, after receiving advance notice, the utility determines that an overlash would create a capacity, safety, reliability, or engineering issue, **the utility[it]** shall provide specific documentation of the issue to the party seeking to overlash within the thirty (30) day advance notice period, and the party seeking to overlash shall address any identified issues before continuing with the overlash either by modifying **the party's[its]** proposal or by explaining why, in the party's view, a modification is unnecessary.

(d)1. A party that engages in overlashing shall be responsible for its own equipment and shall ensure that it complies with reasonable safety, reliability, and engineering practices.

2. If damage to a pole or other existing attachment results from overlashing or overlashing work causes safety or engineering standard violations, then the overlashing party shall be responsible at its expense for any necessary repairs.

(e) An overlashing party shall notify the affected utility within fifteen (15) days of completion of the overlash on a particular pole.

1. The notice shall provide the affected utility at least ninety (90) days from receipt in which to inspect the overlash.

2. The utility shall have fourteen (14) days after completion of its inspection to notify the overlashing party of any damage or code violations to **the utility's[its]** equipment caused by the overlash.

3. If the utility discovers damage or code violations caused by the overlash on equipment belonging to the utility, then the utility shall inform the overlashing party and provide adequate documentation of the damage or code violations.

4. The utility shall either:

- a. Complete any necessary remedial work and bill the overlashing party for the reasonable costs related to **resolving[fixing]** the damage or code violations; or

- b. Require the overlashing party to **resolve[fix]** the damage or code violations at **the overlashing party's[its]** expense within fourteen (14) days following notice from the utility.

~~(7)[(6)]~~ Signed standard contracts or licenses for attachments allowed by subsection (2) of this section shall be submitted to the commission but shall not be filed pursuant to 807 KAR 5:011, Section 13.

~~(8)[(7)]~~ Tariffs conforming to the requirements of this administrative regulation and with a proposed effective date no later than **December 3[May 28]**~~[March 31]~~, **2025[2022]**, shall be filed by **November 3[April 28]**~~[February 28]~~, **2025[2022]**.

#### Section 4. Procedure for New Attachers to Request Utility Pole Attachments.

(1) All time limits established in this section shall be calculated according to 807 KAR 5:001, Section 4(7).

(2) Application review and survey.

(a) Application completeness.

1. A new attacher shall, prior to submitting a pole attachment application to a utility:

- a. Review the application for completeness; and
- b. Submit the information required by Section 3(5).

2. A utility shall review a new attacher's pole attachment application for completeness before reviewing the application on ***the application's[its]*** merits and shall notify the new attacher ***if the application is incomplete*** within the time established in subparagraph 8. of this paragraph~~(ten (10) business days]~~ after receipt of the new attacher's pole attachment application~~[if the application is incomplete].~~

3.~~[2.]~~ A new attacher's pole attachment application shall be considered complete if the application provides the utility with the information necessary under ***the utility's[its]*** procedures, as established in the utility's applicable tariff or a special contract regarding pole attachments between the utility and the new attacher, to begin to survey the affected poles.

4.~~[3.]~~ If the utility notifies a new attacher that its attachment application is not complete, then the utility shall state all reasons for finding it incomplete.

5.~~[4.]~~ A utility shall not require a new attacher to submit a survey or pole loading analysis as a filing requirement for an application.

6. A new attacher may submit a survey with an application of 500 poles or less, which the utility shall accept if the new attacher used an approved contractor, ***as established in Section 5 of this administrative regulation***, listed on the utility's website and the survey was conducted no ***later[longer]*** than thirty (30) days prior to submission. A utility shall conduct the survey for applications exceeding 500 poles.

7. If a utility rejects an application, the rejection shall state the reason for the denial and shall include specific citations to this ***administrative*** regulation and the utility's tariff that form the basis of the rejection.

8. A utility shall complete a review of an application of 500 poles or less within ten (10) business days after receipt of the application. A utility shall have an additional one (1) business day to complete its review for each additional 500-pole increment in an application.

9. A new attacher, if it submits an application while a previous application is still under review, may prioritize the order in which a utility shall review the applications. Prioritizing a new application resets the respective review time period of the new attacher's deprioritized applications currently under review and over which the new application is being prioritized.

