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Jay D. Hartz
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MEMORANDUM

TO: Interim Joint Committee on Transportation

FROM: Jay D. Hartz, LRC Director *JH*

SUBJECT: Administrative Regulations

DATE: August 3, 2022

At its July 14, 2022, meeting, the Administrative Regulation Review Subcommittee completed its review of the following administrative regulations: 502 KAR 010:010; 502 KAR 010:020; 502 KAR 010:030; 502 KAR 010:035; 502 KAR 010:040; 502 KAR 010:050; 502 KAR 010:060; 502 KAR 010:070; 502 KAR 010:080; 502 KAR 010:090; 502 KAR 010:110 and 502 KAR 010:120.

Pursuant to the provisions of KRS Chapter 13A, these regulations have been assigned to the Interim Joint Committee on Transportation. Pursuant to KRS Chapter 13A, the committee has ninety (90) days from the date of this assignment to review these regulations.

The Subcommittee minutes will be delivered to your committee staff upon completion. The material considered by the Subcommittee in its review is attached to the appropriate administrative regulations.

cc: Administrative Regulation Review Subcommittee
John Snyder

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MEMORANDUM

TO: Senator Robert Stivers, President of the Senate
Representative David Osborne, Speaker of the House
Members of the Legislative Research Commission

FROM: Senator Stephen West, Co-Chair
Representative David Hale, Co-Chair
Administrative Regulation Review Subcommittee

RE: Report of the Administrative Regulation Review Subcommittee

DATE: August 3, 2022

Members: Senator Stephen West, Co-Chair; Representative David Hale, Co-Chair; Senator David Yates.
Representatives Randy Bridges, MaryLou Marzian, and Deanna Frazier Gordon.

LRC Staff: Sarah Amburgey, Stacy Auterson, Emily Caudill, Ange Darnell, Emily Harkenrider, Karen Howard, Carrie Nichols, and Christy Young.

Guests: Becky Gilpatrick, Director of Student Aid, Miles Justice, Senior Associate Counsel, Kentucky Higher Education Assistance Authority (KHEAA); Rosemary Holbrook, Assistant General Counsel, Alan Hurst, Executive Director (Office of Employee Relations), Alaina Myers, Deputy Commissioner, Personnel Cabinet; Carrie Bass, Staff Attorney Supervisor, Jessica Beaubien, Policy Specialist, Kentucky Public Pensions Authority (KPPA); Christopher Harlow, Executive Director, Kentucky Board of Pharmacy; Kanetha Dorsey, Executive Director, Kentucky Board of Embalmers and Funeral Directors; Jeffrey Prather, General Counsel, Kentucky Board of Nursing; Eddie Slone, Interim Executive Director, John Wood, Attorney, Kentucky Board of Emergency Medical Services; Dave Dreves, Fisheries Director, Steven Fields, Attorney, Jenny Gilbert, Legislative Liaison, Kentucky Department of Fish and Wildlife Resources; Amber Arnett, Staff Attorney, Captain Marshall Johnson, Commander, Kentucky State Police; Anthony Hudgins, Deputy Executive Director, Office of Unemployment Insurance; Honor Barker, Deputy Commissioner, Oran McFarlan, Deputy General Counsel, Department of Workforce Investment; Joshua Newton, General Counsel, Department of Alcohol Beverage Control; Abigail Gall, Executive Advisor, Shaun Orme, Commissioner, Department of Insurance; Adam Mather, Inspector General, Kara Daniel, Deputy Inspector General, Office of Inspector General; Julie Brooks, Regulations Coordinator, Carrell Rush, Epidemiologist, Department for Public Health; Rachael Ratliff, Regulations Coordinator, Department for Behavioral Health, Developmental and Intellectual Disabilities; Donna Fiaschetti, Kentucky Association of Nurse Anesthetists; Delores Polito, Kentucky Affiliate of ACNM and Kentucky Association of NP and NM.

JUSTICE AND PUBLIC SAFETY CABINET: Department of State Police: Driver Training

502 KAR 010:010. Definitions. Amber Arnett, staff attorney, and Captain Marshall Johnson, commander, Driver Testing Branch, represented the department.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

502 KAR 010:020. Department facilities; facility inspection; conflict of interest.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

502 KAR 010:030. Instructor's license.

502 KAR 010:035. Commercial driver's license skill testing.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

502 KAR 010:040. Training school facilities.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 4, 6, 7, and 9 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

502 KAR 010:050. Contracts and agreements.

A motion was made and seconded to approve the following amendment: to correct the agency name. Without objection, and with agreement of the agency, the amendment was approved.

502 KAR 010:060. School advertising.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

502 KAR 010:070. Training vehicle, annual inspection.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 4, and 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

502 KAR 010:080. License suspension, revocation, denial.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to substitute the term "motor vehicle" for "automobile"; and (2) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

502 KAR 010:090. Procedure for denial, suspension, nonrenewal or revocation hearings.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

502 KAR 010:110. Third-party CDL skills test examiner standards.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 4, 5, and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

502 KAR 010:120. Hazardous materials endorsement requirements.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to: (a) add a definition for "CDL testing location"; and (b) delete the definition for "fingerprint centers"; (2) to amend Section 2 to reference the application requirements established by 49 C.F.R. 1572.9; (3) to amend Sections 2 and 3 to allow the fee for a fingerprint-based background check to be paid electronically; (4) to amend Section 3 to reference a "regional CDL testing location"; (5) to amend Sections 5 and 6 to delete the provisions in their entirety; and (6) to amend Sections 1 through 3 to comply with the formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

JUSTICE AND PUBLIC SAFETY CABINET

Department of Kentucky State Police

(Amended at ARRS Committee)

502 KAR 10:010. Definitions.

RELATES TO: KRS ~~332.015~~~~[332.010]~~

STATUTORY AUTHORITY: KRS 15A.160, ~~332.216~~~~[332.100]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 and ~~332.216~~~~[332.100]~~ provide that the ~~[Secretary of the Justice Cabinet in cooperation with]~~ the Commissioner of the Department of *Kentucky State Police* ~~[, Department of State Police,]~~ may adopt such administrative regulations necessary to carry out the provisions of KRS Chapter 332. This administrative regulation establishes the definitions to be utilized in the driver training schools and instructors administrative regulations.

Section 1. Definitions. ~~[As employed in the driver training and instructors administrative regulations, unless the context requires otherwise the following words and phrases have the following meanings:]~~

(1) "Commissioner" ~~is defined by KRS 332.015(2).~~~~[means the Commissioner]~~~~[, Department]~~~~[of State Police.]~~

(2) "Driver training" ~~is defined by KRS 332.015(3).~~

(3) "Driver training instructor" means any person who gives driver training or offers a course of driver training for which a fee or tuition is charged.

(4) ~~[(3)]~~ "Place of business" means a designated location at which the business of the driver training school is ~~[being]~~ conducted.

(5) ~~[(4)]~~ "Branch office" means an approved location where the business of the driver's school is conducted, other than the principal place of business.

(6) ~~[(5)]~~ "High school education or the equivalent in experience" means any high school diploma or the ability to pass a General Educational Development Test.

FILED WITH LRC: July 14, 2022

CONTACT PERSON: Brenn Combs, Staff Attorney, 919 Versailles Road, Frankfort, Kentucky 40601, phone (502) 782-1800, fax (502) 563-1636, email brenn.combs@ky.gov.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(Amended at ARRS Committee)

502 KAR 10:020. Department facilities; facility inspection; conflict of interest.

RELATES TO: KRS ~~332.216~~[~~332.100~~]

STATUTORY AUTHORITY: KRS 15A.160, ~~332.216~~[~~332.100~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 and ~~332.216~~[~~332.100~~] provide that the ~~{Secretary of the Justice Cabinet in cooperation with the}~~ Commissioner of the department~~[-, Department of State Police,]~~ may adopt such administrative regulations necessary to carry out the provisions of KRS Chapter 332. This ~~{administrative}~~ regulation establishes the department's policy regarding department premises, facility inspection, and conflict of interest.

Section 1. General Prohibitions on Premises.

- (1) ~~A~~ ~~{No}~~ driver training school instructor, employee, or agent ~~shall not/will~~ be permitted to loiter in or on premises rented, leased, owned, or used by the department.
- (2) ~~A~~ ~~{No}~~ driver training school instructor, employee, or agent shall not be permitted to personally solicit any individual on premises rented, leased, owned, or used by the department for the purpose of enrolling them in any driver training school.
- (3) Practice driving ~~shall be/is~~ prohibited on testing areas used by the department while driving tests are in progress.

Section 2. Inspections.

- (1) A driver training school shall permit any authorized representative of the department to inspect the school at any time.
- (2) The driver training school shall make available to the department full information relating to data contained in its application forms and shall permit the department's representative to make ~~{Photostat}~~ copies of school records required by the department.

Section 3. ~~A~~ ~~{No}~~ person whose duties relate in any way to the issuance of motor vehicle operator's license, ~~nor~~ any employee of the department, ~~or/nor~~ any member of the person's or employee's/his immediate family, shall not be connected in any capacity whatsoever with a driver training school.

FILED WITH LRC: July 14, 2022

CONTACT PERSON: Brenn Combs, Staff Attorney, 919 Versailles Road, Frankfort, Kentucky 40601, phone (502) 782-1800, fax (502) 563-1636, email brenn.combs@ky.gov.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(Amended After Comments)

502 KAR 10:030. Instructor's license.

RELATES TO: KRS ~~332.204~~~~[332.030]~~

STATUTORY AUTHORITY: KRS 15A.160, 332.204, 332.216 ~~[332.100]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 332.216 requires the department to promulgate administrative regulations to carry out the provisions of KRS Chapter 332. KRS 15A.160 authorizes the secretary of the cabinet to adopt administrative regulations to administer the cabinet. KRS 332.204(3) requires the department to establish an application process for the licensing of instructors for driver training in the operation of noncommercial motor vehicles. This administrative regulation establishes the requirements for the application and licensing for a driver training instructor. ~~[KRS 15A.160 and 332.100 provide] [] [that the department] [Secretary of the Justice Cabinet in cooperation with the Commissioner, Department of State Police,] [may adopt such administrative regulations necessary to carry out the provisions of KRS Chapter 332. This administrative regulation establishes the department's policy regarding the licensing of driver training instructor.]~~

Section 1. A person seeking ~~[Each person desiring]~~ to be licensed as a driver training instructor shall submit an application with required documents to the Kentucky State Police Drivers Testing Branch at the address in Section 12 of this administrative regulation ~~[on the department's website.]~~ ~~[Additional materials may also be submitted online, including the supporting documentation and the fingerprint background check]~~ ~~[must make application on forms furnished by the department. The forms shall consist of sections dealing with the personal history of the applicant and include a physical examination report signed by an examining physician.]~~

Section 2. The driver training instructor license application shall ~~[must]~~ indicate the name and address of the driver training school employing the applicant and shall ~~[must]~~ be signed by an agent or representative of the driver training school. The application shall ~~[must]~~ be verified under oath and signed by the applicant.

