

1 Labor Cabinet

2 Department of Workers' Claims

3 (Amendment)

4 803 KAR 25:010. Procedure for adjustments of claims.

5 RELATES TO: KRS 342.0011, 342.125, 342.260, 342.265, 342.270, 342.300,
6 342.310, 342.315, 342.710, 342.715, 342.732, 342.760

7 STATUTORY AUTHORITY: KRS 342.033, 342.260(1), 342.270(3), 342.285(1)

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260(1) requires the
9 commissioner [~~executive director~~] to promulgate administrative regulations necessary to
10 implement the provisions of KRS Chapter 342. KRS 342.270(3) requires the
11 commissioner [~~executive director~~] to promulgate an administrative regulation
12 establishing procedures for the resolution of claims. KRS 342.033 requires the
13 commissioner [~~executive director~~] to prescribe the format and content of written medical
14 reports. KRS 342.285(1) requires the commissioner [~~executive director~~] to promulgate
15 an administrative regulation governing appeals to the Workers' Compensation Board.
16 This administrative regulation establishes the procedure for the resolution of claims
17 before an administrative law judge or Workers' Compensation Board.

18 Section 1. Definitions.

19 (1) "Administrative law judge" or "ALJ" means an individual appointed pursuant to
20 KRS 342.230(3).

21 (2) "Board" is defined by KRS 342.0011(10).

1 (3) "Civil Rule" or "CR" means the Kentucky Rules of Civil Procedure.

2 (4) "Claim" means any claims including injury, hearing loss, or occupational
3 disease.

4 (5) "Commissioner" is defined by KRS 342.0011(9).

5 (6) "Date of filing" means the date that:

6 (a) A pleading, motion, or other document is electronically filed with the
7 commissioner at the Department of Workers' Claims ("DWC") in Frankfort, Kentucky

8 (b) A pleading, motion, order, opinion, or other document is received by the
9 commissioner [~~Executive Director~~] at the Department [~~Office~~] of Workers' Claims in
10 Frankfort, Kentucky, except:

11 1. [~~Final orders and opinions of administrative law judges, which shall be deemed~~
12 ~~"filed" three (3) days after the date set forth on the final order or opinion; and~~

13 2.] Documents delivered to the offices of the Department [~~Office~~] of Workers'
14 Claims after the office is closed at 4:30 p.m. or on the weekend, which shall be deemed
15 filed the following business day; or

16 2.[~~(b)~~] [A] Documents [is] transmitted by United States registered (not certified) or
17 express mail, or by other recognized mail carriers shall be deemed filed on[~~, and~~] the
18 date the transmitting agency receives the document from the sender as noted by the
19 transmitting agency on the outside of the container used for transmitting, within the time
20 allowed for filing.

21 (7)[~~(5)~~] "Employer" is defined by KRS 342.630 [~~means individuals, partnerships,~~
22 ~~voluntary associations and corporations~~].

1 ~~(8)[(6)]~~ "Employer who has not secured payment of compensation" means any
2 employer who employs an employee as defined by KRS 342.640 but has not complied
3 with KRS 342.340.

4 ~~(9)[(7)]~~ "Executive director" is defined by ~~KRS 342.0011(9)~~.

5 ~~(8)"Latest available edition" means that edition of the]~~ "Guides to the Evaluation of
6 Permanent Impairment" is defined by KRS 342.0011(37) ~~[which the executive director~~
7 ~~has certified as being generally available to the office, attorneys, and medical~~
8 ~~practitioners, by posting prominently at the office's hearing sites the date upon which a~~
9 ~~particular edition of the "Guides to the Evaluation of Permanent Impairment" is~~
10 ~~applicable for purposes of KRS Chapter 342].~~

11 (10) "Jurisdictional deadline" means a deadline set by statute or administrative
12 regulation that the Department of Workers' Claims shall not extend or change.

13 (11) "Litigation Management System" or "LMS" means the electronic filing and
14 document management system utilized in the filing and processing of workers'
15 compensation claims in the Commonwealth of Kentucky. All pleadings, notices, orders
16 and other documents pertaining to a claim for workers' compensation benefits shall be
17 filed utilizing the LMS.

18 (12) "Notice of Filing" means the notice issued by the commissioner stating that a
19 claim has been filed, scheduling the date and time of the benefit review conference
20 ("BRC"), and stating the week during which a hearing is to be held.

21 (13) "Signature" means actual personal handwritten signatures, and incorporates
22 electronic signatures, which shall be treated as a personal signature for purposes of CR

23 11.

1 ~~(14)~~~~(9)~~ "Special defenses" means defenses that shall be raised by "special
2 answer" filed in accordance with Section ~~7~~ ~~5~~(2)(d) of this administrative regulation.

3 (15) "Technical failure" means:

4 (a) a failure of the Department of Workers' Claims' hardware, software, and
5 telecommunications facility that results in the impossibility for an external user to submit
6 a filing electronically; and

7 (b) does not include malfunctioning of an external user's equipment.

8 Section 2. Parties.

9 (1) Any interested ~~[The]~~ party may file an ~~[making the]~~ original application for
10 resolution of claim pursuant to KRS 342.270 or 342.316. The injured workers, or
11 survivors, shall be designated as "plaintiff". Adverse parties shall be designated as
12 "defendants".

13 (2) All persons shall be joined as plaintiffs in whom any right to any relief pursuant
14 to KRS Chapter 342, arising out of the same transaction and occurrence, is alleged to
15 exist. If a person refuses to join as a plaintiff, that person shall be joined as a defendant,
16 and the fact of refusal to join as a plaintiff shall be pleaded.

17 (3)(a) All persons shall be joined as defendants against whom the ultimate right to
18 relief pursuant to KRS Chapter 342 may exist, whether jointly, severally, or in the
19 alternative. An administrative law judge shall order, upon a proper showing, that a party
20 be joined or dismissed.

21 (b) ~~[The Special Fund may be joined as a defendant in accordance with the~~
22 ~~appropriate statutory provisions for claims in which the injury date or date of last~~
23 ~~exposure occurred before December 12, 1996.~~

1 (e)] Joinder shall be sought by motion as soon as practicable after legal grounds
2 for joinder are known. Notice of joinder and a copy of the claim file shall be served in the
3 manner ordered by the administrative law judge.

4 Section 3. LMS filings.

5 (1) A document submitted electronically shall be deemed filed on the date filing is
6 completed within the time frames set forth in paragraph (a) of this section. The filing
7 party shall receive an electronic notification of the time and date filed.

8 (a) Pleadings, motions, orders or other documents may be filed utilizing the LMS
9 at any time the LMS is available. Periods of unavailability shall be pre-announced by
10 the department. Inability to file during periods that were previously announced shall not
11 constitute an excuse for a failure to file during a period.

12 (b) On or after July 1, 2017, paper or written pleadings, motions, or orders shall
13 not be accepted for filing except for parties representing themselves. Any documents
14 filed on paper after the effective date of this administrative regulation and through June
15 30, 2017, may be mailed consistent with paragraph (d) of this section.

16 (2) An electronically filed document using LMS shall bear the electronic signature
17 of the filing party, if the party is representing himself or herself, or the filing party's
18 attorney, as more fully described in paragraphs (a) and (b) of this subsection. The
19 electronic signature of the filing party, if the party is representing himself or herself, or
20 the filing party's attorney shall be treated as a personal signature and shall serve as a
21 signature for purposes of CR 11, and all other purposes pursuant to the Kentucky Rules
22 of Civil Procedure, and for any purpose for which a signature is required pursuant to this
23 administrative regulation.

1 (a) An electronically filed document shall include a signature block setting forth the
2 name, mailing address, phone number, fax number, and email address of the filing
3 party, if the party is representing himself or herself, or the filing party's attorney.

4 (b) In addition, the name of the filing party, if the party is representing himself or
5 herself, or of the filing party's attorney, shall be preceded by an "/s/" and typed in the
6 space where the signature would otherwise appear. A handwritten signature is required
7 for any paper or written filing.

8 (c) Affidavits and exhibits to pleadings with original handwritten signatures shall be
9 scanned and filed in PDF or PDF/A format.

10 (3) Signatures of more than one (1) party required. A document requiring
11 signatures of more than one (1) party shall be filed either by:

12 (a) Representing the consent of the other parties on the document by inserting in
13 the location where each handwritten signature would otherwise appear the typed
14 signature of each person, other than the filing party, preceded by an "/s/" and followed
15 by the words "by permission" (e.g., "/s/ Jane Doe by permission"); or

16 (b) Electronically filing a scanned document containing all necessary signatures.

17 (4) Signatures of judges, board members, and designees of the commissioner. If
18 the signature of a judge, board member, or designee of the commissioner is required on
19 a document, an electronic signature may be used. The electronic signature shall be
20 treated as the judge's, board member's, or designee's personal signature for purposes
21 of CR 11, all other Kentucky Rules of Civil Procedure, and for any purpose required by
22 this administrative regulation.

23 (5) Documents required to be notarized, acknowledged, verified, or made under

1 oath. The signature on any document required to be notarized, acknowledged, verified,
2 or made under oath shall be handwritten and scanned into the LMS. The scanned
3 document shall be maintained as the official record, and the filing party shall retain the
4 originally executed copy. The original paper copy may be required to be produced if the
5 validity of the signature is challenged.

6 (6) Challenging or disputing authenticity.

7 (a) A non-filing signatory or party who disputes the authenticity of an electronically
8 filed document with a non-attorney signature, or the authenticity of that document or the
9 authenticity of an electronically filed document containing multiple signatures, shall file
10 an objection to the document within fourteen (14) days of service of the document. An
11 objection to the document shall place the burden to respond on the non-objecting party
12 and failure to do so shall result in the filing being stricken from the record.

13 (b) If a party wishes to challenge the authenticity of an electronically filed
14 document or signature after the fourteen (14) day period, the party shall file a motion to
15 seek a ruling, and show cause for the delayed challenge. If the challenge to authenticity
16 is allowed, the non-moving party shall have the burden to prove authenticity. Failure to
17 prove authenticity by the non-moving party shall result in the filing being stricken from
18 the record.

19 (c) Challenges to authenticity filed without a valid basis shall be subject to
20 sanctions pursuant to KRS 342.310 and Section 26 of this administrative regulation.

21 (7) Validity and enforceability of orders. All orders or opinions to be entered or
22 issued may be filed electronically, and shall have the same force and effect as if the
23 judge or board member had affixed a signature to a paper copy of the order in a

1 conventional manner.

2 (8) Entry of orders or opinions. Immediately upon entry of an order or opinion, a
3 notice shall be served electronically on all parties. A paper form of the order or opinion
4 shall be served upon those parties not utilizing LMS.

5 Section 4. Technical Difficulty: Litigation Management System Unavailability.

6 (1) Jurisdictional Deadlines. A jurisdictional deadline shall not be extended. A
7 technical failure, including a failure of LMS, shall not excuse a failure to comply with a
8 jurisdictional deadline. The filing party shall insure that a document is timely filed to
9 comply with jurisdictional deadlines and, if necessary to comply with those deadlines,
10 the filing party shall file the document conventionally accompanied by a certification of
11 the necessity to do so in order to meet a jurisdictional deadline.

12 (2) Technical Failures.

13 (a) If a filing party experiences a technical failure, the filing party may file the
14 document conventionally, if the document is accompanied by a certification, signed by
15 the filing party, that the filing party has attempted to file the document electronically at
16 least twice, with those unsuccessful attempts occurring at least one (1) hour apart. The
17 commissioner may require the document to be accompanied by a disc or CD-ROM that
18 contains the document in PDF format.

19 (b) A filing party who suffers prejudice as a result of a technical failure as defined in
20 Section 1(15) of this administrative regulation, or a filing party who cannot file a time-
21 sensitive document electronically due to unforeseen technical difficulties, other than a
22 document filed under a jurisdictional deadline, may seek relief from an administrative
23 law judge. Parties may also enter into an agreed order deeming a document, other than

1 one (1) filed under a jurisdictional deadline, timely filed.

2 Section 5. Pleadings.

3 (1) An application for resolution of claim and all other pleadings shall be signed or
4 electronically signed when using LMS, and submitted in accordance with this
5 administrative regulation.

6 (a) For each claim, an applicant shall submit a completed application for resolution
7 of claim. If the claim involves a fatality, the applicant shall also submit an Appendix F
8 within fifteen (15) days of the applicant's submission of the application.

9 (b) The applicant may include, if appropriate, a request for vocational rehabilitation,
10 interlocutory relief, or a request for imposition of a safety penalty pursuant to KRS
11 342.165. The applicant shall also designate whether an interpreter will be required at
12 the hearing, and shall specify the language and any specific dialect needed.

13 (2) The filing of an application and service through LMS shall satisfy all
14 requirements for service pursuant to CR 5. All pleadings filed through the LMS shall be
15 served upon all other parties electronically or by e-mail. If a party is represented, the
16 pleading shall be served on that representative, at the party's or the representative's last
17 known address. The parties, by agreement, may serve all pleadings upon each other
18 by electronic means. A certificate of service indicating the date of service and
19 electronically signed by the party shall appear on the face of the pleading. Notices of
20 deposition, notices of physical examination, requests for and responses to requests for
21 production of documents, and exchange of reports or records shall be served by e-mail
22 upon the parties and shall not be filed with the commissioner.