10.a. Any resubmitted application need only address the utility's reasons for finding the original application incomplete and shall be deemed complete within ten (10) business days after ***the application's[its]*** resubmission, unless the utility ***states[specifies]*** which reasons were not addressed and how the resubmitted application did not sufficiently address the reasons.

b. The new attacher may follow the resubmission procedure as many times as ***the new attacher[it]*** chooses ***if[so long as]*** in each case ***the new attacher[it]*** makes a ***good faith[bona fide]*** attempt to correct the reasons identified by the utility.

c.~~[and in each case]~~ The deadline ***established[set forth]*** in this paragraph shall apply to the utility's review.~~[:]~~

11. If the utility does not respond within the time ***established[prescribed]*** in subparagraph 8. of this paragraph~~(ten (10) business days]~~ after receipt of the application, or if the utility rejects the application as incomplete but fails to state any reasons in the utility's response, then the application shall be deemed complete and the time for the utility's next procedural step begins to run.

(b) Survey and application review on the merits.



1. A utility shall complete a survey of poles for which access has been requested within forty-five (45) days of receipt of a complete application to attach facilities to its utility poles (or within 120~~sixty (60)~~ days in the case of larger orders as established in subsection (8)~~(7)~~ of this section) for the purpose of determining if the attachments may be made and identifying any make-ready to be completed to allow for the attachment.
  2. Participation of attachers in surveys conducted by a utility.
    - a. A utility shall allow the new attacher and any existing attachers on the affected poles to be present for any field inspection conducted as part of a utility's survey conducted pursuant paragraph (b)1. Of this subsection.
    - b. A utility shall use commercially reasonable efforts to provide the affected attachers with advance notice of not less than five (5) business days of any field inspection as part of the survey and shall provide the date, time, and location of the inspection, and name of the contractor, if any, performing the inspection.
  3. If a new attacher has conducted a survey pursuant to subsection (10)(b) of this section, or a new attacher has otherwise conducted and provided a survey, after giving existing attachers notice and an opportunity to participate in a manner consistent with subsection (10)(b) **of this section**, a utility may elect to satisfy survey obligations established in this paragraph by notifying affected attachers of the intent to use the survey conducted by the new attacher and by providing a copy of the survey to the affected attachers within the time period established in subparagraph 1. of this paragraph.
  4. Based on the results of the applicable survey and other relevant information, a utility shall respond to the new attacher either by granting access or denying access within forty-five (45) days of receipt of a complete application to attach facilities to its utility poles (or within 120~~sixty (60)~~ days in the case of larger orders as **established**~~described~~ in subsection (8)~~(7)~~ of this section).
  5. A utility's denial of a new attacher's pole attachment application shall be specific, shall include all relevant evidence and information supporting the denial, and shall explain how the evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability, or engineering standards.
  6. Payment of survey costs and estimates.
    - a. A utility's tariff may require prepayment of the costs of surveys made to review a pole attachment application, or some other reasonable security or assurance of credit worthiness before a utility shall be obligated to conduct surveys pursuant to this section.
    - b. If a utility's tariff requires prepayment of survey costs, the utility shall include a **per-pole**~~per pole~~ estimate of costs in the utility's tariff and the payment of estimated costs shall satisfy any requirement that survey costs be prepaid.
    - c. The new attacher shall be responsible for the costs of surveys made to review the new attacher's pole attachment application even if the new attacher decides not to go forward with the attachments.
- (3) Payment of make-ready estimates.
- (a) Within fourteen (14) days of providing a response granting access pursuant to subsection (2)(b)4. of this section, a utility shall send a new attacher whose application for access has been granted a detailed, itemized estimate in writing, on a pole-by-pole basis, if requested, ~~and~~ reasonably calculable, and consistent with subsection (7)(b)~~(6)(b)~~ of this section, of charges to perform all necessary make-ready.
  - (b) A utility shall provide documentation that is sufficient to determine the basis of all estimated charges, including any projected material, labor, and other related costs that form the basis of the estimate.

(c) A utility may withdraw an outstanding estimate of charges to perform make-ready beginning fourteen (14) days after the estimate is presented.

(d) A new attacher may accept a valid estimate and make payment any time after receipt of an estimate, except a new attacher shall not accept the estimate after the estimate is withdrawn.

(e) Invoices for estimates shall clearly identify the application or project for which payment is requested.

(f) Payment for the estimate shall clearly identify the **application or project(application(s) or project(s))** for which payment is made.