Section 3. The driver training instructor license applicant shall submit to the Drivers Testing Branch at the address in Section 12 of this administrative regulation ~~[may be licensed as an instructor upon]~~ ~~[Upon]~~ ~~[receipt by the department of]~~ the following:

- (1) A ~~[a]~~ duly completed driver training instructor application, KSP 107;
- (2) The fee set in KRS 332.204(4) ~~[A refundable fifty (50)]~~ ~~[together with a nonrefundable twenty (20)]~~ ~~[dollar fee]~~ in the form of a certified check or money order made payable to the Kentucky State Treasurer; ~~;~~
- (3) Three (3) identical photographs that:
 - (a) Are one and one-half (1 1/2) inches by one and one-half (1 1/2) inches; and
 - (b) Show a full face view of the applicant's neck and uncovered head;~~[(3)]~~ ~~[A refundable twenty (20) dollar background check fee in the form of a certified check or money order made payable to the Kentucky State Treasurer;]~~
~~[(4)]~~ ~~[Three (3) one]~~ ~~[one (1) set of fingerprints of each digit on right and left hands, three (3) one]~~ ~~[and one-half (1 1/2) inch by one and one-half (1 1/2) inch identical photographs which show a full face view of his or her neck and uncovered head;]~~
- (4) ~~[(5)]~~ A physical examination report, including the following:
 - (a) Results of an eye examination showing the visual acuity of the applicant to be at least 20/20 in one (1) eye and 20/40 in the other, or 20/30 in each eye separately with

or without corrective lenses; ~~and~~

(b) Showing that the applicant has at least~~[is not lacking]~~ one (1) functional:

1. Eye;

2. Hand; and

3. Foot; and

(c) Would not be disqualified for a driver's license pursuant to 601 KAR 13:010; ~~hand, or foot,~~

(5) ~~(6)~~ Proof ~~[proof]~~ of age by copy of birth certificate or valid driver's license;~~;~~

~~(6) (7)~~ Proof of education by copy of diploma or GED certificate;~~;~~ and

~~(7) (8)~~ A Driver Training Instructor's Examination Report, KSP 110 ~~[The]~~ [the] ~~[results of the department's examination], if the applicant has obtained a passing score~~[favorable, the applicant may then be licensed as an instructor].

Section 4. The driver training instructor examination shall be administered by the department.~~[consist of] [;]~~

(1) The examination shall consist of a written theoretical examination prepared and administered by the department and embracing subject matter pertinent to the care, operation, and use of a motor vehicle on the highways, and to general safety principles and practices, both for the purpose of testing an applicant's competency and fitness in the operation of a motor vehicle and in providing classroom instruction, including rules of the road, safe driving practices, pedestrian safety, mechanics of motor vehicles, driver responsibility, the Kentucky point system, types of automobile insurance, and use of automobile safety devices. The results of the examination shall be recorded on the Drivers Training Instructors Examination Report, KSP 110.

(2) The department may also test the applicant for depth perception, peripheral vision, and reaction time.

Section 5. All applicants who pass the instructor's examination and who are ~~[otherwise]~~ qualified pursuant to KRS 332.204(3) and this administrative regulation shall ~~[will]~~ be issued a driver training instructor license certifying the instructor for both classroom and practical instruction and containing the instructor's photograph, the name and address of the licensee, and the name and address of the driver training school by whom the instructor ~~[he]~~ is employed. The license shall be:

(1) Nontransferable;

(2) Carried and displayed in compliance with KRS 332.206; and

(3) Surrendered to the Drivers Testing Branch upon expiration, revocation, suspension, mutilation of the physical license, or the instructor's separation from employment with the driver training school listed on the license.

Section 6. A driver training instructor license shall expire on June 30 of each year or upon separation from employment by the driver training school listed on the license. License renewal shall require submission of a new application pursuant to Section 3 of this administrative regulation, including payment of fees. A renewal application, supporting documents, and fees shall be submitted to the Drivers Testing Branch by June 30 of each year.

Section 7. ~~[Section 6.]~~ If ~~[Should]~~ a license is ~~[be]~~ lost, mutilated, or destroyed, a duplicate license will be issued upon proof of the date the license was lost or destroyed and the circumstances involving the ~~[such]~~ loss, mutilation, or destruction. ~~[If a license is mutilated, it shall be surrendered to the department.]~~ ~~[In the case of a mutilated license, the surrender of such license is necessary.]~~ A five (5) dollar replacement fee shall be paid~~[charge will be made]~~ for a duplicate license~~[all duplicates]~~.

~~{Section 7.} [All expired, revoked, or suspended licenses shall] [must] [be surrendered to the department at the time of expiration, revocation, or suspension.]~~

Section 8. Any applicant who has previously been licensed as a driver training instructor but has not been so employed within two (2) years preceding application shall apply~~[will be treated]~~ as an original applicant.

Section 9. Any instructor who has had the instructor's~~[his or her]~~ license suspended or revoked or any applicant denied a license may apply~~[will be eligible to make application]~~ again six (6) months following the suspension, revocation, or denial.

Section 10. The department shall~~[will]~~ not issue a driver training instructor license to any applicant who has been convicted of two (2) or more moving hazardous traffic violations within the two (2) year period immediately preceding the date of application.

Section 11. A driver training school shall complete a Driver Training School License Information Notice of Change, KSP 115, within ten (10) days of~~[is required to notify the department, in writing, of the]~~ termination of employment of an instructor or agent, or if there is any change in the address of any owner, partner, officer, or driving instructor.

Section 12. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Driver Training Instructor Application". KSP 107, 2009 edition;

(b) "Driver Training Instructor's Examination Report", KSP 110, 2001 edition;
and

(c) "Driver Training School License Information Notice of Change", KSP 115, 2006 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky State Police, Drivers Testing Branch, 1250 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. or at any KSP regional driver testing office. This material is also available on the agency Web site kentuckystatepolice.org under drivers testing.

COL. PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: January 6, 2022

FILED WITH LRC: January 11, 2022 at 1:30 p.m.

CONTACT PERSON: Amy Barker, Assistant General Counsel, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the requirements for the licensing of driver training instructors.

(b) The necessity of this administrative regulation:

This administrative regulation informs applicants for a driver training instructor license of the requirements and procedures to apply for a license pursuant to KRS 332.204(3) and 332.216.

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

KRS 332.216 requires the department to promulgate administrative regulations to carry out the provisions of KRS Chapter 332. KRS 332.204(3) requires the department to establish an application process for the licensing of instructors for driver training in the operation of noncommercial motor vehicles. This administrative regulation establishes the requirements for the application for and the licensing of a driver training instructor.

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

The administrative regulation details the requirements, procedures, and fees to apply for a driver training instructor license. It also informs licensees of the expiration period, renewal procedures, and surrender requirements.

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

(a) How the amendment will change this existing administrative regulation:

The amendment updates statutory references, adds license display requirements, adds expiration and renewal information, adds surrender requirements, and incorporates forms by reference.

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

No answer provided.

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

KRS 332.216 requires the department to promulgate administrative regulations to carry out the provisions of KRS Chapter 332. KRS 332.204(3) requires the department to establish an application process for the licensing of instructors for driver training in the operation of noncommercial motor vehicles. The amendment revises application requirements for a driver training instructor.

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

The amendment clarifies the existing language and adds necessary procedures to inform applicants and licensees and to accurately reflect the licensing process.

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

The Department of Kentucky State Police, 16 driver training schools, 17 driver training facilities, 50 driver training school instructors, and any potential applicants.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

Applicants and instructors renewing a driver training instructor license will have to follow the procedures stated in the amendment.

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

No additional cost is anticipated.

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

The department, driver training schools, applicants, and licensees will benefit from more clearly defined procedures that will assist in the administration of the licenses.

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

(a) Initially:

No additional cost is anticipated.

(b) On a continuing basis:

No additional cost is anticipated.

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

Funds budgeted to the department.

(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:

A fee is stated for a duplicate license copy.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

Yes.

(9) TIERING: Is tiering applied?

No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

The Department of Kentucky State Police; driver training schools; driver training school instructors.

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

: KRS 15A.160, 332.202, 332.204, 332.206, and 332.216.

(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.

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

(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?

The majority of revenue is from statutory fees. A small amount may be received from a few instructors requesting duplicate license copies.

(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?

The majority of revenue is from statutory fees. A small amount may be received from a few instructors requesting duplicate license copies.

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

No additional cost is anticipated.

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

No additional cost is anticipated.

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:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(Amended at ARRS Committee)

502 KAR 10:035. Commercial driver's license skill testing.

RELATES TO: KRS 165A.310, 281A.160, ~~[332.010]~~, ~~49~~ C.F.R. 383.75, 49 C.F.R. 383.131

STATUTORY AUTHORITY: KRS 165A.310, 281A.150(2), (3), 281A.160, ~~[332.010]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 281A.160 *requires the Department of Kentucky State Police to promulgate administrative regulations to implement the provisions of the statute, which allows~~authorizes~~* third parties to administer the skills test for commercial driver's licenses. This administrative regulation establishes procedures for authorization and testing.