23 (3) Documents filed or served outside of LMS.

1 (a) A document filed or served outside of LMS shall comply with this subsection.

2 ~~____[Section 3. Pleadings. (1) An application for resolution of claim and all other~~
3 ~~pleadings shall be typewritten and submitted in accordance with this administrative~~
4 ~~regulation.~~

5 ~~____ (a) For an injury claim, an applicant shall submit a completed Form 101,~~
6 ~~Application for Resolution of Injury Claim.~~

7 ~~____ (b) For an occupational disease claim other than coal workers' pneumoconiosis, an~~
8 ~~applicant shall submit a completed Form 102-0D, Application for Resolution of~~
9 ~~Occupational Disease Claim.~~

10 ~~____ (c) For a hearing loss claim, an applicant shall submit a completed Form 103,~~
11 ~~Application for Resolution of Hearing Loss Claim.]~~

12 (b)[(2)] An application for resolution of claim shall be filed with sufficient copies for
13 service on all parties. The commissioner [executive director] shall make service by first
14 class mail. [Incomplete applications may be rejected and returned to the applicant. If the
15 application is refiled in proper form within twenty (20) days of the date it was returned,
16 the filing shall relate back to the date the application was first received by the executive
17 director. Otherwise, the date of second receipt shall be the filing date.]

18 ____ (c)[(3)] All pleadings shall be served upon the commissioner [executive director]
19 through LMS or, if a party is unrepresented, by paper and shall be served upon all other
20 parties by mailing a copy to the other parties or, if represented, to the parties' [that]
21 representative, at the party's or representative's last known address or, if agreed to, by
22 electronic means. A certificate of service indicating the method and date of service and
23 signed by the party shall appear on the face of the pleading. Notices of deposition and

1 physical examination shall be served upon the parties and shall not be filed with the
2 commissioner ~~[executive director]~~.

3 (c)~~[(4)]~~ After the application for resolution has been assigned to an administrative
4 law judge, subsequent pleadings shall include, within the style of the claim and
5 immediately before the claim number, "Before Administrative Law Judge (name)". Upon
6 consolidation of claims, the most recent claim number shall be listed first.

7 (d) 1.~~[(5)(a)]~~ All documents involved in an appeal to the Workers' Compensation
8 Board shall include the language "Before Workers' Compensation Board" before the
9 claim number within the style of the claim.

10 2.~~[(b)]~~ Parties shall insert the language "Appeals Branch" or "Workers'
11 Compensation Board" on the outside of the envelope containing documents involved in
12 an appeal.

13 Section 6.~~[4.]~~ Motions.

14 (1) ~~[The party filing a motion shall tender a proposed order granting the relief~~
15 ~~requested.~~

16 (2) The party filing a motion may file a brief memorandum supporting the motion
17 and opposing parties may file brief memoranda in reply. Further memoranda (for
18 example, reply to response) shall not be filed.

19 (2)~~[(3)]~~ Every motion and response, the grounds of which depend upon the
20 existence of facts not in evidence, shall be supported by affidavits demonstrating the
21 facts.

22 (3)~~[(4)]~~ Every motion, the grounds of which depend upon the existence of facts that
23 ~~[which]~~ the moving party believes are shown in the evidence or are admitted by the

1 pleadings, shall make reference to the place in the record where that evidence or
2 admission is found.

3 ~~(4)~~⁽⁵⁾ A response to a motion, other than to reopen pursuant to KRS 342.125 or
4 for interlocutory relief, shall be filed within ~~[be considered]~~ ten (10) days after the date of
5 the filing of a motion. The administrative law judge shall rule on the motion no later than
6 ten (10) days after the date for the filing of the response has passed. ~~[A response shall~~
7 ~~be considered if filed on or before the tenth day after the filing of the motion.]~~

8 ~~(5)~~⁽⁶⁾(a) A motion to reopen shall be accompanied by as many of the following
9 items as may be applicable:

- 10 1. A current medical release Form 106 executed by the plaintiff;
- 11 2. An affidavit evidencing the grounds to support reopening;
- 12 3. A current medical report showing a change in disability established by objective
13 medical findings;
- 14 4. A copy of the opinion and award, settlement, voluntary agreed order, or agreed
15 resolution sought to be reopened;
- 16 5. An affidavit certifying that a previous motion to reopen has not been made by
17 the moving party, or if one (1) has previously been made, the date on which the
18 previous motion was filed; or
- 19 6. A designation of evidence from the original record specifically identifying the
20 relevant items of proof that ~~[which]~~ are to be considered as part of the record during
21 reopening ~~]; or~~
- 22 ~~7. A certification of service that the motion was served on all parties as well as~~
23 ~~counsel for the parties].~~

1 (b)1. The [A] designation of evidence made by a party shall list only those items of
2 evidence from the original record that are relevant to the matters raised on reopening.

3 2. The burden of completeness of the record shall rest with the parties to include
4 so much of the original record, up to and including the award or order on reopening, as
5 is necessary to permit the administrative law judge to compare the relevant evidence
6 that existed in the original record with all subsequent evidence submitted by the parties.

7 3. Except for good cause shown at the time of the filing of the designation of
8 evidence, a party shall not designate the entire original record from the claim for which
9 reopening is being sought.

10 (6)(a) The motion to reopen shall be served on all other parties consistent with the
11 Kentucky Rules of Civil Procedure regarding service as provided under CR 4.01(a) or
12 (b), by:

13 1. Registered mail or certified mail return receipt requested with instructions to the
14 delivery postal employee to deliver to the addressee only and show the address where
15 delivered and the date of delivery; or

16 2. Causing the motion to be transferred for service by any person authorized,
17 other than as in subparagraph 1. of this paragraph, to deliver the document, who shall
18 serve it and whose return endorsed thereon shall be proof of the time and manner of
19 service.

20 (b) The motion to reopen shall contain a certification of the method of service.

21 1. [(c)1. A motion to reopen shall not be considered until twenty-five (25) days after
22 the date of filing.

1 2.] Any response shall be filed within twenty (20) days of filing the motion to
2 reopen.

3 2.~~[3.]~~ A response may contain a designation of evidence specifically identifying
4 evidence from the original record not already listed by the moving party that is relevant
5 to matters raised in a response.

6 3. An administrative law judge shall rule on the motion no sooner than five (5)
7 days and no later than fifteen (15) days after the date for the filing of the response has
8 passed.

9 ~~[(d) Any party may use the following forms provided by the office for motions to~~
10 ~~reopen:~~

- 11 ~~—— 1. Form MTR-1, Motion to Reopen by Employee;~~
- 12 ~~—— 2. Form MTR-3, Motion to Reopen by Defendant; and~~
- 13 ~~—— 3. Form MTR-2, Motion to Reopen KRS 342.732 Benefits.]~~

14 (7) A motion for allowance of a plaintiff's attorney fee shall:

15 (a) Be made within thirty (30) days following the finality of the award, settlement, or
16 agreed resolution upon which the fee request is based;

17 (b) Be served upon the adverse parties and the attorney's client;

18 (c) Set forth the fee requested and mathematical computations establishing that
19 the request is within the limits set forth in KRS 342.320; and

20 (d) Be accompanied by:

21 1. An affidavit of counsel detailing the extent of the services rendered ~~[and the time~~
22 ~~expended]~~;

23 2. A signed and dated Form 109 as required by KRS 342.320(5); and

1 3. A copy of the signed and dated contingency fee contract.

2 (8) A motion for allowance of defendant's attorney's fee shall be:

3 (a) Filed within thirty (30) days following the finality of the decision; and

4 (b) Be accompanied by an affidavit of counsel detailing:

5 1. The extent of the services rendered; and ~~[the time expended;]~~

6 2. The ~~[hourly rate and]~~ total amount to be charged~~;~~ and

7 ~~3. The date upon which agreement was reached for providing the legal services].~~

8 (9) Vocational rehabilitation benefits may be requested in the initial claim filing or

9 by subsequent motion ~~[The following motions relating to vocational rehabilitation training~~

10 ~~provided by the office may be used by all parties:~~

11 ~~— (a) Form VRT, Petition for Vocational Rehabilitation Training; and~~

12 ~~— (b) Form WVR, Joint Motion and Agreement to Waive Vocational Rehabilitation~~
13 ~~Evaluation].~~

14 (10) If a plaintiff is deceased, a motion to substitute party and continue benefits

15 shall be filed ~~[on Form 11].~~

16 Section 7. ~~[5.]~~ Application for Resolution of a a ~~[an Injury]~~ Claim and Response.

17 (1) The applicant shall file an application for resolution of a claim through the LMS.

18 At the time of, or within fifteen (15) days after the filing of the application, the following

19 shall be filed

20 ~~[To apply for resolution of an injury claim, the applicant shall file Form 101 with the~~

21 ~~following completed documents:]~~

1 (a) Form 104, Plaintiff's Employment History [~~Work history (Form 104)~~], to include
2 all past jobs performed on a full or part-time basis within twenty (20) years preceding
3 the date of injury;

4 (b) Form 105, "Plaintiff's Chronological Medical History" [~~Medical history (Form~~
5 ~~105)~~], to include all physicians, chiropractors, osteopaths, psychiatrists, psychologists,
6 and medical facilities such as hospitals where the individual has been seen or admitted
7 in the preceding fifteen (15) years and including beyond that date any physicians or
8 hospitals regarding treatment for the same body part claimed to have been injured;

9 (c) Medical release (Form 106);

10 (d) One (1) medical report, which may consist of legible, hand-written notes of the
11 treating physician, and which shall include the following:

- 12 1. A description of the injury that [~~which~~] is the basis of the claim;
- 13 2. A medical opinion establishing a causal relationship between the work-related
14 events or the medical condition that [~~which~~] is the subject of the claim; and
- 15 3. If a psychological condition is alleged, an additional medical report establishing
16 the presence of a mental impairment or disorder;

17 (e) Documentation substantiating the plaintiff's preinjury and postinjury wages; and

18 (f) Documentation establishing additional periods for which temporary total
19 disability benefits are sought.

20 (2)(a) Following the filing of an application for resolution of claim, or the sustaining
21 of a motion to reopen, the commissioner shall issue a notice of filing. Within forty-five
22 (45) days of the date of the notice of filing, each defendant shall file a notice of claim
23 denial or acceptance. A notice of claim denial shall not be required to be filed by any

1 party in a claim reopened pursuant to KRS 342.125 [~~The defendant shall file a Notice of~~
2 ~~Claim Denial or Acceptance on a Form 111 - Injury and Hearing Loss within forty-five~~
3 ~~(45) days after the notice of the scheduling order or within forty-five (45) days following~~
4 ~~an order sustaining a motion to reopen a claim~~].

5 (b) If a notice of claim denial [~~Form 111~~] is not filed, all allegations of the
6 application shall be deemed admitted.

7 (c) The notice of claim denial [~~Form 111~~] shall set forth the following:

8 1. All pertinent matters that [~~which~~] are admitted and those that [~~which~~] are denied;
9 and

10 2. If a claim is denied in whole or in part, a detailed summary of the basis for denial
11 [~~;~~

12 ~~— 3. The name of each witness whose testimony may be relevant to that denial; and~~

13 ~~— 4. A description of the physical requirements of the plaintiff's job at the time of the~~
14 ~~alleged injury and the name, address and telephone number of the individual~~
15 ~~responsible for gathering this information for the employer and its insurer~~].

16 (d) In the notice of claim denial [~~addition to the Form 111~~], a defendant shall if
17 appropriate file a special answer to raise any special defenses in accordance with this
18 paragraph. If a defendant raises the special defense under KRS 342.165, failure to
19 comply with a safety law, regulation, or rule, the defendant shall also file a completed
20 Form SVE with the special answer and a copy of the law, regulation, or rule supporting
21 the allegation.

22 1. [~~A defendant may incorporate special defenses that have been timely raised in~~
23 ~~the Form 111.~~

1 ~~2.~~ A "special answer" shall be filed within:

2 a. Forty-five (45) days of the initial order scheduling a BRC and hearing ~~[order]~~; or
3 forty-five (45) days of the date of the order joining the defendant as a party, if joinder
4 occurs after the filing of the application for the resolution of the claim; or

5 b. Ten (10) days after discovery of facts supporting the defense if discovery could
6 not have been had earlier in the exercise of due diligence.

7 2. ~~[3.]~~ A special defense shall be waived if not timely raised.

