

BOARDS AND COMMISSIONS

Board of Veterinary Examiners

(Amendment)

201 KAR 16:550. Authorization for animal control agencies to apply for a restricted controlled substances certificate from DEA.

RELATES TO: KRS 217.177(1), (4), Chapter 258, Chapter 301, 321.207, 321.351

STATUTORY AUTHORITY: KRS 321.207(1) — (3), ~~(5)-(8), 321.235(1)(a), (b), (2), (b)3[(1), (2), 321.235(3), 321.240(5)]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.207(1) permits the Kentucky Board of Veterinary Examiners to authorize an animal control agency to apply for a registration certificate by the United States Drug Enforcement Administration (DEA) to euthanize animals. KRS 321.207(2) requires the applicant agency to comply with administrative regulations that establish standards for the proper storage and handling of the drugs the board has authorized for use, and other provisions that may be necessary to ensure that the drugs are used safely and solely for the purpose of euthanizing animals. KRS 321.235(1)(a), (b), and (2)(b)3~~[KRS 321.235(3) and 321.240(5)]~~ authorize the board to promulgate administrative regulations to implement KRS Chapter 321. This administrative regulation establishes the application, renewal, and reinstatement requirements for certification of an animal shelter as an animal control agency, and the requirements for board inspections at certified animal control agencies.

Section 1. Definitions.

(1) "Animal Control Agency" means an animal shelter fulfilling the duties required pursuant to KRS Chapter 258, and the animal shelter is either owned, contracted with, or in service on behalf of a county or municipality.

~~(2)~~

(a) "Animal shelter" means a public agency or private humane society, society for the prevention of cruelty to animals, animal protection shelter or control agency, or other facility that provides shelter and care for homeless, stray, unwanted, or injured animals.

(b) An "animal shelter" shall not include:

1. Shelter or care of wildlife; or

2. Premises of a Kentucky Department of Fish and Wildlife Resources credentialed:

a. Certified wildlife rehabilitator (301 KAR 2:075);

b. Commercial nuisance wildlife control operator (301 KAR 3:120);

c. Captive wildlife holder (301 KAR 2:081);

d. Wildlife transporter (301 KAR 2:082).

~~(3) [(2)]~~ "Certified Animal Control Agency" means an animal shelter that is certified under the provisions of KRS Chapter 321 and 201 KAR Chapter 16.

~~(4) [(3)]~~ "Designated On-site Manager" means a person who registers with the board to assume responsibility for the ordering, management, use, and disposal of controlled substances at a board-certified animal control agency.

Section 2. Application and Renewal Requirements.

(1) The applicant animal shelter shall apply to the board for authorization to operate as a certified animal control agency and to apply to the federal Drug Enforcement Administration (DEA) for a Controlled Substance Registration as established by KRS 321.207.

(2) A complete application to the board shall include the following~~components~~:

(a) A completed Application for Certification as an Animal Control Agency form or online equivalent form, including all required attachments;

(b) Identification of the agency designated on-site manager;

- (c) A complete and current list of all individuals performing euthanasia or related activities at the animal shelter, whether or not each individual holds a credential from the board;~~[-and]~~
 - (d) An animal control agency verification letter signed by the governing body within the county or municipality, including a statement about the animal shelter's role as an animal control agency or contractor pursuant to KRS 258.195;
 - (e) A list of all Kentucky counties which are provided service by the animal shelter;
and
 - (f) Payment of the fee in accordance with 201 KAR 16:514.
- (3) Prior to the board's issuance of the animal control agency certificate, the applicant shall undergo an inspection of the facility by the board, its inspector, or other designee of the board in accordance with Section 5 of this administrative regulation.
- (4) Following board application approval, the applicant shall apply to DEA for registration as a practitioner and designate "animal shelter" on the appropriate DEA application form.
- (5) A certified animal control agency shall submit to inspection by a board representative at any time, with or without advanced notice.
- (6) A certified animal control agency shall identify a designated on-site manager in accordance with 201 KAR 16:552.
- (a) The agency shall notify the board in writing within ten (10) days of any change in the designated on-site manager of the certified animal control agency~~[animal shelter]~~ by submitting a completed Request for a New Designated On-site Manager form or online equivalent form, including all required attachments.
 - (b) The designated on-site manager shall be responsible for complying with all state and federal laws related to the ordering, purchase, storage, tracking, management, and disposal of the drugs obtained under the DEA controlled substances registration.
- (7) Background checks. The board may:
- (a) Conduct ~~[conduct]~~ a national or jurisdictional level background check on each designated on-site manager. The check shall be processed by a board approved background check provider, and may include a copy of the designated on-site manager's fingerprints captured at a board approved location;~~[-]~~
 - (b) Accept ~~[The board may accept]~~ the results of a state-wide~~[an]~~ employment background check ~~[from the county office]~~ in lieu of a state or federal background check if the background check results are not more than six (6) months old from the date of application;~~[-]~~
 - (c) Reject ~~[The board may reject]~~ background checks that do not have an official seal or watermark, or that are more than ninety (90) days old; and~~[-]~~
 - (d) Impose ~~[The board may impose]~~ additional administrative or safety requirements as a condition of certification for the animal control agency or deny certification following the board's review of findings from a background check.