Section 1. Application for Authorization. Persons desiring to administer the skills test for commercial driver's licenses shall make a written request to the Kentucky State Police Driver Testing Branch ~~{Driver Testing Section of the Department of State Police}~~. The request shall be accompanied by:

- (1) A copy of a current driver's training school or instructor's license;~~;~~ and
- (2) Proof of satisfactory completion of a CDL examiner's training course approved by the U.S. Department of Transportation, Federal Highway Administration (FHWA).

Section 2. Issuance of Authorization. Upon receipt of a written request from a qualified person, the Driver Testing Branch~~{Section}~~ of the Department of Kentucky State Police shall issue a letter of authorization to conduct the CDL skills test. The letter of authorization shall be considered an endorsement to the drivers training school or instructor's license and shall be subject to the same terms and conditions as school or instructor's license.

Section 3. Skills Test Requirements. Persons authorized to administer the CDL skills test shall be subject to the following additional requirements:

- (1) Administration of skills tests shall comply with 49 C.F.R. 383.75, Subparts G and H.
- (2) Persons administering the skills tests shall, without deviation, administer the test in accordance with the AAMVA's 2005 CDL Test System Model CDL Examiner's Manual. ~~{Kentucky State Police Driver Testing Section CDL Examiner's Manual. The manual is hereby incorporated by reference. Copies of the manual may be obtained from the Driver Testing Section of the Department of State Police, 919 Versailles Road, Frankfort, Kentucky 40601.}~~
- (3) Persons administering the skills tests shall, following the road test, immediately submit passing results to~~feath~~ the Kentucky State Police Driver Testing Branch by email to KSPCDL-Scores@ky.gov ~~{Driver Testing Section of the Department of State Police and report the score given to the person tested}~~.

Section 4. Processing Fee. A processing fee of twenty-five (25) dollars shall accompany the written request to administer the skills test.

FILED WITH LRC: July 14, 2022

CONTACT PERSON: Amy Barker, Assistant General Counsel, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, email Justice.RegContact@ky.gov.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(Amended at ARRS Committee)

502 KAR 10:040. Training school facilities.

RELATES TO: KRS ~~332.204~~~~[332.030]~~

STATUTORY AUTHORITY: KRS 15A.160, 332.095, 332.204, 332.216~~[332.100]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 332.216 requires the department to promulgate administrative regulations to carry out the provisions of KRS Chapter 332. KRS 15A.160 authorizes the secretary of the cabinet to adopt administrative regulations to administer the cabinet. KRS 332.202 and 332.204 require the department to establish a licensure process for driver training schools for instruction of persons in the operation of motor vehicles that are not commercial motor vehicles. This administrative regulation establishes the licensure process and standards for driver training schools. ~~{KRS 15A.160 and 332.216} [332.100] { authorize the department to establish } [provide that the Secretary of the Justice Cabinet in cooperation with the Commissioner, Department of State Police, may adopt such] [administrative regulations necessary to carry out the provisions of KRS Chapter 332. This administrative regulation establishes the department's policy regarding standards for driver training school facilities.]~~

Section 1. Driver Training School Standards. ~~{The following standards shall apply to driver training school office facilities:}~~

- (1) The driver training school shall have and maintain an established place of business in the Commonwealth of Kentucky.
- (2) The established place of business of each driver training school shall be owned or leased by the driver training school and regularly occupied and primarily used by that driver training school for the business of:
 - (a) Giving driving instructions for hire;~~f/~~ and
 - (b) ~~{the business of}~~Preparing members of the public for examination given by the department for a motor vehicle operator's license.
- (3) The established place of business of each driver training school shall be located in a district ~~{which is}~~ zoned for business or commercial purposes. The driver training school office shall have a permanent sign displaying the school name in letters at least six (6) inches in height and visible from the street or road on which the school is located. If the classroom is at a different address, the classroom~~{it too}~~ shall have a permanent sign meeting the same criteria. The hours during which the driver training is conducted shall also be displayed. If these requirements do not comply with local zoning laws, the department shall permit a sign of a type ~~that~~~~{which}~~ does comply.
- (4) The established place of business or advertised address of any driver training school shall not consist of or include a house trailer, residence, tent, temporary address, office space only, a room or rooms in a hotel, rooming house or apartment house, or premises occupied by a single or multiple unit dwelling house. This requirement~~{The residence requirement of this rule}~~ shall not apply to ~~compel the discontinuance of~~ a driver training school ~~that~~~~{which}~~ was already established and operational on or before June 16, 1966.
- (5) The place of business shall be operated by responsible personnel during stated office hours and shall be open to inspection of the premises, facilities, records and vehicles by any authorized representative of the cabinet during this time.
- (6) The place of business shall have a business telephone used exclusively for the operation of the driving school.

(7) A driver training school shall employ at least one (1) driver training instructor licensed pursuant to KRS 332.204 and 502 KAR 10:030.

(8) A driver training school shall have at least one (1) motor vehicle registered in the name of the school pursuant to 502 KAR 10:070.

(9) A driver training school shall not transfer its license nor change its place of business without the prior approval of the department. A transfer of ownership shall be treated as an initial application for a driver training school license. ~~There will be a \$200 fee for transfer of ownership, which will be treated as an original application for license.~~

Section 2. Driver Training School License Application.

(1) A Driver Training School Application, KSP 106, shall be submitted to the Kentucky State Police Driver Testing Branch for a driver training school facility. If a school has more than one facility, it shall designate one of the facilities as the primary driver training school facility.

(2) The application fee set by KRS 332.204(2) shall be provided with the written application. The fee may be refunded if the application is denied.

(3) The application shall state:

(a) Name of the driver training school;

(b) Address of the driver training school;

(c) Telephone numbers of the driver training school;

(d) Whether the school is a sole proprietorship, corporation, or association; and

(e) Name, address, and telephone number of all owners, partners, associates, processing agents, officers; and managers.

(4) Each owner, partner, officer, and manager shall complete a Driver Training Instructor Application. The health history portion of the application shall not be required unless the applicant is applying for an instructor's license and to meet the requirements of 502 KAR 10:030.

Section 3. Driver Training School Branch Office.

(1) A driver training school branch office shall meet the standards of a driver training school as required in KRS 332.204 and this administrative regulation.

(2) A Driver Training School Application shall be submitted to the Kentucky State Police Driver Testing Branch, 1250 Louisville Road, Frankfort, Kentucky 40601 for each driver training school branch office. The branch office application fee shall be one hundred (100) dollars for each branch office. Payment shall be in the form of a certified check or money order made payable to the Kentucky State Treasurer. The fee shall be provided with the written application. The fee may be refunded if the application is denied.

(3) If the application is approved, the department shall issue a copy of the license of the primary driver training school facility, appropriately endorsed, for use at the branch office. This copy shall be conspicuously displayed in the branch office at all times.

(4) A branch office or its equipment shall not be moved to a new location without prior approval of the department.

Section 4. Change in License Information.

(1) A Driver Training School License Information Notice of Change, KSP 115, shall be submitted to the Drivers Testing Branch for a primary office or a branch office within ten (10) days for:

(a) ~~(1)~~ Change of school name;

(b) ~~(2)~~ Change of address;

(c) ~~(3)~~ Change of contact information;

- ~~(d) f(4)~~ Addition, change, or departure of owner, partner, officer, or manager;
- ~~(e) f(5)~~ Closure of a school or branch office. The license shall be surrendered to the Drivers Testing Branch immediately at 1250 Louisville Road, Frankfort, Kentucky 40601;
- ~~(f) f(6)~~ Renewal of a driver training instructor license;
- ~~(g) f(7)~~ Transfer of a driver training instructor license;
- ~~(h) f(8)~~ Change of a driver training instructor's name or personal information on the license;
- ~~(i) f(9)~~ Termination of a driver training instructor;
- ~~(j) f(10)~~ Addition or removal of a fleet vehicle; or
- ~~(k) f(11)~~ Change, renewal, cancellation, or termination of fleet liability insurance.

(2) The Driver Training School License Information Notice of Change shall be submitted ten (10) days prior to cancellation or termination of insurance.

Section 5. Driver Training Motor Vehicles. A Driver Training School Fleet Information, KSP 118, shall be submitted with the application listing all motor vehicles owned, leased, registered, or insured in the name of the driver training school. All motor vehicles shall comply with the provisions of 502 KAR 10:070. [The following standards shall apply to driver training school branch offices:]

- ~~[(1)] [A driver training school desiring to open a branch office shall make application on a form prescribed by the department. Upon approval] [If application is approved] [; the department will issue a copy of the license of the principal place of business, appropriately endorsed, for use at the branch office. This copy shall be conspicuously displayed in such branch office at all times.]~~
- ~~[(2)] [A branch office or its equipment may not be moved to a new location without the prior approval of the department.]~~
- ~~[(3)] [If] [Should] [a branch office is] [be] [discontinued, the branch office copy of the license shall be surrendered immediately to the department.]~~
- ~~[(4)] [The branch office shall meet all of the requirements of the licensed principal place of business.]~~
- ~~[(5)] [There will be a fee of \$100 for licensure of each branch office.]~~

Section 6. [Section 3.] Classroom Facilities. [The following standards shall apply to driver training school classroom facilities:]

- (1) The classroom facility of each driver training school shall be reasonably near its office facility and within thirty (30) minutes normal driving time of that facility.
- (2) The classroom shall contain sufficient space and equipment to carry on the business of giving classroom instruction for students enrolled in the driver training school, and preparing students for examination for a motor vehicle operator's license.
- (3) The classroom facility shall have adequate lighting, heating, ventilation, and sanitation facilities, and shall comply with all state and local laws relating to public health, safety, and sanitation.
- (4) The classroom facility shall contain the following equipment and supplies:
 - (a) Individual desks or tables providing writing surfaces for not less than eight (8) students;
 - (b) ~~[Adequate]~~ Blackboards or whiteboards that~~[which]~~ are visible from all seating areas;
 - (c) Adequate charts and diagrams or pictures relating to the operation of motor vehicles and traffic laws;
 - (d) Audio visual equipment consistent with modern technology. ~~[One (1) of the following:]~~

~~{1.} [A sixteen (16) millimeter sound movie projector and screen for showing driver training and sound films; or]~~

~~{2.} [A thirty-five (35) millimeter slide projector and slides; or]~~

~~{3.} [A video/audio display screen of not less than nineteen (19) inches diagonal measure, capable of being operated in conjunction with a video tape for showing driver training instruction]; and~~

(e) A copy of this administrative regulation~~[these rules and administrative regulations]~~ displayed so as to be accessible to all students.