8 3. ~~[4.]~~ A special defense shall be pleaded if the defense arises under:

9 a. KRS 342.035(3), unreasonable failure to follow medical advice;

10 b. KRS 342.165, failure to comply with safety laws;

11 c. KRS 342.316(7) or 342.335, false statement on employment application;

12 d. KRS 342.395, voluntary rejection of KRS Chapter 342;

13 e. KRS 342.610(3), voluntary intoxication or self-infliction of injury;

14 f. KRS 342.710(5), refusal to accept rehabilitation services; ~~[or]~~

15 g. Running of periods of limitations or repose under KRS 342.185, 342.270,
16 342.316, or other applicable statute; or

17 h. "Horseplay".

18 (e) Within forty-five (45) days of the issuance of the notice of filing, the parties
19 shall file a notice of disclosure, which shall contain:

20 1. The names of all known witnesses upon whom the party intends to rely except
21 those already submitted into evidence;

22 2. For plaintiff, wage information for all wages earned by the plaintiff, if any,
23 subsequent to the injury, including any wages earned as of the date of service of the

1 notice of disclosure while employed for any employer other than the one (1) for whom
2 he or she was employed at the time of the injury;

3 3. For plaintiff, a listing of each employer, address, and dates of any employment,
4 subsequent to the injury, as well as the nature of the employment, including a
5 description of any physical requirements of the subsequent employment;

6 4. For plaintiff, wage information for all wages earned, if any, for any employment
7 for which the plaintiff was engaged concurrent to the time of the injury on a Form AWW-
8 CON;

9 5. For all parties, a list, with specificity, of all known and anticipated contested
10 issues. Any subsequent addition of contested issues shall only be allowed upon motion
11 to the ALJ establishing good cause as to why the issue could not have been listed
12 earlier;

13 6. For plaintiff, all known unpaid bills to the parties, including travel for medical
14 treatment, co-pays, or direct payments by plaintiff for medical expenses for which
15 plaintiff seeks payment or reimbursement. Actual copies of the bills and requests for
16 reimbursement shall not be filed but shall be served upon opposing parties if requested.

17 7. For each defendant, a completed Form AWW-1, Average Weekly Wage
18 Certification, and itemization of any medical bills or medical expenses known to be
19 disputed by the defendant, any submitted bills being considered but unpaid, and a total
20 for all medical expenses paid as of the date application for resolution of the claim or
21 motion to reopen is filed. Actual copies of the bills and requests for reimbursement shall
22 not be filed but shall be served upon opposing parties if requested. If the plaintiff has
23 earned wages for a defendant after the injury that is the subject of the litigation, the

1 defendant shall provide post-injury wage information records on a Form AWW-POST.
2 In a reopened claim, a Form AWW-1 shall not be required to be filed if an ALJ made a
3 finding establishing the average weekly wage in a previous decision or if the pre-injury
4 average weekly wage was previously stipulated by the parties unless a party seeks and
5 is relieved from the original stipulation

6 8. For a newly joined party, except for a medical provider whose treatment or bills
7 have been contested, within forty-five (45) days of the date of the order joining the new
8 party, a notice of disclosure in accordance with the requirements in this subsection.

9 9. All parties shall amend the notice of disclosure within ten (10) days after the
10 identification of any additional witness, or receipt of information or documents that would
11 have been disclosed at the time of the original filing had it then been known or available.
12 Failure to comply may result in the exclusion of the witness.

13 ~~[Section 6. Application for Resolution of an Occupational Disease Claim and~~
14 ~~Response. (1) To apply for resolution of an occupational disease claim, the applicant~~
15 ~~shall file Form 102-0D with the following completed attachments:~~

16 ~~— (a) Work history (Form 104), to include all past jobs performed on a full or part-time~~
17 ~~basis within twenty (20) years preceding the date of last exposure and all jobs in which~~
18 ~~plaintiff alleges exposure to the hazards of the occupational disease;~~

19 ~~— (b) Medical history (Form 105), to include all physicians, chiropractors, osteopaths,~~
20 ~~psychiatrists, psychologists, and medical facilities such as hospitals where the individual~~
21 ~~has been seen or admitted in the preceding fifteen (15) years and including beyond that~~
22 ~~date any physicians or hospitals regarding treatment for the same body part claimed to~~
23 ~~have been injured;~~

1 ~~— (c) Medical release (Form 106);~~
2 ~~— (d) One (1) medical report supporting the existence of occupational disease; and~~
3 ~~— (e) Social Security Release Form (Form 115).~~
4 ~~— (2)(a) The defendant shall file a Notice of Claim Denial or Acceptance on a Form~~
5 ~~111-OD:~~
6 ~~— 1. Within forty-five (45) days after the notice of the scheduling order; and~~
7 ~~— 2. In accordance with Section 5(2)(b), (c), and (d) of this administrative regulation.~~
8 ~~— (b) In addition to the Form 111-OD, a defendant shall file a special answer to raise~~
9 ~~any special defenses in accordance with Section 5(2)(d) of this administrative~~
10 ~~regulation.~~
11 ~~— (3) For all occupational disease and hearing loss claims, the executive director~~
12 ~~shall promptly schedule an examination pursuant to KRS 342.315 and 342.316.~~
13 ~~— Section 7. Application for Resolution of a Hearing Loss Claim and Response. (1)~~
14 ~~To apply for resolution of a hearing loss claim, the applicant shall file Form 103 with the~~
15 ~~following completed documents:~~
16 ~~— (a) Work history (Form 104), to include all past jobs performed on a full or part-time~~
17 ~~basis within twenty (20) years preceding the last date of noise exposure;~~
18 ~~— (b) Medical history (Form 105), to include all physicians, chiropractors, osteopaths,~~
19 ~~psychiatrists, psychologists, and medical facilities such as hospitals where the individual~~
20 ~~has been seen or admitted in the preceding fifteen (15) years and including beyond that~~
21 ~~date any physicians or hospitals regarding treatment for hearing loss or ear complaints;~~
22 ~~— (c) Medical release (Form 106);~~

1 ~~— (d) One (1) medical report describing the hearing loss which is the basis of the~~
2 ~~claim and, if a psychological condition is alleged, an additional medical report~~
3 ~~establishing the presence of a mental impairment or disorder. Medical reports required~~
4 ~~under this paragraph may consist of legible, hand-written notes of a treating physician;~~
5 ~~and~~

6 ~~— (e) Social Security Release Form (Form 115).~~

7 ~~— (2)(a) The defendant shall file a Notice of Claim Denial or Acceptance on a Form~~
8 ~~111 - Injury and Hearing Loss:~~

9 ~~— 1. Within forty-five (45) days after the notice of the scheduling order; and~~

10 ~~— 2. In accordance with Section 5(2)(b), (c), and (d) of this administrative regulation.~~

11 ~~— (b) In addition to the Form 111 - Injury and Hearing Loss, a defendant shall file a~~
12 ~~special answer to raise any special defenses in accordance with Section 5(2)(d) of this~~
13 ~~administrative regulation.]~~

14 Section 8. Discovery, Evidence, and Exchange of Records.

15 (1) Proof taking and discovery for all parties shall begin from the date of issuance
16 by the commissioner ~~[executive director]~~ of the notice of filing ~~[scheduling order]~~.

17 (2)(a) Plaintiff and defendants shall take proof for a period of sixty (60) days from
18 the date of the notice of filing ~~[scheduling order]~~;

19 (b) After the sixty (60) day period, defendants shall take proof for an additional
20 thirty (30) days; and

21 (c) After the defendant's thirty (30) day period, the plaintiff shall take rebuttal proof
22 for an additional fifteen (15) days.

1 (3) During the pendency of a claim, any party obtaining or possessing a medical or
2 vocational report or records and relevant portions of hospital, educational, Office of Vital
3 Statistics, Armed Forces, Social Security, and other public records shall serve a copy of
4 the report or records upon all other parties within ten (10) days following receipt of those
5 reports or records or within ten (10) days of receipt of notice if assigned to an
6 administrative law judge. Failure to comply with this section may constitute grounds for
7 exclusion of the reports or records as evidence.

8 (4) All medical reports filed with the application for resolution of a claim [~~Forms~~
9 ~~101, 102-0D, or 103~~] shall be admitted into evidence without further order subject to the
10 limitations of KRS 342.033 if:

11 (a) An objection is not filed prior to or with the filing of the notice of claim denial
12 [~~Form 114~~]; and

13 (b) The medical reports comply with Section 10 of this administrative regulation.
14 Section 9. Vocational Reports.

15 (1) One (1) [A] vocational report may be filed by notice and shall be admitted into
16 evidence without further order and without the necessity of a deposition, if an objection
17 is not filed.

18 (2) Vocational reports shall be signed by the individual making the report.

19 (3) Vocational reports shall include, within the body of the report or as an
20 attachment, a statement of the qualifications of the person making the report.

21 (4) An objection to the filing of a vocational report shall:

22 (a) Be filed within ten (10) days of the filing of the notice or motion for admission;
23 and

1 (b) State the grounds for the objection with particularity.

2 (5) The filing party may file a response to the objection within ten (10) days and the
3 administrative law judge shall rule on the objection within ten (10) [~~fifteen (15)~~] days
4 after the response is filed, or, if no response is filed, when the response was due to be
5 filed.

6 (6) If a vocational report is admitted as direct testimony, an adverse party may
7 depose the reporting vocational witness in a timely manner as if on cross-examination
8 at its own expense.

9 Section 10. Medical Reports.

10 (1) A party shall not introduce direct testimony from more than two (2) physicians
11 by medical report except upon a showing of good cause and prior approval by an
12 administrative law judge.

13 (2) Medical reports [~~shall be~~] submitted through the LMS shall utilize the web form
14 for electronic filing [~~on Form 107-I (injury), Form 107-P (psychological), Form 108-OD~~
15 ~~(occupational disease), Form 108-CWP (coal workers' pneumoconiosis), or Form 108-~~
16 ~~HL (hearing loss), as appropriate~~], except [~~that~~] an administrative law judge may permit
17 the introduction of other reports that substantially comply with this section and do not
18 exceed twenty-five (25) pages.

19 (3) Medical reports shall be signed by the physician making the report, or the
20 notice of filing shall be considered [~~be accompanied by~~] an affidavit from the physician
21 or submitting party [~~or representative verifying the authenticity of the report~~].

22 (4) Medical reports shall include, within the body of the report or as an attachment,
23 a statement of qualifications of the person making the report. If the qualifications of the

1 physician who prepared the written medical report have been filed with the
2 commissioner [~~executive director~~] and the physician has been assigned a medical
3 qualifications index number, reference may be made to the physicians index number in
4 lieu of attaching qualifications along with a listing of the physician's specialty of practice.

5 (5) Narratives in medical reports shall be typewritten. Other portions, including
6 spirometric tracings, shall be clearly legible.

7 (6) Notices of filing or motions to file medical reports shall list the impairment
8 rating assigned in the medical report or record in the body of the notice or motion.

9 (a) Upon notice, a party may file evidence from [~~the testimony of~~] two (2)
10 physicians in accordance with KRS 342.033, either by deposition or medical report,
11 which shall be admitted into evidence without further order if an objection is not filed.

12 (b) An objection to the filing of a medical report shall be filed within ten (10) days
13 of the filing of the notice or the motion for admission.

14 (c) Grounds for the objection shall be stated with particularity.

15 (d) The party seeking introduction of the medical report may file a response within
16 ten (10) days after the filing of the objection.

17 (e) The administrative law judge shall rule on the objection within ten (10) [~~fifteen~~
18 ~~(15)~~] days of the response or the date the response is due [~~filing~~].

19 (7) Medical records that are not submitted on the appropriate web form or in a
20 format designated by the commissioner, may be submitted by notice that identifies the
21 records, the person or medical facility that produced the records, and the relevance of
22 the records to the claim. Records submitted in excess of twenty (20) pages shall
23 provide an indexed table of contents generally identifying the contents of each page.

1 Failure to provide an indexed table of contents shall result in rejection of the records
2 which shall not be filed or considered as evidence.

3 (8) If a medical report is admitted as direct testimony, an adverse party may
4 depose the reporting physician in a timely manner as if on cross-examination at its own
5 expense.

6 Section 11. Medical Evaluations Pursuant to KRS 342.315.

7 (1) All persons claiming benefits for hearing loss or occupational disease [~~other~~
8 ~~than coal workers' pneumoconiosis~~] shall be referred by the commissioner for a medical
9 evaluation in accordance with contracts entered into between the commissioner
10 [~~executive director~~] and the University of Kentucky and University of Louisville medical
11 schools or other facility designated by the commissioner.

12 (2) In [~~Upon~~] all other claims, [~~except coal workers' pneumoconiosis claims~~] the
13 commissioner [~~executive director~~] or an administrative law judge may direct
14 appointment by the commissioner [~~executive director~~] of a university medical evaluator
15 or if no university evaluator is available for an evaluation, the commissioner shall direct
16 the appointment of an independent physician.

