



ADMINISTRATIVE REGISTER OF KENTUCKY

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, March 13, 2020.

MEETING NOTICES

The Administrative Regulation Review Subcommittee is tentatively scheduled to meet on April 13, 2020, at 1:00 p.m. in room 149 Capitol Annex.

ARRS Tentative Agenda - **2585** [Updated as needed online](#)

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NEW ADMINISTRATIVE REGULATIONS

None

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KENTUCKY ADMINISTRATIVE REGULATIONS are codified according to the following system and are to be cited by Title, Chapter and Regulation number, as follows:

Title		Chapter	Regulation
806	KAR	50:	155
Cabinet, Department, Board, or Agency		Office, Division, Board, or Major Function	Specific Regulation

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The following agenda may not take into consideration all of the administrative regulations that may be deferred by promulgating agencies. Deferrals may be made any time prior to or during the meeting.

Updated: March 24, 2020 at 11 a.m.



**Administrative Regulation Review Subcommittee
TENTATIVE Meeting Agenda
Monday, April 13, 2020 at 1 p.m.
Annex Room 149**



**1. CALL TO ORDER AND ROLL CALL
2. REGULATIONS FOR COMMITTEE REVIEW**

SECRETARY OF STATE

Notary Public

030 KAR 008:005 & E. Notary Public applications and electronic and online registrations. ("E" expires 08-30-2020)

STATE BOARD OF ELECTIONS

Forms and Procedures

031 KAR 004:120. Additional and emergency precinct officers. (Not Amended After Comments) (Deferred from April)

PERSONNEL BOARD

101 KAR 001:325. Probationary periods.

BOARDS AND COMMISSIONS

Board of Pharmacy

201 KAR 002:095. Pharmacist interns. (Deferred from July)

201 KAR 002:230. Special limited pharmacy permit – Central Fill.

Board of Dentistry

201 KAR 008:550. Anesthesia and sedation. (Amended After Comments)

201 KAR 008:590. Teledentistry.

Board of Medical Licensure

201 KAR 009:270. Professional standards for prescribing or dispensing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone.

Board of Cosmetology

201 KAR 012:030. Licensing, permits, and examinations.

201 KAR 012:060. Inspections.

201 KAR 012:082. Education requirements and school administration.

201 KAR 012:140. School equipment.

201 KAR 012:260. Fees.

COMMUNITY AND TECHNICAL COLLEGE SYSTEM

Board of Emergency Medical Services

202 KAR 007:555. Ground agencies.

DEPARTMENT OF AGRICULTURE

Office of the Consumer and Environmental Protection

Egg Marketing

302 KAR 010:011. Repeal of 302 KAR 010:010, 302 KAR 010:020, 302 KAR 010:030, 302 KAR 010:040, 302 KAR 010:050, 302 KAR 010:060, 302 KAR 010:070, 302 KAR 010:080, and 302 KAR 010:090.

302 KAR 010:015. Egg grading and classification.

302 KAR 010:025. License application, refusal, revocation, suspension, and appeals.

302 KAR 010:100. Refrigeration of eggs and temperature requirements.

Office of the Commissioner

Livestock Sanitation

302 KAR 020:012. Repeal of 302 KAR 020:030, 302 KAR 020:050, 302 KAR 020:052, 302 KAR 020:66, 302 KAR 020:090, 302 KAR 020:100, and 302 KAR 020:150. (Deferred from March)

302 KAR 020:013. Repeal of 302 KAR 020:110, 302 KAR 020:115, 302 KAR 020:120, 302 KAR 020:130, 302 KAR 020:140, 302 KAR 020:180, 302 KAR 020:185, and 302 KAR 020:261.

302 KAR 020:014. Repeal of 302 KAR 020:070.

Office of the State Veterinarian

Livestock, Poultry, and Fish

302 KAR 022:050. Stockyards.

302 KAR 022:130. Equine.

302 KAR 022:150. Cervids. (Amended After Comments)

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Office of Agricultural Marketing
Ginseng
302 KAR 045:010. Ginseng.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Conservation
Administration

416 KAR 001:010. Administration of Kentucky Soil Erosion and Water Quality Cost-Share Fund. (Not Amended After Comments)

JUSTICE AND PUBLIC SAFETY

Motorcycle Safety Education Commission

500 KAR 015:010 & E. Motorcycle safety education program. ("E" expired 10-02-2019) (Not Amended After Comments) (Deferred from July)

Parole Board

501 KAR 001:040 & E. Parole revocation hearing procedures. ("E" expires 08-14-2020) (Amended After Comments)

Department of Corrections
Office of the Secretary

501 KAR 006:020. Corrections policies and procedures.
501 KAR 006:280. Risk and needs assessment.

PUBLIC PROTECTION CABINET

Department of Insurance
Kinds of Insurance; Limits of Risk; Reinsurance

806 KAR 005:025. Credit for reinsurance.

CABINET FOR HEALTH AND FAMILY SERVICES

Kentucky Health Program
Medicaid Services

895 KAR 001:002E. Repeal of 895 KAR 001:001, 895 KAR 001:010, 895 KAR 001:015, 895 KAR 001:020, 895 KAR 001:025, 895 KAR 001:030, 895 KAR 001:035, 895 KAR 001:040, 895 KAR 001:045, 895 KAR 001:050, and 895 KAR 001:055.

Office of Inspector General
Division of Certificate of Need
Certificate of Need

900 KAR 006:075 & E. Certificate of need nonsubstantive review. ("E" expires 09-28-2020)

Department for Public Health
Division of Epidemiology and Health Planning
Communicable Diseases

902 KAR 002:065. Immunization requirements for long-term care facilities.

Office of Human Resource Management
Division of Employee Management
Administration

920 KAR 001:070. Deaf and hard of hearing services. (Amended After Comments)

Department for Community Based Services
Division of Family Support
K-TAP, Kentucky Works, Welfare to Work, State Supplementation

921 KAR 002:015 & E. Supplemental programs for persons who are aged, blind, or have a disability. ("E" expires 08-23-2020)

Department for Community Based Services
Division of Child Care
Day Care

922 KAR 002:090. Child-care center licensure. (Amended After Comments)
922 KAR 002:100. Certification of family child-care homes. (Deferred from February)

3. REGULATIONS REMOVED FROM APRIL'S AGENDA
BOARDS AND COMMISSIONS

Board of Nursing

201 KAR 020:600. Standards for training programs for licensed certified professional midwives. (Comments Received; SOC ext., due 04-15-2020)
201 KAR 020:610. Approval process for training programs for licensed certified professional midwives. (Deferred from March)
201 KAR 020:620. Licensing requirements for licensed certified professional midwives. (Comments Received; SOC ext., due 04-15-2020)
201 KAR 020:630. Disciplinary actions for licensed certified professional midwives. (Comments Received; SOC ext., due 04-15-2020)
201 KAR 020:640. Requirements for informed consent for licensed certified professional midwives. (Deferred from March)
201 KAR 020:650. Licensed certified professional midwives permitted medical tests and formulary. (Comments Received; SOC ext., due 04-15-2020)

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201 KAR 020:660. Licensed certified professional midwives duty to report. (Deferred from March)
201 KAR 020:670. Licensed certified professional midwives consultation, collaboration, and referral provisions. (Deferred from March)
201 KAR 020:680. Licensed certified professional midwives client records. (Deferred from March)
201 KAR 020:690. Licensed certified professional midwives transfer guidelines. (Comments Received; SOC ext., due 04-15-2020)

Real Estate Appraisers

201 KAR 030:130. Education provider, instructor, and course. (Deferred from August)

TOURISM, ARTS AND HERITAGE CABINET

Department of Fish and Wildlife Resources

Game

301 KAR 002:185. Hunter education. (Deferred from September)

Wildlife

301 KAR 004:090. Taxidermy, cervid meat processors, and the buying and selling of inedible wildlife parts. (Deferred from March)

TRANSPORTATION CABINET

Department of Vehicle Regulation

Division of Driver Licensing

Administration

601 KAR 002:030E. Ignition interlock. ("E" expires 05-04-2020) (Not Amended After Comments) (Deferred from January)

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Kentucky Board of Education

Department of Education

Pupil Transportation

702 KAR 005:080. Bus drivers' qualifications, responsibilities, and training. (Comments Received; SOC ext., due 04-15-2020)

Office of Learning Support Services

704 KAR 007:090. Homeless children and youth education program and ensuring educational stability of children in foster care.
(Comments Received; SOC ext., due 04-15-2020)

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Healthcare

Health Services and Facilities

902 KAR 020:036. Operation and services; personal care homes. (Amended After Comments) (Deferred from August)

ADMINISTRATIVE REGULATION REVIEW PROCEDURE
Overview for Regulations Filed BEFORE noon, July 15, 2019
(See KRS Chapter 13A for specific provisions)

Filing and Publication

Administrative bodies shall file with the Regulations Compiler all proposed administrative regulations, public hearing and comment period information, regulatory impact analysis and tiering statement, fiscal note, federal mandate comparison, and incorporated material information. Those administrative regulations received by the deadline established in KRS 13A.050 shall be published in the Administrative Register.

Public Hearing and Public Comment Period

The administrative body shall schedule a public hearing on proposed administrative regulations, which shall not be held before the 21st day or later than the last workday of the month of publication. Written comments shall also be accepted until the end of the calendar month in which the administrative regulation was published.

The administrative regulation shall include: the place, time, and date of the hearing; the manner in which persons may submit notification to attend the hearing and written comments; that notification to attend the hearing shall be sent no later than 5 workdays prior to the hearing date; the deadline for submitting written comments; and the name, position, mailing address, e-mail address, and telephone and fax numbers of the person to whom notification and written comments shall be sent.

The administrative body shall notify the Compiler, by letter, whether the hearing was held or cancelled and whether written comments were received. If the hearing was held or written comments were received, the administrative body shall file a statement of consideration with the Compiler by the fifteenth day of the calendar month following the month of publication.

A transcript of the hearing is not required unless a written request for a transcript is made, and the person requesting the transcript shall have the responsibility of paying for same. A recording may be made in lieu of a transcript.

Review Procedure

After the public hearing and public comment period processes are completed, the administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting. After review by the Subcommittee, the administrative regulation shall be referred by the Legislative Research Commission to an appropriate jurisdictional committee for a second review. The administrative regulation shall be considered as adopted and in effect as of adjournment on the day the appropriate jurisdictional committee meets or 30 days after being referred by LRC, whichever occurs first.

ADMINISTRATIVE REGULATION REVIEW PROCEDURE
Overview for Regulations Filed AFTER noon, July 15, 2019
(See KRS Chapter 13A for specific provisions)

Filing and Publication

Administrative bodies shall file all proposed administrative regulations with the Regulations Compiler. Filed regulations shall include public hearing and comment period information; a regulatory impact analysis and tiering statement; a fiscal note on state and local government; and, if applicable, a federal mandate comparison and any required incorporated material. Administrative regulations received by the deadline established in KRS 13A.050 shall be published in the Administrative Register.

Public Hearing and Public Comment Period

The administrative body shall schedule a public hearing on a proposed administrative regulation, which shall be held between the 21st and the last workday of the month following the month of publication. Written comments shall also be accepted until the end of the calendar month in which the public hearing was scheduled.

Information about the public comment period shall include: the place, time, and date of the hearing; the manner in which a person may submit written comments or a notification to attend the hearing; a statement specifying that unless a notification to attend the hearing is received no later than 5 workdays prior to the hearing date, the hearing may be cancelled; the deadline for submitting written comments; and the name, position, and contact information of the person to whom notifications and written comments shall be sent.

The administrative body shall notify the Compiler, by letter, whether the hearing was held or cancelled and whether or not written comments were received. If the hearing was held or written comments were received, the administrative body shall file a statement of consideration with the Compiler by the fifteenth day of the calendar month following the close of the public comment period.

Review Procedure

After the public hearing and public comment period processes are completed, the administrative regulation will be tentatively scheduled for review at the next meeting of the Administrative Regulation Review Subcommittee. After review by the subcommittee, the administrative regulation shall be referred by the Legislative Research Commission to an appropriate jurisdictional committee for a second review. If a quorum is present, unless the administrative regulation is deferred or found deficient, the administrative regulation shall be considered in effect upon adjournment of the appropriate jurisdictional committee meets or 90 days after being referred by LRC, whichever occurs first.

REPRINTS

Amendment versions of 805 KAR 4:050, 806 KAR 3:230, 806 KAR 5:060, and 806 KAR 9:265 were inadvertently published in the January 2020 *Administrative Register of Kentucky*. The As Amended versions that should have been published in January are printed here in their entirety.

ENERGY AND ENVIRONMENT CABINET
Department for Natural Resources
Division of Mine Reclamation and Enforcement
(As Amended at ARRS, December 16, 2019)

805 KAR 4:050. Records.

RELATES TO: KRS 351.330, 331.335, 331.360

STATUTORY AUTHORITY: KRS [~~Chapter 13A,~~] 351.335, 351.360

NECESSITY, FUNCTION, AND CONFORMITY: KRS 351.330 requires the Department for Natural Resources to compel[require] blasters to keep records. This administrative regulation specifies what records are to be kept and requires blasters that do not have a permit issued pursuant to KRS Chapter 350, or an agreement with the department, to provide notice of its blasting operations to the Department for Natural Resources.

Section 1. Blasting Records. A record of each blast shall be kept. All records including seismograph reports shall be retained at least five (5) years and shall be available for inspection by the Department for Natural Resources and shall contain the[following minimum] data in subsections (1) through (19) of this section:

- (1) Name of company or contractor.
- (2) Exact location of the blast, date, and time of detonation.
- (3) Name, signature, and license number of blaster in charge.
- (4) Type of material blasted.
- (5) Number of holes, burden, and spacing.
- (6) Diameter and depth of holes.
- (7) Types of explosives used.
- (8) Total amount of explosives used.
- (9) Maximum amount of explosives per delay period of eight (8) milliseconds or greater.
- (10) Method of firing and type of circuit.
- (11) Direction, distance in feet, and identification of the nearest dwelling house, public building, school, church, commercial or institutional building neither owned nor leased by the person conducting the blasting.
- (12) Weather conditions.
- (13) Type and height or length of stemming.
- (14) A statement as to whether mats or other protections against flyrock were used.
- (15) Type of[~~delay electric~~] blasting caps used and delay periods used.
- (16) The[person taking the seismograph reading shall accurately indicate] exact location of the seismograph if used and[~~shall also show~~] the distance of the seismograph from the blast.
- (17) Seismograph records, if[where] required, shall include:
 - (a) Name of person and firm analyzing the seismograph record; and[.]
 - (b) Seismograph reading.
- (18) Maximum number of holes[holes] per delay period of eight (8) milliseconds or greater.
- (19) Sketch of blast pattern including number of holes, burden, and spacing distance delay pattern, and if decking is used, a hole profile.

Section 2. Notification of Blasting Operations on Construction, Demolition, and Industrial Sites. (1) Any person conducting blasting operations at a site that does not have a permit issued pursuant to KRS Chapter 350 or an agreement with the Department for Natural Resources, shall provide notice of its blasting operations to the Department for Natural Resources at least twenty four (24) hours prior to the commencement of blasting activities.

(2) The notice shall include:

- (a) The identification of the person or company performing the blasting, including current contact information;
- (b) The specific location of the site where blasting will occur, which[that] may include physical address, latitudinal and longitudinal, or Global Positioning System coordinates;
- (c) The date and time blasting operations are expected to commence; and
- (d) The projected duration of the blasting operations.

CONTACT PERSON: Michael Mullins, Regulation Coordinator, 300 Sower Blvd, Frankfort, Kentucky 40601, phone (502) 782-6720, fax (502) 564-4245, email michael.mullins@ky.gov.

PUBLIC PROTECTION CABINET
Department of Insurance
(As Amended at ARRS, December 16, 2019)

806 KAR 3:230. Standards for safeguarding customer information.

RELATES TO: KRS 304.12-010, 304.12-130, 304.99-020, 15 U.S.C. 6801, 6805(b), 6807

STATUTORY AUTHORITY: KRS 304.2-110(1), 15 U.S.C. 6801(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the commissioner[executive director] to promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code[, as defined in KRS 304.010]. The Gramm-Leach-Bliley Act [as] codified in 15 U.S.C. 6801(b) requires the state insurance regulatory authorities to establish appropriate standards relating to administrative, technical, and physical safeguards: (1) to ensure the security and confidentiality of customer records and information; (2) to protect against any anticipated threats or hazards to the security or integrity of these records; and (3) to protect against unauthorized access to or use of records or information that could result in substantial harm or inconvenience to a customer. This administrative regulation establishes the appropriate standards for licensees of the Department[Office] of Insurance to safeguard customer information. [The Gramm-Leach-Bliley Act extends particularly to financial institutions, however, this administrative regulation applies to all licensees of the office regardless of whether or not the licensee is considered a financial institution for purposes of the Gramm-Leach-Bliley Act.]

Section 1. Definitions. (1) "Consumer" means an individual who seeks to obtain, obtains, or has obtained an insurance product or service from a licensee that is to be used primarily for personal, family, or household purposes, and about whom the licensee has nonpublic personal information; or that individual's legal representative.

(2) "Customer" means a consumer who has a customer relationship with a licensee.

(3) "Customer information" means nonpublic personal information about a customer, whether in paper, electronic or other form, that is maintained by or on behalf of the licensee.

(4) ["Customer information systems" means the electronic or physical methods used to access, collect, store, use, transmit, protect or dispose of customer information.

(5) "Customer relationship" means a continuing relationship between a consumer and a licensee under which the licensee provides one (1) or more insurance products or services to the consumer that are to be used primarily for personal, family, or

household purposes.

(5)(6)] "Licensee" means all insurers holding a certificate of authority, licensed producers, companies, or business entities licensed or required to be licensed, or authorized or required to be authorized, or registered, excluding service contract makers, or required to be registered pursuant to the Kentucky Insurance Code [as defined in KRS 304.1-010].

(7) "Service provider" means a person that maintains, processes or otherwise is permitted access to customer information through its provision of services directly to the licensee.]

Section 2. Information Security Program. Each licensee shall implement a comprehensive written information security program that includes administrative, technical, and physical safeguards for the protection of customer information. The administrative, technical, and physical safeguards included in the information security program shall be appropriate to the size and complexity of the licensee and the nature and scope of its activities.

Section 3. Objectives of Information Security Program. A licensee's information security program shall be designed to:

- (1) Ensure the security and confidentiality of customer information;
- (2) Protect against any anticipated threats or hazards to the security or integrity of the information; and
- (3) Protect against unauthorized access to or use of the information that may[could] result in substantial harm or inconvenience to any customer.

Section 4. Determined Violation. A violation of this administrative regulation may constitute an unfair trade practice in the business of insurance and shall subject the licensee to a civil penalty authorized by KRS 304.99-020. [Section 5. Effective Date. Each licensee shall establish and implement an information security program, including appropriate policies and systems pursuant to Sections 1 to 3 of this administrative regulation, within 180 days of the effective date of this administrative regulation.