(5) ~~[In addition to the foregoing,]~~The following ~~[are]~~suggested teaching aids may be used:

(a) A reaction time testing device;

(b) Peripheral vision testing device;

(c) Magnetic traffic boards; and

(d) Other ~~[Such other]~~ devices that~~[as]~~ may help to acquaint students with traffic laws and prepare them to safely operate motor vehicles.

(6) A minimum of four (4)~~[five (5)]~~ hours of classroom instruction shall be available to each student receiving driving training from a driver training school.

Section 7. ~~[Section 4.] [Driver training schools shall make available the following] [both]~~Theoretical and Practical Instruction.~~[as follows][:]~~

(1) Practical instruction in driver training shall;

(a) Include the demonstration of, and actual instruction in, starting, stopping, shifting, turning, backing, parking, and steering; and

(b) Take place in a training vehicle,~~that~~~~which~~ meets the regulatory requirements set forth herein.

(2) Theoretical instruction in driver training shall include subject matter relating to rules of the road, safe driving practices, pedestrian safety, mechanics of motor vehicles, driver responsibility, the Kentucky point system, types of automobile insurance, and use of automobile safety devices~~[that meets the requirements set forth in 601 KAR 13:110, Section 4(a)-(d)]~~~~[relating to rules of the road, safe driving practices, pedestrian safety, mechanics of motor vehicles, driver responsibility, the Kentucky point system, types of automobile insurance, and use of automobile safety devices].~~

Section 8. ~~[Section 5.]~~ Student Fees and Charges.

(1) A ~~[Each]~~ school shall publish a schedule of fees or charges for behind-the-wheel lessons, classroom lessons, and all other fees or charges made by the school. A copy of this schedule shall be filed with the department at the address in Section 10 of this administrative regulation.

(2)

~~[Section 6.]~~ A ~~[Each]~~ school shall inform each student, prior to the time instruction commences, of the character and amount of any ~~[and all]~~ fees or charges made for enrollment ~~[or]~~registration, tuition, and use of any other service,~~[or]~~ equipment or materials provided by the school.

Section 9. ~~[Section 7.]~~ Relocation. Prior to the relocation of a ~~[Before any]~~ driver training school office,~~f-or~~ branch office, or any school equipment~~[thereof]~~, ~~[is moved to another location,]~~the department shall be notified and the new location shall be inspected and approved, if the school office, branch office, or equipment complies with the requirements of this administrative regulation.

Section 10. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Driver Training School Application", KSP 106, 2009 edition;

(b) "Driver Training School License Information Notice of Change", KSP 115, 2006 edition; and

(c) "Driver Training School Fleet Information", KSP-118, 2022 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky State Police, Drivers Testing Branch, 1250 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. and at any KSP regional driver testing office. This material is also available on the agency Web site kentuckystatepolice.org under driver testing.

FILED WITH LRC: July 14, 2022

CONTACT PERSON: Brenn Combs, Staff Attorney, 919 Versailles Road, Frankfort, Kentucky 40601, phone (502) 782-1800, fax (502) 563-1636, email brenn.combs@ky.gov.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(Amendment)

502 KAR 10:050. Contracts and agreements.

RELATES TO: KRS ~~332.216~~ [332.100]

STATUTORY AUTHORITY: KRS 15A.160, 332.100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 and ~~332.216~~[332.100] provide that the department [~~Secretary of the Justice Cabinet in cooperation with the Commissioner, Department of State Police,~~] may adopt [~~such~~] administrative regulations necessary to carry out the provisions of KRS Chapter 332. This administrative regulation establishes the department's policy regarding contracts and agreements involving driver training schools.

Section 1. Each school shall file and maintain [~~with the department~~] a list of [~~those~~] persons authorized [~~for empowered~~] to execute contracts on behalf of the driver's school with the department. A complete signature record form shall be filed with the department for each person authorized to sign contracts for the school.

Section 2. Each school which uses contracts or agreements shall furnish the department with blank copies of each form used.

Section 3. Any student who signs a contract or agreement with a [~~any~~] driver training school shall receive a [~~carbon~~] copy of the contract and the original retained and filed by the school. These contracts shall be made available to any authorized representative of the department upon request.

Section 4. All contracts used by a commercial driver training school shall contain the following:

(1) The name and address of the school. If the school is conducted under an assumed name or is operated by a corporation, partnership or association, the agreement shall contain the name of the individual owner, or the[~~such of~~] names of the officers of the corporation, association, or members of the partnership as the department may require.

(2) All contracts shall contain the following statement. "This constitutes the entire agreement between the school and the student and no verbal statements or promises will be recognized."

(3) The fee charged for each lesson, if fees are charged for individual lessons, or [~~and/or~~] the fee for the entire series of lessons agreed upon.

(4) A statement indicating that these administrative regulations of the driver training schools are available on the school premises for the examination by the student.

PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: August 24, 2021

FILED WITH LRC: August 26, 2021 at 4:30 p.m.

CONTACT PERSON: Amy Barker, Assistant General Counsel, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the department's policy regarding contracts and agreements involving driver training schools.

(b) The necessity of this administrative regulation:

This regulation is necessary in order to carry out the provisions of KRS 15A.160 and 332.216.

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

This regulation conforms to the authorizing statute by providing guidance to the promulgated regulations implementing KRS 15A.160 and 332.216.

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

The regulation assists in the administration of the statutes by clarifying the statutory authority and updating the procedures currently utilized by the department.

(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 accurately reflects the statutory authority and the procedures utilized by the department.

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

No answer provided.

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

This amendment conforms to the authorizing statute by providing guidance to the promulgated regulations implementing KRS 15A.160 and 332.216.

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

The amendment clarifies the statutory authority.

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

The Department of Kentucky State Police; driver training schools; driver training school instructors. (4) Provide an analysis of how the entities identified in the previous question 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 each of the regulated entities have to take to comply with this regulation or amendment: No new or additional actions will have to be taken by the regulated entities in order to effectively comply with this amended regulation. (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Nothing. (c) As a result of compliance, what benefits will accrue to the entities: They will benefit from having the correct statutory authority cited.

(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:

No answer provided.

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

No answer provided.

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

No answer provided.

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

(a) Initially:

None.

(b) On a continuing basis:

None.

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

Not applicable.

(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:

No increase in fees will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

No, this regulation does not establish any new fees; nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied?

Explain why or why not. No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

The Department of Kentucky State Police; driver training schools; driver training school instructors.

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

: KRS 15A.160 and 332.216.

(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.

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

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

None.

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

None.

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

Nothing.

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

Nothing.

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

Revenues (+/-):None.

Expenditures (+/-):None.

Other Explanation:

None.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(Amended at ARRS Committee)

502 KAR 10:060. School advertising.

RELATES TO: KRS ~~332.216~~~~[332.100]~~

STATUTORY AUTHORITY: KRS 15A.160, ~~332.216~~~~[332.100]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 and ~~332.216~~ authorize the department to establish~~[332.100 provide that the Secretary of the Justice Cabinet in cooperation with the Commissioner, Department of State Police, may adopt such]~~ administrative regulations necessary to carry out the provisions of KRS Chapter 332. This administrative regulation establishes the department's policy regarding advertising by driver training schools.

Section 1. ~~A~~ ~~[No]~~ person shall *not* advertise a driver training school or driver training of any type in this state unless licensed by the department.

Section 2. A school shall not use any name other than its licensed name, ~~and nor shall~~ a school *shall not* advertise or imply that it is "supervised," "recommended," "endorsed," "accredited," or "approved" by the Kentucky State Police or the Commonwealth of Kentucky. ~~A~~ ~~[No]~~ ~~[Neither shall any]~~ reference *shall* be made to past or present association with any police agency by ~~any person~~~~[person(s)]~~ now an officer or employee of the school. Driver training schools which are licensed by the department may ~~advertise~~~~[, however, indicate on their advertising]~~ that they are "inspected and licensed by the Kentucky State Police."

Section 3. A driver training school ~~shall not~~~~[may not]~~:

(1) Make any false or misleading claim in any of its advertising;~~f and it shall not~~~~[, nor shall it]~~

(2) Use a name that is like or deceptively similar to a name used by another driver training school;~~f, nor shall it]~~

(3) Advertise or imply that free lessons will be given to students who fail a motor vehicle operator's license examination.

Section 4. Each telephone directory listing or telephone advertisement of a driving school shall include the address or addresses of the driving school's established place or places of business. Addresses of telephone answering services ~~that~~~~[which]~~ are not established places of business shall not be shown in any media of advertisement or telephone directory listing.

Section 5. A driver training school shall not claim ~~or nor~~ imply that it will guarantee;

(1) Employment upon completion of a course of instruction; or

(2) ~~[guarantee]~~ The securing of a license to drive a motor vehicle.

Section 6. A copy of each telephone directory or similar directory advertisement of a driver training school shall be submitted to the department by the school at the same time it is placed for publication.

FILED WITH LRC: July 14, 2022

CONTACT PERSON: Brenn Combs, Staff Attorney, 919 Versailles Road, Frankfort, Kentucky 40601, phone (502) 782-1800, fax (502) 563-1636, email brenn.combs@ky.gov.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(Amended After Comments)

502 KAR 10:070. Training vehicle, annual inspection.

RELATES TO: KRS ~~Chapter 332~~~~[165A.460]~~[332.030]

STATUTORY AUTHORITY: KRS 15A.160, ~~[165A.460,]~~ 332.216~~[332.100]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 332.216 requires the department to promulgate administrative regulations to carry out the provisions of KRS Chapter 332. KRS 15A.160 authorizes the secretary of the cabinet to adopt administrative regulations to administer the cabinet. This administrative regulation establishes the inspection of driver training motor vehicles used by driver training schools. ~~[KRS 15A.160] [and 332.100] [] [authorizes the Department of Kentucky State Police to promulgate] [provide that the Secretary of the Justice Cabinet in cooperation with the Commissioner, Department of State Police, may adopt such] [administrative regulations necessary to carry out the provisions of KRS Chapter 332. This administrative regulation establishes the department's policy regarding the annual inspection of driver training vehicles utilized by driver training schools.]~~

Section 1. Driver training motor vehicles shall be presented to any authorized representative of the Kentucky State Police Driver Testing Branch~~[Section for inspection]~~ at least once a year for inspection.