17 (3) Upon referral for medical evaluation under this section, a party may tender
18 additional relevant medical treatment records and diagnostic studies [~~information~~] to the
19 administrative law judge or to the commissioner for determination of relevancy and
20 submission to the evaluator [~~university medical school to whom the evaluation is~~
21 ~~assigned~~]. The administrative law judge or the commissioner shall provide notice to the
22 parties of the material submitted to the evaluator. This additional information shall not
23 be filed of record. The additional medical information shall be:

1 (a) Submitted to the administrative law judge or to the commissioner ~~[university]~~
2 within fourteen (14) days following an order for medical evaluation pursuant to KRS
3 342.315 or KRS 342.316;

4 (b) ~~[Submitted by way of medical reports, notes, or depositions;~~

5 ~~(c)]~~ Clearly legible;

6 (c) ~~[(d)]~~ Indexed;

7 (d) ~~[(e)]~~ Furnished in chronological order;

8 (e) ~~[(f)]~~ Timely furnished to all other parties within ten (10) days following receipt of
9 the medical information; and

10 (f) ~~[(g)]~~ Accompanied by a summary that is filed of record and served upon all
11 parties. The summary shall:

- 12 1. Identify the medical provider;
- 13 2. Include the date of medical services; and
- 14 3. Include the nature of medical services provided.

15 (4) Upon the scheduling of an evaluation, the commissioner ~~[executive director]~~
16 shall provide notice to all parties and the employer shall forward to the plaintiff
17 necessary travel expenses as required by KRS 342.315(4). Upon completion of the
18 evaluation, the commissioner ~~[executive director]~~ shall provide copies of the report to all
19 parties and shall file the original report in the claim record to be considered as evidence.

20 (5) The administrative law judge shall allow timely cross-examination of a medical
21 evaluator appointed by the commissioner ~~[executive director]~~ at the expense of the
22 moving party.

1 (6) Unjustified failure by the plaintiff to attend the scheduled medical evaluation
2 may be grounds for dismissal, payment of a no-show fee, suspension of the claim
3 pursuant to KRS 342.205(3), sanctions, or any combination of these penalties, unless
4 good cause is shown for the failure ~~[all of the above]~~.

5 (7) Failure by the employer or its insurance carrier to pay travel expenses within
6 seven (7) working days prior to the ~~[of notification of a]~~ scheduled medical evaluation or
7 to pay the cost of the exam within thirty (30) days of the receipt of a statement of
8 charges for the exam may result in ~~[be grounds for imposition of]~~ sanctions, payment of
9 failure to appear charges, or unfair claims practice penalties unless good cause is
10 shown for the failure or delay.

11 Section 12. Interlocutory Relief.

12 (1) A party may seek interlocutory relief at the time of the initial claim application
13 or by motion requesting:

14 (a) Interim payment of income benefits for total disability pursuant to KRS
15 342.730(1)(a);

16 (b) Medical benefits pursuant to KRS 342.020; or

17 (c) Rehabilitation services pursuant to KRS 342.710.

18 (2) If interlocutory relief is requested prior to or at the time the application for
19 resolution of claim is filed, the commissioner shall issue an order allowing the
20 responding party twenty (20) days to respond to the request.

21 (a) Upon receipt of the response, the commissioner shall assign the claim to an
22 ALJ for resolution of the request for interlocutory relief.

23 (b) The ALJ to whom the interlocutory relief request is assigned may schedule a

1 hearing to be held within thirty-five (35) days of the order assigning the claim for
2 resolution.

3 (c) The ALJ shall issue a decision regarding interlocutory relief within twenty (20)
4 days after the date of the hearing.

5 (d) If no hearing is held, the ALJ shall issue a decision within twenty (20) days
6 after the date the response is filed, or twenty (20) days after the date the response is
7 due if no response is filed.

8 (e) If the request for interlocutory relief is denied, the claim shall be referred to the
9 commissioner for reassignment of the claim for resolution by another ALJ.

10 (f) If the request for interlocutory relief for income benefits is granted, the claim
11 shall be placed in abeyance. The plaintiff shall provide a status report every sixty (60)
12 days, or sooner if circumstances warrant or upon order by the ALJ, updating his or her
13 current status. Upon motion and a showing of cause, or upon the ALJ's own motion,
14 interlocutory relief shall be terminated and the claim removed from abeyance. Failure to
15 file a timely status report shall constitute cause to terminate interlocutory relief. The
16 order terminating interlocutory relief shall also contain a provision for referral to the
17 commissioner for reassignment of the claim for resolution by another ALJ.

18 (3)(a) If a motion for interlocutory relief is filed after the claim is assigned to an
19 ALJ, he or she shall within ten (10) days issue an order:

20 1. Requiring a response to the request for interlocutory relief be served within
21 twenty (20) days from the date of the order, and refer it to the commissioner for
22 assignment to an ALJ for the sole purpose of considering the request for interlocutory
23 relief; and

1 2. If necessary, setting a hearing within thirty-five (35) days of the order. The
2 hearing may be held telephonically, by video, or by other electronic means, if the parties
3 agree or a party demonstrates good cause as to why the party cannot appear at the
4 hearing in person. The hearing may be waived by agreement.

5 (b) Upon completion of the hearing, an ALJ shall issue a decision within twenty
6 (20) days.

7 (c) If the hearing is waived, an ALJ shall issue a decision within twenty (20) days
8 after the date of agreed waiver.

9 (4)(a) Entitlement to interlocutory relief shall be established by means of
10 affidavit, deposition, hearing testimony, or other means of record demonstrating the
11 requesting party:

- 12 1. Is eligible under KRS Chapter 342;
- 13 2. Will suffer immediate and irreparable injury, loss, or damage pending a final
14 decision on the application; and
- 15 3. Is likely to succeed on the merits based upon the evidence introduced by the
16 parties.

17 (b) Rehabilitation services may be ordered while the claim is pending upon a
18 showing that immediate provision of services will substantially increase the probability
19 that the plaintiff will return to work.

20 (5) Benefits awarded pursuant to an interlocutory order shall not be terminated
21 except upon entry of an order issued by an administrative law judge. Failure to pay
22 benefits under an interlocutory order or termination of benefits ordered pursuant to an
23 interlocutory order without prior approval of the ALJ shall constitute grounds for a

1 violation of the Unfair Claims Settlement Practices Act at KRS 342.267, and for
2 sanctions pursuant to KRS 342.310 and Section 26 of this administrative regulation,
3 unless good cause is shown for failure to do so.

4 (6) If a claimant is successful in his or her request for interlocutory relief, and if
5 payment of benefits pursuant to the interlocutory relief order results in an overpayment
6 of benefits, the party making the overpayment shall be entitled to a dollar-for-dollar
7 credit for the overpayment against past due or future awarded income benefits.

8 (7) If interlocutory relief is requested in the application for benefits, an assignment
9 to an ALJ shall not be made on other issues and a scheduling order shall not be issued
10 until a ruling has been made on the interlocutory relief request, unless the requesting
11 party shows that delay will result in irreparable harm.

12 (8) [(1) During a claim, a party may seek interlocutory relief through:

13 —(a) Interim payment of income benefits for total disability pursuant to KRS
14 342.730(1)(a);

15 —(b) Medical benefits pursuant to KRS 342.020; or

16 —(c) Rehabilitation services pursuant to KRS 342.710.

17 (2) Upon motion of any party, an informal conference:

18 —(a) Shall be held to review the plaintiff's entitlement to interlocutory relief; and

19 —(b) May be held telephonically.

20 (3) Any response to a request for interlocutory relief shall be served within twenty
21 (20) days from the date of the request and thereafter, the request shall be ripe for a
22 decision.

1 ~~— (4)(a) Entitlement to interlocutory relief shall be shown by means of affidavit,~~
2 ~~deposition, or other evidence of record demonstrating the requesting party:~~

3 ~~— 1. Is eligible under KRS Chapter 342; and~~

4 ~~— 2. Will suffer irreparable injury, loss or damage pending a final decision on the~~
5 ~~application.~~

6 ~~— (b) Rehabilitation services may be ordered while the claim is pending upon~~
7 ~~showing that immediate provision of services will substantially increase the probability~~
8 ~~that the plaintiff will return to work.~~

9 ~~— (5) If interlocutory relief is awarded in the form of income benefits, the application~~
10 ~~shall be placed in abeyance unless a party shows irreparable harm will result. The~~
11 ~~administrative law judge may require periodic reports as to the physical condition of the~~
12 ~~plaintiff. Upon motion and a showing of cause, or upon the administrative law judge's~~
13 ~~own motion, interlocutory relief shall be terminated and the claim removed from~~
14 ~~abeyance.~~

15 ~~(6)] An attorney's fee in the amounts authorized by KRS 342.320 that does not~~
16 ~~exceed twenty (20) percent of the weekly income benefits awarded pursuant to a~~
17 ~~request for interlocutory relief may be granted. The approved fee shall be deducted in~~
18 ~~equal amounts from the weekly income benefits awarded and shall be paid directly to~~
19 ~~the attorney.~~

20 ~~[(7) A party seeking interlocutory relief may use the following forms:~~

21 ~~— (a) Motion for Interlocutory Relief, Form MIR-1;~~

22 ~~— (b) Affidavit for Payment of Medical Expenses, Form MIR-2;~~

23 ~~— (c) Affidavit for Payment of Temporary Total Disability, Form MIR-3; and~~

1 ——— ~~(d) Affidavit Regarding Rehabilitation Services, Form MIR-4.]~~

2 Section 13. Benefit Review Conferences.

3 (1) The purpose of the BRC [~~benefit review conference~~] shall be to expedite the
4 processing of the claim and to avoid if possible the need for a hearing.

5 (2) The BRC [~~benefit review conference~~] shall be an informal proceeding.

6 (3) The date, time, and place for the BRC [~~benefit review conference~~] shall be
7 stated on the notice of filing [~~scheduling order~~] issued by the commissioner [~~executive~~
8 ~~director~~].

9 (4) The plaintiff and his or her representative, the defendant or its representative,
10 and the representatives of all other parties shall attend the BRC [~~benefit review~~
11 ~~conference~~].

12 (5) If the defendant is insured or a qualified self-insured, a representative of the
13 carrier with settlement authority shall be present or available by telephone during the
14 BRC [~~benefit review conference~~]. Failure to comply with this provision may result in the
15 imposition of sanctions.

16 (6) The administrative law judge may upon motion waive the plaintiff's attendance
17 at the BRC [~~benefit review conference~~] for good cause shown.

18 (7) A transcript of the BRC [~~benefit review conference~~] shall not be made.

19 (8) Representatives of all parties shall have authority to resolve disputed issues
20 and settle the claim at the BRC [~~benefit review conference~~].

21 (9)(a) [~~The defendant shall provide a completed Form AWW-1, Average Weekly~~
22 ~~Wage Certification.~~

1 ~~(b)~~] The plaintiff shall bring to the BRC copies of known unpaid medical bills not
2 previously provided and documentation of out-of-pocket expenses including travel for
3 medical treatments. Absent a showing of good cause, failure to do so may constitute a
4 waiver to claim payment for those bills.

5 ~~(b)~~~~(e)~~] Each defendant shall bring copies of known ~~[disputed]~~ medical bills not
6 previously provided and medical expenses presented to them, their insurer or
7 representative known to be unpaid or disputed including travel expenses. Absent a
8 showing of good cause, failure to do so may constitute a waiver to challenge those bills.

9 ~~(10) [Ten (10) days before the benefit review conference, the parties shall~~
10 ~~exchange final stipulations and lists of known witnesses and exhibits that:~~

11 ~~— (a) Name each proposed witness;~~

12 ~~— (b) Summarize the anticipated testimony of each witness;~~

13 ~~— (c) For medical witnesses, include in the summary:~~

14 ~~— 1. The diagnosis reached;~~

15 ~~— 2. Clinical findings and results of diagnostic studies upon which the diagnosis is~~
16 ~~based;~~

17 ~~— 3. The functional impairment rating assessed by the witness; and~~

18 ~~— 4. A description of any work-related restrictions imposed; and~~

19 ~~— (d) Identify any exhibits.~~

20 ~~(11) At the benefit review conference, the parties shall:~~

21 ~~— (a) Attempt to resolve controversies and disputed issues;~~

22 ~~— (b) Narrow and define disputed issues; and~~

23 ~~— (c) Facilitate a prompt settlement.~~

1 ~~(12)~~ A party seeking postponement of a BRC ~~[benefit review conference]~~ shall file
2 a motion at least fifteen (15) days prior to the date of the conference and shall
3 demonstrate good cause for the postponement.

4 ~~(11)~~ ~~[(13)]~~ If at the conclusion of the BRC ~~[benefit review conference]~~ the parties
5 have not reached agreement on all the issues, the administrative law judge shall:

6 (a) Prepare a final BRC memorandum and order including stipulations and
7 identification of all issues, which shall be signed by all parties or if represented, their
8 counsel, and the administrative law judge ~~[Prepare a summary stipulation of all~~
9 ~~contested and uncontested issues which shall be signed by representatives of the~~
10 ~~parties and by the administrative law judge]; and~~

11 (b) Schedule a final hearing.

12 ~~(12)~~ ~~[(14)]~~ Only contested issues shall be the subject of further proceedings.