Section 6. Incorporated by Reference. (1) SAFE-1, "Examples of Methods of Development and Implementation (August 2003 Ed)" is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available at <http://doi.ppr.ky.gov/kentucky/>.

CONTACT PERSON: Patrick O'Connor II, Deputy Commissioner, Policy, 215 W. Main St., Frankfort, Kentucky 40601, phone 1-502-564-6026, fax 1-502-564-1453, email patrick.oconnor@ky.gov.

**PUBLIC PROTECTION CABINET
Department Of Insurance
(As Amended at ARRS, December 16, 2019)**

806 KAR 5:060. Registration of service contracts for consumer products.

RELATES TO: KRS 304.5-070

STATUTORY AUTHORITY: KRS 304.5-070(1)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.5-070(1)(g) requires that makers of service contracts who repair, replace, or maintain consumer products register with the Commissioner [and maintain registration with the office] to be exempt from the definition of casualty insurance. This administrative regulation establishes[sets forth] the filing requirements for that registration.

Section 1. Definitions. **(1) "Casualty insurance" is defined by KRS 304.5-070.**

(2) "Maker of a service contract" or "maker" is the entity contractually obligated under the terms of the service contract.

Section 2. Registration Required. A maker of a service contract seeking exemption from the definition of casualty insurance shall register with the commissioner by submitting:

(1)[office by providing] The name and address of its principal office; and **[either]**

(2) Evidence of financial security demonstrated by one (1) of the following:

(a) Evidence [the other required information or documentation pursuant to Section 3 of this administrative regulation.

~~Section 3. Service contracts to repair, replace, or maintain consumer products shall not be considered casualty insurance if the maker of the service contract meets one (1) of the following requirements:~~

~~(1)(a) Maintains a net worth] of at least \$100,000,000[400 million] dollars in net worth; or~~

~~**(b)[(3)]** Evidence of] and registers with the executive director by providing the following:~~

- ~~1. Its current annual report;~~
- ~~2. A copy of its 10K or 20F form as filed with Securities Exchange Commission; or~~
- ~~3. A financial statement audited by an independent certified public accountant in conformity with generally accepted accounting practices;~~

~~(b) Immediately notifies the office in writing of any change that would decrease the net worth of the maker below 100 million dollars;~~

~~(2)(a) Maintains] an insurance policy or performance bond that:~~

~~1. Assures performance of the duties of the maker for all service contracts issued in Kentucky;~~

~~2.]~~

~~**1.](a)]** Shall not be terminated unless at least thirty (30) days prior written notice is given to the commissioner;~~

~~**2.](b)]** States[executive director; and~~

~~3. Shall state] that the holder of a [the] service contract shall be entitled to make a direct claim against the insurer upon the failure of the maker to pay any claim within sixty (60) days after the claim has been filed with the maker; and~~

~~**3.a.[either (c)]** Assures performance of the duties of the maker for all service contracts issued in Kentucky; or~~

~~**b.](d)]**(b) Provide a copy of the insurance policy or performance bond; or~~

~~(3)(a) Maintain an insurance policy or performance bond that:~~

~~1.] Is written for an amount of \$50,000 or twenty-five (25) percent of the maker's annual revenues from the service contracts issued in Kentucky, whichever is greater.];]~~

Section 3. Establishing Evidence for Registration. A maker of a service contract providing evidence required by Section 2 of this administrative regulation may submit:

(1) A current annual report;

(2) A copy of its 10K or 20F form as filed with the Securities Exchange Commission;

(3) A financial statement audited by an independent certified public accountant in conformity with generally accepted accounting practices; or

(4) A copy of the insurance policy or performance bond, accompanied by the following information, signed and certified under oath by an officer of the company:

(a)[2. Shall not be terminated unless at least thirty (30) days prior written notice is given to the executive director; and

3. Shall state that the holder of the service contract shall be entitled to make a direct claim against the insurer upon the failure of the maker to pay any claim within sixty (60) days after the claim has been filed with the maker; and

(b) Register with the executive director by providing the following:

1. A copy of the insurance policy or performance bond;

2.] The amount of annual revenues from the sales of service contracts in Kentucky for the previous year ending December 31;

and

(b)[3.] A projection of the revenue from service contracts to be sold in Kentucky for the current year.

Section 4. Changes to Registration. A registered maker of a service contract shall immediately notify the commissioner in writing of any change that would:

(1) Decrease the net worth of the maker below \$100,000,000 dollars; or

(2) Result in the termination of the insurance policy or performance bond; (c) The document giving the required information shall be signed and certified under oath by an officer of the company].

Section 5[4]. Registration Approval, Renewal, Cessation, and Revocation. (1) If the initial registration has not been affirmatively accepted or rejected by the commissioner[executive director] within thirty (30) days of filing, [then the] registration requirements shall be **determined as[deemed]** met.

(2)[(a)] After the initial registration, each maker of a service contract shall file an updated report annually, on or before March 1.

(3)[, file a report that sets forth or is accompanied by the information required in Section 3 of this administrative regulation; (b)] If a maker ceases issuing service contracts, the maker[annual reports] shall continue to file annual reports[be filed] through the duration of all outstanding service contracts[.];

(4)[(3)] If at any time, the maker fails to demonstrate compliance with[Section 3 of] this administrative regulation, the commissioner[executive director] may revoke the maker's registration. Upon revocation of registration, the maker shall immediately cease issuing service contracts to consumers in Kentucky[-.

Section 5. (1) Each service contract shall conspicuously state the name and address of the maker of the service contract; and

(2) If the maker of the service contract has an insurance policy or performance bond to assure contractual duties, the following must be stated in the service contract:

(a) Name and address of authorized underwriting insurer issuing insurance policy or performance bond; and

(b) A statement that the holder of the service contract shall be entitled to make a direct claim against the insurer upon the failure of the maker to pay any claim within sixty (60) days after the claim has been filed with the maker].

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**PUBLIC PROTECTION CABINET
Department Of Insurance
(As Amended at ARRS, December 16, 2019)**

806 KAR 9:265. Rental vehicle agent license[and managing employee].

RELATES TO: KRS 304.4-010, 304.9-295, 304.9-505[304.9-295, 304.9-501, 304.9-505, 304.9-513]

STATUTORY AUTHORITY: KRS 304.2-110, 304.9-230, 304.9-505[304.9-513]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the commissioner[executive director] to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.9-230 authorizes the commissioner to issue an agent's license with the limited line of authority for rental vehicle, and requires the commissioner to promulgate administrative regulations to establish the requirements, if any, for prelicensing courses of instruction and examination for each limited line of authority. KRS 304.9-505[- as defined in

KRS 304.1-010. KRS 304.9-513] authorizes the commissioner to issue licenses to act as a rental vehicle agent and requires the commissioner to prescribe an application form for a business entity seeking to act as a rental vehicle agent[executive director to promulgate administrative regulations to carry out the purpose of KRS 304.9-501 to 304.9-513]. This administrative regulation establishes the information to be included in the application for rental vehicle agent business entity and managing employee licenses; the requirements for prelicensing education, course examinations[-, continuing education for rental vehicle managing employees]; and recordkeeping for rental vehicle agents and their employees who sell rental vehicle insurance.

Section 1. License Application. To apply for a rental vehicle agent license, an applicant shall submit:

(1) The appropriate completed form:

(a)[Definitions. (1) "Executive director" means the Executive Director of the Office of Insurance.

(2) "Office" means the Office of Insurance.

Section 2. The license application shall be submitted as a package, and shall include:

(1) Form 8301-BE, incorporated by reference in 806 KAR 9:340, for the business entity rental vehicle agent applicant or Form 8301, incorporated by reference in 806 KAR 9:340,] For [the] individual managing employees, Form 8301[rental vehicle agent applicant signed by the applicant and Form 8302-AP], incorporated by reference in 806 KAR 9:025;

(b) For Business Entities, Form 8301-BE[340, completed by the appointing insurer;

(2) Form 8301, incorporated by reference in 806 KAR 9:340, for each managing employee applicant signed by the applicant and Form 8302-AP], incorporated by reference in 806 KAR 9:025; and

(c) Listings, signed by the[340, completed by the appointing insurer;

(3) Form 8301-BGC, incorporated by reference in 806 KAR 9:340, for resident] rental vehicle agent applicant, of:

1. All business locations proposed to be licensed; and

2. The name and assigned licensed[or managing employee applicants;

(4) Form 8301-RV, incorporated by reference in 806 KAR 9:340, signed by the rental vehicle agent applicant and each managing employee for each business location.

(2) The corresponding fees established by[applicant; and

(5) The fees specified in KRS 304.4-010 and] 806 KAR 4:010.

Section 2[3]. Register. (1) A[(1) A licensed rental vehicle agent shall keep current the information required to be disclosed in its application for license by reporting within thirty (30) days all material changes and additions on applicable forms required in Section 1 of this administrative regulation on Form 8303, incorporated by reference in 806 KAR 9:340.

(2) A business entity] licensed[as a] rental vehicle agent shall maintain a register that includes:

(a) A[not sell, solicit, or negotiate insurance at any business location that does not have a licensed managing employee assigned to that location.

Section 4. A licensed rental vehicle agent shall maintain a] current list of every unlicensed employee authorized to act under the license;

(b) Records[and the name] of all prelicensing study and course examinations completed by[the assigned licensed managing employee for each business location.

Section 5. (1) The licensed rental vehicle agent shall:

(a) Adopt and utilize the office's preapproved prelicensing course of study for its] managing employees; and

(c) Records of all disclosure training completed by unlicensed[or

(b) Submit to the executive director for approval in accordance with subsection (2) of this section, a prelicensing course of study for its managing] employees pursuant to KRS 304.9-507(1)(e).

(2) ~~The register~~[(a) A prelicensing course of study] shall be made available to the department upon request.

Section 3. Licensed Rental Vehicle Agent Responsibilities.
The licensed rental vehicle agent shall:

(1) ~~Provide~~[approved by the executive director or its designee prior to authorized use and shall be renewed biennially.

(b) ~~Submission of the prelicensing course of study shall be filed with Form CE/PL-100, incorporated by reference in 806 KAR 9:340 or electronically through the office's Web site, <http://doi.ppr.ky.gov>.~~

(c) ~~In approving~~ a prelicensing course of study[;] for its managing employees, approved by the commissioner;

(2) ~~Administer an~~[the executive director or its designees shall consider whether the course of study covers, at a minimum, the materials designated in a course outline provided by the office.

(3) The licensed rental vehicle agent shall be responsible for the insurance activities of its licensed managing employees and its unlicensed employees and representatives.

Section 6. (1) The licensed rental vehicle agent shall submit its proposed licensing examination to [be given to its] managing employees that is approved by the commissioner and that includesto the executive director, or his designee, for approval.

(2) ~~The examination for the managing employees shall include~~ at least twenty-five (25) questions on the topics in the ~~department's~~[office] course outline. The managing employee applicant shall attain a score of seventy (70) percent or better to pass the examination and be eligible for the license[;]

(3) ~~Be responsible for the~~[Section 7. (1) The licensed rental vehicle agent shall submit its proposed continuing education courses for its licensed managing employees and its unlicensed employees or representatives to the executive director for approval.

(2) The licensed managing employee shall successfully complete at least six (6) hours of continuing education during each continuing education biennium. At least four (4) hours shall be related to property and casualty insurance activities of its licensed[and at least two (2) hours shall be related to ethics.

(3) The licensed rental vehicle agent's unlicensed employees or representatives shall receive one (1) hour of continuing education relating to consumer disclosures each year.

(4) Only continuing education courses approved in accordance with subsection (1) of this section or 806 KAR 9:220 may be used to satisfy the continuing education requirements of this section. These continuing education courses shall be taught by approved providers and instructors, which may include the licensed rental vehicle agent.

(5) ~~The~~ managing employees and[employee license of any individual failing to comply with the continuing education requirements of this section shall be terminated and promptly surrendered to the executive director without demand.

Section 8. (1) The rental vehicle agent licensee shall certify to the executive director on Form CE/RV-302, as prescribed in 806 KAR 9:340, that each licensed managing employee has successfully completed the continuing education required by Section 6 of this administrative regulation for each continuing education biennium in accordance with KRS 304.9-295.

(2) The rental vehicle agent licensee shall certify to the executive director on Form CE/RV-303, as prescribed in 806 KAR 9:340, that[its unlicensed employees and representatives; and

(4) Report all material changes and additions to the department within thirty (30) days[have successfully completed the continuing education required by Section 6 of this administrative regulation for each continuing education biennium in accordance with KRS 304.9-295.

(3) The rental vehicle agent licensee shall maintain complete records of the prelicensing study and course examination for the managing employees and continuing education for the managing employees and unlicensed employees or representatives for at least three (3) years.

~~Section 9. The licensed managing employee shall certify to the executive director on Form CE/RV-302, as prescribed in 806 KAR 9:340, that he or she has successfully completed the continuing education required by Section 6 of this administrative regulation for each continuing education biennium in accordance with KRS 304.9-295].~~

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EMERGENCY ADMINISTRATIVE REGULATIONS

STATEMENT OF EMERGENCY
907 KAR 1:604E

This emergency administrative regulation is being promulgated to remove copayment requirements for 1915(c) waiver enrollees and members receiving services within long-term care facilities, waive Medicaid copayments under circumstances relating to an emergency declaration, clarify additional circumstances where the department may waive cost-sharing in response to an actuarial analysis if federal approval is received, clarify that pregnant women are fully exempt from Medicaid copayments, remove references to a nonfunctioning federal waiver, and clarify that managed care organizations may reduce or eliminate copayments for their enrollees. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)2. to prevent a loss of federal and state funds, and pursuant to KRS 13A.190(1)(a)4. to protect human health. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
ERIC FRIEDLANDER, Acting Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(Emergency Amendment)

907 KAR 1:604E. Recipient cost-sharing.

EFFECTIVE: March 13, 2020

RELATES TO: KRS 205.560, 205.6312, 205.6485, 205.8451, 319A.010, 327.010, 334A.020, 42 C.F.R. 430.10, 431.51, 447.15, 447.20, 447.21, 447.50, 447.52, 447.54, 447.55, 447.56, 447.57, 457.224, 457.310, 457.505, 457.510, 457.515, 457.520, 457.530, 457.535, 457.570, 42 U.S.C. 1396a, 1396b, 1396c, 1396d, 1396e, 1396f-6, 1396f-8, 1396u-1, 1397aa -1397jj

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6312(5), 205.6485(1), 42 C.F.R. 431.51, 447.15, 447.50-447.90, 457.535, 457.560, 42 U.S.C. 1396f-6(b)(5)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. KRS 205.6312(5) requires the cabinet to promulgate administrative regulations that implement copayments for Medicaid recipients. This administrative regulation establishes the provisions relating to Medicaid Program copayments.

Section 1. Definitions. (1) "Community spouse" means the individual who is married to an institutionalized spouse and who:

- (a) Remains at home in the community; and
- (b) Is not:

- 1. Living in a medical institution;
- 2. Living in a nursing facility; or
- 3. Participating in a 1915(c) home and community based services waiver program.

(2) "Copayment" means a dollar amount representing the portion of the cost of a Medicaid benefit that a recipient is required to pay.

(3) "Department" means the Department for Medicaid Services or its designee.

(4) "Dependent child" means a child, including a child gained through adoption, who:

- (a) Lives with the community spouse; and
- (b) Is claimed as a dependent by either spouse under the Internal Revenue Service Code.

(5) "DMEPOS" means durable medical equipment, prosthetics,

orthotics, and supplies.

(6) "Drug" means a covered drug provided in accordance with 907 KAR 23:010 for which the Department for Medicaid Services provides reimbursement.

(7) "Enrollee" means a Medicaid recipient who is enrolled with a managed care organization.

(8) "Federal Poverty Level" or "FPL" means guidelines that are updated annually in the Federal Register by the United States Department of Health and Human Services under authority of 42 U.S.C. 9902(2).

(9) "KCHIP" means the Kentucky Children's Health Insurance Program.

(10) "Managed care organization" or "MCO" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined by 42 C.F.R. 438.2.

(11) "Medicaid Works individual" means an individual who:

(a) But for earning in excess of the income limit established under 42 U.S.C. 1396d(q)(2)(B) would be considered to be receiving supplemental security income;

(b) Is at least sixteen (16), but less than sixty-five (65), years of age;

(c) Is engaged in active employment verifiable with:

- 1. Paycheck stubs;
- 2. Tax returns;
- 3. 1099 forms; or
- 4. Proof of quarterly estimated tax;

(d) Meets the income standards established in 907 KAR 20:020; and

(e) Meets the resource standards established in 907 KAR 20:025.

(12) "Nonemergency" means a condition that does not require an emergency service pursuant to 42 C.F.R. 447.54.

(13) "Office visit for behavioral health care" means a visit to a clinician or prescriber in which a:

(a) Diagnosis of a behavioral health condition is made;

(b) Treatment decision related to the diagnosis of a behavioral health condition is continued; or

(c) Prescription for a behavioral health condition is:

- 1. Initially issued; or
- 2. Renewed.

(14) "Recipient" is defined by [i] KRS 205.8451(9).

(15) "Visit" means:

(a) 1. An encounter; or

2. A series of encounters that are performed on the same date of service at the same physical location;

(b) Between a recipient or enrollee and a health care provider during which time a covered service is delivered; and

(c) A service that occurs:

- 1. In person; or
- 2. Via telehealth if authorized by 907 KAR 3:170.

Section 2. Copayments. (1) The following table shall establish the:

(a) Copayment amounts that a recipient shall pay, unless the recipient is exempt from cost sharing pursuant to Section 3(1) and (2) of this administrative regulation; and

(b) Corresponding provider reimbursement deductions.

Benefit	Copayment Amount
Acute inpatient hospital admission	\$50
Outpatient hospital or ambulatory surgical center visit	\$4
Emergency room for a nonemergency visit	\$8
DMEPOS	\$4
Podiatry office visit	\$3
Chiropractic office visit	\$3
Dental office visit	\$3
Optometry office visit	\$3
General ophthalmological office visit	\$3
Physician office visit	\$3

Office visit for care by a physician assistant, an advanced practice registered nurse, a certified pediatric and family nurse practitioner, or a nurse midwife	\$3
Office visit for behavioral health care	\$3
Office visit to a rural health clinic	\$3
Office visit to a federally qualified health center or a federally qualified health center look-alike	\$3
Office visit to a primary care center	\$3
Physical therapy office visit	\$3
Occupational therapy office visit	\$3
Speech-language pathology services office visit	\$3
Laboratory, diagnostic, or radiological service	\$3
A Medicaid or KCHIP beneficiary who is younger than nineteen (19) years of age	\$0
Brand name drug	\$4
Generic drug	\$1
Brand name drug preferred over generic drug	\$1
Pharmacy product class: certain antipsychotic drugs	\$1
Pharmacy product class: contraceptives for family planning	\$0
Pharmacy product class: tobacco cessation	\$0
Pharmacy product class: diabetes supplies, blood glucose meters	\$0
Pharmacy product class: Diabetes supplies, all other covered diabetic supplies	\$4 for first fill, \$0 for second fill and beyond, per day
Pharmacy patient attribute: pregnant	\$0
Pharmacy patient attribute: long-term care resident	\$0
Pharmacy patient attribute: under eighteen (18) years of age	\$0
KI-HIPP participant	\$0
[Kentucky HEALTH: Medically Frail	\$0
Kentucky HEALTH: Former Foster Care Youth up to 26 years of age	\$0
Kentucky HEALTH: enrollee current on premiums]	\$0

(2) The full amount of the copayment established in the table in subsection (1) of this section shall be deducted from the provider reimbursement.