Section 2. All motor vehicles used to give driver training instruction shall have a current safety inspection certificate issued by the department which shall be kept in the vehicle~~[glove compartment]~~.

Section 3. ~~[In order to be approved]~~ The motor vehicle shall be:

- (1) In a safe operating condition, not more than ten (10)~~[five (5)]~~ years old~~[, except that truck/tractors shall not be more than]~~~~[ten (10) years old for on-the-road instruction and]~~~~[fifteen (15) years old for off-the-road instruction];~~
- (2) Insured as required in KRS 332.204(1)(d)~~[165A.475]~~~~[332.030];~~
- (3) Registered with the department in the name of a driver training school as required by 502 KAR 10:040;
- (4) Equipped with dual controls on the foot brake, and on the clutch, if any, to~~[which will]~~ enable the instructor to bring the car under control in case of emergency. ~~[Dual controls are not required on a truck/tractor. In addition, it is suggested that]~~ The driver training school may offer instruction in both manual ~~[gear shift]~~ and automatic transmission vehicles; and
- (5) Equipped with seat belts that shall~~[which should]~~ be used by both student and instructor;~~[-]~~
- (6) Emergency ignition-kill toggle switch on instructor's side;~~[-, except for tractor/trailers.]~~
- (7) Equipped with outside mirror on both driver's side and instructor's side; and~~[-]~~
- (8) Owned or leased by the school.

Section 4. The full name of the driver training school shall be prominently displayed on both front and rear of such vehicle in letters at least two (2) inches high and in colors vividly contrasting with the color of the vehicle.

Section 5.

- (1) ~~[It shall be the responsibility of]~~ The driver training school and ~~[the duty of]~~ the driver training instructor shall~~[to]~~ insure that all training vehicles ~~[vehicle]~~ are~~[the~~

~~vehicle is~~ inspected annually.

(2) If any items in Section 3 are found to be missing, or insufficient, the vehicle may be determined uncertifiable, and the driver training school may be directed to:

- (a) Correct any condition that renders a vehicle unsafe for operation,
- (b) Have mechanical or equipment deficiencies corrected by a certified mechanic, or
- (c) Obtain insurance, registration, or ownership of the vehicle in compliance with Section

(3) Any vehicle that is determined to be uncertifiable shall be reinspected and have all corrections verified by the Driver Testing Branch prior to being approved for operation by the driver training school.

Section 6. A Driver Training School Fleet Information form, KSP 118, shall be submitted to the Driver Testing Branch within ten (10) days if:

- (1) A driver training vehicle is added to the fleet of a primary or branch office location;
- (2) A driver training vehicle is removed from the fleet of a primary or branch office location;
- (3) A primary or branch office license is renewed as required by 502 KAR 10:040.

Section 7. Incorporated by reference.

(1) "Driver Training School Fleet Information", KSP-118, 2022 edition is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky State Police, Driver Testing Branch, 1250 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. and at any KSP regional driver testing office. This material is also available on the agency website kentuckystatepolice.org under driver testing. ~~It shall be the responsibility of the school to furnish written notice any time a vehicle is added to or deleted from the school's motor vehicle fleet.~~

COL. PHILLIP J. BURNETT, JR., Commissioner

APPROVED BY AGENCY: January 6, 2022

FILED WITH LRC: January 11, 2022 at 10:44 a.m.

CONTACT PERSON: Amy Barker, Assistant General Counsel, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8207, fax (502) 564-6686, email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the annual inspection of driver training vehicles used by driver training schools.

(b) The necessity of this administrative regulation:

This regulation informs driver training schools of the requirements for registration of vehicles utilized for driver training instruction.

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

This administrative regulation establishes the procedures to ensure vehicles used for driver training instruction are registered, inspected, and safe to operate by driver training schools.

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

The administrative regulation establishes the requirements for inspection and certification of vehicles used for driver training instruction and adds requirements for maintenance of registration records filed with the department.

(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 adds a process for finding a vehicle uncertifiable, provides for correction and reinspection of an uncertifiable vehicle, provides for updating information when a vehicle is added, removed, or transferred in a driver training school's fleet, and adds a form.

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

The amendment addresses changes required by statutory changes.

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

KRS 332.216 requires the department to promulgate administrative regulations to carry out the provisions of KRS Chapter 332. KRS 332.202 and 332.204 require the department to establish a licensure process for driver training schools for instruction of persons in the operation of motor vehicles which are not commercial motor vehicles. The amendment addresses the inspection and safety of vehicles used for training in the schools.

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

The amendment provides clarification.

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

The Department of Kentucky State Police; driver training schools; driver training school instructors; driver training school facilities.

(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:

The training schools will need to comply with the training vehicle inspection requirements.

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

No additional cost is anticipated.

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

They will benefit from having training vehicles inspected for safety in the schools.

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

(a) Initially:

No additional cost is anticipated.

(b) On a continuing basis:

No additional cost is anticipated.

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

Funds budgeted to the department.

(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:

No increase in fees will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

This regulation does not establish any new fees; nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied?

No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

The Department of Kentucky State Police; driver training schools; driver training school instructors; driver training school facilities.

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

: KRS 15A.160, 332.202, 332.204, and 332.216.

(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.

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

(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?

The administrative regulation does not generate any revenue.

(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?

The administrative regulation does not generate any revenue.

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

No additional cost is anticipated.

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

No additional cost is anticipated.

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:

JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(Amended at ARRS Committee)

502 KAR 10:080. License suspension, revocation, denial.

RELATES TO: KRS ~~332.216~~~~[332.060]~~

STATUTORY AUTHORITY: KRS 332.202, 332.210, ~~15A.160, 165A.475,~~
~~332.216~~~~[332.100]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 authorizes the secretary of the Justice and Public Safety Cabinet to promulgate administrative regulations for the administration of all laws and functions which are vested in the cabinet, except for laws and functions vested in the Department for Public Advocacy. ~~KRS and~~~~332.216~~ requires the Department of Kentucky State Police to promulgate ~~authorize the department to~~~~[332.100~~ provide that the Secretary of the Justice Cabinet in cooperation with the Commissioner, Department of State Police, may ~~adopt~~ such administrative regulations necessary to carry out the provisions of KRS Chapter ~~165A and~~~~Chapter~~ 332. This administrative regulation establishes the department's policy regarding ~~license~~ suspensions, revocations, or denials of licenses for driver training schools and driver training instructors.

Section 1. In addition to the provisions of KRS ~~332.216~~~~[332.060]~~, and in accordance with KRS 332.210, the commissioner of the department~~[secretary]~~ shall upon receipt of satisfactory evidence, suspend, revoke, refuse to issue, or refuse to renew the license of a driver training school or a driver training instructor if:

- (1) The licensee fails or refuses to comply with the provisions of KRS Chapter ~~165A and~~ 332 or 502 KAR Chapter 10~~any rule or administrative regulation adopted thereunder~~.
- (2) The licensee has made a false material statement or has concealed a material fact in connection with his or her application.
- (3) The licensee or any officer, director, partner, or other person directly interested in the driver training school held a license issued under KRS Chapter 332 that~~165A.475~~~~[332.030]~~~~which~~ was revoked or suspended and not reinstated.
- (4) The licensee has been guilty of a fraudulent practice in attempting to obtain for himself, herself, or another a license to operate a motor vehicle.
- (5) Written notice of the cancellation of insurance required by KRS ~~165A or~~ ~~332.204~~~~[332.030]~~ is received by the commissioner, and the licensee does not present satisfactory evidence of insurance to the commissioner prior to the effective date of the cancellation.
- (6) The licensee has failed to maintain adequate standards of instructions or safe and necessary equipment ~~that~~~~which~~ is needed to give proper driver training instruction.
- (7) The licensee is employing instructors or agents who have not been licensed by the department.
- (8) The licensee has been convicted of a felony, or any crime involving violence, dishonesty, deceit, indecency, immoral conduct, or sexual abuse.
- (9) The licensee or any officer, director, partner,~~or other~~ person directly interested in the driver training school, or any instructor licensed under the name of the school ~~has~~~~shall~~~~have~~ in their possession a copy of the department's driver licensing examination questions or their equivalent, or attempts to obtain a copy of these test questions for the purpose of making them available to their students or any other person.
- (10) The licensee has failed to provide or maintain premises, equipment, or conditions which are adequate, safe, and sanitary in accordance with 502 KAR Chapter 10~~these~~

~~administrative regulations~~.

(11) The licensee or any officer, director, partner, instructor, agent, or other person actively involved in the driver training school is addicted to the use of alcohol, morphine, cocaine, or other mood-altering drug.

(12) The licensee or any officer, director, partner, instructor, agent, or other person actively involved in the driver training school has been legally adjudged mentally incompetent.

Section 2. The license of a driver training instructor shall be revoked if the instructor is convicted of:

(1) Driving a motor vehicle while under the influence;

(2) Leaving the scene of an accident;

(3) Reckless homicide;

(4) Two (2) moving hazardous violations within a two (2) year period; or

(5) Driving when addicted to, or under the influence of, narcotic drugs. ~~[If]~~
~~[Whenever] [a driver training instructor is convicted of driving an automobile while under the influence or of leaving the scene of an accident, reckless homicide, two (2) moving hazardous violations within a two (2) year period, or driving when addicted to or while under the influence of narcotic drugs, his license shall be revoked.]~~

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JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(Amended at ARRS Committee)

502 KAR 10:090. Procedure for denial, suspension, nonrenewal or revocation hearings.

RELATES TO: KRS 165A.460~~[332.030]~~

STATUTORY AUTHORITY: KRS 15A.160, 332.216~~[332.100]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 and 332.216 authorize the department to establish ~~[332.100 provide that the Secretary of the Justice Cabinet in cooperation with the Commissioner, Department of State Police, may adopt such]~~ administrative regulations necessary to carry out the provisions of KRS Chapter 332. This administrative regulation outlines the administrative adjudication procedures of the ~~department~~~~[cabinet]~~ in license denial, suspension, nonrenewal and revocation hearings.