(4) Make-ready. Upon receipt of payment for survey costs owed to-date pursuant to the utility's tariff and the make-ready estimate **established[specified]** in subsection (3)(d) of this section, a utility shall, as soon as practical but in no case more than seven (7) days, notify all known entities with existing attachments in writing that could be affected by the make-ready.

(a) For make-ready in the communications space, the notice shall:

1. State where and what make-ready will be performed;
2. State a date for completion of make-ready in the communications space that is no later than forty-five (45)[thirty (30)] days after notification is sent (or up to 120[seventy-five (75)] days in the case of larger orders as established in subsection (8)[(7)] of this section);
3. State that any entity with an existing attachment may modify the attachment. Modification shall be consistent with the specified make-ready before the date established for completion;
4. State that, if make-ready is not completed by the completion date established by the utility in subparagraph 2. of this paragraph, the new attacher may complete the make-ready, which shall be completed as **established in[specified pursuant to]** subparagraph 1. of this paragraph; and
5. State the name, telephone number, and email address of a person to contact for more information about the make-ready procedure.

(b) For make-ready above the communications space, the notice shall:

1. State where and what make-ready will be performed;
2. State a date for completion of make-ready that is no later than ninety (90) days after notification is sent (or 165[135] days in the case of larger orders, as established in subsection (8)[(7)] of this section).
3. State that any entity with an existing attachment may modify the attachment. Modification shall be consistent with the specified make-ready before the date established for completion;
4. State that the utility may assert the utility's right to up to fifteen (15) additional days to complete make-ready;
5. State that if make-ready is not completed by the completion date established by the utility in subparagraph 2. of this paragraph (or, if the utility has asserted its fifteen (15) day right of control, fifteen (15) days later), the new attacher may complete the make-ready, which shall be completed as **established[specified]** pursuant to subparagraph 1. of this paragraph; and
6. State the name, telephone number, and email address of a person to contact for more information about the make-ready procedure.

(c) Once a utility provides the notices required by this subsection, the utility shall provide the new attacher with a copy of the notices and the existing attachers' contact information and address where the utility sent the notices. The new attacher shall be responsible for coordinating with existing attachers to encourage completion of make-ready by the dates established by the utility pursuant to paragraph (a)2. of this subsection for communications space attachments or paragraph (b)2. of this subsection for attachments above the communications space.

(5) A utility shall complete its make-ready in the communications space by the same dates established for existing attachers in subsection (4)(a)2. of this section or its make-ready above the communications space by the same dates for existing attachers in subsection (4)(b)2. of this section (or if the utility has asserted its fifteen (15) day right of control, fifteen (15) days later).

(6) An attacher shall, within fifteen (15) business days following completion of all attachments within an application, provide written notice to a utility in the manner and form stated in the utility's tariff.

(7) Final invoice.

(a) Within a reasonable period, not to exceed 120 days after a utility completes the utility's make-ready, the utility shall provide the new attacher:

1. A detailed, itemized final invoice of the actual survey charges incurred if the final survey costs for an application differ from the amount~~[any estimate]~~ previously paid~~[for the survey work or if no estimate was previously paid]~~; and

2. A detailed, itemized final invoice, on a pole-by-pole basis if requested and reasonably calculable, of the actual make ready costs to accommodate attachments if the final make-ready costs differ from the estimate provided pursuant to subsection (3)(d) of this section.

(b) Limitations on make ready costs.

1. A utility shall not charge a new attacher, as part of any invoice for make-ready, to bring poles, attachments, or third-party or utility equipment into compliance with current published safety, reliability, **or[and]** pole owner construction standards if the poles, attachments, or third-party or utility equipment were out of compliance because of work performed by a party other than the new attacher prior to the new attachment.

2. A utility shall not charge a new attacher, as part of any invoice for make ready, the cost to replace any **red-tagged[red-tagged]** pole with a replacement pole of the same type and height.

3. If a **red-tagged[red-tagged]** pole is replaced with a pole of a different type or height, then the new attacher shall be responsible, as part of any invoice for make ready, only for the difference, if any, between the cost for the replacement pole and the cost for a new utility pole of the type and height that the utility would have installed in the same location in the absence of the new attachment.

4. The make ready cost, if any, for a pole that is not a **red-tagged[red-tagged]** pole to be replaced with a new utility pole to accommodate the new attacher's attachment shall be charged in accordance with the utility's tariff or a special contract regarding pole attachments between the utility and the new attacher.