Section 3. Renewal Requirements for a Certified Animal Control Agency.

- (1) A board-certified animal control agency shall renew the board certification annually in accordance with 201 KAR 16:572.
- (2) Failure to renew the certificate for an animal control agency shall result in the following actions by the board:
 - (a) The animal control agency certificate shall be moved to expired status;
 - (b) Each "active" status certified animal euthanasia specialist under the employment of the expired certified animal control agency shall be moved to "inactive" status;
 - (c) The DEA shall be notified of the lapse in certification; and
 - (d) The board shall conduct a closeout inspection within six (6) months of the date of expiration of the certificate to ensure that the controlled substances and other drugs on-

site are properly disposed of. An animal shelter with an expired certificate shall continue to maintain the drugs in accordance with 201 KAR 16:552, and the Kentucky Veterinary Medicine Practice Act (KRS Chapter 321), and 201 KAR Chapter 16, until the drugs are transferred in accordance with state and federal laws, or disposed of in accordance with 201 KAR 16:552, Section 7.

Section 4. Reinstatement Requirements for Certified Animal Control Agencies.

- (1) An animal control agency with an expired certificate shall have five (5) years to reinstate their certificate by submitting a completed Reinstatement Application for Animal Control Agencies form or online equivalent form, including all required attachments and payment of the reinstatement application fee pursuant to 201 KAR 16:514.
- (2) The animal control agency shall undergo inspection by an authorized representative of the board in accordance with Section 5(3) of this administrative regulation prior to the reinstatement of a certificate.
- (3) After five (5) years of the date of the expiration of the certificate, the agency shall not ~~be able to~~ reinstate the certificate and the animal control agency shall be required to apply for a new certificate in accordance with 201 KAR Chapter 16~~[this administrative regulation and 201 KAR 16:572]~~.

Section 5. Inspection Requirements.

- (1) A certified animal control agency shall be subject to inspection by the board, its investigator, or a board representative.
- (2) An inspection may occur at any time, with or without advance notice. The designated on-site manager shall make themselves available to provide access and information during the inspection.
- (3) An inspection shall be required:
 - (a) Prior to the approval of a new Application for Certification as an Animal Control Agency;
 - (b) Prior to the approval of a Reinstatement Application for Animal Control Agencies, if the last inspection was completed more than twelve (12) months prior to the date of the application;
 - (c) Periodically on a schedule set by the board, not more routinely than every ten (10) months, and at least once every two (2) years;
 - (d) As needed due to staff turnover at the animal control agency;
 - (e) Under suspicion of probable cause for violation of KRS Chapter 321 or 201 KAR Chapter 16; and
 - (f) Following the expiration, termination, suspension, or surrender of the certificate in accordance with Section 3(2)(d) of this administrative regulation.

Section 6. Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) "Application for Certification as an Animal Control Agency", 7/2023~~[12/2022]~~;
 - (b) "Reinstatement Application for Animal Control Agencies", 7/2023~~[12/2022]~~; and
 - (c) "Request for a New Designated On-site Manager", 7/2023~~[12/2022]~~.
- (2) This material may be inspected, copied, or obtained, subjected to applicable copyright law, at the Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:30 a.m. to 4:30 p.m. This material may also be obtained at www.kybve.com.