13 ~~(13)~~ ~~[(15)]~~ Upon motion with good cause shown, the administrative law judge may
14 order that additional discovery or proof be taken between the BRC ~~[benefit review~~
15 ~~conference]~~ and the date of the hearing and may limit the number of witnesses to be
16 presented at the hearing.

17 Section 14. Evidence - Rules Applicable.

18 (1) The Rules of Evidence prescribed by the Kentucky Supreme Court shall apply
19 in all proceedings before an administrative law judge except as varied by specific
20 statute and this administrative regulation.

21 (2) Any party may file as evidence before the administrative law judge pertinent
22 material and relevant portions of hospital records limited to emergency room records,
23 history, physical and discharge summary, operative notes, and reports of specialized

1 testing, educational, Office of Vital Statistics, Armed Forces, Social Security, and other
2 public records. An opinion of a physician that [~~which~~] is expressed in these records shall
3 not be considered by an administrative law judge in violation of the limitation on the
4 number of physician's opinions established in KRS 342.033. If the records or reports
5 submitted exceed twenty-five (25) pages, the party attempting to file those records or
6 reports into evidence shall include an indexed table of contents generally identifying the
7 contents. An appropriate release shall be included to permit opposing parties the ability
8 to obtain complete copies of the records.

9 Section 15. Extensions of Proof Time.

10 (1) An extension of time for producing evidence may be granted upon showing of
11 circumstances that prevent timely introduction.

12 (2) A motion for extension of time shall be filed no later than five (5) days before
13 the deadline sought to be extended.

14 (3) The motion or supporting affidavits shall set forth:

15 (a) The efforts to produce the evidence in a timely manner;

16 (b) Facts which prevented timely production; and

17 (c) The date of availability of the evidence, the probability of its production, and the
18 materiality of the evidence.

19 (4) In the absence of compelling circumstances, only one (1) extension of thirty
20 (30) days shall be granted to each side for completion of discovery or proof by
21 deposition.

22 (5) The granting of an extension of time for completion of discovery or proof shall:

23 (a) Enlarge the time to all:

- 1 1. Plaintiffs if the extension is granted to a plaintiff; and
- 2 2. Defendants if an extension is granted to a defendant; [~~and~~]
- 3 (b) Extend the time of the adverse party automatically except if the extension is for
- 4 rebuttal proof; and
- 5 (c) Be limited to the introduction of evidence cited as the basis for the requested
- 6 extension of time.

7 Section 16. Stipulation of Facts.

8 (1) Refusal to stipulate facts that [~~which~~] are not genuinely in issue shall warrant
9 imposition of sanctions as established in Section 26 [~~24~~] of this administrative
10 regulation. An assertion that a party has not had sufficient opportunity to ascertain
11 relevant facts shall not be considered "good cause" in the absence of due diligence.

12 (2) Upon cause shown, a party may be relieved of a stipulation if the motion for
13 relief is filed at least ten (10) days prior to the date of the hearing, or as soon as
14 practicable after discovery that the stipulation was erroneous.

15 (3) Upon granting relief from a stipulation, the administrative law judge may grant a
16 continuance of the hearing and additional proof time.

17 Section 17. Discovery and Depositions.

18 (1) Discovery and the taking of depositions shall be in accordance with the
19 provisions of Kentucky [~~Civil~~] Rules of Civil Procedure 26 to 37, [~~inclusive,~~] except for
20 [~~Civil~~] Rules 27, 33, and 36, which shall not apply to practice before the administrative
21 law judges or the board.

22 (2) Depositions may be taken by telephone if the reporter administering the oath to
23 the witness and reporting the deposition is physically present with the witness at the

1 time the deposition is given. Notice of a telephonic deposition shall relate the following
2 information:

3 (a) That the deposition is to be taken by telephone;

4 (b) The address and telephone number from which the call will be placed to the
5 witness;

6 (c) The address and telephone number of the place where the witness will answer
7 the deposition call; and

8 (d) Whether opposing parties may participate in the deposition either at the place
9 where the deposition is being given, at the place the telephone call is placed to the
10 witness, or by conference call. If a party elects to participate by conference call, that
11 party shall contribute proportionate costs of the conference call.

12 (3) A party seeking a subpoena from an ALJ shall prepare a subpoena or
13 subpoena duces tecum, and provide it to the ALJ to whom the case is assigned, or if no
14 assignment has been made then it shall be sent to the chief administrative law judge.
15 Except for good cause shown, a subpoena shall be requested a minimum of ten (10)
16 days prior to the date of the appearance being requested. A motion shall not be filed. A
17 subpoena shall be served in accordance with Kentucky Rules of Civil Procedure 5.02,
18 45.03, or 45.05, whichever is applicable.

19 (4) The commissioner [~~executive director~~] shall establish a medical qualifications
20 index.

21 (a) An index number shall be assigned to a physician upon the filing of the
22 physician's qualifications.

1 (b) Any physician who has been assigned an index number may offer the assigned
2 number in lieu of stating qualifications.

3 (c) Qualifications shall be revised or updated by submitting revisions to the
4 commissioner ~~[executive director]~~.

5 (d) A party may inquire further into the qualifications of a physician.

6 (e) If the physician's qualifications have not previously been filed into the index
7 maintained by the commissioner, the filing party shall provide sufficient information
8 containing the physician's qualifications, and request the physician be included in the
9 index and a number issued.

10 (5) Discovery requests and responses to the requests shall not be submitted into
11 the record.

12 Section 18. Informal Conference.

13 Prior to the hearing, the ALJ may conduct an informal conference either at a
14 hearing site, telephonically, or by other electronic means to inquire about remaining
15 contested issues, and who will testify at the hearing.

16 Section 19. ~~[48.]~~ Hearings.

17 (1) At the hearing, the parties shall present proof concerning contested issues. If
18 the plaintiff or plaintiff's counsel fails to appear, the administrative law judge may
19 dismiss the case for want of prosecution, or if good cause is shown, the hearing may be
20 continued.

21 (2) At the conclusion of the hearing, the administrative law judge may hold oral
22 arguments, order, briefs, or proceed to final decision ~~[claim shall be taken under~~
23 ~~submission immediately or may be ordered]~~.

1 (3) Briefs shall not exceed fifteen (15) pages in length. Reply briefs shall be limited
2 to five (5) pages. Permission to increase the length of a brief shall be sought by motion.

3 (4) The administrative law judge may announce his decision at the conclusion of
4 the hearing or shall defer decision until rendering a written opinion.

5 (5) A decision shall be rendered no later than sixty (60) days following the hearing.

6 (6) The time of filing a petition for reconsideration or notice of appeal shall not
7 begin to run until after the [“]date of filing[“] of the written opinion.

8 (7) An opinion or other final order of an administrative law judge shall not be
9 deemed final until the administrative law judge opinion is entered into LMS, or, if mailed,
10 by certificate of service from the Office of the ALJ or Department of Workers’ Claims
11 with ~~[has certified that]~~ a certification that ~~[of]~~ mailing was sent to:

12 (a) An attorney who has entered an appearance for a party; or

13 (b) The party if an attorney has not entered an appearance.

14 (8) The parties with approval of the administrative law judge may waive a final
15 hearing. Waiver of a final hearing shall require agreement of all parties and the
16 administrative law judge. The claim shall be taken under submission as of the date of
17 the order allowing the waiver of hearing. A decision shall be rendered no later than sixty
18 (60) days following the date of the order allowing the waiver of hearing.

19 Section 20. ~~[49.]~~ Petitions for Reconsideration.

20 (1) If applicable, a party shall file a petition for reconsideration within fourteen (14)
21 days of the filing of a final order or award of an administrative law judge and~~[,]~~ clearly
22 state~~[ing]~~ the patent error that ~~[which]~~ the petitioner seeks to have corrected and setting

1 forth the authorities upon which petitioner relies. The party filing the petition for
2 reconsideration shall tender a proposed order granting the relief requested.

3 (2) A response shall be served within ten (10) days after the date of filing of the
4 petition.

5 (3) The administrative law judge shall act upon the petition within ten (10) days
6 after the response is due.

7 Section 21. Settlements.

8 (1) Unless the settlement agreement is completed and tendered to the ALJ for
9 immediate approval at the BRC, informal conference, or hearing, or unless the ALJ
10 orders otherwise, the party drafting the settlement agreement shall provide the signed
11 original to the adverse party no later than fifteen (15) days after the date the parties
12 agree to settle. The agreement shall be signed by all parties and tendered to the ALJ
13 for approval no later than thirty (30) days after the date the parties agreed to settle
14 absent a showing of good cause.

15 (2) Payment shall be made within thirty (30) days after the date of the order
16 approving settlement.

17 (3) Failure to satisfy the time requirements in subsection (2) of this section unless
18 solely the fault of the claimant or claimant's counsel may result in the addition of twelve
19 (12) percent interest per annum on all benefits agreed upon in the settlement for any
20 period of delay beyond the time prescribed in subsection (2) of this section.

21 (4) Parties who settle future periodic payments in a lump sum shall use the
22 discount factor computed in accordance with KRS 342.265(3).

23 (5) Parties who reach an agreement pursuant to KRS 342.265 shall file the

1 agreement on the applicable form as listed in this subsection and, if not filed
2 electronically, that form shall include the original signatures of the parties:

3 (a) Form 110-F, Agreement as to Compensation and Order Approving Settlement-
4 Fatality; or

5 (b) Form 110, Agreement as to Compensation and Order Approving Settlement.

6 (6) A settlement agreement that contains information or provisions that are outside
7 the provisions and purview of KRS Chapter 342 shall not be approved and shall be
8 returned to the parties.

9 ~~[20. Benefit Calculations for Settlements. (1) For computing lump sum settlements,~~
10 ~~the employer shall utilize the prescribed discount rate for its weeks of liability only, not~~
11 ~~for the entire award period. A discount shall not be taken on past due benefits by the~~
12 ~~employer or Special Fund. Lump sum settlements shall be calculated as follows:~~

13 ~~— (a) Determine the entire lump sum liability:~~

14 ~~— 1. Compute the remaining weeks of liability in the award by subtracting the number~~
15 ~~of weeks past due from the entire number of weeks in the award;~~

16 ~~— 2. Discount the number of weeks remaining in the award at the prescribed discount~~
17 ~~rate;~~

18 ~~— 3. Multiply the weekly benefit rate by the discounted number of weeks remaining~~
19 ~~(subparagraph 2 of this paragraph) in the award. This product shall equal the entire~~
20 ~~future lump sum liability for the award; and~~

21 ~~— 4. Add the amount of past due benefits to the future lump sum liability award~~
22 ~~(subparagraph 3 of this paragraph). The sum shall represent the entire lump sum value~~
23 ~~of the award.~~

1 ~~—— (b) Determine the employer's lump sum liability as follows:~~

2 ~~—— 1. The employer's future liability shall be computed by determining its total weeks~~
3 ~~of liability less the number of weeks of liability past due.~~

4 ~~—— 2. The number of weeks remaining shall be discounted at the prescribed discount~~
5 ~~rate and multiplied by the amount of the weekly benefit.~~

6 ~~—— 3. Multiply the number of past due weeks by the amount of the weekly benefit.~~

7 ~~—— 4. The employer's entire liability for a lump sum payment shall be determined by~~
8 ~~adding the results of subparagraphs 2 and 3 of this paragraph.~~

9 ~~—— (c) Determine the Special Fund's portion of the lump sum liability by subtracting the~~
10 ~~value of the employer's liability in lump sum (paragraph (b) of this subsection) from the~~
11 ~~entire value of the lump sum settlement (paragraph (a) of this subsection). The~~
12 ~~remainder shall be the Special Fund's lump sum liability.~~

13 ~~—— (2) If the employer settles its liability for income benefits with the employee for a~~
14 ~~lump sum payment and a determination is made of the Special Fund's liability, the~~
15 ~~Special Fund's portion of income benefits shall be paid commencing with the date of~~
16 ~~approval of the employer's settlement and continuing for the balance of the~~
17 ~~compensable period.~~

18 ~~—— (3) In computing settlements involving periodic payments, the employer shall pay~~
19 ~~its liability over the initial portion of the award, based on the number of weeks its liability~~
20 ~~bears to the entire liability for the claim. The Special Fund shall make all remaining~~
21 ~~payments for the balance of the compensable period.~~

22 ~~—— (4) Pursuant to KRS 342.265, election by the Special Fund to settle on the same~~
23 ~~terms as the employer shall mean the Special Fund agrees to settle in the same~~

1 manner as the employer in either a discounted lump sum or in periodic payments based
2 upon its proportionate share of the permanent disability percentage paid by the
3 employer. "Same terms" shall not include any additional payments the employer
4 included for buy out of medical expenses, temporary total disability, rehabilitation, or
5 other benefits for which the Special Fund is not liable.