~~(8)~~(7) For the purposes of compliance with the time periods in this section:

(a) A utility shall apply the timeline as established in subsections (2) through (4) of this section to all requests for attachment up to the lesser of 500~~[300]~~ poles or zero and .75~~[five-tenths (0.5)]~~ percent of the utility's poles in the state;

(b) A utility may, for every 500-pole increment, add up to fifteen (15) days to the survey period established in subsection (4) of this section to larger orders up to the lesser of 3,000~~[1,000]~~ poles or three (3)~~[1.50]~~ percent of the utility's poles in Kentucky;

(c) A utility may, for every 500-pole increment, add up to fifteen (15)~~[forty-five (45)]~~ days to the make-ready periods established in subsection (4) of this section to larger orders up to the lesser of 3,000~~[1,000]~~ poles or three (3)~~[1.50]~~ percent of the utility's poles in Kentucky;

(d) A utility and a new attacher, unless the utility owns or controls fewer than 500 poles, shall negotiate a special contract in good faith, **which shall include** ~~[the timing of]~~ all requests for attachment larger than the lesser of 3,000~~[1,000]~~ poles or three (3)~~[1.50]~~ percent of the utility's poles in Kentucky.~~;~~ The special contract, at a minimum, shall contain:

1. An agreement for a prepaid account from the new attacher to cover the cost of the request;

2. Direction from the new attacher regarding make ready work that the utility may complete without further direction from the new attacher including;

a. The maximum cost per pole; and

b. The total cost for make ready work for each project or line of each project;

3. The new attacher's prioritization of projects if the new attacher has submitted multiple requests for attachment;

4. Contact information, including phone numbers and email addresses, for all necessary utility and new attacher personnel;

5. The cadence, location, and necessary personnel for each project; and

6. The timing of surveys and make ready;[;]

(e) If a special contract **established[identified]** in paragraph (d) of this subsection cannot be agreed to within fifteen (15) business days from submission of a formal written request to engage from the attacher, the new attacher may file a complaint with the commission, with a copy **that the new attacher shall serve[served]** contemporaneously to the utility, on which the commission shall rule within twenty (20) business days of filing of the complaint;[;]

(f)[(e)] For the calculation of any deadlines in this regulation a[A] utility may treat multiple applications[requests] from a single new attacher as one (1) application[request] if the applications[requests] are submitted within thirty (30) days of one another;[-and]

(g)[(f)] As soon as reasonably practicable, but no less than ninety (90)[sixty (60)] days before the new attacher expects to submit an application in which the number of requests exceed the lesser of the amounts identified in paragraph (a) of this subsection, a new attacher shall provide written notice to a utility in the manner and form stated in the utility's tariff that the new attacher expects to submit a [high volume] request; and[;]

(h) As soon as reasonably practicable, a utility shall provide written notice to an attacher if the utility determines it will be unable to meet survey or other make-ready deadlines. **The[Such]** notice shall entitle an attacher **to** immediately [~~to~~] proceed with self-help remedies in accordance with **subsection (10) of this section[-4(10)]**.

(9)[(8)] Deviations from make-ready timeline.

(a) A utility may deviate from the time limits **established[specified]** in this section before offering an estimate of charges if the new attacher failed to satisfy a condition in the utility's tariff or in a special contract between the utility and the new attacher.

(b) A utility may deviate from the time limits established in this section during performance of make-ready for good and sufficient cause that renders it infeasible for the utility to complete make-ready within the time limits established in this section. A utility that so deviates shall immediately notify, in writing, the new attacher and affected existing attachers and shall identify the affected poles and include a detailed explanation of the reason for the deviation and a new completion date. The utility shall deviate from the time limits established in this section for a period no longer than necessary to complete make-ready on the affected poles and shall resume make-ready without discrimination once the utility returns to routine operations.

(c) An existing attacher may deviate from the time limits established in this section during performance of complex make-ready for reasons of safety or service interruption that renders it infeasible for the existing attacher to complete complex make-ready within the time limits established in this section. An existing attacher that so deviates shall immediately notify, in writing, the new attacher and other affected existing attachers and shall identify the affected poles and include a detailed explanation of the basis for the deviation and a new completion date, which shall not extend beyond sixty (60) days from the completion date provided in the notice **established[specified]** in subsection (4) of this

section as sent by the utility (or up to 105 days in the case of larger orders **established[specified]** in subsection (8)[(6)](b) and (c) of this section). The existing attacher shall not deviate from the time limits established in this section for a period for longer than necessary to complete make-ready on the affected poles.