(3) The maximum amount of cost-sharing shall not exceed five (5) percent of a family's income for a quarter.

Section 3. Copayment General Provisions and Exemptions.

(1)(a) A Medicaid or KCHIP beneficiary who is younger than nineteen (19) years of age shall be exempt from the copayment or cost-sharing requirements established pursuant to this administrative regulation.

(b) A beneficiary receiving services via a 1915(c) home and community based waiver shall not be subject to cost-sharing established pursuant to this administrative regulation.

(c) A beneficiary receiving services in a long term care facility shall not be subject to cost-sharing established pursuant to this administrative regulation.

(d) In response to a declared emergency relating to or rationally related to healthcare or public health, the department may waive or direct the waiving of all required cost-sharing for all Medicaid beneficiaries or any subpopulation of Medicaid beneficiaries not already exempted from this administrative regulation, including a geographic or age-related subpopulation.

(e) In response to a contracted actuarial analysis demonstrating cost-effectiveness or cost-neutrality, the department may waive or direct the waiving of all cost-sharing for all Medicaid beneficiaries or any subpopulation of Medicaid beneficiaries not already exempted from this administrative regulation, including a geographic or age-related subpopulation. As necessary, the

department shall seek federal financial participation and approval to implement this paragraph.

(2)(a) A copayment shall not be imposed for a service, prescription, item, supply, equipment, or any type of Medicaid benefit provided to a foster care child or a pregnant woman.

(b) The department shall impose no cost sharing for an individual or recipient who is exempt pursuant to 42 C.F.R. 447.56.

(c) A provider shall not deny services to a recipient who:

1. Makes less than or equal to 100 percent of the federal poverty level even if the recipient cannot pay any required cost-sharing; or

2. Makes more than 100 percent of the federal poverty level if:

a. The recipient cannot pay any required cost sharing; and

b. The provider does not have a policy that applies to all patients that allows for denial of services upon nonpayment of a cost sharing obligation.

(3) A pharmacy provider or supplier, including a pharmaceutical manufacturer as defined by [it] 42 U.S.C. 1396r-8(k)(5), or a representative, employee, independent contractor, or agent of a pharmaceutical manufacturer, shall not make a copayment for a recipient.

(4) A parent or guardian shall be responsible for a copayment imposed on a dependent child under the age of twenty-one (21).

(5)(a) Any amount of uncollected copayment by a provider from a recipient with income above 100 percent of the Federal Poverty Level at the time of service provision shall be considered a debt to the provider if that is the current business practice for all patients.

(b) Any amount of uncollected copayment by a provider from a recipient with income at or below 100 percent of the Federal Poverty Level at the time of service provision shall not be considered a debt to the provider.

(6) A provider shall:

(a) Collect from a recipient the copayment as imposed by the department for a recipient in accordance with this administrative regulation or have a written process for attempting to collect the copayment;

(b) Not waive a copayment obligation as imposed by the department for a recipient; [and]

(c) Document each attempt to collect the copayment or collect a copayment at the time a benefit is provided or at a later date not to exceed six (6) months from the date of provision of the service; and

(d) Not collect a copayment from an enrollee for a service or item if a copayment is not imposed for that service or item.

(7) Cumulative cost sharing for copayments for a family with children who receive benefits under Title XXI, 42 U.S.C. 1397aa to 1397jj, shall be limited to five (5) percent of the annual family income.

(8) In accordance with 42 C.F.R. 447.15 and 447.20, the department shall not increase its reimbursement to a provider to offset an uncollected copayment from a recipient.

Section 4. Premiums for Medicaid Works Individuals. (1)(a) A Medicaid Works individual shall pay a monthly premium that is:

1. Based on income used to determine eligibility for the program; and

2. Established in paragraph (b) of this subsection.

(b) The monthly premium shall be:

1. Thirty-five (35) dollars for an individual whose income is greater than 100 percent but no more than 150 percent of the FPL;

2. Forty-five (45) dollars for an individual whose income is greater than 150 percent but no more than 200 percent of the FPL; and

3. Fifty-five (55) dollars for an individual whose income is greater than 200 percent but no more than 250 percent of the FPL.

(2) An individual whose family income is equal to or below 100 percent of the FPL shall not be required to pay a monthly premium.

(3) A Medicaid Works individual shall begin paying a premium with the first full month of benefits after the month of application.

(4) Benefits shall be effective with the date of application if the premium specified in subsection (1) of this section has been paid.

(5) Retroactive eligibility pursuant to 907 KAR 20:010, Section

1(3), shall not apply to a Medicaid Works individual.

(6) If a recipient fails to make two (2) consecutive premium payments, benefits shall be discontinued at the end of the first benefit month for which the premium has not been paid.

(7) A Medicaid Works individual shall be eligible for reenrollment upon payment of the missed premium providing all other technical eligibility, income, and resource standards continue to be met.

(8) If twelve (12) months have elapsed since a missed premium, a Medicaid Works individual shall not be required to pay the missed premium before reenrolling.

Section 5. Provisions for Enrollees. A managed care organization:

(1) Shall not impose a copayment on an enrollee that exceeds a copayment established in this administrative regulation; and

(2) May impose on an enrollee:

(a) A lower copayment than established in this administrative regulation; or

(b) No copayment.

Section 6. Freedom of Choice. (1) In accordance with 42 C.F.R. 431.51, a recipient who is not an enrollee may obtain services from any qualified provider who is willing to provide services to that particular recipient.

(2) A managed care organization may restrict an enrollee's choice of providers to the providers in the provider network of the managed care organization in which the enrollee is enrolled except as established in:

(a) 42 C.F.R. 438.52; or

(b) 42 C.F.R. 438.114(c).

Section 7. Appeal Rights. An appeal of a department decision regarding the Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

~~Section 8. [Applicability of KAR Title 895. If eligible for Kentucky HEALTH, an individual subject to this administrative regulation shall also comply with any applicable requirements established pursuant to KAR Title 895.]~~

~~Section 9.] Federal Approval and Federal Financial Participation. The department's copayment provisions and any coverage of services established in this administrative regulation shall be contingent upon:~~

~~(1) Receipt of federal financial participation; and~~

~~(2) Centers for Medicare and Medicaid Services' approval.~~

Section 9[40]. This administrative regulation was found deficient by the Administrative Regulation Review Subcommittee on May 13, 2014.

LISA LEE, Commissioner

ERIC FRIEDLANDER, Acting Secretary

APPROVED BY AGENCY: March 12, 2020

FILED WITH LRC: March 13, 2020 at 10 a.m.

CONTACT PERSON: Donna Little, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott and Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the cost sharing requirements and provisions for the Kentucky Medicaid program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the cost sharing requirements and provisions for the Kentucky Medicaid program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the cost

sharing requirements and provisions for the Kentucky Medicaid program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the cost sharing requirements and provisions for the Kentucky Medicaid program.

(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 to this administrative regulation exempts 1915(c) Medicaid members and Medicaid members who receive services within a long-term care facility from Medicaid co-pays, waives co-payments under circumstances relating to an emergency declaration, and clarifies additional circumstances where the department may waive copayments in response to an actuarial analysis if any needed federal approval is received. The amendment also more clearly exempts pregnant women from co-pays to reflect current department practice and interpretation of federal regulation. The amendment also will allow for a managed care organization to reduce or eliminate an enrollee's requirement to pay a copay, and prohibit a provider from collecting a copayment for a service or item if a copayment is not imposed. The amendment also removes references to the Kentucky HEALTH program in the table of copayments.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are necessary to clarify Medicaid policy relating to copayments and to clarify Medicaid policy relating to Medicaid cost-sharing and declared emergencies.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by clarifying departmental copayment policy relating to copayments administered by managed care organizations.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by instituting a clear policy on the use of copayments.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All Medicaid recipients who may be subject to cost sharing may be affected by the amendment as well as Medicaid providers for whose services cost sharing is applied. The department estimates that up to 800,000 Medicaid members may be impacted by this administrative regulation.

(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. Enrollees, recipients, and providers will be able to benefit from reduced or eliminated cost sharing if approved by an MCO.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Enrollees and recipients will have to pay copayments as listed in this administrative regulation, unless waived or reduced by an MCO.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Enrollees and recipients will be able to fully access Medicaid benefits, and providers will be able to charge for services provided.

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

(a) Initially: The Department for Medicaid Services (DMS) anticipates costs of no more than \$170,000 as a result of the amendments to this administrative regulation.

(b) On a continuing basis: The Department for Medicaid Services (DMS) anticipates costs of no more than \$170,000 as a result of the amendments to this administrative regulation.

(6) What is the source of the funding to be used for the

implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching funds from general fund appropriations.

(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: Neither an increase in fees nor funding will be necessary to implement the amendment.

___(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendments to this administrative regulation neither establish nor increase any fees.

(9) Tiering: Is tiering applied Tiering is applied in that some Medicaid recipients are exempt (by federal regulation or law) from most cost sharing obligations.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(14), 42 U.S.C. 1396o, 42 C.F.R. 447.50 through 447.90, 42 C.F.R. 447.15 and 447.20, and 42 C.F.R. 438.108

2. State compliance standards. KRS 205.520(3) and KRS 194A.050(1).

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(14) authorizes a state's Medicaid program to impose cost sharing only as allowed by 42 U.S.C. 1396o. 42 U.S.C. 1396o establishes categories of individuals for whom a state's Medicaid program may not impose cost sharing as well as cost sharing and premium limits.

42 C.F.R. 447.50 through 447.60 also establishes limits on cost sharing (based on income of the given Medicaid eligibility group); Medicaid populations exempt from cost sharing (children, pregnant women, institutionalized individuals for example); services exempt from cost sharing (emergency services, family planning services to child-bearing age individuals); prohibition against multiple cost sharing for one (1) service; a requirement that state Medicaid programs do not increase a provider's reimbursement by the amount of cost sharing; and a requirement that managed care organizations' cost sharing must comply with the aforementioned federal regulations.

42 C.F.R. 438.108 establishes that a managed care organization's cost sharing must comply with the federal cost sharing requirements for Medicaid established in 42 C.F.R. 447.50 through 42 C.F.R. 447.90.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter requirements are not imposed.

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 for Medicaid Services (DMS) will be affected by the amendment to this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. Federal regulations 42 C.F.R. 447.50 through 42 C.F.R. 447.90, 42 C.F.R. 447.15 and 447.20 authorize the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities,

counties, fire departments, or school districts) for the first year? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.

(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? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates costs of no more than \$170,000 as a result of the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? The Department for Medicaid Services (DMS) anticipates costs of no more than \$170,000 as a result of the amendments to this administrative regulation.

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: _____

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

COUNCIL ON POSTSECONDARY EDUCATION
(As Amended at ARRS, March 9, 2020)

13 KAR 4:010. State Authorization Reciprocity Agreement.

RELATES TO: KRS 164.020(23), 164.945, 164.946, 164.947, 164.992, 165A.320-165A.450

STATUTORY AUTHORITY: KRS 164.540(3)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.540(3) authorizes the Council on Postsecondary Education to promulgate an administrative regulation to enter into the State Authorization Reciprocity Agreement, which establishes uniform national standards for interstate offerings of postsecondary distance education and authorizes postsecondary educational institutions meeting those standards located in member states or territories to provide distance education to residents of other member states. KRS 164.540(3) also authorizes the council to serve as the lead or portal agency on behalf of the Commonwealth's public and private postsecondary institutions seeking to offer distance education in member states. This administrative regulation establishes the mechanism by which Kentucky institutions may join the State Authorization Reciprocity Agreement and sets forth the process by which non-resident students can file complaints against Kentucky member institutions.

Section 1. Definitions. (1) ~~["Accredited" means holding institutional accreditation by name as a U.S.-based institution from an accreditor recognized by the U.S. Department of Education.~~

~~(2)]~~ "Commission" means the Kentucky Commission on Proprietary Education.

~~(2)](3)]~~ "Council" means the Kentucky Council on Postsecondary Education.

~~(3)](4)]~~ "Degree" means an award conferred at the associate level or higher by an institution as official recognition for the successful completion of a program of studies.

~~(4)](5)]~~ "Institution" means a Kentucky degree-granting postsecondary entity.

~~(5)](6)]~~ "NC-SARA" means the National Council for State Authorization Reciprocity Agreements.

~~(6)](7)]~~ "President" means the President of the Kentucky Council on Postsecondary Education.

~~(7)](8)]~~ "State Authorization Reciprocity Agreement," or "SARA," means the agreement among member states, districts, and U.S. territories that establishes comparable national standards for interstate offering of degrees through distance education and authorizes institutions meeting those standards located in member states or territories to provide distance education to residents of other member states.

Section 2. Initial Application Procedures. (1) In order to participate in SARA, an institution shall submit the following items to the president for review and action:

(a) The current NC-SARA Application and Approval Form for Institutional Participation in SARA, in electronic format; and

(b) The fees due to the Council, in accordance with Section 6 of this administrative regulation.

(2) The application referenced in subsection (1)(a) of this section may be found online at www.nc-sara.org.

Section 3. Renewal Application Procedures. (1) In order to continue participating in SARA, an institution shall submit the following items to the president for review and action at least sixty (60) days before the anniversary date of the institution's initial approval:

(a) The current NC-SARA Application for Institutional Renewal to Participate in SARA, in electronic format; and

(b) The fees due to the council, in accordance with Section 6 of this administrative regulation.

(2) The application referenced in subsection (1)(a) of this section may be found online at www.nc-sara.org.

Section 4. Standards for Approval. In order to participate in SARA, an institution shall comply with the following:

(1) Maintain authorization to operate in Kentucky through one (1) of the following:

(a) Creation by Kentucky Revised Statutes;

(b) Licensure by the council; or

(c) Licensure by the commission; and

(2) Meet the current minimum requirements to participate in SARA.

Section 5. Consumer Complaints. (1) After first exhausting the institution's internal procedure for complaint resolution, a non-resident student may file a complaint against the institution for failure to comply with any SARA standard within two (2) years of the incident about which the complaint is made.

(2) In order to be considered, a complaint shall be submitted by the student in writing and include the following information:

(a) Name, address, email address, and phone number of student;

(b) Name of institution;

(c) Location of institution;

(d) Dates of attendance;

(e) An explanation of the steps taken to exhaust the institution's grievance process;

(f) A full description of the issue and any relevant documentation supporting the complaint; and

(g) The desired resolution of the complaint.

(3) Complaints regarding student grades or student conduct violations shall not be considered.

(4) The president shall forward the complaint by email to the institution and require a written response no later than thirty (30) days from the date of transmittal.

(5) After review of information and materials provided by the student and the institution, the president may request additional information from either party.

(6) After review of all relevant information and materials, the president shall facilitate a resolution of the complaint. The relief provided the student, if any, shall be commensurate with the circumstances.

(7) Resolution of a complaint by the president shall be final, except in instances where the subject matter of the complaint may violate any other applicable laws.

(8) The president shall provide to the executive director of the commission, for reference purposes, a copy of:

(a) Any complaint initiated against an institution licensed by the commission;

(b) The resolution; and

(c) Any related materials.

Section 6. Fees. The council shall charge an initial and annual renewal fee to institutions based on all enrolled full-time equivalent students, which shall be due at time of application. Applications shall not be reviewed without receipt of fee payment. Failure to pay a fee on or before the date of application shall be sufficient grounds for denial of an application. Fees shall be in addition to any fees charged by NC-SARA and shall be in accordance with the following schedule:

(1) Under 2,500 - \$3,000 full-time equivalent students;

(2) 2,500 – 9,999 - \$5,000 full-time equivalent students; or

(3) 10,000 or more - \$7,000 full-time equivalent students.

Section 7. Appeals.

(1) An institution denied approval for an initial or renewal application may request an appeal of that decision in accordance with the terms of this subsection.

(a) The institution shall notify the president of the intent to appeal the decision within seven (7) days of the receipt of the notice of denial.

(b) The president shall request that the Office of Administrative Hearings appoint a hearing officer who shall conduct an administrative hearing consistent with the provisions of KRS 13B.005-13B.170.

(c) The appeal shall be presented in writing no later than thirty (30) days following the receipt of notification of intent to appeal. **The appeal shall be considered on the written record alone.**

(d) The appeals officer shall review findings of fact, consider testimony, draw conclusions, and formulate a recommendation consistent with the facts and this administrative regulation.

(e) Upon completion, the report of the appeals officer shall be forwarded to the institution and to the president.

(f) Within thirty (30) working days of receiving the report of the appeals officer, the president shall either uphold the decision or approve the application.

CONTACT PERSON: Sarah Levy, Executive Director of Postsecondary Licensing, Council on Postsecondary Education, 1024 Capital Center Dr., Suite 350, Frankfort, Kentucky 40601, phone 502.573.1555, fax 502.573.1535, email sarah.levy@ky.gov.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Education Professional Standards Board
(As Amended at ARRS, March 9, 2020)**

16 KAR 9:060. The district[alternative] training program for preparation of candidates for initial teacher certification.

RELATES TO: KRS 161.028, 161.030, 161.048, 161.049

STATUTORY AUTHORITY: KRS 161.028, 161.030, 161.048, 161.049

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.048 and KRS 161.049 requires [directs] the Education Professional Standards Board (EPSB) to promulgate [adopt] administrative regulations establishing standards and procedures for local district training programs and the approval [and evaluation process] for these programs. This administrative regulation establishes the required elements of a local district training program, outlines the training and responsibilities required of the professional support team, and establishes the training that [which] a candidate for alternative certification shall be provided. In addition, this [the] administrative regulation establishes the process for evaluation of the candidate and evaluation of the district training program.

Section 1. The district[alternative] training program, as defined in KRS 161.048 and 161.049, is an alternative certification program to prepare a candidate for initial teacher certification at any grade level. Except for the preparation of teachers of exceptional children, a local district or a group of districts may seek approval to offer the district training program in all instructional fields [for middle-grade teachers as identified in 704 KAR 20:080 and TEC 35.0 of the Kentucky Standards for the Preparation Certification of Professional School Personnel incorporated by reference in 16 KAR 5:013 and for secondary classroom teachers as identified in 704 KAR 20:070 and TEC 40.2] including interdisciplinary early childhood education, except for the preparation of teachers of exceptional children.

Section 2. District Plan. (1) The local school district or group of districts[consortium] shall submit a plan for the alternative training program for approval by the [(EPSB)] [Education Professional Standards Board], to include the following:

(a) Written evidence that the district has sought joint sponsorship of the program with an accredited college or university.

(b) The names of a four (4) member professional support team for each candidate, as described in Section 4 of this administrative regulation.

(c) The names and qualifications of personnel in addition to [other than] the four (4) member professional support team, if any, who will provide formal instruction as described in Section 5 of this administrative regulation.