6 ~~— (5) Parties involved in a lump-sum settlement of future periodic payments shall use
7 the discount factor computed in accordance with KRS 342.265(3).~~

8 ~~— (6) Parties who reach an agreement pursuant to KRS 342.265 shall file the
9 agreement on the applicable form as listed below:~~

10 ~~— (a) Form 110-F, Agreement as to Compensation and Order Approving Settlement-~~
11 ~~Fatality;~~

12 ~~— (b) Form 110-I, Agreement as to Compensation and Order Approving Settlement-~~
13 ~~Injury;~~

14 ~~— (c) Form 110-O, Agreement as to Compensation and Order Approving Settlement-~~
15 ~~Occupational Disease; or~~

16 ~~— (d) Form 110-CWP, Agreement as to Compensation and Order Approving~~
17 ~~Settlement - Coal Workers' Pneumoconiosis.}~~

18 Section 22. [24.] Review of Administrative Law Judge Decisions.

19 (1) General.

20 (a) Pursuant to KRS 342.285(1), decisions of administrative law judges shall be
21 subject to review by the Workers' Compensation Board in accordance with the
22 procedures set out in this administrative regulation.

1 (b) Parties shall insert the language "Appeals Branch" or "Workers' Compensation
2 Board" on the outside of an envelope containing documents filed in an appeal to the
3 board.

4 (2) Time and format of notice of appeal.

5 (a) Within thirty (30) days of the date a final award, order, or decision rendered by
6 an administrative law judge pursuant to KRS 342.275(2) is filed, any party aggrieved by
7 that award, order, or decision may file a notice of appeal to the Workers' Compensation
8 Board.

9 (b) As used in this section, a final award, order, or decision shall be determined in
10 accordance with Civil Rule 54.02(1) and (2).

11 (c) The notice of appeal shall:

12 1. Denote the appealing party as the petitioner;

13 2. Denote all parties against whom the appeal is taken as respondents;

14 3. Name the administrative law judge who rendered the award, order, or decision
15 appealed from as a respondent;

16 4. If appropriate pursuant to KRS 342.120 or 342.1242, name the director of the
17 Division of Workers' Compensation Funds as a respondent; ~~and~~

18 5. Include the claim number; and

19 6. State the date of the final award, order or decision appealed.

20 (d) Cross-appeal.

21 1. Any party may file a cross-appeal through notice of cross-appeal filed within ten
22 (10) days after the notice of appeal is served.

23 2. A cross-appeal shall designate the parties as stated in the notice of appeal.

1 (e) Failure to file the notice within the time allowed shall require dismissal of the
2 appeal.

3 ~~[(f) The executive director shall issue an acknowledgement to all parties of the~~
4 ~~filing of a notice of appeal or cross-appeal.]~~

5 (3) ~~[Number of copies and]~~ Format of petitioner's brief.

6 (a) ~~[The]~~ petitioner's brief shall be filed within thirty (30) days of the filing of the
7 notice of appeal.

8 (b) ~~[An original and two (2) copies of the]~~ petitioner's brief shall be filed with the
9 commissioner ~~[Executive Director]~~ of the Department ~~[Office]~~ of Workers' Claims.

10 (c) The petitioner's brief shall conform in all respects to Civil Rule 7.02(4).

11 (4) Petitioner's brief. The petitioner's brief shall designate the parties as petitioner
12 (or petitioners) and respondent (or respondents) and shall be drafted in the ~~[following]~~
13 manner established in this subsection. ~~[:]~~

14 (a)1. The name of each petitioner and each respondent shall be included in the
15 brief.

16 2. The petitioner shall specifically designate as respondents all adverse parties.

17 3. The administrative law judge who rendered the award, order, or decision
18 appealed from shall be named as a respondent.

19 (b) The workers' compensation claim number, or numbers, shall be set forth in all
20 pleadings before the Workers' Compensation Board.

21 (c) The petitioner's brief shall state the date of entry of the final award, order, or
22 decision by the administrative law judge.

1 (d) The petitioner's brief shall state whether any matters remain in litigation
2 between the parties in any forum or court other than those for which an appeal is being
3 sought.

4 (e) The petitioner's brief shall include a statement of the "Need for Oral Argument",
5 designating whether the party requests an argument to be heard orally before the board
6 and, if so, a brief statement setting out the reason or reasons for the request.

7 (f) The petitioner's brief shall include a "Statement of Benefits Pending Review"
8 which shall set forth whether the benefits designated to be paid by the award, order, or
9 decision for which review is being sought have been instituted pursuant to KRS
10 342.300.

11 (g) The organization and contents of the petitioner's brief for review shall be as
12 established in this paragraph. [~~follows:~~]

13 1. A brief "Introduction" shall indicate the nature of the case.

14 2. A "Statement of Points and Authorities" shall set forth, succinctly and in the
15 order in which they are discussed in the body of the argument, the petitioner's
16 contentions with respect to each issue of law on which he relies for a reversal, listing
17 under each the authority cited on that point and the respective pages of the brief on
18 which the argument appears and on which the authorities are cited. This requirement
19 may be eliminated for briefs of five (5) or less pages.

20 3. A "Statement of the Case" shall consist of a chronological summary of the facts
21 and procedural events necessary to an understanding of the issues presented by the
22 appeal, with ample reference to the specific pages of the record supporting each of the
23 statements narrated in the summary.

1 4. An "Argument" shall:

2 a. Conform with the statement of points and authorities, with ample supportive
3 references to the record and citations of authority pertinent to each issue of law; and

4 b. Contain, at the beginning of the argument, a statement with reference to the
5 record showing whether the issue was properly preserved for review and, if so, in what
6 manner.

7 5. A "Conclusion" shall set forth the specific relief sought from the board.

8 6. An "Appendix" shall contain:

9 a. ~~[Copies of the final award, order, or decision of the administrative law judge~~
10 ~~from which review is being sought;~~

11 ~~— b. Any petitions for reconsideration filed by the parties pursuant to KRS 342.281;~~

12 ~~— c. The administrative law judge's order addressing any petitions for~~
13 ~~reconsideration;~~

14 ~~d.]~~ Copies of cases cited from federal courts and foreign jurisdictions, if any, upon
15 which reliance is made; and

16 b. ~~[e.]~~ Copies of prior board opinions in accordance with subsection 10 ~~[(9)]~~ of this
17 section.

18 7. Civil Rule 76.28(4)(c) shall govern the use of unpublished opinions of the Court
19 of Appeals or Supreme Court.

20 (5) Respondent's brief, combined brief, or cross-petitioner's brief.

21 (a) Each respondent shall file an original ~~[and two (2) copies of a]~~ brief, or
22 combined brief if cross-petition or cross-petitioner's brief, within thirty (30) days of the

1 date on which the petitioner's brief was filed with the commissioner [~~Executive Director~~]
2 of the Department [~~Office~~] of Workers' Claims.

3 (b) [~~The~~] Respondent's brief shall include a statement of the "Need for Oral
4 Argument" similar to the statement required of the petitioner by subsection (4)(e) of this
5 section.

6 (c) The respondent's brief shall include a "Statement of Benefits Pending Review"
7 similar to the statement required of the petitioner by subsection (4)(f) of this section.

8 (d) Respondent's counter-argument shall follow the organization and content of the
9 petitioner's brief as set forth in subsection (4)(g) of this section.

10 (6) Reply brief.

11 (a) If applicable, the petitioner may file a reply brief within ten (10) days after the
12 date on which the respondent's brief was served or due, whichever is earlier.

13 (b) The organization and contents of the reply brief shall be as provided in Civil
14 Rule 76.12(4)(e), except that an index or contents page shall not be required.

15 (c) If a cross-appeal has been filed, the cross-petitioner's reply brief may be served
16 within ten (10) days after the date on which the last cross-respondent's brief was served
17 or due, whichever is earlier.

18 (7) Certification. The petitioner's brief, respondent's brief, and reply brief shall be
19 signed by each party or his counsel and that signature shall constitute a certification that
20 the statements contained in the document are true and made in good faith, or if not filed
21 through LMS, bear an original signature of each party or his counsel with a written
22 certification the statements contained in the document are true and made in good faith,
23 and that service has been made upon opposing parties with identification of the manner

1 of service [~~signed by each party or his counsel and that signature shall constitute a~~
2 ~~certification that the statements contained in the document are true and made in good~~
3 ~~faith~~] .

4 (8) Service of notice of appeal, cross-appeal, petitioner's brief, respondent's brief,
5 and reply briefs on adverse parties.

6 (a) Before filing a notice of appeal, cross-appeal, or any brief with the
7 commissioner [~~Executive Director~~] of the Department [~~Office~~] of Workers' Claims, a
8 party shall serve, in the manner provided by Civil Rule 5.02, or electronically as set forth
9 in this administrative regulation, a copy of the document on each adverse party.

10 (b) Every brief filed in an appeal to the Workers' Compensation Board shall bear,
11 on the front cover, a signed statement, in accordance with Civil Rule 5.03 by the
12 attorney or party that service has been made in conformity to this administrative
13 regulation [~~as required by paragraph (a) of this subsection~~]. The statement shall identify
14 by name each person served.

15 (c) The name of each attorney, or an unrepresented party, submitting a document
16 to the Workers' Compensation Board along with a current address, email address, and
17 telephone number shall appear following its "conclusion".

18 (d) If the respondent is also a cross-petitioner, the respondent may file a combined
19 brief or separate cross-petitioner's brief that [~~which~~] shall address issues raised by the
20 cross-appeal.

21 (e) If a separate cross-petitioner's brief is filed, the format shall be the same as a
22 respondent's brief.

1 (9) Except for good cause shown, any motion for extension of time to file a brief
2 shall be filed not later than five (5) days prior to the date the brief is due.

3 (10) Form of citations.

4 (a) All citations to [øf] Kentucky statutes and reported decisions of the Court of
5 Appeals and Supreme Court shall conform to the requirements of Civil Rule 76.12(4)(g).

6 (b) All citations to [øf] Kentucky unpublished decisions shall conform to the
7 requirements of Civil Rule 76.28(4)(c).

8 (c) Citations to [fœr] prior decisions of the board shall include the style of the case,
9 the appropriate claim or case number, and the date the decision was rendered.

10 (11)~~(10)~~ Number of Pages.

11 (a) The petitioner's brief and the respondent's brief shall be limited to twenty (20)
12 total pages, including those items required by this section [each]. The appendix shall
13 not count against the page limit.

14 (b) Reply briefs shall be limited to five (5) pages.

15 (c) Combined briefs shall be limited to twenty-five (25) total pages, including those
16 items required by this section. The appendix shall not count against the page limit.

17 (d) The parties shall make every effort to comply with the above page limitations.

18 (e) Permission to increase the length of a brief shall be sought by motion, but shall
19 only be granted upon a showing of good cause.

20 (12)~~(11)~~ Sanctions. Failure of a party to file a brief conforming to the requirements
21 of this administrative regulation or failure of a party to timely file a response may be
22 grounds for the imposition of one (1) or more of the following sanctions:

23 (a) Affirmation or reversal of the final order;

1 (b) Rejection of a brief that does not conform as to organization or content, with
2 leave to refile in proper form within ten (10) days of the date returned. If timely refileing
3 occurs, the filing shall date back to the date of the original filing;

4 (c) Striking of an untimely response;

5 (d) A fine of not more than \$500; or

6 (e) Dismissal.

7 (13)~~[(12)]~~ Motions.

8 (a) A ~~[Except for a brief,]~~ motion, response, or objection ~~[pleading]~~ shall ~~[require~~
9 ~~the original to]~~ be filed with the commissioner ~~[Executive Director]~~ of the Department
10 [Office] of Workers' Claims in accordance with Section 3 of this administrative
11 regulation, and shall bear the designation of Appeals Branch or Workers' Compensation
12 Board.

13 (b) The style of the case, including the claim number and title of the motion or
14 pleading, shall appear on the first page of the motion or pleading.

15 (c) The party filing a motion may file a brief memorandum supporting the motion
16 and opposing parties may file brief memoranda in response. To be considered, a
17 response shall be filed within ten (10) days of the motion. Further responses shall not
18 be filed.

19 (d) Every motion and response, the grounds of which depend upon the existence
20 of facts not in evidence, shall be supported by affidavits demonstrating those facts.

21 (e) Every motion and response, the grounds of which depend upon the existence
22 of facts that ~~[which]~~ the moving or responding party believes are shown in the evidence

1 or are admitted by the pleadings, shall make reference to the place in the record where
2 that evidence or admission is found.

3 (f) Before filing a motion or pleading with the commissioner [~~executive director~~] of
4 the Department [~~Office~~] of Workers' Claims, a party shall serve, in the manner provided
5 by Civil Rule 5.02 or as set forth in this administrative regulation, a copy of the
6 document on each adverse party.

7 (g) The filing of a motion to dismiss an appeal shall stay the remaining time for the
8 filing of a responsive pleading. If the petitioner's brief has been previously filed and a
9 motion to dismiss has been overruled, the respondent shall have fifteen (15) days from
10 the order to file a respondent's brief.

11 (h) Except for motions that call for final disposition of an appeal, any board
12 member designated by the chairman may dispose of a motion. An intermediate order
13 may be issued on the signature of any board member.

14 (14) [~~(13)~~] Oral arguments.