**(10)[(9)] Self-help remedy.**

(a) Surveys. If a utility fails to complete a survey as established in subsection (2)(b) of this section [,*;*] or if a utility waives its right to perform the survey in writing, then a new attacher may conduct the survey in place of the utility by hiring a contractor to complete a survey, which shall be completed as **established[specified]** in Section 5 of this administrative regulation.

1. A new attacher shall allow the affected utility and existing attachers to be present for any field inspection conducted as part of the new attacher's survey.
2. A new attacher shall use commercially reasonable efforts to provide the affected utility and existing attachers with advance notice of not less than five (5) business days of a field inspection as part of any survey the attacher conducts.
3. The notice shall include the date and time of the survey, a description of the work involved, and the name of the contractor being used by the new attacher.

(b) Make-ready. If make-ready is not complete by the applicable date established in subsection (4) of this section, then a new attacher may conduct the make-ready in place of the utility and existing attachers by hiring a contractor to complete the make-ready, which shall be completed as **established[specified]** in Section 5 of this administrative regulation. The make-ready shall be performed in compliance with this administrative regulation, the utility's tariff, and the construction standards listed on the utility's website. Make-ready work performed by the new attacher within the electric space shall be conducted by an approved contractor, as established in Section 5 of this administrative regulation, listed on the utility's website.

1. A new attacher shall allow the affected utility and existing attachers to be present for any make-ready.
2. A new attacher shall use commercially reasonable efforts to provide the affected utility and existing attachers with advance notice of not less than seven (7) days of the impending make-ready.
3. The notice shall include the date and time of the make-ready, a description of the work involved, and the name of the contractor being used by the new attacher.

(c) The new attacher shall notify an affected utility or existing attacher immediately if make-ready damages the equipment of a utility or an existing attacher or causes an outage that is reasonably likely to interrupt the service of a utility or existing attacher.

(d) Pole replacements. Self-help shall not be available for pole replacements.

**(11)[(10)] One-touch make-ready option.** For attachments involving simple make-ready, new attachers may elect to proceed with the process established in this subsection in lieu of the attachment process established in subsections (2) through (6) and (9) of this section.

(a) Attachment application.

1. A new attacher electing the one-touch make-ready process shall elect the one-touch make-ready process in writing in its attachment application and shall identify the simple make-ready that it will perform. It is the responsibility of the new attacher to ensure that its contractor determines if the make-ready requested in an attachment application is simple.
2. Application completeness.
  - a. The utility shall review the new attacher's attachment application for completeness before reviewing the application on its merits and shall notify the new attacher within ten (10) business

days after receipt of the new attachers attachment application whether or not the application is complete.

b. An attachment application shall be considered complete if the application provides the utility with the information necessary under its procedures, as established in the utility's applicable tariff or a special contract regarding pole attachments between the utility and the new attacher, to make an informed decision on the application.

c. If the utility notifies the new attacher that an attachment application is not complete, then the utility shall state all reasons for finding the application incomplete.

d. If the utility fails to notify a new attacher in writing that an application is incomplete within ten (10) business days of receipt, then the application shall be deemed complete.

3. Application review on the merits. The utility shall review on the merits a complete application requesting one-touch make-ready and respond to the new attacher either granting or denying an application within fifteen (15) days of the utility's receipt of a complete application (or within thirty (30) days in the case of larger orders as established in subsection ~~(8)(7)(b)~~ of this section or within a time negotiated in good faith for requests equal to or larger than those established in **subsection (8)(d) of this section**~~(7)(d)~~).

a. If the utility denies the application on its merits, then the utility's decision shall be specific, shall include all relevant evidence and information supporting its decision, and shall explain how the evidence and information relate to a denial of access.

b. Within the fifteen (15) day application review period (or within thirty (30) days in the case of larger orders as established in subsection ~~(8)(7)(b)~~ of this section or within a time negotiated in good faith for requests equal to or larger than those established in **subsection (8)(7)(d) of this section**), a utility or an existing attacher may object to the designation by the new attacher's contractor that certain make-ready is simple.

c. An objection made pursuant to clause b. of this subparagraph shall be specific and in writing, include all relevant evidence and information supporting the objection, be made in good faith, and explain how the evidence and information relate to a determination that the make-ready is not simple.

d. If the utility's or the existing attacher's objection to the new attacher's determination that make-ready is simple complies with clause c. of this subparagraph, then the make-ready shall be deemed to be complex and the new attacher shall not proceed with the affected proposed one-touch make-ready.