(d) The training program for the support team, as described in Section 6 of this administrative regulation.

(e) The professional development plan[training program] for each candidate, as described in Section 5 of this administrative regulation.

[(f)] A tentative budget to include expected personnel costs, for the period of time for which the district is requesting approval of the proposal, which may not exceed five (5) years.]

[(f)(h)](g) The name, title, address, and telephone number of the program director.

(g) [(h)] Appeal process.

1. ~~The sponsoring district or consortium shall establish an appeals process for candidates in the alternative training program and shall notify the Education Professional Standards Board of this process at the time of application for approval of the program.~~

2. ~~Complaints relative to failure of the sponsoring district or consortium or the professional support team to comply with and follow all prescribed statutory and regulatory requirements and procedures of an approved alternative training program shall be directed to and assessed by the superintendent or designee of the sponsoring district or consortium.~~

3. ~~The district shall notify the Education Professional Standards Board of all appeals and actions taken as a result of appeals.~~

(i) The roles and expectations for the professional support team during the eight (8) week training and the two (2) subsequent eighteen (18) week training sessions.

(2) The proposed district training program plan [for an alternative training program] shall be submitted to [reviewed by staff of] the EPSB [Kentucky Department of Education] for review by staff.

(a) Staff shall review the district training program plan in terms of the following criteria:

1.(a)] Compliance of the proposed program with the requirements and standards set forth in KRS 161.048 [161.08], KRS 161.049, [16 KAR 9:050] and this administrative regulation; and .]

2.(b)] [Evidence that sufficient financial and staff resources are available to the program for its effective implementation.]

(e) Qualifications of program staff in the areas of instruction and supervision for which they have responsibility, including the qualifications described in Section 6 of this administrative regulation.

(b) The district training program plan [for the proposed alternative certification program] shall provide evidence to the satisfaction of the EPSB [Education Professional Standards Board] in support of the [three (3)] criteria listed above and .] staff shall recommend acceptance or denial of the plan to the EPSB, which shall include supporting [the] rationale for the recommendation.

(c) The EPSB shall review the staff recommendations, shall approve or deny each plan, and shall transmit the decision and rationale for the decision to the district.

(d) The district may revise and resubmit a plan that has been denied. Any approval granted by the EPSB [Education Professional Standards Board] shall specify the period of approval of the district training program, which shall not exceed seven (7) years [five (5) years]. Districts may apply for an extension of approval as outlined in Section 11 of this administrative regulation.

(3) The district shall offer employment, pursuant to KRS 161.048(3)(d), to a candidate seeking certification only after the district plan for an alternative training program has been approved by the EPSB [Education Professional Standards Board].

(4) For each candidate seeking certification through an approved district[alternative] training program, the district shall maintain a file, either in hardcopy format or electronic format, which shall be made available to the EPSB upon request and shall contain [contains] [submit] [the following and shall be made available to EPSB upon request]:

(a) Evidence of a criminal background [records] check and clear C/AN check in compliance with KRS 160.380(4).]

(b) [Transcripts of all college work undertaken by the candidate.

(c) Three (3) recent letters of reference from persons not related to the candidate who are familiar with the candidate's professional

work.]

(d)] Identification of the school, or an accurate description of another location including the reasons for selecting a non-school site, in which the candidate shall be trained during the first eight (8) weeks of training.~~[(Reasons for selecting a nonschool site shall be provided.)]~~

(c)](e)] Identification of the school, or an accurate description of another location including the reasons for selecting a non-school site, in which the candidate shall teach and be trained during the two (2) subsequent eighteen (18) week periods of training.~~[(.)]~~

(d)](f)] A proposed list of grade levels and classes the candidate will teach.~~[(.)]~~

(e)](g)] The proposed daily workload and schedule of the candidate for each phase of the training;~~and.]~~

(h) A copy of the official letter offering employment to the candidate.

(i) Evidence that the candidate has accepted the offered employment.]

(f)](j)] The names and titles[positions] of the members of the four (4) person professional support team, including [to include] evidence that each member has successfully completed training and testing for participation in the Kentucky teacher internship program[or the required update as established in 704 KAR 20:320].

Section 3. (1) Candidates. An eligible candidate who meets the requirements of KRS 161.048 (3)(a)-(d) and 16 KAR 2:010, Section 3 (1), shall be issued a one (1) year [one-year] provisional teaching certificate to participate in the district training program.

(2) The candidate shall apply to the EPSB and provide:

(a) Official transcripts of all college work undertaken by the candidate establishing proof of a bachelor's degree or graduate degree and grade point average;

(b) Proof of a passing score on the academic content assessment, as established in 16 KAR 6:010, in the area in which certification is being sought;

(c) Documentation of the candidate's employment history, including a position description that shows a direct connection to the academic content area for which certification is being sought; and

(d) Written evidence of an offer of employment by a school district with an approved district training program.

(3) A candidate shall [must] be issued a one (1) year [one-year] provisional teaching certificate prior to participation in the district training program.

Section 4[3]. [Orientation and] Professional Development Plan for a Candidate. A[An orientation and a] professional development plan to assist[for assisting] each candidate in achieving a recommendation for approval[toward proficiency] shall be created and maintained[provided] by the local school district as follows:

(1) The four (4) member professional support team and the candidate, or a small cohort of candidates, shall meet before the candidate begins Phase I training to[and shall] be oriented to the district[approved] training program[proposal] and to the responsibilities and expectations for each team member and the candidate.

(2) The professional support team shall adopt[draft] an individual professional development plan for the candidate that which addresses[to cover] all phases of the training. [The candidates' professional development plan shall be consistent with the district plan for assisting a teacher toward proficiency as described in KRS 156.101(6)(c)6 and with the district's approved alternative certification proposal, and shall be fully discussed with the candidate.]

(3) The candidate's professional development plan shall be maintained by the district and shall be made available to the EPSB on request[submitted to the Education Professional Standards Board for review and approval, along with documentation of each team member's knowledge and skills as described in Section 6 of this administrative regulation and the candidate's application for candidacy as described in Section 3 of 16 KAR 9:050. If the board's judgment is that the professional development plan is not consistent with the approved district plan, the board may refuse to approve the individual plan and may deny the candidacy until a professional

development plan is approved].

Section 5[4]. Professional Support Team. Each member of the professional support team shall provide to the district documented evidence [of] that he or she possesses [possess] knowledge and skills in field and clinical supervision, mentoring, conferencing, student assessment, evaluation of curricula and teaching skills, and dealing with a variety of students. Documentation of these competencies shall be maintained by the district and made available to EPSB upon request. A four (4) member professional support team [who have successfully completed the training identified in Section 6 of this administrative regulation] shall be identified by the local school district for each candidate seeking certification through the district training program[an approved alternative training program] as follows:

(1) School principal. The principal of a[the] school in the district where the candidate will be employed[initially assigned to teach] shall chair the professional support team. He or she shall keep records of the following:

(a) All informal visits and critiques;

(b) All formal visits and evaluations; and

(c) Documented changes made in the candidate's professional development plan. At regular intervals, the chair shall convene the professional support team in order to discuss with the candidate his or her professional progress and appropriate modifications in the professional development plan.

(2) Experienced teacher. The teacher shall hold current certification valid for the grade range and subject area or a [closely] related subject area for which the candidate is seeking certification. The teacher shall hold Rank I or II, and shall have at least four (4) years of full-time teaching experience. At least one (1) year of the prior teaching experience shall be in the district that has employed the candidate.

(3) Instructional supervisor. The instructional supervisor shall hold a valid Kentucky certificate for supervision of instruction and shall have at least one (1) year of prior experience in the district that has employed the candidate. If an instructional supervisor is not available, the district shall assign a person who has held the full-time position of supervisor of instruction for at least one (1) year within the prior three (3) years and who holds a valid Kentucky certificate for supervision of instruction.

(4) College or university faculty member. The faculty member shall be a [full-time] faculty member of an EPSB accredited [senior] college or university [who is associated with the teacher preparation program and] whose academic field is the same as or is closely related to the field in which the candidate is seeking certification. If a faculty member is not available, the district shall assign a person approved by an EPSB accredited[a senior] college or university who has held the position[full-time position] of college faculty member within the prior three (3) years [and whose academic field is the same as or closely related to the area in which the candidate is seeking certification].

Section 6. District Training Plan Framework[Section 5. Training for the Candidate]. A three (3) phase training program for each candidate, as established in KRS 161.049, shall occur to ensure implementation of the candidate's professional development plan and a minimum of 250 hours of formal instruction. Formal instruction shall be for the purpose of ensuring that the candidate acquires the competencies established in 16 KAR 1:010[704 KAR 20:070, Sections 2, 3, 4, 5, 6 and 8] and shall relate directly to the candidate's professional development plan [and to the knowledge base of the Kentucky teacher internship program]. Formal instruction shall include:

(1) Phase I training. Phase I shall include a full-time seminar and practicum of no less than eight (8) weeks' duration prior to the time the candidate assumes responsibility for a classroom and shall comply with the following:

(a) The district training program shall include an introduction to basic teaching skills through supervised teaching experiences with students.

(b)[The training program shall integrate the candidate's supervised teaching experience with formal instruction in human

growth and development, basic teaching skills, classroom management, dealing with diverse learning styles of diverse student populations, student assessment, and the knowledge base for the Kentucky teacher internship program.

(e) The district shall provide a formal orientation to the policies, organization, and curriculum, [and student characteristics] of the employing district. [The orientation shall be supervised by, or provided by, one (1) or more members of the professional support team.]

(c)(d) During the last week of Phase I training, evaluations shall be performed [by] or supervised by one (1) or more members of the professional support team, which[and] shall include written tests of the required competency areas pursuant to this Section [and observations of the candidate's classroom performance].

(d) The candidate's understanding in the areas of formal instruction [outlined in Section (5)(1)(b)] and the candidate's performance in the competency areas established in the designated sections of 16 KAR 6:010[704 KAR 20:070] shall be evaluated, along with the candidate's understanding of policies, organization, and curriculum of the employing school district.

(e) Evaluation results in written form shall be shared with all members of the professional support team and shall be used to modify and improve the candidate's professional development plan. The revised professional development plan shall be discussed with the candidate and maintained by the district [forwarded to the Kentucky Department of Education].

(2) Phase 2 training. Phase 2 shall include eighteen (18) weeks of formal instruction, informal observations, and critiques of the candidate during which time the candidate shall have responsibility for one-half (1/2) time classroom assignment. Formal instruction, informal observations, critiques, and evaluations shall relate directly to the candidates' professional development plan and to the competencies established in 16 KAR 1:010[704 KAR 20:070]. Phase 2 training shall comply with the following:

(a) Prior to or during the first week of Phase 2 training the team shall discuss with the candidate the purpose and expectations of informal observations, critiques, formal observations, and evaluations, as defined in Sections 7 and 8 of this administrative regulation.

(b) Informal observation and critique. The candidate shall be visited, informally observed, and critiqued at least one (1) time per week by one (1) or more members of the professional support team. [Over the eighteen (18) week period, each member of the team shall visit, informally observe and critique no less than five (5) times].

(c) Formal observation. Each team member shall schedule a formal observation of the candidate at least one (1) time during the first five (5) weeks, one (1) time during the second five (5) weeks, and one (1) time during the last eight (8) weeks.

(d) Formal evaluation. The team shall meet to formally evaluate the candidate at the end of five (5) weeks, at the end of ten (10) weeks, and at the end of eighteen (18) weeks. After each [set of] formal evaluation[evaluations], the team shall meet with the candidate to discuss evaluation results that [which] may lead to modifications of the candidate's professional development plan.

(3) Phase 3 training. Phase 3 training shall include eighteen (18) weeks of formal instruction, informal visits, and critiques [of classroom assignment], and at least two (2) formal observations and evaluations during which time the candidate may[shall] have full-time classroom assignment. Phase 3 training shall comply with the following:

(a) Each member of the professional support team shall informally visit and critique the candidate at least one (1) time per month. Each informal observation shall last no less than one (1)[a] full class period.

(b) The [district plan shall show time and personnel allocations to permit the] candidate shall[te] spend at least one (1) class period per week observing an experienced teacher. Teachers selected for observation shall represent a variety of classroom subjects and levels, and shall be chosen for their ability to demonstrate a variety of exemplary teaching techniques and strategies.

(c) Each member of the professional support team shall formally observe and evaluate the candidate at least two (2) times during Phase 3. No more than two (2) months shall pass[eight (8) weeks]

shall occur] without a formal observation.

(d) [Formal instruction shall continue during this period.]

(e) The candidate shall take the pedagogy assessment [professional knowledge portion of the core battery of the NTE] no earlier than the Phase 3 training period. The score required of the candidate is established in 16 KAR 6:010. The professional support team shall not recommend approval for a candidate until a passing score is achieved.

[Section 6. Training for the Professional Support Team. (1) Each member of the professional support team shall successfully complete the training to prepare classroom observers for the Kentucky teacher internship program. Each member of the team shall successfully complete the written and coding tests for the Kentucky teacher internship program before undertaking service on a professional support team. In no case shall training for a team member occur after the start of Phase I training.]

(2) In addition, each member of the professional support team shall provide documented evidence of possessing knowledge and skills in field and clinical supervision, mentoring, conferencing, student assessment, evaluation of curricula and teaching skills, and dealing with a variety of students including children of diverse cultural backgrounds and exceptional children. Documentation of these competencies shall accompany the district proposal.

(3) Prospective team members who have successfully completed the training and testing for the Kentucky teacher internship program, but who lack documented evidence of knowledge and skills in one (1) or more of the areas specified in subsection (2) of this section, shall successfully complete training in these areas. The training shall be completed prior to Phase I of the district's approved program, and shall be provided through, or approved by, the Kentucky Department of Education.]

Section 7. Informal Observation and Critique. (1) During an informal observation visit, each team member shall record observations regarding the candidate's performance in relation to the standards identified in 16 KAR 1:010 [Kentucky teacher internship knowledge base] and the performance of students in the classroom. [Team members may use the classroom observation instrument of the Kentucky teacher internship program.] Each informal observation leading to a critique shall be no less than twenty (20) minutes. Visits for informal observations shall be scheduled and unscheduled, and over the period of eighteen (18) weeks shall cover the range of times and activities for which the candidate is responsible for the classroom.

(2) At a critiquing session following an informal observation, results and feedback shall be shared with the candidate. The critique shall occur as soon as possible after the observation in order to assist the candidate to improve his or her classroom performance and the performance of his or her students.

Section 8. Formal Observation and Evaluation. (1) Formal observations shall be scheduled in advance with the candidate and shall last no less than one (1) class period. [Team members shall use the classroom observation instrument of the Kentucky teacher internship program during each formal observation and shall share observation results with the candidate as soon as possible after the end of the formal observation.]

(2) As a part of the formal evaluation, team members shall review the candidate's progress as recorded on observation instruments, notes, and other documents relating to the candidate's classroom performance.

(3) Each formal evaluation shall consist of the team's written assessment of the candidate's performance as measured through formal and informal observations.

(4) Following each set of formal evaluations, the team shall meet with the candidate to discuss evaluation results, which may lead to modification of the candidate's professional development plan. The team and the candidate shall plan together for the candidate's professional growth over the following training periods.

Section 9. Evaluation Report of the Candidate. (1) At the conclusion of the district[alternative] training program for each candidate, the chair of the professional support team shall prepare a

comprehensive evaluation report on the candidate's performance. The professional support team shall by majority vote recommend one (1) of the following actions to the EPSB[Education Professional Standards Board]:

(a) Approved. The professional support team recommends issuance of the teaching certificate[statement of eligibility] for the candidate[, who may seek a teaching position and undertake the Kentucky teacher internship program established under 704 KAR 20:320].

(b) Insufficient. The professional support team recommends that the candidate be allowed to seek reentry into a district training[alternative teacher preparation] program. The team shall identify areas of insufficiency and shall attach to the recommendation a suggestion for remediation in each area. The team shall also recommend a point of reentry to a district training[alternative preparation] program. A provisional certificate shall be reissued for a second year if the candidate is employed by a district for participation in its approved training programs for a subsequent year.

(c) Disapproved. The professional support team recommends that the candidate not be permitted to enter a district training[alternative teacher preparation] program. The team shall identify specific reasons for this recommendation and shall document the evidence used by the team to reach its decision. Reasons for the recommendation [of disapproval] shall be submitted with[attached to] the recommendation form, and shall be directly related to one (1) or more of the areas of formal instruction, testing, and classroom performance specified in Sections 5, 7, and 8 of this administrative regulation.

(2) If team members cannot reach a majority agreement concerning a recommendation under this section, the recommendation shall be submitted as insufficient. The team shall provide a statement in the evaluation report addressing the dispute among team members about the recommendation.[All team members shall vote on the final recommendation. If the professional support team fails to achieve a majority vote (3-1 or 4-0) for any recommendation, the decision shall be interpreted as falling under the insufficient category. The team chair shall prepare a narrative describing the vote. Team members may attach an individual position statement to any recommendation. All documents shall be forwarded for review by the Education Professional Standards Board.]

(3) The chair shall forward the recommendation form and all observation and evaluation documents to the EPSB[Education Professional Standards Board].

Section 10. District Training Program Evaluation. (1) The district or group of districts plan[consortium proposal] for a district training[an alternative teacher preparation] program shall include a schedule for short-range program evaluation to include[, but not be limited to,] an evaluation of the effectiveness of the formal instruction in relation to acquisition by the candidate of the knowledge and competencies specified in 16 KAR 1:010[Section 5 of this administrative regulation], the supervised [student] teaching, the assistance provided by the professional support team, and the effectiveness of the candidate in the classroom during the two (2) eighteen (18) week training sessions.

(2) The plan shall include a schedule for long-range program evaluation to include[, but not be limited to,] the goals of the alternative preparation program and the effectiveness of the program in meeting these goals.

~~(3)[(a) The Education Professional Standards Board shall conduct periodic reviews of the district training programs which shall include on-site evaluations to verify the quality of the programs. The on-site evaluations shall be scheduled in advance with the district to allow sufficient time for the district to provide evaluation results and other necessary records and documents, ensure availability of program staff and candidates and provide other facilities for the conduct of the evaluation.~~

(b) The Educational Professional Standards Board shall provide a copy of its evaluation report to the district within thirty (30) working days of the site visit. The district shall provide a written response to all program weaknesses identified in the board's report and shall forward this response to the board within thirty (30) working days of

receipt of the board's evaluation report. The board shall review the report and response and shall take appropriate action.

~~(e) The board may conduct on-site evaluations of any approved district training program to evaluate the quality of the programs. If in the judgment of the board a district[an alternative] training program exhibits continuing [and insurmountable] weaknesses, the board may direct termination of the program at the end of the current school year.~~

Section 11. Continuance[Extension] of Program Approval. (1) ~~A[Over the signature of the appropriate superintendent or superintendents, a] district or group[consortium] of districts may apply for continuance[an extension] of an approved district[alternative] training program for an additional period of time not to exceed seven (7)[five (5)] years. The request for continuance[extension] shall reference program evaluation results described under Section 10 of this administrative regulation, and shall specify significant changes in program components that have occurred since the training program received prior board approval and that are planned for implementation in subsequent training periods.~~

(2) The request for continuance[extension] shall [specify how program costs in terms of salaries, training personnel, staff time and district facilities shall be accommodated within the district's budget, and shall] provide specific examples of demonstrating[other assurances of] program quality[as may be requested by the Education Professional Standards Board]. The request for continuance shall set forth statistical information related to teacher retention for all prior candidates who have completed the training program. Standards for program approval and program quality specified under Sections 2 through 10 of this administrative regulation shall be maintained under any program extension.