15 (a) Upon motion of a party or within its discretion [~~upon the board's own motion~~],
16 the board may order an oral argument on the merits in a case appealed from a decision,
17 award, or order of an administrative law judge.

18 (b) Oral arguments shall occur on a date and at a time and location specified by
19 the board.

20 (c) Appeals designated for oral argument shall be held in abeyance and all
21 subsequent appeal time in the case shall be calculated from the date of the oral
22 argument.

23 (15) [~~(14)~~] Continuation of benefits pending appeal.

1 (a) Benefits awarded by an administrative law judge that [~~which~~] are not contested
2 shall be paid during the pendency of an appeal. A motion requesting the payment of
3 these benefits shall not be required. Uncontested benefits shall include income benefits
4 at an amount lesser than what was awarded if the issue on appeal addresses the
5 amount of benefits to be awarded as opposed to the entitlement to income benefits.

6 (b) Upon the motion of a party pursuant to KRS 342.300, the board may order
7 payment of benefits pending appeal in conformity with the award, decision, or order
8 appealed from.

9 (c) Entitlement to relief pursuant to KRS 342.300 shall be granted upon motion
10 establishing [~~that~~]:

11 1. The probability of the existence in fact of:

12 a. Financial loss;

13 b. Privation, suffering, or adversity resulting from insufficient income; or

14 c. Detriment to the moving party's property or health if payment of benefits is not
15 instituted; and

16 2. That there exists a reasonable likelihood that the moving party will prevail on
17 appeal.

18 (d) Any response to a motion for continuation of an award pending appeal shall be
19 served within ten (10) days from the date of the request and, thereafter, the request
20 shall be ripe for a decision.

21 (e) Entitlement to relief by the moving party and responses shall be shown by:

22 1. Affidavit if the grounds for the motion or response depend upon the existence of
23 facts not in evidence; or

1 2. Supporting memorandum citing to evidence existing within the record and
2 making reference to the place in the record where that evidence is found.

3 (16) [~~(15)~~] Decisions.

4 (a) The board shall:

5 1. Enter its decision affirming, modifying, or setting aside the order appealed from;

6 or

7 2. Remand the claim to an administrative law judge for further proceedings.

8 (b) Motions for reconsideration shall not be permitted.

9 (c) The decision of the administrative law judge shall be affirmed if:

10 1. A board member is unable to sit on a decision; and

11 2. The remaining two (2) board members cannot reach an agreement on a final
12 disposition.

13 (17) [~~(16)~~] Appeal from board decisions. If applicable, pursuant to KRS 342.290, the
14 decision of the board shall be appealed to the Kentucky Court of Appeals as provided in
15 Civil Rule 76.25.

16 (18) If the parties agree to settle a claim while it is on appeal to the board, the
17 original agreement signed by all parties, along with a motion to place the appeal in
18 abeyance and to remand to the ALJ shall be filed. An action shall not be taken by an
19 ALJ until an order is issued by the board holding the appeal in abeyance, and
20 remanding the claim to the ALJ for approval of the settlement agreement. Once the
21 settlement agreement is approved, the appeal shall be removed from abeyance, and
22 dismissed if all issues on appeal have been resolved. If issues remain for decision

1 subsequent to the approval of the settlement agreement, the board shall remove the
2 appeal from abeyance and establish a briefing schedule.

3 Section 23. [~~22.~~] Coverage - Insured Status.

4 Upon the filing of an application for resolution of claim, the commissioner
5 [~~executive director~~] shall ascertain whether the employer or any other person against
6 whom a claim is filed and who is not exempted by KRS 342.650 has secured payment
7 of compensation by obtaining insurance coverage or qualifying as a self-insurer
8 pursuant to KRS 342.340. If an employer does not have insurance coverage or qualify
9 as a self-insurer, the commissioner [~~executive director~~] shall notify the administrative
10 law judge and all parties by service of a certification of no coverage.

11 Section 24. [~~23.~~] Withdrawal of Records and Disposition of Exhibits.

12 (1) A portion of any original record of the office shall not be withdrawn except upon
13 an order of the commissioner [~~executive director~~], an administrative law judge, or a
14 member of the board.

15 (2)(a) All physical exhibits, including x-rays, shall be disposed of sixty (60) days
16 after the order resolving the claim has become final except x-rays filed in coal workers'
17 pneumoconiosis claims, which shall be returned to the party who filed the x-ray.

18 (b) A party filing an exhibit may make arrangements to claim an exhibit prior to that
19 time.

20 (c)1. If an unclaimed exhibit has no money value, it shall be destroyed.

21 2. If an unclaimed exhibit has a value of more than \$100, it shall be sold as surplus
22 property.

1 3. If an unclaimed exhibit has a value of less than \$100, it shall be donated to the
2 appropriate state agency.

3 4. If an unclaimed exhibit has historic value, it shall be sent to the state archives.

4 Section 25. Time for payment of benefits in litigated claims.

5 (1) If a disputed claim is litigated and an opinion, order, or award is entered
6 awarding benefits to a claimant and no appeal is taken that prevents finality of the
7 opinion, order, or award:

8 (a) All past benefits due under the award shall be paid no later than twenty-one
9 (21) days after expiration of the last appeal date unless otherwise ordered by an ALJ;
10 and

11 (b) Any attorney fee shall be paid no later than thirty (30) days after the date of the
12 administrative law judge's order approving the fee unless otherwise ordered by an ALJ.

13 (2) If an appeal[~~s~~] is taken from an opinion, order, or award awarding benefits to
14 a claimant, any benefits shall be paid no later than twenty-one (21) days after the
15 decision becomes final and no further appeal can be taken. Any attorney fee shall be
16 paid no later than thirty (30) days after the decision becomes final, or the date of the
17 ALJ's order approving fee, whichever is later unless otherwise ordered by an ALJ.

18 (3) Failure to comply with this section may be grounds for sanctions pursuant
19 to Section 26 of this administrative regulation, unless good cause is shown for the
20 failure.

21 Section 26. [24.] Sanctions.

1 (1) Pursuant to KRS 342.310, an administrative law judge or the board may assess
2 costs upon a determination that the proceedings have been brought, prosecuted, or
3 defended without reasonable grounds.

4 (2) A sanction may be assessed against an offending attorney or representative
5 rather than against the party.

6 (3) If a party is a governmental agency and attorney's fees are assessed, the fees
7 shall include fees for the services of an attorney in public employment, measured by the
8 reasonable cost of similar services had a private attorney been retained.

9 (4) Failure of a party to timely file a pleading or document or failure to comply with
10 the procedures required by this administrative regulation may be treated by an
11 administrative law judge or the board as prosecuting or defending without reasonable
12 grounds.

13 Section 27. [~~25~~.] Payment of Compensation from Uninsured Employers' Fund.

14 (1) Payment from the Uninsured Employers' Fund of compensation shall be made
15 upon the determination by an administrative law judge that the responsible employer
16 failed to secure payment of compensation as provided by KRS 342.340; and

17 (a) Thirty (30) days have expired since the finality of an award or issuance of an
18 interlocutory relief order and a party in interest certifies the responsible employer has
19 failed to initiate payments in accordance with that award;

20 (b) Upon showing that the responsible employer has filed a petition under any
21 section of the Federal Bankruptcy Code; or

22 (c) The plaintiff or any other party in interest has filed in the circuit court of the
23 county where the injury occurred an action pursuant to KRS 342.305 to enforce

1 payment of the award against the uninsured employer, and there has been default in
2 payment of the judgment by the employer.

3 (2) The plaintiff may by motion and affidavit demonstrate compliance with this
4 section and request an administrative law judge to order payment from the Uninsured
5 Employers' Fund in accordance with KRS 342.760.

6 (3) This section shall not be construed to prohibit the voluntary payment of
7 compensation by an employer, or any other person liable for the payment, who has
8 failed to secure payment of compensation as provided by KRS Chapter 342, the
9 compromise and settlement of a claim, or the payment of benefits by the Special Fund
10 or Coal Workers' Pneumoconiosis Fund.

11 ~~[(4) Form UEF-P, Motion for Payment from Uninsured Employers' Fund, provided
12 by the office may be used by the employee.]~~

13 Section 28. ~~[26.]~~ Forms.

14 The Department ~~[Office]~~ of Workers' Claims shall not accept applications or forms
15 in use prior to the forms required by and incorporated by reference in this administrative
16 regulation. Outdated applications or forms submitted may ~~[shall]~~ be rejected and
17 returned to the applicant or person submitting the form. If the application or form is
18 resubmitted on the proper form within twenty (20) days of the date it was returned, the
19 filing shall date back to the date the application or form was first received by the
20 commissioner ~~[executive director]~~. Otherwise, the date of the second receipt shall be
21 the filing date.

22 Section 29. Request for Participation by the Kentucky Coal Workers'
23 Pneumoconiosis Fund.

1 (1) Following a final award or order approving settlement of a claim for coal
2 workers' pneumoconiosis benefits pursuant to KRS 342.732, the employer shall file a
3 written request for participation with the Kentucky Coal Workers' Pneumoconiosis Fund
4 within thirty (30) days and shall serve copies of the request on all other parties.

5 (2) A written request for participation with the Kentucky Coal Workers'
6 Pneumoconiosis Fund shall be in writing and include the following documents:

7 (a) Plaintiff's application for resolution of claim;

8 (b) Defendant's notice of resistance, notice of claim denial or acceptance, and any
9 special answer;

10 (c) All medical evidence upon which the award or settlement was based;

11 (d) The notice of consensus issued by the commissioner, if rendered;

12 (e) Final opinion or order of an administrative law judge determining liability for
13 benefits or settlement agreement and order approving settlement agreement;

14 (f) If an administrative law judge's award was appealed, the appellate opinions;
15 and

16 (g) If the request for participation includes retraining incentive benefits under KRS
17 342.732, a certification by the requesting party that the plaintiff meets the relevant
18 statutory criteria.

19 (3) If the request for participation is based upon the settlement of a claim, the
20 employer shall submit a settlement agreement that represents liability exclusively for
21 coal workers' pneumoconiosis benefits, and does not include any sums for other claims
22 that the plaintiff may have against the employer.

1 (4) In claims arising under KRS 342.792, if the employer fails to submit a request
2 for participation within thirty (30) days of the final award or order approving settlement,
3 the plaintiff or an administrative law judge may file a written request for participation with
4 the Kentucky Coal Workers' Pneumoconiosis Fund within sixty (60) days of the final
5 award or order approving settlement.

6 (5) Within thirty (30) days following receipt of a completed request for participation,
7 the director of the Kentucky Coal Workers' Pneumoconiosis Fund shall notify the
8 employer and all other parties of acceptance or denial of the request.

9 (6) A denial shall be in writing and based upon any of the following findings by the
10 director:

11 (a) Failure to file a written request for participation within the time limits specified in
12 this administrative regulation without good cause;

13 (b) The employer failed to defend the claim;

14 (c) The employer entered into a settlement agreement not supported by the
15 medical evidence, or that includes sums for claims other than coal workers'
16 pneumoconiosis or that was procured by fraud or mistake; or

17 (d) The award or settlement was for retraining incentive benefits and the request
18 for participation did not include the training or education certification required by this
19 administrative regulation.

20 (7) Denial of a request for participation may be appealed by any party to an
21 administrative law judge within thirty (30) days following receipt of the denial.

22 (8) The administrative law judge shall:

1 (a) Determine if the denial was arbitrary, capricious, or in excess of the statutory
2 authority of the director; and

3 (b) Not reexamine the weight assigned to evidence by an administrative law judge
4 in an award.

5 (9) Except in claims under KRS 342.792, the employer shall promptly commence
6 payment on all of the liability pursuant to the award or order and shall continue until the
7 liability of the Kentucky Coal Workers' Pneumoconiosis Fund is established.

8 (a) This duty of prompt payment shall continue during pendency of an appeal from
9 denial of a request for participation.

10 (b) In claims arising from KRS 342.792, the Kentucky Coal Workers'
11 Pneumoconiosis Fund shall promptly commence payment upon its acceptance of the
12 claim.

13 (10)(a) Except in claims under KRS 342.792, upon an appeal from the denial of a
14 request for participation, if the Kentucky Coal Workers' Pneumoconiosis Fund does not
15 prevail, it shall reimburse the employer for its proportionate share of the liability with
16 interest accrued from the date of denial.

17 (b) In an appeal of a denial in a claim arising under KRS 342.792, in which the
18 Kentucky Coal Workers' Pneumoconiosis Fund does not prevail, the fund shall
19 commence payment pursuant to the opinion and award or order approving settlement
20 with interest accrued from the date of the denial. All interest shall be paid at the rate
21 established in KRS 342.040.