Section 1. ~~fScope and~~ Definitions.

(1) "Commissioner" is defined by KRS 332.015(2).

(2) "Contested case" means an adjudicatory proceeding before the department in which the legal rights, duties, or privileges of any person are required by law to be determined after an opportunity for a hearing, without regard to whether the proceeding is instituted by the department, or by some other person.

(3) "Department" is defined by KRS 332.015(1).

(4) "Party" means any person or agency named or admitted as a party to any proceedings conducted pursuant to 502 KAR Chapter 10 and includes only persons who have a real interest in the matter before the commissioner of the department.

(5) "Person" means any individual, sole proprietorship, partnership, corporation, association, or public or private organization of any character.

(6) "Order" means the whole, or any part, of a final disposition of an adjudication. ~~[These administrative regulations govern the procedure for the department]~~ ~~[Justice Cabinet]~~ ~~[in all proceedings under this chapter in which the legal rights, duties or privileges of any person licensed by the department]~~ ~~[cabinet]~~ ~~[is required by statutes or by these rules to be determined after an opportunity for a hearing. These rules shall be construed to secure a fair and impartial determination of every proceeding.]~~

~~[(2)] [For purposes of administrative adjudicatory procedure unless the context otherwise requires:]~~

~~[(a)] ["Party" means any person or agency named or admitted as a party to any proceedings conducted pursuant to these administrative regulations and shall include only persons who have a real interest in the matter before the commissioner of the department]~~ ~~[secretary.]~~

~~[(b)] ["Person" means any individual, sole proprietorship, partnership, corporation, association or public or private organization of any character.]~~

~~[(c)] ["Order" means the whole or any part of a final disposition of an adjudication.]~~

~~[(d)] ["Contested case" means an adjudicatory proceeding before the department]~~ ~~[secretary]~~ ~~[in which the legal rights, duties, or privileges of any person are required by law to be determined after an opportunity for a hearing, without regard to whether the proceeding is instituted by the department,]~~ ~~[cabinet]~~ ~~[or by some other person.]~~

~~[(e)] ["Cabinet" means the Justice Cabinet.]~~

~~[(f)] ["Secretary" means the Secretary of the Justice Cabinet.]~~

~~[(f)] [(g)] ["Department" means the Department of State Police.]~~

~~f (g) / [(h)]~~ *"Commissioner" means the Commissioner of the Department of State Police.*

Section 2. Complaints and Investigations.

(1) Complaints.

~~(a)~~ A complaint may be made by any person against the holder of a license by the filing of written charges with the commissioner~~[secretary]~~. The written complaint shall contain:

~~1.~~ The name and address of any person making charges, as well as the name and address of the person or persons against whom charges are being made; and

~~2.~~ A clear and concise statement of the facts giving rise to the complaint.

~~(b)~~ Any complaint or charge filed with the department~~[secretary]~~ shall be forwarded to the licensee involved and the licensee shall be given thirty (30) days to resolve the problem or make a full satisfactory reply~~[thereto]~~. Any defamatory matter in a formal written complaint shall be ~~excised~~~~exercised~~ by the commissioner~~[secretary]~~ prior to the complaint being forwarded to the licensee.

(2) Investigations. Upon the receipt of a complaint and following the expiration of the thirty (30) days provided for in subsection (1) of this section, the commissioner~~[secretary]~~ may cause an investigation to be made~~[by the Department of State Police or by any agent or representative appointed by the secretary]~~. Upon the completion of any investigation, the person or persons making ~~the~~~~such~~ investigation shall submit a full written report to the person designated by the commissioner~~[secretary]~~ to prosecute the matter in an adjudicatory proceeding.

Section 3. Commencement of Adjudicatory Proceedings. Upon the request of the prosecutor or after the expiration of the thirty (30) day period referred to in Section 2(1) of this administrative regulation ~~if~~~~where~~ an investigation is not made, the commissioner~~[secretary]~~ may begin formal adjudicatory proceedings in accordance with the following procedure:

(1) If it is determined that the facts alleged in the complaint ~~or~~~~and~~~~or~~ investigative report may constitute grounds for the suspension, probation, or revocation of a license, a hearing shall be scheduled before the commissioner~~[secretary]~~, or his ~~or~~ her designated hearing officer, on those allegations. ~~If~~~~in any case in which~~ an application for license or renewal of license has been denied, a hearing shall only be scheduled upon receipt by the commissioner~~[secretary]~~ of a written request submitted by or on behalf of the person whose application for license was denied or not renewed. Any required hearing shall be held within three (3) months, or as soon~~[thereafter]~~ as practicable, after the receipt by the commissioner~~[secretary]~~ of a written request for a hearing. In any contested case, whether it be instituted by the department~~[cabinet]~~ or by some other person, all the parties to the proceeding shall be given reasonable notice and an opportunity to be heard.

(2) Notice. The notice provided for shall be issued in the name of the department~~[cabinet]~~ by the commissioner~~[secretary]~~ or designated hearing officer and shall state:

(a) The time, date, place, and nature of the hearing;

(b) The legal authority and jurisdiction under which the hearing is to be held;

(c) The alleged statutory or regulatory violations; and

(d) A short and plain statement of the complaint or charges which are being ~~proffered~~~~preferred~~ and the remedy ~~that~~~~which~~ is being sought. The notice shall be personally served or mailed to the last known address of the party or parties not less than twenty (20) days before the date of the hearing, in accordance with KRS 13B.050.

(3) Appearance and service. In any contested case, the parties to the proceeding shall have the right to:

(a)

1. Appear personally at the hearing, and by counsel;

2. ~~f;f~~ ~~and shall have the right to~~ Cross-examine witnesses appearing against them; and ~~to~~

3. Produce witnesses on their ~~own~~ behalf.

~~(b)~~ When a party has appeared by an attorney, or otherwise designated an attorney as his representative, all communications, notices, orders, or other correspondence shall be served on ~~this~~ attorney. ~~f;f~~ Service on the attorney shall be considered as service on the party, and the hearing officer shall be notified of any change in ~~the~~ attorney.

(4) The ~~commissioner~~ ~~secretary~~ or his or her designated hearing officer shall preside over the hearing proceedings. ~~f;f~~ If the ~~commissioner~~ ~~secretary~~ presides, he or she may have assistance of counsel to rule on evidentiary matters.

(5) Authority to administer oaths. In hearings before the ~~commissioner~~ ~~secretary~~ or hearing officer, any oath or affirmation required may be administered by any person authorized to administer oaths by the laws of the Commonwealth of Kentucky.

(6) Presentation of evidence. The evidence against the licensee or other person concerning the pending complaint or charge shall be presented by the designated prosecutor. Additionally, any witness or other evidence may be questioned or introduced by the presiding officer.

Section 4. Conduct of Hearings; Witnesses; Burden of Proof; Evidence. *The hearing shall be conducted in accordance with the requirements of KRS 13B.080.*

(1) The presiding officer may hear testimony of any person present at the hearing who has information to offer ~~bearing~~ on the subject matter of ~~the~~ hearings. The presiding officer may ask any witness questions as may be required for a full and true disclosure of the facts. The presiding officer shall have only one (1) witness ~~before him~~ at ~~any one~~ ~~(1)~~ time, and other witnesses may be excluded from the hearing room while any one (1) witness is being questioned.

(2) The hearing in a contested case involving a suspension, probation, or revocation of a license shall proceed in the following order, unless the presiding officer, for special reasons otherwise directs:

(a) The party filing the complaint or ~~proffering~~ ~~preferring~~ the charges, or the persons appointed or designated to present the evidence against the licensee, shall briefly state the substance of the charges and the evidence by which he or she expects to sustain them.

(b) The party against whom a complaint has been filed or charges otherwise ~~proffered~~ ~~preferred~~ may briefly state the substance of his or her defense and the evidence which he or she expects to offer in support of it.

(c) The party filing the complaint or otherwise ~~proffering~~ ~~preferring~~ the charges, or the designated prosecutor, shall have the burden of proof in the whole action ~~and~~; ~~therefore, he or she shall~~ produce his or her evidence first. ~~f;f~~ The party against whom a complaint has been filed or charges ~~proffered~~ ~~preferred~~ may then produce his or her evidence. The presiding officer, however, may regulate the order of proof in any proceeding to expedite the hearing and to enable the presiding officer to obtain a clear view of the whole evidence.

(d) The parties shall then be confined to rebuttal evidence, unless the presiding officer, in accordance with KRS 13B.080 ~~his or her discretion~~, permits them to offer additional evidence in chief.

(e) The parties may then submit the matter to the presiding officer for consideration, or present arguments on the issues involved. In the arguments, the party filing the complaint or otherwise ~~proffering~~ ~~preferring~~ the charges, or the designated

- prosecutor, shall have the conclusion, and the party against whom the complaint was filed or charges otherwise ~~proffered~~~~preferred~~ shall have the opening.
- (3) In a hearing requested in writing by a person whose application for a license has been denied or not renewed, the burden of proof and order of proceedings delineated in subsection (2) of this section shall be reversed.
- (4) In any contested case, the presiding officer shall, as far as practical, adhere to the following rules of evidence:
- (a) Any evidence which would be admissible under the statutes of the Commonwealth of Kentucky, and under the rules of evidence followed by circuit courts of the Commonwealth of Kentucky, shall be admitted in hearings before the presiding officer, ~~except that;~~ ~~however;~~ the presiding officer may admit evidence that would be inadmissible in the courts if the evidence is of the type commonly relied upon by a reasonable, prudent person~~men~~ in the conduct of his or her~~their~~ affairs.
 - (b) Every party shall have the right to present~~such~~ oral or documentary evidence, exhibits, and rebuttal evidence and conduct~~such~~ cross-examination ~~that~~~~as~~ may be required for a full and true disclosure of the facts. Documentary evidence may be introduced in the form of copies or receipts if the original is not readily available ~~if provided that~~ upon request, the parties or the presiding officer shall be given an opportunity to compare the copy with the original.
 - (c) ~~If~~ ~~When~~ a hearing will be expedited and the interests of the parties will not be substantially prejudiced~~thereby~~, all or part of the evidence may be received in written form by affidavit or prepared statement. Prepared statements shall not be read or made a part of the record until the party against whom the statement is offered has been given a reasonable time for review and objection.
 - (d) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded and the presiding officer shall give effect to the rule of privilege recognized by the laws of the Commonwealth of Kentucky.
 - (e) The presiding officer may take notice of judicially cognizable facts.
 - (f) Objections to evidentiary offers may be made and shall be noted in the record.
- (5) The parties to any hearing may agree to waive any one (1) or more of the procedural steps ~~that~~~~which~~ would otherwise precede the reaching of a final decision by the ~~commissioner~~~~secretary~~, but ~~this~~~~such~~ waiver shall not be binding on the ~~commissioner~~~~secretary~~.