MICHELLE M. SHANE, Executive Director

APPROVED BY AGENCY: July 12, 2023

FILED WITH LRC: July 12, 2023 at 1:00 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 25, 2023 at 1:00 p.m., at the Kentucky Department of Agriculture, Office of the State Veterinarian, 109 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made prior to the end of the hearing. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michelle Shane, Executive Director, Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Second Floor, Frankfort, Kentucky 40601, phone (502) 782-0273, fax (502) 695-5887, email michelle.shane@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person:Michelle Shane

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the application and renewal requirements for certification as an animal control agency, and the requirements for board inspections at certified animal control agencies.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to establish the application requirements for certification as an animal control agency, as mandated by KRS 321.207.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 321.207 specifically requires the board to promulgate administrative regulations related to the application requirements for certification as an animal control agency.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation will assist in effective administration by clearly detailing board expectations for applications and renewals of board-issued certificates for animal control agencies, and requirements related inspections of board-certified animal control agencies.

(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:

Updating statutory references to conform with the new Kentucky Veterinary Medicine Practice Act, KRS Chapter 312; adding clarifying definitions, clarifying that eligible animal shelters should have a mission to support the county or municipality with their in animal control needs, and clarifying that animal shelters eligible for a KBVE certificate do not include the handling, management, and transport of wildlife, because wildlife management falls under the scope of the Kentucky Department of Fish and Wildlife Resources.

(b) The necessity of the amendment to this administrative regulation:

Changes are necessary to conform with the new Kentucky Veterinary Medicine Practice Act, KRS Chapter 312. The Kentucky Board of Veterinary Examiners has determined this amendment is necessary to prevent application for wildlife shelter certification to the board, because wildlife control and management is beyond the board's scope of authority.

(c) How the amendment conforms to the content of the authorizing statutes:

KRS 321.207 specifically requires the board to promulgate administrative regulations related to board-certified animal control agencies, including who is eligible to apply and the application requirements.

(d) How the amendment will assist in the effective administration of the statutes:

This amendment shall ensure transparency about who is eligible to apply.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

50 board-certified animal control agencies and 232 animal euthanasia specialists, and future applicants.

(4) 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:

There will not be any impact to currently regulated entities. This amendment shall ensure that those who are not qualified to apply do not pay a fee and then have their application denied by the board.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

This amendment will save potential applicants money by clarifying who is eligible for KBVE certification as an animal control agency.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Administrative ease of clear communications of the approved requirements.

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

(a) Initially:

No costs are anticipated.

(b) On a continuing basis:

No costs are anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

This administrative regulation does not establish fees. Funding for the KBVE comes from licensure and certification fees.

(7) 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:

There is no anticipation of an increase in fees or needed funding to implement this administrative regulation, as the KBVE is already running an administrative program to process applications and an inspection program to ensure compliance.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

No fees are established or increased by this administrative regulation.

(9) TIERING: Is tiering applied?

No. All regulated entities have the same requirements.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

The Kentucky Board of Veterinary Examiners and KBVE-certified county animal shelters.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 321.207, KRS 321.235

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

No revenue will be generated from this filing.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

No revenue will be generated from this filing.

(c) How much will it cost to administer this program for the first year?

This is not a new program.

(d) How much will it cost to administer this program for subsequent years?

Staff time is required for record keeping. Costs will be very minimal.

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

Revenues (+/-):None.

Expenditures (+/-):None or negligible.

Other Explanation:

n/a

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

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

There will be no cost savings; this amendment simply codifies the requirements, making them easily accessible for regulated entities.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

There will be no cost savings.

(c) How much will it cost the regulated entities for the first year?

There will be no additional costs involved.

(d) How much will it cost the regulated entities for subsequent years?

There will be no additional costs involved.

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

Cost Savings (+/-):None.

Expenditures (+/-):None or negligible.

Other Explanation:

n/a

(5) Explain whether this administrative regulation will have a major economic impact, as defined below.

"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. This amendment shall not have a "major economic impact", as defined in KRS 13A.010(13).. KRS 321.207 requires animal shelters seeking a DEA Controlled Substances Registration to become certified by KBVE prior to application with the federal agency.