(b) Surveys.

1. The new attacher shall be responsible for all surveys required as part of the one-touch make-ready process and shall use a contractor as established in Section 5(2) of this administrative regulation to complete surveys.

2. The new attacher shall allow the utility and any existing attachers on the affected poles to be present for any field inspection conducted as part of the new attacher's surveys.

3. The new attacher shall use commercially reasonable efforts to provide the utility and affected existing attachers with advance notice of not less than five (5) business days of a field inspection as part of any survey and shall provide the date, time, ~~[and]~~ location of the surveys, and name of the contractor performing the surveys.

(c) Make-ready. If the new attacher's attachment application **complies with this administrative regulation and the pole owner's tariff**, is approved by the pole owner, and if the **new** attacher has provided at least fifteen (15) days prior written notice of the make-ready to the affected utility and existing attachers, the new attacher may proceed with make-ready. The new attacher shall use a

contractor in the manner established for simple make-ready in Section 5(2) of this administrative regulation.

1. The prior written notice shall include the date and time of the make-ready, a description of the work involved, the name of the contractor being used by the new attacher, and provide the affected utility and existing attachers a reasonable opportunity to be present for any make-ready.

2. The new attacher shall notify an affected utility or existing attacher immediately if make-ready damages the equipment of a utility or an existing attacher or causes an outage that is reasonably likely to interrupt the service of a utility or existing attacher.

3. In performing make-ready, if the new attacher or the utility determines that make-ready classified as simple is complex, then all make-ready on the impacted poles shall be halted and the determining party shall provide immediate notice to the other party of its determination and the impacted poles. All remaining make-ready on the impacted poles shall then be governed by subsections (2) through (9) of this section, and the utility shall provide the notices and estimates required by subsections (2)(a), (3), and (4) of this section as soon as reasonably practicable.

(d) Post-make-ready timeline. A new attacher shall notify the affected utility and existing attachers within fifteen (15) days after completion of make-ready on a one-touch make ready application.

#### Section 5. Contractors for Survey and Make-ready.

(1) Contractors for self-help complex and above the communications space make-ready. A utility shall make available and keep up-to-date a reasonably sufficient list of contractors the utility authorizes to perform self-help surveys and make-ready that is complex and self-help surveys and make-ready that is above the communications space on the utility's poles. The new attacher shall use a contractor from this list to perform self-help work that is complex or above the communications space. New and existing attachers may request the addition to the list of any contractor that meets the minimum qualifications in subsection (3) of this section and the utility shall not unreasonably withhold its consent.

(2) Contractors for surveys and simple work. A utility may keep up-to-date a reasonably sufficient list of contractors the utility authorizes to perform surveys and simple make-ready. If a utility provides this list, then the new attacher shall choose a contractor from the list to perform the work. New and existing attachers may request the addition to the list of any contractor that meets the minimum qualifications in subsection (3) of this section and the utility shall not unreasonably withhold its consent.

(a)1. If the utility does not provide a list of approved contractors for surveys or simple make-ready or no utility-approved contractor is available within a reasonable time period, then the new attacher may choose its own qualified contractor that shall meet the requirements in subsection (3) of this section.

2. If choosing a contractor that is not on a utility-provided list, the new attacher shall certify to the utility that the attacher's contractor meets the minimum qualifications established in subsection (3) of this section upon providing notices required by Section 4 ~~(10)(a)2., (9)(a)2., (10)(b)2., (9)(b)2., [(10)](b)3.,~~ and (10)(c) of this administrative regulation.

(b)1. The utility may disqualify any contractor chosen by the new attacher that is not on a utility-provided list, but a disqualification shall be based on reasonable safety or reliability concerns related to the contractor's failure to meet any of the minimum qualifications established in subsection (3) of this section or to meet the utility's publicly available and commercially reasonable safety or reliability standards.

2. The utility shall provide notice of the utility's objection to the contractor within the notice periods established by the new attacher in Section 4 ~~(10)(a)2., (10)(b)2., [(4)(a)2., (9)(b)2., [(10)](b)3.,~~ and (10)(c) of this administrative regulation and in the utility's objection **shall[must]** identify at least one **(1)** available qualified contractor.