CONTACT PERSON: Deanna L. Durrett, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321; email regcomments@education.ky.gov.

**FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(As Amended at ARRS, March 9, 2020)**

103 KAR 2:005. Life Mortality Table[Life expectancy table].

RELATES TO: KRS 140.100

STATUTORY AUTHORITY: KRS 131.130, 140.100(2)[(1)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of all tax laws of this state. KRS 140.100(2) requires the application of the appropriate United States life mortality tables when ascertaining the value of future, contingent, or limited estates, which includes life estates and annuities. This administrative regulation establishes the appropriate United States life mortality table as required by KRS 140.100(2).

Section 1. The mortality table as prescribed in ~~/Section 7520(a)(1)~~ of the Internal Revenue Code, 26 U.S.C. 7520(a)(1).[The United States Decennial Life Tables published by the United States Department of Health and Human Services, National Center for Health Statistics,] shall be utilized when computing the value of a beneficiary's life estate, annuity, remainder interest, or any other interest in the estate which is based on the life expectancy of the beneficiary or some other person. The mortality table prescribed by the Internal Revenue Service as of January 1 of the year of the decedent's death shall be used.

Section 2. For inheritance tax purposes, the value of future, contingent, or limited estates shall be computed using Table 1, Life Table for the Total Population: United States, 1999–2001, as published in United States Decennial Life Tables for 1991–2001,

United States Life Tables, Vol. 57, No. 1 (Aug. 5, 2008).

Section 3. Incorporation by Reference.

(1) "Table 1, Life Table for the Total Population: United States, 1999–2001, as published in United States Decennial Life Tables for 1991–2001, United States Life Tables, Vol. 57, No. 1", Aug. 5, 2008, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40620, Monday through Friday, 8 a.m. to 5 p.m.]

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email Lisa.Swiger@ky.gov.

**FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(As Amended at ARRS, March 9, 2020)**

103 KAR 30:170. Containers, wrapping, and packing materials.

RELATES TO: KRS 139.010, 139.470

STATUTORY AUTHORITY: KRS 131.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the assessment, collection, refunding, administration, and enforcement of Kentucky tax laws. This administrative regulation defines and clarifies the sales and use tax law as it applies to containers, wrapping and packing materials, labels, and related products.

Section 1. Definitions.

(1) "Containers" means articles used for shipment or delivery of tangible personal property. Examples of such articles are wrapping materials, bags, cans, twine, gummed tape, boxes, bottles, drums, carboys, cartons, baling wire, and sacks.

(2) "Nonreturnable containers" means all containers other than those defined in subsection (3) of this section. Examples are wrapping and packing materials, paper bags, twine, medicine packaging, and distilled spirits bottles.

(3) "Returnable containers" means containers of a kind customarily returned by the buyer of the contents for reuse. Examples of returnable containers are milk bottles, steel drums, beer and soft drink bottles, wine barrels, chemical carboys, totes, and gas cylinders.

Section 2. Sales of Returnable Containers.

(1) Sales of returnable containers when sold without the contents to manufacturers, compounders, bottlers, etc., who place the contents in the container and sell the contents together with the container are not subject to the sales or use tax. The container is not subject to the tax when it is sold at retail in connection with a retail sale of its contents. The fact that the retailer may require a deposit against the return of the container or allows a credit upon its return does not alter the rule. Returnable containers are not subject to the tax when they are resold by the final buyer for refilling.

(2) Sales of returnable containers, for example totes, to manufacturing suppliers who place the contents in the totes and sell the contents but not the tote to their manufacturing customer are subject to the sales and use tax. As the tote is not sold to the manufacturer, the sales and use tax exemption found in KRS 139.470(2) is not applicable.

Section 3. Sales of Nonreturnable Containers.

(1) Sales of nonreturnable containers to manufacturers, compounders, bottlers, etc., for use in packaging their product for resale which are not intended to be returned for reuse are not subject to the sales or use tax. Bottle caps and crowns shall be treated at all times as nonreturnable containers for use in

packaging a product for resale.

(2) Sales of wrapping paper, clothes hangers, twine, tape, and similar articles to persons who use them to package merchandise for sale at retail are usually sales made for resale and are therefore not subject to the tax. Sales of such articles to persons who use them in the conduct of an activity other than sale of tangible personal property at retail[, for example, laundries and dry cleaning establishments,] are subject to the sales or use tax.

(3) Sales of nonreturnable paper napkins, straws, and like articles to restaurants, lunch counters, etc., who use them in connection with the sale and serving of food are sales made for resale and are therefore not subject to the tax.

Section 4. Labels and Name Plates.

(1) Sales of labels and name plates are not subject to the sales or use tax if:

(a) They are affixed to a nonreturnable container of property sold; or

(b) They are affixed to returnable containers if a new label is affixed to the container each time it is refilled.

(2) Labels, name plates, and price tags which are permanently affixed to the product for sale become a component part of that product and thus not subject to tax when sold to the manufacturer to be affixed by him.

(3) Price tags, shipping tags, and advertising materials used in connection with the sale of property or enclosed with the property sold are subject to the tax.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-9526, fax (502) 564-3875, email Lisa.Swiger@ky.gov.

BOARDS AND COMMISSIONS

Board of Veterinary Examiners

(As Amended at ARRS, March 9, 2020)

201 KAR 16:500. Code of ethical conduct for veterinarians.

RELATES TO: KRS 257.080, 321.185, 321.351(1)(g)

STATUTORY AUTHORITY: KRS 321.235(3), 321.240(5), (6), 321.351(1)(g)(a)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.240(6) requires the Kentucky Board of Veterinary Examiners to establish a code of ethical conduct governing the practice of veterinary medicine. KRS 321.351(1)(g) provides for the suspension or revocation of a license, imposition of probationary conditions or an administrative fine, or the issuance of a written reprimand for any violation of the code of ethical conduct promulgated by the board. KRS 321.235(3) and 321.240(5) authorize the board to promulgate administrative regulations to implement KRS Chapter 321. This administrative regulation establishes a code of ethical conduct for veterinarians[sets forth certain standards which shall constitute a code of ethical conduct for and upheld by each licensed veterinarian].

Section 1. A veterinarian shall not engage in fraud, deceit, or misrepresentation in the practice of veterinary medicine.

Section 2. A veterinarian shall bill accurately and truthfully for services rendered.

Section 3. A veterinarian shall not engage in false, misleading, or deceptive advertising.

Section 4. A veterinarian shall not issue a certificate of veterinary inspection (CVI) unless the veterinarian has personal knowledge through appropriate examination. A veterinarian shall not issue a CVI unless he or she has complied with all entry requirements of the jurisdiction of destination.

Section 5. A veterinarian shall not represent to the public that

he or she is a board certified specialist in any specialty of veterinary medicine unless that veterinarian has been certified by an entity approved by the American Veterinary Medical Association (AVMA) and has submitted the certification for filing with the board.

Section 6. A veterinarian's conduct shall conform to the currently accepted standards in the practice of veterinary medicine.

Section 7. A veterinarian shall maintain adequate equipment to treat patients that he or she is called upon to treat in the practice of veterinary medicine.

Section 8. A veterinarian shall maintain his or her service premises and equipment in a clean and sanitary condition.

Section 9. A veterinarian shall take sufficient time to perform a complete physical exam and recommend the appropriate tests as needed to diagnose the condition of the patient.

Section 10. A veterinarian shall not neglect a patient under his or her care.

Section 11. A veterinarian shall not physically abuse a patient under his or her care.

Section 12. Except as provided by Section 41 offor-in this administrative regulation, a veterinarian shall have the right to refuse any patient.

Section 13. A veterinarian shall not practice veterinary medicine in a manner that endangers the health of a patient or endangers the health, safety, or welfare of the public.

Section 14. A veterinarian shall not practice veterinary medicine if his or her ability to practice with reasonable skill and safety is adversely affected by the use of alcohol, drugs, narcotics, chemicals, or other substances.

Section 15. A veterinarian shall not overutilize his or her practice. A practice shall be deemed to be overutilized if it exceeds the needs of the patient, considering the patient's history and subjective symptoms; the veterinarian's objective findings, the veterinarian's reasonable clinical judgment, and other information relevant to the practice of veterinary medicine.

Section 16. A veterinarian shall not aid or abet any person in the unlawful practice of veterinary medicine.

Section 17. A veterinarian shall ascertain, before hiring, whether a person who may be hired as a veterinarian has a license to practice veterinary medicine in the Commonwealth of Kentucky and shall be responsible for ensuring that the employee's license remains current.

Section 18. A veterinarian shall not permit a veterinary technician or veterinary assistant to diagnose, prescribe medical treatment, or perform surgical procedures other than the castrating and dehorning of food animals.

Section 19. A veterinarian shall create adequate records to document the veterinarian's examination and treatment of his or her patients in accordance with KRS 321.185(2).

Section 20. A veterinarian shall retain records of his or her examination and treatment of each patient for a period of at least five (5) years from the most recent examination of the patient.

Section 21. (1) A veterinarian shall provide copies of the veterinarian's medical records of the examination and treatment of a patient upon the request of the client.

(2) Copies of records may be released to the client's designee or another veterinarian engaged by the client to examine or treat the patient upon submission of a signed Authorization for the

Release of Medical Records form[medical-release] pursuant to KRS 321.185(3).

(c) A veterinarian shall provide copies of the veterinarian's medical records to the board upon request by the board or the board's designee for inspection or investigation pursuant to KRS 321.185(3)(e)1.

Section 22. A veterinarian shall not sell, or offer for sale, prescription medications, including controlled substances, at any place other than in his or her office, clinic, hospital, or mobile unit; or in another place where he or she is treating patients.

Section 23. (1) Except as provided by subsection (2) offin this section~~[of this administrative regulation]~~, a veterinarian shall prescribe, dispense, sell, or offer for sale, prescription medications only for his or her own patients.

(2) A veterinarian may dispense a non-controlled substance medication for a client that was prescribed by another veterinarian who has established a veterinarian-client-patient relationship (VCPR).

Section 24. A veterinarian shall comply with the requirements of 201 KAR 16:600.

Section 25. A veterinarian shall not write testimonials as to the virtue of medications, remedies, or foods except to report the results of properly controlled, unbiased experiments, or clinical studies.

Section 26. A veterinarian shall post at his or her facility, and make available over the telephone or online, the veterinarian's policy regarding the hours, emergency coverage, and other similar provisions for the operation of the facility.

Section 27. A veterinarian shall maintain a confidential relationship with his or her clients in accordance with KRS 321.185(3) and in accordance with KRS 257.080, or exceptions[, except as] otherwise provided by law, or required by considerations related to public health or animal health.

Section 28. A veterinarian shall obtain the consent of the patient's owner (or the owner's agent) before administering general anesthesia or performing any surgical procedure unless circumstances qualifying as an emergency do not permit obtaining the consent.

Section 29. A veterinarian shall attempt to obtain the consent of a patient's owner (or the owner's agent) in writing, if feasible, before euthanizing a patient or transporting a patient to another facility. If it is not feasible to obtain consent in writing, the veterinarian shall obtain oral consent from the patient's owner (or the owner's agent) and document the consent in the medical record.

Section 30. A veterinarian shall make reasonable efforts to obtain the consent of the owner (or the owner's agent) before disposing of any patient that[which] dies while in the veterinarian's care. Any patient disposal shall be done according to all applicable health and safety laws and regulations.

Section 31. A veterinarian shall, where possible, preserve the body of any patient that[which] dies while in the veterinarian's care while its owner (or the owner's agent) is away, except as otherwise provided by law.

Section 32. A veterinarian shall not abuse or take advantage of the confidence of the client.

Section 33. A veterinarian shall not enter into a business transaction with a client in which the veterinarian and his or her client have differing interests:

(1) If the client reasonably expects the veterinarian to exercise his or her professional judgment for the protection of the client;

(2) If the veterinarian has not fully disclosed his or her interest in the transaction; or

(3) If the client has not given his or her informed consent to the transaction.

Section 34. **(1)** If a veterinarian performed an inspection of an animal on behalf of a person that the veterinarian knew (or reasonably should have known) planned to sell that animal within sixty (60) days from the date of inspection, then the veterinarian shall not perform an inspection of that animal on behalf of any person that the veterinarian knows (or reasonably should know) is a potential buyer of the animal without first disclosing to the potential buyer the fact and circumstances of the veterinarian's previous inspection of the animal.

(2) ~~[(1)]~~ The creation, review, or analysis of a radiograph shall constitute an "inspection" for the purposes of this section. ~~[(1)]~~

Section 35. An applicant for a license shall be truthful in his or her representations to the board.

Section 36. A veterinarian shall comply with the board's request to appear before the board, to provide information to the board, or to make his or her premises available for inspection by the board.

Section 37. A veterinarian shall comply with restrictions on his or her practice of veterinary medicine imposed by the board.

Section 38. A veterinarian shall notify the board within thirty (30) days of a change to his or her legal name.

Section 39. A veterinarian shall notify the board within thirty (30) days of a change to his or her permanent address or mailing address.

Section 40. A veterinarian shall notify the board within thirty (30) days of the occurrence of the following events:

(1) Disciplinary action, revocation, suspension, ~~[(or)]~~ or the voluntary surrender of his or her license to practice veterinary medicine in another jurisdiction;

(2) The suspension, revocation, or voluntary surrender of his or her United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) Accreditation;

(3) The suspension, revocation, or voluntary surrender of his or her federal Drug Enforcement Administration (DEA) registration;

(4) The suspension, revocation, or voluntary surrender of his or her state controlled substances license in any jurisdiction; or

(5) The conviction, in any jurisdiction, of any felony or misdemeanor other than a minor traffic violation.

Section 41. A veterinarian shall not refuse treatment of a patient on the basis of the client's race, color, sex, gender identity, age, religion, national origin, veteran status, or disability.

Section 42. A veterinarian shall conduct professional activities in conformity with all federal, state, and municipal laws, ordinances, or regulations.

Section 43. A veterinarian shall not verbally abuse or harass, nor physically threaten or assault a client, an employee, a board member, or any agent of the board.

Section 44. Incorporation by Reference. (1) "Authorization for the Release of Medical Records", 2/2020, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subjected to applicable copyright law, at the Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material may also be obtained at www.kybve.com.

CONTACT PERSON: Michelle Shane, Executive Director, Kentucky Board of Veterinary Examiners, 107 Corporate Drive,

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BOARDS AND COMMISSIONS
Board of Veterinary Examiners
(As Amended at ARRS, March 9, 2020)

201 KAR 16:510. Fees for veterinarians.

RELATES TO: KRS 321.193, 321.211, 321.240

STATUTORY AUTHORITY: KRS 321.193 **(1), (5)**, 321.211, 321.235(3), 321.240(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.240(5) requires the Kentucky Board of Veterinary Examiners to promulgate administrative regulations as it may deem necessary and proper to effectively carry out and enforce the provisions of KRS Chapter 321, including regulations to establish authorized fees. This administrative regulation establishes those fees for veterinarians.

Section 1. Payment and Submission of Fees. (1) Fees to the board shall be paid by check or money order, or, ~~if/when~~ available, online payment by debit or credit card. Checks and money orders shall be made payable to the Kentucky State Treasurer.

(2) All fees shall be nonrefundable.

Section 2. Application Fees for Veterinarians. (1) The application fee for a veterinarian shall be \$100.

(2) The fee shall be attached to the completed Application for Licensure as a Veterinarian form as found in 201 KAR 16: ~~540~~ **700** or online equivalent form, including all required attachments.

Section 3. Examination Fees for Veterinarians. (1) The fee for the North American Veterinary Licensing Examination (NAVLE) shall be paid directly to the International Council for Veterinary Assessment (ICVA), its designee, or current test administrator.

(2) The fee for the Kentucky State Board Examination shall be \$100 paid directly to the board.

(3) The fee for an applicant to obtain board approval to retake the NAVLE shall be fifty (50) dollars paid directly to the board and attached to the Application for Retake of the NAVLE form as found in 201 KAR 16: ~~530~~ **700** or online equivalent form.

Section 4. Renewal Fees for Veterinarians. The following fees shall be paid in connection with licensure renewals:

(1) ~~(a)~~ Except as provided by paragraphs (b) and (c) of this subsection ~~for in subsections (a) and (b) of this section~~, the biennial renewal fee for licensure as a veterinarian in active status shall be \$200 if:

1. The Renewal Application for Veterinarians form as found in 201 KAR 16: ~~570~~ **700** or online equivalent form is complete, including all required attachments, continuing education credits, and fee payment; ~~[(f)]~~ and

2. The complete package is submitted to the board for review and approval not later than September 30 of the second year of the renewal biennium.

~~(b)~~ ~~(a)~~ For veterinarians who are initially licensed in the second year of the biennium between **365 days and 182 days prior to the end of the renewal biennium** ~~October 1 and March 31~~, the licensure renewal fee shall be reduced to \$100 during a licensee's first licensure cycle. The late fee for renewal, if applicable, shall not be reduced or waived without board authorization.

~~(c)~~ ~~(b)~~ For veterinarians who are initially licensed in the second year of the biennium between **181 days and the last day of the renewal biennium** ~~April 1 and September 30~~, the licensure renewal fee shall be waived during a licensee's first licensure cycle.

(2) ~~(a)~~ During the grace period established by KRS 321.211, a licensed veterinarian who failed to meet the September 30 renewal deadline may continue to function as though licensed until a late

renewal application is submitted to the board.

(b) The late fee for biennial renewal shall be \$100 in addition to the renewal fee as described in Section 4(1)~~[- Section 4(2);]~~ or Section 6 of this administrative regulation.

(c) The veterinarian shall submit the complete Renewal Application for Veterinarians form as found in 201 KAR 16:570 or online equivalent form, including all required attachments, continuing education hours, and fee payment, to the board between October 1 and November 30 during the last year of the biennium.

(3) A veterinarian's license shall expire if no renewal application package and all attachments, and late fee if applicable, is paid to the board by November 30.

Section 5. Reinstatement Fees for Veterinarians. **(1)(a)** Except as provided ~~by~~**(for in)** Section 6 of this administrative regulation, if not more than five (5) years have elapsed since the last date of license expiration pursuant to KRS 321.211(3), a veterinarian may pay a reinstatement fee of \$400 and submit a complete Reinstatement Application for Veterinarians form as found in 201 KAR 16:540~~[700]~~ or online equivalent form, including all required attachments, to the board for reinstatement of his or her license.

(b) A veterinarian ~~shall~~**[may]** not apply for a new license during this five (5) year window; a reinstatement application ~~shall be~~**[is]** required.