Section 5. Deliberations; Records; Final Order.

- (1) Deliberations. During any hearing and after the case has been submitted to the ~~commissioner~~~~secretary~~ or hearing officer for decision, deliberations shall be governed by the following principles:
- (a) Ex parte investigations. ~~Neither~~ The ~~commissioner~~~~secretary~~ ~~nor any~~ hearing officer, or any other person who shall make findings of fact and conclusions of law in a contested case shall not, once a hearing has commenced, consult with any person or party in connection with any issue of fact or law, except upon notice and opportunity for all parties to participate. ~~if provided, however, that~~ The ~~commissioner~~~~secretary~~ or hearing officer may have the aid and advice of one (1) or more personal assistants, including the assistance of counsel.
 - (b) Separation of functions. ~~An~~~~No~~ officer, employee, or agent of the ~~department~~~~cabinet~~ who is engaged in the performance of investigative or prosecuting functions in a contested case shall not, in that or a factually related case, participate or advise in the decision except as a witness or counsel in the public hearing.
 - (c) Examination of evidence. The ~~commissioner~~~~secretary~~ or hearing officer shall personally consider the whole record, or ~~such~~ portions of the record~~thereof~~ as may be cited by the parties before a decision is reached.

- (d) The presiding officer ~~at his or her discretion~~ may recess a hearing for the taking of additional discovery and evidence as required.
- (2) Record. The record shall include all pleadings, motions, exhibits, documentary and testimonial evidence received or considered, a statement of matters officially noticed, and questions and offers of proof and rulings ~~therein~~. ~~If~~ ~~Should~~ any party requests ~~desire~~ a written transcript of the proceedings, the party shall be required to ~~it shall be necessary that they~~ pay for the ~~said~~ transcript.
- (3) Recommended order. ~~If~~ ~~In the event~~ the commissioner ~~secretary~~ designates a hearing officer as presiding officer of a hearing in a contested case, the hearing officer shall, as soon as practical after the conclusion of the hearing, but at a minimum, not in no event later than thirty (30) days after the hearing ~~thereafter~~, prepare findings of fact, conclusions of law, and a recommended order and provide a copy to ~~cause copies of same to be served on~~ all parties. The parties shall have ten (10) days following entry of the recommended order to file objections and comments ~~thereto~~ with the commissioner ~~secretary~~. The commissioner shall consider ~~secretary~~ ~~after considering~~ the record and the hearing officer's report consisting of a synopsis of procedural matters, findings of fact, conclusions of law, ~~and~~ the recommended order, and ~~also~~ any objections or comments filed by the parties before rendering ~~shall render~~ a final order.
- (4) Final order. The final decision in any case in which a hearing is required or requested shall be in writing and shall be made a part of the official ~~office~~ record. It shall include a concise and explicit statement of the findings of fact and conclusions of law, separately stated, and shall be signed by the commissioner ~~secretary~~. One (1) copy of the order shall ~~forthwith~~ be served on each party to the proceeding. Motions to correct clerical errors may be filed within ten (10) days after entry of the final order. Any subsequent modifying order ~~subsequent thereto~~ shall be served on all parties.

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JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(Amended at ARRS Committee)

502 KAR 10:110. Third-party CDL skills test examiner standards.

RELATES TO: KRS 281A.160(4), 49 C.F.R. 383.75, 49 C.F.R. 383.131

STATUTORY AUTHORITY: KRS 281A.160(5), (8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 281A.160(5) and (8) require the Kentucky State Police to promulgate administrative regulations for third-party CDL skills test examiners. This administrative regulation establishes the minimum qualifications, mandatory training requirements, and prohibited conflicts of interest for third-party CDL skills test examiners.

Section 1. Definitions.

- (1) "AAMVA" means the American Association of Motor Vehicle Administrators.
- (2) "CDL" means a commercial driver license.
- (3) "DOE" means the Kentucky Department of Education.
- (4) "Family member" means:
 - (a) The current and ~~if any~~ former spouse, if any, of a third-party skills test examiner; ~~or~~
 - (b) A person within the third degree of relationship to any of them; ~~or~~
 - (c) The spouse of that person.
- (5) "FMCSA" means the Federal Motor Carrier Safety Administration.
- (6) "KSP" means the Kentucky State Police.
- (7) "MOA" means memorandum of agreement.
- (8) "Third-party CDL skills test examiner" means an employee of the DOE or a local board of education who, pursuant to a MOA entered into between KSP and their employer, administers CDL skills tests to other DOE or local board of education employees who are seeking a CDL to operate publicly-owned school buses, and persons retained by KSP under contractual agreement to administer CDL skills test to CDL applicants.

Section 2. Third-Party CDL Skills Test Examiner Minimum Qualifications. DOE employees or persons seeking to enter a contractual agreement with KSP to act as a third-party CDL skills test examiner shall satisfy the following minimum qualifications for initial appointment and retention. *The individual:*

- (1) Shall not have accrued more than six (6) demerit points on their driving record;
- (2) Shall possess a high school diploma or GED;
- (3) Shall, if a DOE employee, possess a Class A or B CDL with passenger and school bus endorsements;
- (4) Shall, if a third-party contract examiner, possess:
 - (a) A Class A CDL with all available endorsements; and
 - (b) Previous experience as a CDL skills test examiner or two (2) years' experience within the past five (5) years as a licensed Class A or B CDL operator in good standing;
- (5) Shall maintain their CDL license with all endorsements required by subsections (3) and (4) of this section;
- (6) Shall pass one (1) complete battery of forms A, B, or C of the CDL knowledge tests administered by KSP. These tests shall be retaken every four (4) years;
- (7) Shall pass the CDL skills test administered by KSP in the type of commercial vehicle in which they will test CDL applicants. This CDL skills test shall be retaken every four (4) years at the direction of KSP; and

(8) Shall give written consent to KSP to conduct a Kentucky criminal history records check, and further give written consent to an updated Kentucky criminal history records check being performed every four (4) years. Persons who are determined to have felony or misdemeanor convictions involving violence, dishonesty, or moral turpitude may be rejected for appointment, or have their appointment as a third-party CDL skills test examiner revoked.~~f, based upon a case-by-case discretionary consideration of the facts and circumstances surrounding the conviction.~~

Section 3. Third-Party CDL Skills Test Examiner Mandatory Training Requirements.

(1)

(a) Except as provided in paragraph (b) of this subsection, persons appointed as a third-party CDL skills test examiner shall successfully complete the initial forty (40) hours of CDL skills test examiner training conducted by KSP and pass all exams associated with the training. This training shall be approved by AAMVA and FMCSA. Certificates of completion shall be issued by KSP upon successful completion of this training;

(b) Persons who have previously administered CDL skills tests for KSP and who have completed this training within the past two (2) years shall be waived from this training requirement.

(2) Third-party skills test examiners shall attend and successfully complete an annual ten (10) hour in-service training conducted by KSP.

(3) Third-party skills test examiners shall participate in the certification process for CDL examiners administered through AAMVA. This certification shall be sought and maintained through KSP. It shall be the responsibility of the third-party skills test examiner to pay all fees charged by AAMVA to obtain and maintain this certification. Failure to obtain this certification within two (2) years from the date of appointment as a third-party CDL skills test examiner shall be grounds for revocation of appointment.

(4) Third-party CDL skills test examiners shall be issued identification cards and a unique examiner identification number that identifies them as a CDL examiner. The identification card shall be carried and produced upon request of KSP. The examiner identification number shall be recorded by the third-party CDL skills test examiner on all CDL examination reports and related documents required by KSP to be completed by the examiner in the course of their duties.

(5) Third-party CDL skills test examiners shall conduct CDL skills tests in a uniform approved by KSP. KSP shall not be responsible for the purchase or maintenance costs for this uniform.

Section 4. Additional CDL Skills Test Requirements.

(1) Third-party skills tests examiners shall comply with 49 C.F.R. 383.75, Subparts G and H.

(2) Third-party CDL skills test examiners shall, without deviation, administer the CDL skills test in accordance with the AAMVA's 2005 CDL Test System Model CDL Examiner's Manual (July 2010 version or newer)~~[KSP Driver Testing Branch CDL Examiners Manual]~~.

(3) Third-party CDL skills test examiners shall record the CDL applicant's skills test scores.

(4) Third-party CDL skills test examiners shall be required to keep and maintain files pertaining to CDL tests that they have administered for a period of two (2) years. These records shall be subject to inspection by KSP or any other state or federal entity performing an audit of these records.

(5) Third-party skills test examiners shall be subject annually to at least one (1) check ride every two (2) years~~[two (2)]~~~~f check rides~~ performed by an official observer who, at the direction of KSP, shall ride with the examiner and observe the CDL skills test as it is

given to ensure the examiner is administering the test in full compliance with all federal and state laws and administrative regulations.

(6) Third-party CDL skills test examiners shall be subject to "select tests" conducted by KSP. These tests shall consist of the CDL applicant being retested not later than two (2) days following the original test administered by the third-party CDL skills test examiner, utilizing commercial vehicle equipment provided by or on the behalf of the CDL skills test applicant at no cost to KSP. The retest results shall then be compared to verify that there are no deficiencies with the original test given by the third-party CDL skills test examiner. If the two (2) test scores differ, making a difference as to whether the CDL applicant passed or failed, the score given by KSP on its retest shall be entered into the official record as the actual score of the CDL applicant.