(3) Contractor minimum qualification requirements. ***Each utility[Utilities]*** shall ensure that contractors on a utility-provided list, and new attachers shall ensure that contractors selected pursuant to subsection (2)(a) of this section, meet the minimum requirements established in paragraphs (a) through (e) of this subsection.

(a) The contractor ***shall agree[has agreed]*** to follow published safety and operational guidelines of the utility, if available, but if unavailable, the contractor shall agree to follow National Electrical Safety Code (NESC) guidelines, ***incorporated by reference in 807 KAR 5:041.***

(b) The contractor ***shall acknowledge[has acknowledged]*** that the contractor knows how to read and follow licensed-engineered pole designs for make-ready, if required by the utility.

(c) The contractor ***shall agree to comply with[has agreed to follow]*** all local, state, and federal laws and regulations including the rules ***established in 47 C.F.R. 1.1412*** regarding Qualified and Competent Persons under the requirements of the Occupational and Safety Health Administration (OSHA) rules.

(d) The contractor ***shall agree[has agreed]*** to meet or exceed any uniformly applied and reasonable safety and reliability thresholds established by the utility, if made available.

(e) The contractor shall be adequately insured or shall establish an adequate performance bond for the make-ready the contractor will perform, including work the contractor will perform on facilities owned by existing attachers.

(4) A consulting representative of a utility may make final determinations, on a nondiscriminatory basis, if there is insufficient capacity and for reasons of safety, reliability, ***or[and]*** generally applicable engineering purposes.

#### Section 6. Notice of Changes to Existing Attachers.

(1) Unless otherwise established in a joint use agreement or special contract, a utility shall provide an existing attacher no less than sixty (60) days written notice prior to:

(a) Removal of facilities or termination of any service to those facilities if that removal or termination arises out of a rate, term, or condition of the utility's pole attachment tariff or any special contract regarding pole attachments between the utility and the attacher; or

(b) Any modification of facilities by the utility other than make-ready noticed pursuant to Section 4 of this administrative regulation, routine maintenance, or modifications in response to emergencies.

(2) Stays from removals, terminations, and modifications noticed pursuant to subsection (1) of this section.

(a) An existing attacher may request a stay of the action contained in a notice received pursuant to subsection (1) of this section. ***A motion for a stay of action shall be submitted*** by filing a motion pursuant to 807 KAR 5:001, Section 4 within fifteen (15) days of the receipt of the first notice provided pursuant to subsection (1) of this section.

(b) The motion shall be served on the utility that provided the notice pursuant to 807 KAR 5:001, Section 5(1).

(c) The motion shall not be considered unless it includes the relief sought, the reasons for such relief, including a showing of irreparable harm and likely cessation of cable television system operator or telecommunication service, a copy of the notice, and a certification that service was provided pursuant to paragraph (b) of this subsection.

(d) The utility may file a response, ***which shall be submitted*** within ten (10) days of the date the motion for a temporary stay was filed.

(e) ***[No-]*** Further filings under this subsection shall ***not*** be considered unless requested or authorized by the commission ***as necessary to develop the record.***



(3) Transfer of attachments to new poles.

(a) Unless an applicable tariff, ~~or~~ special contract, or Section 4 of this administrative regulation establishes a different timeframe, existing attachers shall transfer their attachments within sixty (60) days of receiving written notice from the utility pole owner.

(b) Existing attachers may deviate from the time limit established in paragraph (a) of this subsection for good and sufficient cause that renders it infeasible for the existing attacher to complete the transfer within the time limit established. An existing attacher that requires ~~such~~ a deviation shall immediately notify, in writing, the utility and shall identify the affected poles and include a detailed explanation of the reason for the deviation and the date by which the attacher shall complete the transfer. An existing attacher shall deviate from the time limits established in paragraph (a) of this subsection for a period no longer than is necessary to complete the transfer.

(c) If an existing attacher fails to transfer its attachments within the timeframe established in paragraph (a) of this subsection and the existing attacher has not notified the utility of good and sufficient cause for extending the time limit pursuant to paragraph (a) of this subsection, a utility pole owner may transfer attachments and the transfer shall be at the existing attacher's expense.

(d) A utility pole owner may transfer an existing attacher's attachment prior to the expiration of any period established by paragraph (a) or (b) of this subsection if an expedited transfer is necessary for safety or reliability purposes.

Section 7. Complaints for Violations of This Administrative Regulation.