(2) If more than five (5) years have elapsed since the last date of license expiration, a veterinarian ~~shall~~**[must]** apply as a new applicant to obtain a license in the Commonwealth of Kentucky.

Section 6. Inactive Status of License. **(1)(a)** A veterinarian may request inactive licensure status in accordance with 201 KAR 16:580.

(b) If using the Request for Licensure Status Change form, there shall not be a fee.

(c) If using the Renewal Application for Veterinarians form, the fee shall be as established in subsection (2) of this section. [opt to renew his or her license with status of "inactive" during the renewal period by completing the Renewal Application for Veterinarians form as found in 201 KAR 16:700 or online equivalent form, or at any point during the biennium by completing a Request for Licensure Status Change form as found in 201 KAR 16:700 or online equivalent form. Licensees with an inactive status shall not practice the profession of veterinary medicine in the Commonwealth of Kentucky until the board approves the license to return to active status.]

(2) Renewal of an inactive veterinary license.

(a) The biennial renewal fee for inactive veterinarian licensure status shall be \$100 per renewal biennium.

(b) The late fees established in Section 4(2) of this administrative regulation shall apply to a license in an inactive status that was not renewed by September 30 of the biennium.

~~**(c)** [No continuing education is required while a veterinarian's license is in inactive status.]~~

~~**(d)]** A license in an inactive status that is not renewed by November 30 shall be deemed to be expired.~~

(3) Reinstatement of inactive veterinarian license status to active status.

(a) A veterinarian licensee in inactive status may reinstate his or her license to active status in accordance with 201 KAR 16:580.

(b) There shall be a reinstatement fee of \$200. [at any time by completing and submitting a Reinstatement Application for Veterinarians or designating the status change on a Renewal form during the open renewal period, paying a reinstatement fee of \$200, and complying with the provisions established in 201 KAR 16:540, 201 KAR 16:580, and 201 KAR 16:590.

(b) At the time of reinstatement, an inactive licensee shall be required to comply with continuing education requirements established in 201 KAR 16:590.]

Section 7. Retirement of a Veterinary License. **(1)(a)** A veterinarian may request to retire his or her license at any time.

~~**(b)** The one~~~~[(4)]~~-time fee for this service ~~shall be~~**[is]** twenty-five (25) dollars, which ~~shall~~**[must]** be attached to a Request for Licensure Status Change form as found in 201 KAR 16:580~~[700]~~ or the Renewal Application for Veterinarians form as found in 201 KAR 16:570 or online equivalent forms~~[provided by the board]~~.

(2) Once a license is retired it ~~shall not~~**[cannot]** be reactivated. If a veterinarian holds a retired license and wishes to practice again, he or she ~~shall~~**[must]** apply to the board for a new license to practice veterinary medicine in the Commonwealth of Kentucky.

Section 8. Fee Reduction for Military Personnel. If a veterinarian applicant submits a copy of his or her DD-214 (or other documentation acceptable to the board) with their application or renewal paperwork, the board shall[will]** ~~waive or reduce fees as indicated in this section~~**[of this administrative regulation].****

(1) For active duty military, active reserves, and National Guard service persons, an individual's initial application fees, the Kentucky State Exam fee, and the biennial renewal fees shall be waived.

(2) For retired military personnel with twenty (20) or more years of service, an individual's initial application fees shall be waived, and the biennial renewal fees shall be reduced by half, rounded to the nearest whole dollar.

(3) For any other military veteran, the initial application fees shall be waived.

(4) All other requirements of licensure, including renewal deadlines and continuing education requirements established in 201 KAR 16:590, shall**[must]** ~~still be met.~~

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BOARDS AND COMMISSIONS Board of Veterinary Examiners (As Amended at ARRS, March 9, 2020)

201 KAR 16:512. Fees for veterinary technicians.

RELATES TO: KRS 321.240, 321.441

STATUTORY AUTHORITY: KRS 321.235(3), 321.240(5), 321.441~~(3)~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.240(5) requires the Kentucky Board of Veterinary Examiners to promulgate administrative regulations as it may deem necessary and proper to effectively carry out and enforce the provisions of KRS Chapter 321, including regulations to establish authorized fees. This administrative regulation establishes those fees for veterinary technicians.

Section 1. Payment and Submission of Fees. **(1)** Fees to the board shall be paid by check or money order, or, ~~if~~**[when]** available, online payment by debit or credit card. Checks and money orders shall be made payable to the Kentucky State Treasurer.

(2) All fees shall be nonrefundable.

Section 2. Application Fees for Veterinary Technicians. **(1)** The application fee for a veterinary technician shall be twenty-five (25) dollars.

(2) The fee shall be attached to the completed Application for Licensure as a Veterinary Technician form as found in 201 KAR 16:540~~[700]~~ or online equivalent form, including all required attachments.

Section 3. Examination Fees for Veterinary Technicians. ~~[(1)]~~ The fee for the Veterinary Technician National Exam (VTNE) shall be paid directly to the American Association of Veterinary State

Boards (AAVSB), its designee, or current test administrator.

Section 4. Renewal Fees for Veterinary Technicians. The following fees shall be paid in connection with licensure renewals for veterinary technicians:

(1)(a) Except as provided by paragraph (b) of this~~for in~~ subsection~~[(a)]~~, the annual renewal fee for licensure as a veterinary technician in active status shall be thirty (30) dollars if:

1. The Renewal Application for Veterinary Technicians form as found in 201 KAR 16:570~~[700]~~ or online equivalent form is complete, including all required attachments, continuing education credits, and fee payment; and

2. The complete package is submitted~~[,] to the board for review and approval~~ not later than September 30.

~~(b) [(a)]~~ For a veterinary technician who is initially licensed 120 days prior to the end~~on or after June 2]~~ of the renewal period, the licensure renewal fee shall be waived during a licensee's first licensure cycle.

~~(2)(a) A sixty (60) day grace period shall be allowed after September 30, during which time~~~~During the grace period established by KRS 321.214,~~ the licensed veterinary technician who failed to meet the September 30 renewal deadline may continue to function as though licensed until a late renewal application is submitted to the board.

~~(b)~~ The late fee for annual renewal shall be fifteen (15) dollars in addition to the renewal fee as described in Section 4(1) of this administrative regulation.

~~(c)~~ The veterinary technician shall submit the complete Renewal Application for Veterinary Technicians form as found in 201 KAR 16:570, including all required attachments, continuing education credits, and fee payment, to the board between October 1 and November 30.

(3) A veterinary technician's license shall expire if no renewal application package and all attachments, and late fee if applicable, is paid to the board by November 30.

Section 5. Reinstatement Fees for Veterinary Technicians.

(1)(a) Except as provided by~~for in~~ Section 6~~5~~(3) of this administrative regulation, if not more than five (5) years have elapsed since the last date of license expiration~~[pursuant to KRS 321.214(3)]~~, a veterinary technician may pay a reinstatement fee of fifty (50)~~seventy-five (75)]~~ dollars and submit a complete Reinstatement Application for Veterinary Technicians form as found in 201 KAR 16:540~~[700]~~ or online equivalent form, including all required attachments, to the board for reinstatement of his or her license.

~~(b)~~ A veterinary technician shall~~may~~ not apply for a new license during this five (5) year window; a reinstatement application shall be~~is~~ required.

(2) If more than five (5) years have elapsed since the last date of license expiration, a veterinary technician shall~~must~~ apply as a new applicant to obtain a license in the Commonwealth of Kentucky.

Section 6. Inactive Status of a License. (1)(a) A veterinary technician may request inactive licensure status in accordance with 201 KAR 16:580.

(b) If using the Request for Licensure Status Change form, there shall not be a fee.

(c) If using the Renewal Application for Veterinary Technicians form, the fee shall be as established in subsection (2) of this section. [A veterinary technician may opt to renew his or her license with status of "inactive" during the renewal period by completing Renewal Application for Veterinary Technicians form as found in 201 KAR 16:700 or online equivalent form, or at any point during the annual cycle by completing the Request for Licensure Status Change form as found in 201 KAR 16:700 or online equivalent form. Licensees with an inactive status shall not practice as a veterinary technician in the Commonwealth of Kentucky until the license status is approved by the board to move back to active status.]

(2) Renewal of an inactive veterinary technician license.

(a) The annual renewal fee for inactive veterinary technician licensure status shall be ten (10) dollars per renewal period.

(b) The late fees established in Section 4(2) of this administrative regulation shall apply to licenses not renewed annually by September 30.

~~(c) [No continuing education is required while a veterinary technician's license is in inactive status.~~

~~(d)]~~ A license in an inactive status that is not renewed by November 30 shall be deemed to be expired.

(3) Reinstatement of inactive veterinary technician license status to active status.

(a) A licensed veterinary technician in inactive status may reinstate his or her license to active status in accordance with 201 KAR 16:580.

(b) There shall be a reinstatement fee of twenty-five (25) dollars. [by completing and submitting a Reinstatement Application, paying a reinstatement fee of twenty-five (25) dollars, and complying with the provisions established in 201 KAR 16:540, 201 KAR 16:580, and 201 KAR 16:590.

(b) At the time of reinstatement, an inactive licensee shall still be required to comply with continuing education requirements established in 201 KAR 16:590.]

Section 7. Retirement of License. (1)(a) A veterinary technician may request to retire his or her license at any time.

~~(b)~~ The one~~[(1)]~~-time fee for this service shall be~~is~~ ten (10) dollars, which shall~~must~~ be attached to a Request for Licensure Status Change form as found in 201 KAR 16:580, Renewal Application for Veterinary Technicians form as found in 201 KAR 16:570, [700 or the renewal form] or online equivalent forms~~[provided by the board]~~.

~~(2)~~ Once a license is retired, it shall not~~cannot~~ be reactivated. If a veterinary technician holds a retired license and wishes to practice again, he or she shall~~must~~ apply to the board for a new license to practice the profession of a veterinary technician in the Commonwealth of Kentucky.

Section 8. Fee Reduction for Military Personnel. If a veterinary technician applicant submits a copy of his or her DD-214 (or other documentation acceptable to the board) with their application or renewal paperwork, the board shall will waive or reduce fees as indicated in this section [of this administrative regulation].

(1) For active duty military, active reserves, and National Guard service persons, an individual's initial application fees and annual renewal fees shall be waived.

(2) For retired career military, an individual's initial application fees shall be waived, and the annual renewal fees shall be reduced by half, rounded to the nearest whole dollar.

(3) For any other military veteran, the initial application fees shall be waived.

(4) All other requirements of licensure, including renewal deadlines and continuing education requirements established in 201 KAR 16:590, shall must still be met.

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BOARDS AND COMMISSIONS
Board of Veterinary Examiners
(As Amended at ARRS, March 9, 2020)

201 KAR 16:514. Fees for animal control agencies and animal euthanasia specialists.

RELATES TO: KRS 321.207
STATUTORY AUTHORITY: KRS 321.207, 321.235(3), 321.240(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.207(1) authorizes the Kentucky Board of Veterinary

Examiners to permit qualified animal control agencies in the Commonwealth of Kentucky to apply for a registration certificate from the United States Drug Enforcement Administration (DEA) **to euthanize animals [KRS 321.207(3) authorizes the board to certify animal control agencies to perform euthanasia services for animals.]** KRS 321.207(3)(4) authorizes the board to issue certificates to those persons who are deemed to be qualified to work as animal euthanasia specialists. **KRS 321.240(5) authorizes the board to promulgate administrative regulations as it may deem necessary and proper to effectively carry out and enforce the provisions of KRS Chapter 321, including regulations to establish authorized fees. This administrative regulation establishes fees for animal control agencies and animal euthanasia specialists.**

Section 1. Payment and Submission of Fees. (1) Fees to the board shall be paid by check or money order, or, **if[when]** available, online payment by debit or credit card. Checks and money orders shall be made payable to the Kentucky State Treasurer.

(2) All fees shall be nonrefundable.

Section 2. Application Fees. (1) The application fee for issuance of a board certificate authorizing an animal control agency to apply for a restricted controlled substance registration with the United States Drug Enforcement Administration (DEA) shall be fifty (50) dollars. The fee shall be attached to the completed Application for Certification as an Animal Control Agency form as found in 201 KAR 16:550[700] or online equivalent form **[provided by the board]**, including all required attachments. The animal control agency shall undergo inspection by an authorized representative of the board in accordance with 201 KAR 16:550, **Section 1(3)** prior to the issuance of a certificate.

(2) The application fee for **[issuance of a certificate to]** a certified animal euthanasia specialist shall be fifty (50) dollars. The fee shall be attached to the completed Application for Certification as an Animal Euthanasia Specialist form as found in 201 KAR 16:560[700] or online equivalent form **[provided by the board]**, including all required attachments.

Section 3. Renewal Fees for Animal Control Agencies. (1)(a) Except as provided **by paragraph (b)[for in subsection (a)]** of this **subsection[section]**, a certified animal control agency shall annually, on or before March 1, pay to the board a renewal fee of fifty (50) dollars for the renewal of the certificate. The animal control agency shall submit the complete Renewal Application for Animal Control Agencies form as found in 201 KAR 16:572[700] or online equivalent form, including all required attachments, and fee payment to the board.

(b)[(a)] The renewal fee for the first renewal shall be waived for a certificate issued **120 days prior to the end[on or after November 1]** of the renewal period.

(2) A sixty (60) day grace period shall be allowed after March 1, during which time the animal control agency may continue to function as though certified until a late renewal application is submitted to the board. The late fee for renewal shall be ten (10) dollars in addition to the renewal fee as described in Section 3(1) of this administrative regulation. The animal control agency shall submit the complete Renewal **Application for Animal Control Agencies** form **as found in 201 KAR 16:572 or online equivalent form**, including all required attachments, and fee payment, to the board between March 2 and April 30 of the annual renewal period. The late fee for renewal, if applicable, shall not be reduced or waived without board authorization.

(3) An animal control agency restricted controlled substance registration certificate shall expire if no renewal package, and late fee if applicable, is paid to the board annually by April 30.

(4) If not more than five (5) years have elapsed since the last date of certificate expiration, an animal control agency that has an expired restricted controlled substance registration certificate may be reinstated upon the submission of a completed Reinstatement Application for Animal Control Agencies form as found in 201 KAR 16:550[700] or online equivalent form **[provided by the board]**,

including all attachments, and the payment of a reinstatement fee of seventy-five (75) dollars. The animal control agency shall undergo inspection by an authorized representative of the board in accordance with 201 KAR 16:550, **Section 1(3)** prior to the reinstatement of a certificate. An animal control agency **shall[may]** not apply for a new certificate during this five (5) year window; a reinstatement application **shall be[is]** required.

(5) If more than five (5) years have elapsed since the last date of certificate expiration, an animal control agency **shall[must]** reapply to obtain a board certificate authorizing restricted controlled substance registration with the DEA.

Section 4. Renewal Fees for Animal Euthanasia Specialists. (1)(a) Except as provided **by paragraph (b) of this[for in] subsection[(a) of this section]**, a certified animal euthanasia specialist shall annually, on or before March 1, pay to the board a renewal fee of fifty (50) dollars for the renewal of the certificate. The animal euthanasia specialist shall submit the complete Renewal Application for Animal Euthanasia Specialists form as found in 201 KAR 16:572[700] or online equivalent form **[provided by the board]**, including all required attachments, and fee payment to the board.

(b)[(a)] The renewal fee for the first renewal shall be waived for a certificate issued **120 days prior to the end[on or after November 1]** of the renewal period.

(2) A sixty (60) day grace period shall be allowed after March 1, during which time the certified animal euthanasia specialist may continue to function as though certified until a late renewal application is submitted to the board. The late fee for renewal shall be ten (10) dollars in addition to the renewal fee as described in Section 4(1) of this administrative regulation. The animal euthanasia specialist shall submit the complete Renewal **Application for Animal Euthanasia Specialists** form **as found in 201 KAR 16:572 or online equivalent form**, including all required attachments and fee payments, to the board between March 2 and April 30 of the renewal period. The late fee for renewal, if applicable, shall not be reduced without board authorization.

(3) An animal euthanasia specialist certificate shall expire if no renewal package, and late fee if applicable, is paid to the board annually by April 30.

(4) If not more than five (5) years have elapsed since the last date of certificate expiration, an animal euthanasia certificate that has expired may be reinstated upon the submission of a completed Reinstatement Application for Animal Euthanasia Specialists form as found in 201 KAR 16:560[700] or online equivalent form **[provided by the board]**, including all attachments, and the payment of a reinstatement fee of seventy-five (75) dollars. An animal euthanasia specialist **shall[may]** not apply for a new certificate during this five (5) year window; a reinstatement application **shall be[is]** required.

(5) If more than five (5) years have elapsed since the last date of certificate expiration, an individual **shall[must]** reapply to obtain a certificate as an animal euthanasia specialist in the Commonwealth of Kentucky.

Section 5. Inactive Status for Animal Euthanasia Specialists. (1)(a) A certified animal euthanasia specialist may **request or be moved to inactive licensure status in accordance with 201 KAR 16:580. There shall not be a fee.**

(b) There shall not be a renewal fee for a certified animal euthanasia specialist with inactive licensure status.[may opt to renew a certificate with a status of inactive at any time by indicating so on a completed Request for Licensure Status Change form as found in 201 KAR 16:700 or the renewal form or online equivalent forms provided by the board. (1) There is no fee for inactive status for a certified animal euthanasia specialist.]

(2)(a) A certified animal euthanasia specialist may reinstate his or her certificate to active status in accordance with 201 KAR 16:580.

(b) There shall be a reinstatement fee of fifty (50) dollars only if the certificate was placed in inactive status as a result of:

1. The certificate holder's request; or

2. By severing employment with the affiliated animal control agency on record with the board.~~[When a certified animal euthanasia specialist's employment with a certified animal control agency terminates or the certificate for the certified animal control agency expires, his or her certificate shall be moved to inactive status for a period not to exceed five (5) years.~~

~~(a) During the five (5) year period, the animal euthanasia specialist may apply to reinstate the certificate to active status by completing a reinstatement application.~~

~~(b) After five (5) years, the individual must reapply for certification as an animal euthanasia specialist.~~

~~(3) A certified animal euthanasia specialist may convert his or her certificate from inactive to active status at any time when he or she is employed with a certified animal control agency by completing and submitting a reinstatement application, paying a fifty (50) dollar reinstatement fee, and complying with the provisions established in 201 KAR 16:514, 201 KAR 16:560, and 201 KAR 16:572.]~~

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**BOARDS AND COMMISSIONS
Board of Veterinary Examiners
(As Amended at ARRS, March 9, 2020)**

201 KAR 16:516. Fees – other fees.

RELATES TO: KRS 321.240, 321.201

STATUTORY AUTHORITY: KRS~~[321.240,]~~ 321.201~~(1),~~ 321.235(3), 321.240(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.240~~(5)~~ authorizes the Kentucky Board of Veterinary Examiners to promulgate administrative regulations as it may deem necessary and proper to effectively carry out and enforce the provisions of KRS Chapter 321, including regulations to establish authorized fees. ~~[This administrative regulation establishes fees for various services provided by the board.]~~ KRS 321.201~~(1)~~ authorizes the board to issue a special permit for the practice of veterinary medicine and to require a fee for the permit[such permits]. This administrative regulation establishes fees for various services provided by the board and the fee for a special permit.