(7) Third-party CDL skills test examiners shall be subject to random inspection testing by KSP or FMCSA. These tests may consist of the third-party CDL skills test examiner administering a CDL skills test to a CDL applicant who is an agent of KSP or FMCSA without the examiner's knowledge of the individual's true identity.

(8) Third-party CDL examiners shall be subject to monitoring of their testing processes by KSP or FMCSA to ensure compliance with all federal and state laws and administrative regulations.

Section 5. Prohibited Conflicts of Interest.

(1) A third-party CDL skills test examiner shall not administer a CDL skills test to a CDL applicant who is a family member or who has received commercial truck driving instruction training at a commercial truck driving school that is owned or operated by a family member.

(2) A third-party CDL skills test examiner shall not administer a CDL skills test to a CDL applicant with whom the examiner is involved in a dating, romantic, or other type of intimate personal relationship, regardless of whether the examiner and applicant share a residence.

(3)

(a) Except as provided in paragraph (b) of this subsection, a third-party CDL skills test examiner who administers CDL skills tests under a contractual agreement with KSP and who is a present or former commercial truck driving school employee, shall not administer third-party CDL skills test exams to any CDL applicant who has attended a commercial truck driving school as a student of the examiner's present or former employer;

(b) Once a third-party CDL skills test examiner has ceased employment with a commercial truck driving school for at least one (1) year, the examiner may be authorized to administer CDL skills test exams to CDL applicants who are commercial truck driving students of their former employer, if KSP, ~~in its sole discretion,~~ determines that the examiner can administer the exam in a fair, unbiased, and legal manner as prescribed by the FMCSA, 49 C.F.R. Parts 383 and 384.

Section 6. Revocation of Appointment. Failure to comply with the requirements of this administrative regulation shall be grounds for revocation of appointment as a third-party CDL skills test examiner by KSP and shall further constitute good cause for termination of KSP's contractual obligations with examiners who administer CDL skills test pursuant to contract.

Section 7. Third-Party CDL Skills Test Examiner Records. All records pertaining to selection and appointment of third-party CDL skills test examiners shall be maintained by KSP. These records shall be reviewed prior to renewing CDL third-party CDL skills test examiner appointment, whether by Memorandum of Agreement with DOE or contractual

agreement with other third-party CDL skills test examiners. Third-party CDL skills test examiner records shall contain the following information:

- (1) Copy of qualification questionnaire containing photo of individual;
- (2) Copy of DOE Memorandum of Agreement (if applicable);
- (3) Copy of criminal history and driving record;
- (4) All other documents related to the qualification and requirements of the examiner; and
- (5) Any investigations, select testing and covert testing, or monitoring conducted by KSP concerning the third-party CDL skills test examiner.

~~{Section 8.} {Incorporation by Reference.}~~

~~{(1)} {The following material is incorporated by reference:}~~

~~{(a)} {"KSP Driver Testing Branch CDL Examiners Manual", Version 2.0. The manual is produced by AAMVA; and}~~

~~{(b)} {CDL Skills Test Reporting Form, July 2001.}~~

~~{(2)} {This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Custodian of Records, Kentucky State Police Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.}~~

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JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(Amended at ARRS Committee)

502 KAR 10:120. Hazardous materials endorsement requirements.

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

STATUTORY AUTHORITY: KRS 281A.040

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

Section 1. Definitions.

(1) "CDL" or "Commercial Driver's License" is defined by KRS 281A.010(5) and 49 C.F.R. 383.5.

(2) "CDL testing location" means the department's regional CDL testing offices.

~~(3) "Determination of No Security Threat" is defined by 49 C.F.R. 1572.15(d)(1).~~

~~(4) ~~(3)~~ "DOT" means the federal Department of Transportation.~~

~~(5) ~~(4)~~ "Final Determination of Threat Assessment" is defined by 49 C.F.R. 1572.15(d)(4).~~

~~*[(5)] ["Fingerprint centers" means the department's regional offices] [of Kentucky State Police's Division of Driver's Testing] [established to process the fingerprints of applicants for a hazardous materials endorsement for a commercial driver's license holder under KRS 281A.170(2)(b).]*~~

(6) "HME" means hazardous materials endorsement.

(7) "Initial Determination of Threat Assessment" is defined by 49 C.F.R. 1572.15(d)(2).

(8) "KSP" means the Kentucky State Police.

(9) "Proper identification" means:

(a) A driver's license issued by the applicant's state where they will obtain or have obtained a commercial driver's license; or

(b) With respect to non-United States citizens applying for a hazardous materials endorsement for a commercial driver's license, proper identification means valid and unrestricted documentation establishing lawful nonimmigrant alien, asylee, or refugee status.

(10) "TSA" means the federal Transportation Security Administration.

Section 2. Initial Applications for HME.

(1) An applicant applying for a hazardous materials endorsement shall first obtain a commercial driver's instruction permit or CDL prior to requesting a security threat assessment from the TSA. The applicant shall submit application information in accordance with 49 C.F.R. 1572.9. ~~[A In order to receive the security threat assessment, the applicant shall complete a] *"Transportation Security Administration Application for a Hazardous Materials Endorsement," OMB No. 1652-0027, containing all information necessary for the TSA to complete the required assessment as described in 49 C.F.R. 1572.9 shall be submitted by the applicant.*]~~ The applicant shall further submit to a fingerprint verified criminal background check conducted by KSP.

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

(3) An applicant shall bring proper identification, and ~~[their DOT medical card,]~~ a completed "Transportation Security Administration Application for a Hazardous Materials Endorsement," OMB No. 1652-0027~~], and a certified check of \$115 for the fingerprint fee.~~

(4) An applicant shall pay a \$115 fee for a fingerprint-based background check. The fee may be paid by:

(a) Certified check;

(b) Cashier's check;

(c) Money order; or

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

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

~~(6) (5)~~ If TSA informs the Commonwealth of a finding of Determination of No Security Threat, then the applicant shall be notified by the Transportation Cabinet that he or she is eligible~~[and may proceed to the circuit clerk's office]~~ to take the knowledge test required to qualify for the HME.

~~(7) (6)~~ If TSA informs the Commonwealth of a finding of Initial Determination of Threat Assessment, the applicant shall not be issued a HME. The applicant may appeal the TSA's determination in accordance with 49 C.F.R. 1515.5 or 1515.9. Following appeal, if the applicant receives a Final Determination of Security Threat Assessment, the applicant may seek a waiver from TSA in accordance with 49 C.F.R. 1515.7.

~~(8) (7)~~ Within fifteen (15) days after the TSA has notified the Commonwealth of a Determination of No Security Threat or of a finding of Final Determination of Security Threat Assessment, the Transportation Cabinet shall update the applicant's permanent record to reflect the results of the security threat assessment, the issuance or denial of an HME, and the new expiration date of the HME.

Section 3. Renewal Applications For HME.

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

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

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

(4) A renewal applicant shall bring to the appointment proper identification, ~~[the applicant's DOT medical card,]~~ a completed "Transportation Security Administration Application for a Hazardous Materials Endorsement," OMB No. 1652-0027~~, and a certified check of \$115 for the fingerprint fee.~~

(5) A renewal applicant shall pay a \$115 fee for a fingerprint-based background check. The fee may be paid by:

(a) Certified check;

(b) Cashier's check;

(c) Money order; or

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

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

~~(7) (6)~~ If the Commonwealth has not received notification from TSA of the results of the security threat assessment prior to the expiration of the renewal applicant's HME, the Transportation Cabinet may extend the expiration date of the HME for a period up to ninety (90) days. Any additional extension shall be approved by TSA.

~~(8) (7)~~ If TSA informs the Commonwealth of a finding of Determination of No Security Threat, then the renewal applicant shall be notified by the Transportation Cabinet that he or she is eligible~~[and may proceed to the circuit clerk's office]~~ to take the knowledge test required to qualify for the HME.

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

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

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

Section 4. Transfer Applications For HME. (1) In accordance with 49 C.F.R. 1572.13(e), an applicant who applies to transfer an existing HME from another state to the Commonwealth shall not be required to undergo a new security threat assessment until the security threat assessment renewal period established in the preceding issuing state, not to exceed five (5) years, expires.

~~[Section 5.] [Regional Fingerprint Centers. KSP shall provide fingerprinting centers, regionally situated to provide efficient coverage of the state. Locations of the regional fingerprinting centers shall be published on the department's website] [have eight (8) regional fingerprinting centers in the Commonwealth. These centers shall be located in the following cities:]~~

~~[(1)] [Lexington at 162 East Main Street, Room 201, Lexington, Kentucky 40507;]~~

~~[(2)] [Louisville at Bowman Field, 3501 Roger E. Schupp Street, Louisville, Kentucky 40205;]~~

~~[(3)] [Erlanger at 645 Stevenson Road, Erlanger, Kentucky 41018;]~~

~~[(4)] [Paducah at McCracken County Courthouse, South 7th, Paducah, Kentucky 42003;]~~

~~[(5)] [Madisonville at Hopkins County Courthouse, Main Street, Room 11, Madisonville, Kentucky 42431;]~~

~~[(6)] [Bowling Green at Warren County Courthouse, 1001 Center Street, Room 103, Bowling Green, Kentucky 42101;]~~

~~[(7)] [London at 225 West 5th Street (corner of 5th and Long Street), London, Kentucky 40743; and]~~

~~[(8)] [Paintsville at Johnson County Courthouse, Court Street, 2nd Floor, Paintsville, Kentucky 41240] f.]~~

~~{Section 6.} {Incorporation by Reference.}~~

~~{(1)} {"Transportation Security Administration Application for a Hazardous Materials Endorsement" OMB No. 1652-0027, Exp. 1/31/08, is incorporated by reference.}~~

~~{(2)} {This material may be inspected, copied, or obtained, subject to applicable copyright law, at any KSP regional fingerprint centers, and at KSP Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.}~~

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