(1) Contents of complaint. Each complaint shall be headed "Before the Public Service Commission," shall establish the names of the complainant and the defendant, and shall state:

(a) The full name and post office address of the complainant;

(b) The full name and post office address of the defendant;

(c) Fully, clearly, and with reasonable certainty, the act or omission, of which complaint is made, with a reference, if practicable, to the law, order, or administrative regulation, of which a **violation[failure to comply]** is alleged, and other matters, or facts, if any, as necessary to acquaint the commission fully with the details of the alleged **violation[failure]**; and

(d) The relief sought.

(2) Signature. The complainant or his or her attorney, if applicable, shall sign the complaint. A complaint by a corporation, association, or another organization with the right to file a complaint, shall be signed by its attorney.

(3) **Filing procedure[How filed].**

(a) Complaints shall be filed in accordance with the electronic filing procedures in 807 KAR 5:001, Section 8, ~~and~~

(b) The complainant shall serve a copy of the complaint on the defendant at the same time as **the complainant[it]** files the complaint with the commission. ~~[The filing party shall file two (2) copies in paper medium with the commission in the manner required by 807 KAR 5:001, Section 8(12)(a)2.]~~

(4) Procedure on filing of complaint.

(a) Upon the filing of a complaint, the commission shall immediately examine the complaint to ascertain if **the complaint[it]** establishes a prima facie case and **complies with[conforms to]** this administrative regulation.

1. If the commission finds that the complaint does not establish a prima facie case or does not **comply with[conform to]** this administrative regulation, the commission shall notify the complainant and provide the complainant an opportunity to amend the complaint within a stated time.

2. If the complaint is not amended within the time or the extension as the commission, for good cause shown, shall grant, the complaint shall be dismissed.

(b) If the complaint, either as originally filed or as amended, establishes a prima facie case and **complies with**~~[conforms to]~~ this administrative regulation, the commission shall serve an order upon the person complained of, accompanied by a copy of the complaint, directed to the person complained of, and requiring that the matter complained of be satisfied, or that the complaint be answered in writing within ten (10) days from the date of service of the order. The commission may require the answer to be filed within a shorter period if the complaint involves an emergency situation or otherwise would be detrimental to the public interest.

(5) Satisfaction of the complaint. If the defendant desires to satisfy the complaint, **the defendant**~~[he or she]~~ shall submit to the commission, within the time allowed for satisfaction or answer, a statement of the relief that the defendant is willing to give. Upon the acceptance of this offer by the complainant and with the approval of the commission, pursuant to KRS Chapter 278 and this administrative regulation, the case shall be dismissed.

(6) Answer to complaint. If the complainant is not satisfied with the relief offered, the defendant shall file an answer to the complaint within the time stated in the order or the extension as the commission, for good cause shown, shall grant.

(a) The answer shall contain a specific denial of the material allegations of the complaint as controverted by the defendant and also a statement of any new matters constituting a defense.

(b) If the defendant does not have information sufficient to answer an allegation of the complaint, the defendant may so state in the answer and place the denial upon that ground.

(7) Burden of proof.

(a) The complainant **shall have**~~[has]~~ the burden of establishing **that the complainant**~~[it]~~ is entitled to the relief sought.

(b) ~~[The commission may presume that]~~ A pole replaced to accommodate a new attachment **shall be considered**~~[was]~~ a **red-tagged**~~[red-tagged]~~ pole if:

1. **a.** There is a dispute regarding the condition of the pole at the time it was replaced; and

**b.**~~[2.]~~ The utility failed to document and maintain records that:

**(i)** Inspections were conducted pursuant to 807 KAR 5:006; and

**(ii)**~~[that no]~~ Deficiencies were **not** found on the pole or poles at issue, or;

**2.**~~[if]~~ Inspections of poles are not required pursuant to 807 KAR 5:006 **and**~~[,]~~ the utility failed to periodically inspect and document the condition of **the utility's**~~[its]~~ poles.

(8) Time for final action.

(a) The commission shall take final action on a complaint regarding the rates, terms, or conditions for access to a utility's pole, duct, conduit, or right-of-way within **sixty (60)**~~[60]~~~~[180]~~ days of a complaint establishing a prima facie case being filed, unless the commission finds it is necessary to continue the proceeding for good cause for up to **180**~~[360]~~ days from the date the complaint establishing a prima facie case is filed.

(b) The period within which final action shall be taken may be extended beyond **180**~~[360]~~ days **by order of the commission** upon agreement of the complainant and defendant~~[and approval of the commission]~~.

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