Section 1. Payment and Submission of Fees. (1) Fees to the board shall be paid by check or money order, or, if[when] available, online payment by debit or credit card. Checks and money orders shall be made payable to the Kentucky State Treasurer.

(2) All fees shall be nonrefundable.

Section 2. Fees for Special Permits. (1) The fee for a special permit issued by the board pursuant to KRS 321.201 shall be fifty (50) dollars.

(2) The fee shall be attached to either the Application for Licensure as a Veterinarian form as found in 201 KAR 16:540 or the Application for Retake of the NAVLE form as found in 201 KAR 16:530[700] or online equivalent forms[provided by the board].

Section 3. Fees for License Verification Letters and Letters of Good Standing. (1) The fee for a license verification letter or a letter of good standing shall be[is] ten (10) dollars. The fee shall be attached to a Request for Licensure Verification form [as found in 201 KAR 16:700] or online equivalent form [provided by the board].

(2) Upon receipt of the request and payment, the board shall[will] issue the requested letter and complete any forms required by regulatory bodies in other jurisdictions.

Section 4. Fees for Mailing Lists. (1) The fee for a request to obtain a copy of the mailing list of the board's licensees shall be[is] fifteen (15) dollars. The fee shall be attached to a Request for Mailing List form [as found in 201 KAR 16:700] or online equivalent form.

(2) Upon the receipt of the request and payment, the board shall[will] send a current licensee mailing list to the requesting party.

Section 5. Fees for Duplicate Wall Certificates and laminated credentials. (1) The fee for a duplicate wall certificate, including the board's seal, or a new laminated wallet-sized card, shall be[is] ten (10) dollars.

(2) The fee shall be attached to a Request for Printed Credentials form [as found in 201 KAR 16:700] or online equivalent form.

Section 6. Fees for Processing Payments. (1) The board ~~may[shall have authority to]~~ require a reasonable service charge for processing payments submitted online or in paper form. ~~The[Such]~~ fees shall be calculated as a percentage of the underlying fee and shall not be higher than[pursuant to] the board's current contracted rate for payment processing services.

(2) Service charge fees shall be[are] non-refundable.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Request for Licensure Verification", 2/2020;

(b) "Request for Mailing List", 2/2020; and

(c) "Request for Printed Credentials", 3/2020.

(2) This material may be inspected, copied, or obtained, subjected to applicable copyright law, at the Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material may also be obtained at www.kybve.com.

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**BOARDS AND COMMISSIONS
Board of Veterinary Examiners
(As Amended at ARRS, March 9, 2020)**

201 KAR 16:520. Approved veterinary colleges; approved programs for veterinary technicians.

RELATES TO: KRS 321.193, 321.441

STATUTORY AUTHORITY: KRS 321.193~~(3), (5),~~ 321.235(3), 321.240(5), 321.441~~(1)(a)~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.193(3) requires a veterinarian applicant to have received a degree from a veterinary college approved by the Kentucky Board of Veterinary Examiners. KRS 321.441(1)(a) requires a veterinary technician applicant to be a graduate of an accredited program of veterinary technology or its equivalent as approved by the board. KRS 321.235(3) and 321.240(5) authorize the board to promulgate administrative regulations to implement KRS Chapter 321[321.190 requires persons engaging in the practice of veterinary medicine in the Commonwealth of Kentucky to be licensed by the board. KRS 321.190 sets forth the requirements for licensure as a veterinarian. KRS 321.441 provides for the qualification, licensing, and use of veterinary technicians. One (1) of the requirements for veterinarians is the receipt of a degree from a veterinary college approved by the board, and one (1) of the requirements for veterinary technicians is the receipt of a degree from a program approved by the board]. This administrative regulation establishes[sets forth] the veterinary colleges and veterinary technician programs approved by the

board.

Section 1. Approved Veterinary Colleges. ~~A[The board hereby approves any]~~ veterinary college shall be approved if it[which] held full accreditation, limited accreditation, or approval by the American Veterinary Medical Association (AVMA) Council on Education on the date when the applicant received a degree from the veterinary college.

Section 2. Licensure of Veterinarians who Graduated from Non-approved Schools. If an applicant for a veterinarian license does not possess a degree from a veterinary college within the scope established[set forth] in Section 1 of this administrative regulation, the applicant shall be eligible for licensure after successfully completing and receiving certification from one of the following programs:

(1) The Educational Commission for Foreign Veterinary Graduates (ECFVG) of the American Veterinary Medical Association (AVMA);~~;~~ or

(2) The Program for the Assessment of Veterinary Education Equivalence (PAVE) of the American Association of Veterinary State Boards (AAVSB).

Section 3. Approved Veterinary Technician Programs. ~~A[The board hereby approves any]~~ veterinary technician program, or veterinary technologist program, or veterinary nurse program, shall be approved if it[which] held full accreditation, limited accreditation, or approval by the American Veterinary Medical Association (AVMA) Committee on Veterinary Technician Education and Activities on the date when the applicant received a degree from the institution.

Section 4. Licensure of Veterinary Technicians who Graduated from Non-approved Schools or Programs. If an applicant for a veterinary technician license does not possess a degree from a veterinary technician program within the scope established[set forth] in Section 3 of this administrative regulation, the candidate shall be eligible to qualify for licensure and board approval by:

(1)~~(a)~~ Following graduation, submitting an official copy of final transcripts from the college of study, and any other requested documentation, showing successful completion of the program for the board's review and determination of approval; or

~~(b)[(2)]~~ Successfully completing the program and receiving certification from the Program for the Assessment of Veterinary Education Equivalence (PAVE) or its equivalent program of the American Association of Veterinary State Boards (AAVSB) for veterinary technicians; and

~~(2)[(3)]~~ Successfully completing all other application requirements for licensure.

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BOARDS AND COMMISSIONS
Board of Veterinary Examiners
(As Amended at ARRS, March 9, 2020)

201 KAR 16:530. Examination requirements for veterinarians and veterinary technicians.

RELATES TO: KRS 321.193, 321.441

STATUTORY AUTHORITY: KRS 321.193~~(4)~~, 321.235(3), 321.240(5), 321.441~~(1)(b)~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.193~~(4)~~ requires the Kentucky Board of Veterinary Examiners to establish required examinations and passing scores for veterinarian applicants. KRS 321.441(1)(b) requires the board to establish required examinations and passing scores for veterinary technician applicants. KRS 321.235(3) and 321.240(5) authorize the board to promulgate

administrative regulations to implement KRS Chapter 321[provides that the examinations required for licensure shall be approved by the board]. This administrative regulation establishes examination requirements for[identifies the examinations that are required of] veterinarians and veterinary technicians for licensure by the board.

Section 1. (1) The examination required for licensure by the board as a veterinarian shall be the successful completion of the North American Veterinary Licensing Examination (NAVLE).

(2) Candidates shall apply to the board for verification of eligibility to take the NAVLE.

(3) Candidates seeking to take the NAVLE shall apply directly to the International Council for Veterinary Assessment (ICVA), its designee, or current administrator of the NAVLE for admission to the examination.

(4) Applicants for veterinarian licensure to the board shall request and pay a fee directly to the ICVA, its designee, the American Association of Veterinary State Boards (AAVSB), or current official records custodian, to have test scores sent directly to the board. Unofficial copies of scores from applicants or other sources shall[will] not be accepted.

(5) Candidates for the NAVLE who do not receive a passing score shall[must] apply to the board to retake the NAVLE on the Application for Retake of the NAVLE form~~[as found in 201 KAR 16:700]~~ or online equivalent form.

(6) In addition to achieving a passing score on the NAVLE, applicants for licensure shall be required to achieve a score of eighty (80) percent or higher on the Commonwealth of Kentucky State Board Examination, which shall cover the specific requirements of KRS Chapter 321 and 201 KAR Chapter 16[the administrative regulations promulgated pursuant thereto].

(7) The board shall recognize passing scores on the National Board Examination (NBE) and the Clinical Competency Test (CCT) in lieu of a NAVLE test score if the applicant for licensure completed both examinations prior to May, 2000.

(8) Graduates of veterinary schools or programs not approved by the American Veterinary Medical Association (AVMA) shall[must] also submit proof of successful completion of one (1) of the following programs:

(a) The Educational Commission for Foreign Veterinary Graduates (ECFVG) program offered by the AVMA; or

(b) The Program for the Assessment of Veterinary Education Equivalence (PAVE) program offered by the American Association of Veterinary State Boards (AAVSB).

Section 2. (1)~~(a)~~ Except as provided by paragraph (b) of this[for in] subsection~~[(a)]~~, the examination required for licensure by the board as a veterinary technician shall be the successful completion of the Veterinary Technician National Exam (VTNE).

~~(b)[(a)]~~ If the veterinary technician graduated from an approved program prior to 1990, and successfully completed one of the following tests prior to 1990:~~;~~

1. The board shall[will] also accept official results showing a passing score from the Animal Technician National Exam (ATNE) if taken during the years 1986 – 1989; or

2. The board shall[will] also accept official results showing a passing score from a jurisdictional level competency exam if taken prior to 1986.

(2) Candidates seeking to take the VTNE shall apply directly to the AAVSB, its designee, or current administrator of the VTNE for verification of eligibility and admission to the examination.

(3) Applicants for veterinary technician licensure to the board shall request and pay a fee directly to the AAVSB, PSI Services, one of their designees, or to the current official records custodian to have test scores sent directly to the board. Copies of scores from applicants or other sources shall[will] not be accepted.

Section 3. Incorporation by Reference. (1) "Application for Retake of the NAVLE". 3/2020, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subjected to applicable copyright law, at the Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Frankfort,

Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material may also be obtained at www.kybve.com.

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BOARDS AND COMMISSIONS
Board of Veterinary Examiners
(As Amended at ARRS, March 9, 2020)

201 KAR 16:540. Application requirements for veterinarians and veterinary technicians.

RELATES TO: KRS 321.193, 321.235, 321.221, 321.441
STATUTORY AUTHORITY: KRS 321.193, 321.221(1), 321.235(3), 321.240(5), 321.441(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.193, 321.235(3), and 321.221(1) authorize the Kentucky Board of Veterinary Examiners to establish[provides for] application requirements for veterinarians. KRS 321.441(1) authorizes the board to establish[sets forth] the requirements for licensure as a veterinary technician. KRS 321.235(3) and 321.240(5) authorize the board to promulgate administrative regulations to implement KRS Chapter 321. This administrative regulation establishes[sets forth] application requirements for veterinarians and veterinary technicians applying for licensure in the Commonwealth of Kentucky from the board.

Section 1. (1) A new application to the board for licensure as a veterinarian shall include the following components:

(a)[(1)] A completed application on an Application for Licensure as a Veterinarian form [as found in 201 KAR 16:700] or online equivalent form [provided by the board], including all required attachments;

(b)[(2)] A current color photograph of the applicant not smaller than 2 in. x 2 in., or a color copy of the applicant's current valid driver's license or passport with photo;

(c)[(3)] An official copy of final transcripts, or a copy of the applicant's diploma from the issuing school;

(d)[(4)] ~~A complete national background check from a board approved background check provider, which may include a copy of the applicant's fingerprints captured at a board approved office for the purpose of a national background check. The board has the power to impose additional requirements as a condition of licensure or deny licensure following the board's review of findings from a national background check;~~

(5) A copy of any court documents, final orders, settlement agreements, or other documents requested by the board in support of the application;

(e)[(5)] (6) An official copy of an applicant's testing score report. The score report shall be sent directly to the board from the International Council for Veterinary Assessment (ICVA), the American Association of Veterinary State Boards (AAVSB), other board recognized testing body, their designee, or official records custodian. The report shall include results for either:

1.[(a)] The North American Veterinary Licensing Exam (NAVLE); or

2.[(b)] The National Board Examination (NBE) and the Clinical Competency Test (CCT), if completed prior to May 31, 2000;

(f)[(6)] (7) The completed State Exam Answer Sheet; and

(g)[(7)] (8) Payment for the application fee required by 201 KAR 16:510.

(2)[(8)] (9) In addition to the requirements listed in subsection (1)(a), (b), (d), (f), and (g)[subsections (1), (2), (4), (5), (7), and (8)] of this section, requirements for veterinary license endorsement applications shall include:

(a) Licensure verifications from all jurisdictions in which an applicant once held or currently holds a license as a veterinarian; and

(b) A current Veterinary Application for Uniform Licensure Transfer (VAULT) credential report, which shall include an applicant's score report for the NAVLE or NBE and CCT, directly from the AAVSB, its designee, or official records custodian.

(3)[(9)] (10) In addition to the requirements listed in subsection (1)(a), (b), (d), (f), and (g)[subsections (1), (2), (4), (6), and (5)], (7), and (8) of this section, requirements for foreign graduate veterinary license applications shall include: ;

(a) Licensure verifications from all jurisdictions in which an applicant once held or currently holds a license as a veterinarian;

(b) A current VAULT credential report, which shall include an applicant's score report for the NAVLE or NBE and CCT, directly from the AAVSB, its designee, or official records custodian; and

(c) An official report or letter showing completion of one (1) of the programs listed in [the] subparagraphs 1 and 2 of this paragraph [Section 1(10)(c) of this administrative regulation]. The report or letter shall be sent directly to the board from the testing organization, its designee, or current official records custodian.

1. The Educational Commission for Foreign Veterinary Graduates (ECFVG) Program of the American Veterinary Medical Association (AVMA); ;

2. The Program for the Assessment of Veterinary Education Equivalence (PAVE) of the AAVSB.

Section 2. A veterinarian may apply for reinstatement of an expired license if not more than five (5) years have elapsed since the last date of license expiration pursuant to KRS 321.211(3). Reinstatement applications to the board for licensure as a veterinarian shall include the following components:

(1) A completed application on a Reinstatement Application for Veterinarians form [as found in 201 KAR 16:700] or online equivalent form [provided by the board], including all required attachments;

(2) ~~A complete national background check from a board approved background check provider, which may include a copy of the applicant's fingerprints captured at a board approved office for the purpose of a national background check;~~

(3) A copy of any court documents, final orders, settlement agreements, or other documents requested by the board in support of the application;

(3)[(4)] Licensure verifications from all jurisdictions in which an applicant once held or currently holds a license as a veterinarian;

(4)[(5)] A current VAULT credential report directly from the AAVSB, its designee, or official records custodian;

(5)[(6)] Proof of a minimum of thirty (30) [board approved] continuing education credits [as approved pursuant to 201 KAR 16:590] during the twenty-four (24) months immediately prior to the date of application; and

(6)[(7)] Payment for the reinstatement application fee pursuant to 201 KAR 16:510.

Section 3. A veterinary license holder of the board shall [be required to] renew his or her license pursuant to 201 KAR 16:570.

Section 4. (1) New applications to the board for licensure as a veterinary technician shall include the following components:

(a)[(1)] A completed application on an Application for Licensure as a Veterinary Technician form [as found in 201 KAR 16:700] or online equivalent form [provided by the board], including all required attachments;

(b)[(2)] A current color photograph of the applicant not smaller than 2 in. x 2 in., or color copy of the applicant's current valid driver's license or passport with photo;

(c)[(3)] An official copy of final transcripts, or copy of the applicant's diploma from the issuing school;

(d)[(4)] ~~A complete national background check from a board approved background check provider, which may include a copy of the applicant's fingerprints captured at a board approved office for the purpose of a national background check;~~

(5) A copy of any court documents, final orders, settlement

agreements, or other documents requested by the board in support of the application;[f]

~~(e)[(5)](6)~~ An official copy of an applicant's test scores pursuant to 201 KAR 16:530, Section 2(1), directly from PSI Services, the American Association of Veterinary State Boards (AAVSB), their designee, or official records custodian; and

~~(f)[(6)](7)~~ Payment for the application fee pursuant to 201 KAR 16:512.

~~(2)[(7)](8)~~ In addition to the requirements listed in subsection (1) of this section~~subsections (1) – (6)[(7)]~~~~in Section 3 of this administrative regulation~~, requirements for endorsement veterinary technician applications shall include licensure verifications from all jurisdictions in which an applicant once held or currently holds a license as a veterinary technician.

~~(3)[(8)]~~Section 5. In addition to the requirements listed in subsection (1) of this section~~subsections (1) – (6)[(7)]~~~~of Section 4 of this administrative regulation~~, requirements for foreign graduate veterinary technician license applications shall include;[f]

(a) Licensure verifications from all jurisdictions in which an applicant once held or currently holds a license as a veterinary technician;

(b) A current Veterinary Application for Uniform Licensure Transfer (VAULT) credential report directly from the AAVSB, its designee, or official records custodian; and

(c) An official score report or letter showing results for the Program for the Assessment of Veterinary Education Equivalence (PAVE) or equivalent program of the AAVSB for veterinary technicians. The score report shall be sent directly to the board from the testing organization, its designee, or official records custodian.

Section 5.~~6.~~ A veterinary technician may apply for reinstatement of an expired license if not more than five (5) years have elapsed since the last date of license expiration. Reinstatement applications to the board for licensure as a veterinary technician shall include the following components:

(1) A completed application on a Reinstatement Application for Veterinary Technicians form~~as found in 201 KAR 16:700~~ or online equivalent form~~provided by the board~~, including all required attachments;

~~(2) [A complete national background check from a board approved background check provider, which may include a copy of the applicant's fingerprints captured at a board approved office for the purpose of a national background check;~~

~~(3)~~ A copy of any court documents, settlement agreements, or other documents requested by the board in support of the application;

~~(3)[(4)]~~ Proof of a minimum of six (6)~~[board approved]~~ continuing education credits (as approved pursuant to 201 KAR 16:590) during the twelve (12) months immediately prior to the date of application;[f]

~~(4)[(5)]~~ Licensure verifications from all jurisdictions in which the applicant once held or currently holds a license as a veterinary technician;

~~(5) If more than one (1) year since the date of license expiration.~~~~(6)~~ a current VAULT credential report from the AAVSB; and

~~(6)[(7)]~~ Payment for the application fee pursuant to 201 KAR 16:512.

Section 6. A veterinary technician license holder of the board shall~~be required to~~ renew his or her license pursuant to 201 KAR 16:570.

Section 7. Change in Licensure Status. Veterinarian and veterinary technician license holders may apply to the board for a change in licensure status in accordance with 201 KAR 16:580~~Such requests shall include the following components:~~
~~(1) A completed application on a Request for Licensure Status Change form as found in 201 KAR 16:700 or online equivalent form provided by the board, including all required~~

~~attachments; (2) Payment for the application fee pursuant to 201 KAR 16:510 for veterinarians or 201 KAR 16:512 for veterinary technicians].~~

Section 8. Background checks. The board may~~is authorized to~~ conduct a national or jurisdictional level background check on each applicant for licensure. The check shall~~must~~ be processed by a board-approved background check provider, and may include a copy of the applicant's fingerprints captured at a board-approved location. The board may reject background checks that do not have an official seal or watermark, or that are more than ninety (90)[(9)] days old. The board may~~has the power to~~ impose additional requirements as a condition of licensure or ~~to~~ deny licensure following the board's review of findings from a background check.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Licensure as a Veterinarian", 3/2020;
(b) "Reinstatement Application for Veterinarians", 3/2020;
(c) "Application for Licensure as a Veterinary Technician", 3/2020; and
(d) "Reinstatement Application for Veterinary Technicians", 3/2020.