22 Section 30. ~~[27.]~~ Incorporation by Reference.

23 (1) The following material is incorporated by reference:

1 (a) ~~Form 101, "Application for Resolution of Injury Claim", (revised April 2006),~~
2 ~~Office of Workers' Claims;~~

3 ~~— (b) Form 102-OD, "Application for Resolution of Occupational Disease Claim",~~
4 ~~(revised June, 2005), Office of Workers' Claims;~~

5 ~~— (c) Form 103, "Application for Resolution of Hearing Loss Claim", (June 2005~~
6 ~~Edition), Office of Workers' Claims;~~

7 (d) Form 104, "Plaintiff's Employment History", [(January 1, 1997 Edition)],
8 Department [Office] of Workers' Claims;

9 (b) [(e)] Form 105, "Plaintiff's Chronological Medical History", [(January 1, 1997
10 Edition)], Department [Office] of Workers' Claims;

11 (c) [(f)] Form 106, "Medical Waiver and Consent", [(July 2003 Edition)],
12 Department [Office] of Workers' Claims;

13 (d) [(g) Form 107-I, "Medical Report - Injury", (revised April 2005), Office of
14 Workers' Claims;

15 ~~— (h) Form 107-P, "Medical Report - Psychological", (revised April 2005), Office of~~
16 ~~Workers' Claims;~~

17 ~~— (i) Form 108-OD, "Medical Report - Occupational Disease," (April 2005 Edition),~~
18 ~~Office of Workers' Claims;~~

19 ~~— (j) Form 108-CWP, "Medical Report - Coal Workers' Pneumoconiosis", (April 2005~~
20 ~~Edition), Office of Workers' Claims;~~

21 ~~— (k) Form 108-HL, "Medical Report - Hearing Loss", (revised April 2005), Office of~~
22 ~~Workers' Claims;]~~

1 ~~(l)~~ Form 109, "Attorney Fee Election", [~~{~~March 15, 1995 Edition~~}~~], Department
2 [Office] of Workers' Claims;

3 (e) Form 110, "Agreement as to Compensation and Order Approving Settlement",
4 Web edition to be developed, Department of Workers' Claims;

5 (f) ~~{m}~~ Form 110-F, "Agreement as to Compensation and Order Approving
6 Settlement -Fatality", [~~{~~revised January 2005~~}~~];

7 ~~(g) ~~{n}~~ Form 110-I, "Agreement as to Compensation and Order Approving~~
8 ~~Settlement - Injury", (revised July 2006), Office of Workers' Claims;~~

9 ~~— (o) Form 110-O, "Agreement as to Compensation and Order Approving Settlement~~
10 ~~-Occupational Disease", (revised July 2006), Office of Workers' Claims;~~

11 ~~— (p) Form 110-CWP, "Agreement as to Compensation and Order Approving~~
12 ~~Settlement - Coal Workers' Pneumoconiosis", (July 2002 Edition), Office of Workers'~~
13 ~~Claims;~~

14 ~~— (q) Form 111- Injury and Hearing Loss, "Notice of Claim Denial or Acceptance",~~
15 ~~(January 1, 1997 Edition), Office of Workers' Claims;~~

16 ~~— (r) Form 111-OD, "Notice of Claim Denial or Acceptance", (January 1, 1997~~
17 ~~Edition), Office of Workers' Claims;~~

18 ~~— (s) Form 115, "Social Security Release Form", (January 1, 1997 Edition); and~~
19 ~~Office of Workers' Claims;~~

20 ~~(t)~~ Form AWW - 1, "Average Weekly Wage Certification", [~~{~~January 1, 1997
21 Edition~~}~~], Department [Office] of Workers' Claims;

22 (h) Form AWW-CON, "Average Weekly Wage Certification-Concurrent", Web
23 edition to be developed, Department of Workers' Claims;

- 1 (i) Form AWW-POST, "Average Weekly Wage Certification-Post-Injury", Web
2 edition to be developed, Department of Workers' Claims;
- 3 (j) Form F "Fatality", Web edition to be developed, Department of Workers' Claims;
- 4 (k) Form SVC, "Safety Violation Alleged by Plaintiff/Employee", Web edition to be
5 developed, Department of Workers' Claims; and
- 6 (l) Form SVE, "Safety Violation Alleged by Defendant/Employer", Web edition to be
7 developed, Department of Workers' Claims
- 8 ~~[(u) Form MIR-1, Motion for Interlocutory Relief (May 29, 1997 Edition);~~
- 9 ~~— (v) Form MIR-2, Affidavit for Payment of Medical Expenses (May 29, 1997 Edition);~~
- 10 ~~— (w) Form MIR-3, Affidavit for Payment of Temporary Total Disability (May 29, 1997~~
11 ~~Edition);~~
- 12 ~~— (x) Form MIR-4, Affidavit Regarding Rehabilitation Services (May 29, 1997~~
13 ~~Edition);~~
- 14 ~~— (y) Form VRT, Petition for Vocational Rehabilitation Training (April 2005 Edition);~~
- 15 ~~— (z) Form MTR-1, Motion to Reopen by Employee (May 29, 1997 Edition);~~
- 16 ~~— (aa) Form MTR-2, Motion to Reopen KRS 342.732 Benefits (May 29, 1997~~
17 ~~Edition);~~
- 18 ~~— (bb) Form MTR-3, Motion to Reopen by Defendant (May 29, 1997 Edition);~~
- 19 ~~— (cc) Form WVR, Joint Motion and Agreement to Waive Vocational Rehabilitation~~
20 ~~Evaluation (April 2005 Edition);~~
- 21 ~~— (dd) Form UEF-P, Motion for Payment from Uninsured Employers' Fund (April~~
22 ~~2005 Edition); and~~

1 ——— ~~(ee) Form 11, Motion to Substitute Party and Continue Benefits (January 31,~~
2 ~~2005)].~~

3 (2) This material may be inspected, copied, or obtained, subject to applicable
4 copyright law, at the Department ~~[Office]~~ of Workers' Claims, Prevention Park, 657
5 Chamberlin Avenue, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30
6 p.m.

Dwight T. Lovan, Commissioner
Department of Workers' Claims

Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on Monday, April 25, 2016, at 1:30 p.m. (EDT) at the offices of the Department of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard shall be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing shall not be made unless a written request for a transcript is made. 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 close of business Monday, May 2, 2016. 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: Charles E. Lowther, General Counsel
Department of Worker's Claims
Prevention Park
657 Chamberlin Avenue
Frankfort, Kentucky 40601
Telephone Number: (502) 782-4464
Fax Number: (502) 564-0681

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 803 KAR 25:010

Contact person: Charles E. Lowther

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes the procedure for the adjustment and practice of claims for workers' compensation using the newly established Litigation Management System (LMS).
 - (b) The necessity of this administrative regulation: Pursuant to KRS 342.260(1) and KRS 342.285(1), the commissioner is required to promulgate administrative regulations necessary to carry on the work of the administrative law judges and the Workers' Compensation Board. The new administrative regulation establishes the procedures utilizing the electronic filing, or LMS. It amends 803 KAR 25:010.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes an orderly procedure for the Department of Workers' Claims' administrative law judges and the Workers' Compensation Board to carry on the adjudication of workers' compensation claims and appeals.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation is necessary for the orderly and prompt resolution and adjudication of workers' compensation claims and appeals. All parties to a workers' compensation claim should be afforded a process and procedure for prompt, orderly and fair resolution and adjudication. The Litigation Management System will allow for the prompt filing of legal documents without the filing of paper.
- (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: The amendment provides for use of electronic filing of claims and streamlines and revises the claim process.
 - (b) The necessity of the amendment to this administrative regulation: The amendment is needed to implement electronic claims filing.
 - (c) How the amendment conforms to the content of the authorizing statutes: The amendment updates procedures for filing and litigating claims.

- (d) How the amendment will assist in the effective administration of the statutes:
The amendment enables the use of electronic filing and simplifies the filing and litigation of claims.
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amended administrative regulation affects all injured workers, those afflicted with an occupational disease, and employers, including governmental entities subject to the Workers' Compensation Act, all physicians and medical providers providing services to injured workers, workers with occupational diseases, insurance carriers, self-insured employers, self-insured groups, third-party administrators, and their attorneys.
- (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: Those regulated entities identified in question (3) will have to familiarize themselves with the amended procedure and resolve or adjudicate workers' compensation claims in accordance with the administrative regulation. This includes the usage of computers for electronic filing of documents required by the Litigation Management System.
- (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amended administrative regulation will be available for no additional cost through the web site of the Legislative Research Commission. Thus, there should be no additional cost for access to the administrative regulation. It is anticipated that increased adjudicatory efficiencies will reduce overall litigation costs for the identified entities, as there will be a drastic reduction in paper usage and postage expenses.
- (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The identified entities will receive prompt, fair and orderly resolution and adjudication of workers' compensation claims and disputes, which should be faster due to the electronic filing of documents.
- (5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
- (a) Initially: No additional costs
(b) On a continuing basis: No continuing costs
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Workers' Claims normal operating budget is the source of funding.

- (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 will be no increase in fees or funding to implement this amended administrative regulation.
- (8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amended administrative regulation does not establish or directly or indirectly increase any fees.
- (9) TIERING: Is tiering applied? (Explain why or why not) Tiering is not applied because the amended procedure applies equally to all parties.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 803 KAR 25:010

Contact Person: Charles E. Lowther
(502-782-4464)

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? All parts of government with employees subject to KRS Chapter 342 are impacted.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 342.260(1) and KRS 342.285(1)

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. As an employer, there may be some minimal initial increased costs for implementation; however, it is anticipated that costs subsequently will be lowered.

(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 is expected to be generated.

(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 is expected to be generated.

(c) How much will it cost to administer this program for the first year? No new administration costs are expected.

(d) How much will it cost to administer this program for subsequent years? No new administration costs are expected.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PROCEDURE FOR ADJUSTMENTS OF CLAIMS

SUMMARY OF MATERIAL INCORPORATED BY REFERENCE

FILED WITH LRC _____, 2016

Summary of Material Incorporated by Reference

The procedure for adjustments of claims is adopted pursuant to KRS 342.260(1). Employees, employers, their representatives or counsel shall use the following forms adopted by the Department for processing and resolving claims.

The total number of pages incorporated by reference is twenty-six (26).

Form 104, "Plaintiff's Employment History", is a form to outline employment history. It consists of one (1) page.

Form 105, "Plaintiff's Chronological Medical History" is a form to outline medical treatment history. It consists of one (1) page.

Form 106, "Medical Waiver and Consent Form", is a form authorizing health care providers to release medical information to the claimant, his attorney, his employer, the workers' compensation carrier or its agent, the Division of workers' Compensation Funds, the Uninsured Employers' Fund or the ALJ. It consists of one (1) page.

Form 109, "Attorney Fee Election Form", is a form to allow a claimant to elect how fees are to be paid to his attorney. It consists of one (1) page.

Form 110, "Agreement as to Compensation and Order Approving Settlement" is a new form to be utilized in all claims except for fatalities. The form is to be used to set out the terms of settlement for claims, except in fatality claims. It consists of three (3) pages. This will be a web form used in LMS and is in the process of being developed.

Form 110 F, "Agreement as to Compensation and Order Approving Settlement Form- Fatality", is a form to be utilized in fatality claims. The form is to be used to set out the terms of settlement in workers' compensation claims involving a fatal injury. It consists of three (3) pages.

Form 115, "Social Security Release Form", is a form for claimants to authorize the Social Security Administration to release information on claimant's benefit or wage earnings. It consists of one (1) page.

Appendix F, "Fatality", is a new form that allows the dependents of a deceased worker to file with the department pertinent information that allows for the payment of benefits after the employee's death. It will consist of one (1) page. This will be a web form used in LMS and is in the process of being developed.

AWW-1, "Average Weekly Wage Certification", is a form for computing claimant's average weekly wage at the date of injury. It consists of four (4) pages.

Form AWW-CON, "Average Weekly Wage Certification-Concurrent", is a form for computing average weekly wage when a claimant earned wages from concurrent employment at the time the claim arose. It will be utilized when concurrent wages were earned and supplements the AWW-1 Form. It will consist of four (4) pages. This will be a web form used in LMS and is in the process of being developed.

Form AWW-POST, "Average Weekly Wage Certification-Post Injury", is a form for computing the claimant's wage earnings after the date of injury. This information is used to determine the benefits under KRS 342.730. It will consist of four (4) pages. This is a web form and is in the process of being developed.

Form SVC, "Safety Violation Alleged by Plaintiff/Employee", is a new form for claimants to set out the specific facts and safety violation alleged to have been committed by the employer which led to the occurrence of the injury. This form provides notice of the specific reason claimant is seeking a thirty percent (30%) increase in benefits allowed under KRS 342.165. It will consist of one (1) page. This is a web form to be developed for use with LMS.

Form SVE, "Safety Violation Alleged by Defendant/Employer", is a new form for employer to set out the specific prohibited actions of the claimant that are claimed to have caused the injury. It provides notice of the reason(s) why the employer claims it is entitled to a fifteen percent (15%) reduction in benefits allowed in KRS 342.165. It will consist of one (1) page. This is a web form to be developed for use with LMS.

The Department of Workers' Claims is in the process of converting from a paper-based filing system to an electronic filing system called LMS. Paper forms are being replaced by web forms to be completed by parties on line through LMS.