(2) This material may be inspected, copied, or obtained, subjected to applicable copyright law, at the Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material may also be obtained at www.kybe.com.

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

BOARDS AND COMMISSIONS Board of Veterinary Examiners (As Amended at ARRS, March 9, 2020)

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

RELATES TO: KRS 217.177(6), 321.207, 321.235(7), 321.351
STATUTORY AUTHORITY: KRS 321.207~~(1)~~, (2), 321.235(3), 321.240(5)

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

Section 1. General Requirements. (1) The applicant animal control agency shall apply to the board for authorization as established~~defined~~ by KRS 321.207.

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

(a) A completed Application for Certification as an Animal Control Agency form~~as found in 201 KAR 16:700~~ or online equivalent form~~provided by the board~~, including all required

attachments;

(b) Identification of the agency designated onsite manager;

(c) ~~[A complete national background check on the agency designated onsite manager from a board approved background check provider, which may include a copy of the applicant's fingerprints captured at a board approved office for the purpose of a national background check;~~

(d) A complete and current list of all individuals performing euthanasia activities at the animal control facility; and

(d)(e) Payment of the fee in accordance with 201 KAR 16:514.

(3) Prior to the board's issuance of the certificate of authorization, the applicant shall undergo an inspection of the facility by the board inspector or other designee of the board.

(4) Following board application approval, the applicant shall apply to DEA for registration as a practitioner and designate "animal shelter" on the appropriate DEA form.

(5) A certified animal control agency shall submit to inspection by a board representative at any time, with or without advanced notice.

(6) A certified animal control agency shall designate an onsite manager of the shelter. The agency shall notify the board in writing within ten (10) days of any change in the onsite manager of the shelter. ~~[The board is authorized to conduct a national or jurisdictional level background check on each manager. The board has the power to impose additional requirements as a condition of certification or to deny certification following the board's review of findings from a background check.]~~

(7) Background checks. The board may/is authorized to conduct a national or jurisdictional level background check on each designated shelter manager. The check shall/must be processed by a board approved background check provider, and may include a copy of the designated manager's fingerprints captured at a board approved location. The board may reject background checks that do not have an official seal or watermark, or that are more than ninety (90) days old. The board may/has the power to impose additional requirements as a condition of certification for the animal control agency or to deny certification following the board's review of findings from a background check.

(8) Animal control agency certificate renewal requirements.

(a) An animal control agency shall renew the board certification annually in accordance with 201 KAR 16:572.

(b) Failure to renew the certificate for an animal control agency shall result in the following actions by the board:

1. The animal control agency certificate shall be moved to expired status;

2. All certified animal euthanasia specialists under the employment of the formerly certified animal control agency shall be moved to inactive status; and

3. The DEA shall be notified of the lapse in certification.

(c) 1.[4.] An animal control agency with an expired certificate shall have five (5) years to reinstate their certificate by submitting a completed Reinstatement Application for Animal Control Agencies form or online equivalent form, including all required attachments and payment of the application fee pursuant to 201 KAR 16:514.

2. The animal control agency shall undergo inspection by an authorized representative of the board in accordance with subsection (3) of this section prior to the reinstatement of a certificate.

3.[.] After five (5) years, [which] the agency shall/must apply for a new certificate in accordance with this administrative regulation and 201 KAR 16:572.

Section 2. Approved Drugs. A certified animal control agency shall be restricted to the purchase of sodium pentobarbital and other euthanasia drugs currently approved by the American Veterinary Medical Association (AVMA) for the purpose of euthanizing animals. DEA's Schedule II order forms (titled "DEA-222") shall be used for each purchase of sodium pentobarbital or other AVMA approved euthanasia drugs.

Section 3. Records. (1) A certified animal control agency shall

maintain records of purchases and administration of sodium pentobarbital and other AVMA approved euthanasia drugs for a period of not less than two (2) years.

(2) Records of administration shall include, at a minimum, the following information:

(a) The date of use;

(b) Identification of the animal;

(c) The amount of the drug used;

(d) The signature of the person administering the drug;

(e) The signature of the onsite manager certifying the accuracy of the administration of sodium pentobarbital and other AVMA approved euthanasia drugs not less than once per month; and

(f) The signature of the onsite manager certifying to the accuracy of the records.

(3) Records of purchase and destruction of sodium pentobarbital and other AVMA approved euthanasia drugs shall be maintained in a separate file from the records of administration of those/such substances.

(4) The records of purchase, destruction, and administration may be audited/are subject to audit by representatives of the DEA or authorized designees of the board to determine adequacy, accuracy, and validity of the recordkeeping. The board may/has the power to impose restrictions and administrative penalties on certificate holders as a result of substandard controls or records of the/said drugs.

(5) The records of purchase, destruction, and administration shall be maintained at the location of the agency.

Section 4. Storage. (1) Sodium pentobarbital and other AVMA/AVAM approved euthanasia drugs shall be stored in a securely locked cabinet within a locked storage room or other enclosure at the certified animal control agency.

(2) Schedule II order forms shall be stored in a securely locked cabinet, separate from the storage location of the drugs, within a locked storage room or other enclosure at the certified animal control agency.

Section 5. Disposal of Needles and Medical Waste. All needles generated in the process of euthanizing animals shall be disposed of pursuant to KRS 217.177(6).

Section 6. Disciplinary Action. An animal control agency and its employees shall be subject to disciplinary action pursuant to KRS 321.235(7) and KRS 321.351 for a violation/violations of state or federal statutes or administrative regulations.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Certification as an Animal Control Agency", 3/2020; and

(b) "Reinstatement Application for Animal Control Agencies", 3/2020.

(2) This material may be inspected, copied, or obtained, subjected to applicable copyright law, at the Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material may also be obtained at www.kybve.com.

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

BOARDS AND COMMISSIONS Board of Veterinary Examiners (As Amended at ARRS, March 9, 2020)

201 KAR 16:560. Certification as an animal euthanasia specialist.

RELATES TO: KRS 257.160, 321.207, 321.235(7), 321.351
STATUTORY AUTHORITY: KRS 321.207(3), 321.235(3),

321.240(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.207(3) requires the Kentucky Board of Veterinary Examiners to issue a certificate to a person who meets the qualifications of an animal euthanasia specialist and is approved by the board for a certificate. KRS 321.235(3) and 321.240(5) authorize the board to promulgate administrative regulations to implement KRS Chapter 321. This administrative regulation establishes the qualifications for certification as an animal euthanasia specialist and the duties of an animal euthanasia specialist.

Section 1. In order to be eligible for certification as a certified animal euthanasia specialist an applicant shall:

- (1) Be at least twenty-one (21) years of age;
- (2) Be of good moral character;
- (3) Not have been convicted of, or entered an "Alford" plea or plea of nolo contendere to, irrespective of an order granting probation or suspending imposition of any sentence imposed following the conviction or entry of the[such] plea, one (1) or more or the following in the last ten (10) years, subject to the provisions of KRS Chapter 335B:
 - (a) A felony;
 - (b) An act involving moral turpitude or gross immorality; or
 - (c) A violation of any law, rule, or administrative regulation of this state, any other state, or the United States government that[which] involves the use or trafficking of illegal substances;
- (4) Have [received] a high school diploma or general equivalency degree (GED);
- (5) Pay[paid] the initial certification fee as specified in 201 KAR 16:514;
- (6) Be employed by a board certified animal control agency; and
- (7) Have completed[Complete] a board approved sixteen (16) hour euthanasia specialist training course as established[set forth] in Section 2 of this administrative regulation within ten (10) years prior to application.

Section 2. Euthanasia Specialist Training Course Curriculum.

(1) The curriculum for the sixteen (16) hour euthanasia specialist course shall provide information on the following subjects:

- (a) Pharmacology, proper administration, and storage of euthanasia solutions that shall consist of a minimum of eight (8) hours;
 - (b) Federal and state laws regulating the storage and accountability for euthanasia solutions;
 - (c) Euthanasia specialist stress management;
 - (d) Proper animal handling with emphasis on easing the trauma and stress to the animal; and
 - (e) Disposal of euthanized animals.
- (2) A training course for a euthanasia specialist shall be reviewed and approved by the board prior to presentation. A provider of a euthanasia specialist training shall submit the following information to the board:

- (a) A published course or similar description;
- (b) Names and qualifications of current instructors;
- (c) A copy of the program agenda indicating hours of education, refreshment[coffee], and lunch breaks;
- (d) A copy of the full program curriculum;
- (e) A copy of an official certificate of completion from the sponsoring agency; and
- (f) Upon completion of the instruction of a sixteen (16)-hour euthanasia course, a complete attendee list to the board, including the following:
 1. The dates and locations of the course;
 2. Each attendee's full name and address; and
 3. Notation by an individual's name if the course was not completed.

Section 3. An application to the board for certification[licensure] as an[a][certified] animal euthanasia specialist shall include the following components:

- (1) A completed application on an Application for Certification

as an Animal Euthanasia Specialist form [as found in 201 KAR 16:700] or online equivalent form [provided by the board], including all required attachments;

(2) An official copy of final transcripts or a copy of the applicant's diploma from high school, or GED certificate, or highest level of education attained;

(3) A copy of a certificate of completion from a board approved sixteen (16)-hour euthanasia training course; and

(4) [A complete national background check from a board approved background check provider, which may include a copy of the applicant's fingerprints captured at a board approved office for the purpose of a national background check; and

(5) Payment for the application fee pursuant to 201 KAR 16:514.

Section 4. An individual with an expired animal euthanasia specialist certificate may reinstate their certificate if not more than five (5) years have elapsed since the last date of certificate expiration. Reinstatement applications seeking board approval for certification as an animal euthanasia specialist shall include the following components:

(1) A completed application on a Reinstatement Application for Animal Euthanasia Specialists form [as found in 201 KAR 16:700] or online equivalent form [provided by the board], including all required attachments; and

(2) [A complete national background check from a board approved background check provider, which may include a copy of the applicant's fingerprints captured at a board approved office for the purpose of a national background check; and

(3) Payment for the application fee pursuant to 201 KAR 16:514.

Section 5. An application to the board for approval for a change in licensure status shall be made in accordance with 201 KAR 16:580 [include the following components:

(1) A completed application on a Request for Licensure Status Change as found in 201 KAR 16:700 or online equivalent form provided by the board, including all required attachments; and

(2) Payment for the application fee pursuant to 201 KAR 16:514].

Section 6. Background Checks. The board may[is authorized to] conduct a national or jurisdictional level background check on each applicant for certification. The check shall[must] be processed by a board approved background check provider, and may include a copy of the applicant's fingerprints captured at a board approved location. The board may reject background checks that do not have an official seal or watermark, or that are more than ninety (90) days old. The board may[has the power to] impose additional requirements as a condition of certification or [to] deny certification following the board's review of findings from a background check.[The board is authorized to conduct a national or jurisdictional background check on each applicant for licensure. The board has the power to impose additional requirements as a condition of licensure or deny licensure following the board's review of findings from a background check.]

Section 7. Employment and Termination. (1) A person may function as a certified animal euthanasia specialist only while he or she remains employed by a certified animal control agency in the Commonwealth of Kentucky.

(2) Upon termination of employment with a certified animal control agency or upon expiration of the certified animal control agency's certificate, a certified animal euthanasia specialist's certificate status shall automatically be moved by the board from an active to inactive status. The inactive certified individual shall not perform animal euthanasia until he or she has obtained employment with a certified animal control agency with a certificate

in active status, and applied to the board and been approved to move the animal euthanasia specialist certificate back into active status in accordance with 201 KAR 16:580.

Section 8. Duties of a Certified Animal Euthanasia Specialist. The duties of certified animal euthanasia specialist shall include the following:

- (1) Preparing animals for euthanasia;
- (2) Carefully and accurately recording dosages, administration, and drug waste;
- (3) Ordering supplies and drugs;
- (4) Maintaining the security of all controlled substances and drugs in accordance with 201 KAR 16:550 and other applicable federal, state, and local laws;
- (5) Reporting to the board any infraction of KRS Chapter 321 or 201 KAR Chapter 16[the administrative regulations promulgated thereunder];
- (6) Humanely euthanizing animals;
- (7) Disposing of the bodies in a manner consistent with KRS 257.160;
- (8) Maintaining his or her certification;
- (9) Reporting to the board any change of address within thirty (30) days; and
- (10) Providing a written response to a grievance or inquiry from the board within thirty (30) days of receipt.

Section 9. Approved Methods of Euthanasia. (1) A certified animal euthanasia specialist shall perform euthanasia by means of lethal injection on an animal by use of sodium pentobarbital or other AVMA approved euthanasia drug and AVMA approved administration methodology, in a manufactured dosage form, whose only indication is for euthanizing animals.

(2) When using a lethal solution to perform euthanasia on an animal, a certified animal euthanasia specialist shall use the appropriate solution in accordance with the following methods and in the following order of preference:

- (a) Intravenous injection by hypodermic needle;
- (b) Intraperitoneal injection by hypodermic needle;
- (c) Intracardial injection by hypodermic needle, but only on a sedated or unconscious animal; or
- (d) Solution or powder added to food.

Section 10. Disciplinary Action. A certified animal euthanasia specialist shall be subject to disciplinary action pursuant to KRS 321.235(7) and 321.351 for a violation[violations] of state or federal statutes or administrative regulations.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Certification as an Animal Euthanasia Specialist", 3/2020; and

(b) "Reinstatement Application for Animal Euthanasia Specialists", 3/2020.

(2) This material may be inspected, copied, or obtained, subjected to applicable copyright law, at the Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material may also be obtained at www.kybve.com.

STEVEN J. WILLS, DVM, Chair

APPROVED BY AGENCY: February 12, 2020

FILED WITH LRC: February 12, 2020 at 11 a.m.

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

BOARDS AND COMMISSIONS
Board of Veterinary Examiners
(As Amended at ARRS, March 9, 2020)

201 KAR 16:570. License renewal for veterinarians and veterinary technicians; renewal notice.

RELATES TO: KRS 321.193, 321.211, 321.221, 321.441
STATUTORY AUTHORITY: KRS 321.235(3), 321.240(5)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.193, 321.221, and 321.441 require the Kentucky Board of Veterinary Examiners to issue a license~~for registration~~ to all persons successfully passing the examination and being qualified to engage in the practice of veterinary medicine or as a veterinary technician in the Commonwealth of Kentucky. KRS 321.211 and 321.441 provide for the renewal of the license~~for registration~~. KRS 321.235(3) and 321.240(5) authorize the board to promulgate administrative regulations to implement KRS Chapter 321. This administrative regulation requires a renewal notice to all licensed veterinarians and veterinary technicians and requires all licensed veterinarians and veterinary technicians to complete the renewal application and return it, along with the renewal fee, to the board. It further requires all licensed veterinarians and veterinary technicians to keep the board apprised of the legal name and current address of the licensee.

Section 1. (1) The board shall, not later than August 31 of each even-numbered year, email or mail to each licensed veterinarian a biennial renewal notice.

(2) The board shall, not later than August 31 of each year, email or mail to each licensed veterinary technician an annual renewal notice.

(3) The renewal application shall be completed by the licensee and returned to the board, including all required attachments and, if required by the board, proof of course completion for the required continuing education.

(4) Timely receipt of renewal application.

(a) Renewals bearing a postmark, or, if an[~~in the case of~~] online renewal, a timestamp, of September 30 or earlier shall be considered received on time.

(b) Renewals bearing a postmark, or, if an[~~in the case of~~] online renewal, a timestamp, between October 1 and November 30 shall be considered late and therefore incur a late fee pursuant to 201 KAR 16:510 for veterinarians and 201 KAR 16:512 for veterinary technicians.

(5)(a) The renewal fee shall be attached to the completed renewal form when it is returned to the board.

(b) The renewal fee shall be paid in accordance with 201 KAR 16:510 for veterinarians and 201 KAR 16:512 for veterinary technicians.

Section 2. (1) Every licensed veterinarian shall list his or her continuing education hours received pursuant to 201 KAR 16:590 on the Renewal Application for Veterinarians form~~as found in 201 KAR 16:700~~ or online equivalent form~~provided by the board~~, including all required attachments, and if required, proof of attendance or completion of training to the board.

(2) Every licensed veterinary technician shall list his or her continuing education hours received pursuant to 201 KAR 16:590 on the Renewal Application for Veterinary Technicians form~~as found in 201 KAR 16:700~~ or online equivalent form~~provided by the board~~, including all required attachments, and if required by the board, proof of course completion of the required continuing education.

(3)(a) The board shall not renew the license of any person who fails to appropriately document the required hours of continuing education.

(b) The veterinarian license shall expire and subsequently be terminated as prescribed by KRS 321.211.

(c) The veterinary technician license shall expire and subsequently be terminated as prescribed by KRS 321.441.

Section 3. The board shall not be held responsible or liable for

lost renewal notices, or renewal notices not received, or not received on time. (1) Regardless of cause, the board shall not have[has no obligation] to refund money to a licensee who fails to renew in a timely manner pursuant to Section 1(4) of this administrative regulation.

(2) If a licensee fails to renew by the grace period deadline, the license shall expire. The former licensee may[has not more than five (5) years from the date of expiration to] apply for reinstatement of the license within five (5) years from the date of expiration in accordance with 201 KAR 16:540. A reinstatement application shall be[is] required during this period; an application for a new license shall[will] not be accepted until five (5) years after the last date of expiration.

Section 4. Every licensed veterinarian or veterinary technician shall:

(1) File his or her legal name and proper and current mailing address with the board at its principal office; and [shall]

(2) Within thirty (30) days, notify the board of any changes of his or her legal name or mailing address by submitting a completed Request for Name or Address Change form.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Renewal Application for Veterinarians", 3/2020;

(b) "Renewal Application for Veterinary Technicians", 3/2020; and

(c) "Request for Name or Address Change", 2/2020.

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

BOARDS AND COMMISSIONS
Board of Veterinary Examiners
(As Amended at ARRS, March 9, 2020)

201 KAR 16:572. Certificate[License] renewal for [registered] animal control agencies and animal euthanasia specialists; renewal notice.

RELATES TO: KRS 321.207

STATUTORY AUTHORITY: KRS 321.207, 321.235(3), 321.240(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.207 requires the Kentucky Board of Veterinary Examiners to issue a certificate for registration to all animal control agencies being qualified to register with the United States Drug Enforcement Administration (DEA) to purchase, possess, and use board authorized controlled substances, and to all persons qualified to engage in the practice of animal euthanasia in the Commonwealth of Kentucky. KRS 321.235(3) and 321.240(5) authorize the board to promulgate administrative regulations to implement KRS Chapter 321. This administrative regulation requires a renewal notice to all certified[registered] animal control agencies and animal euthanasia specialists and requires all certified[registered] animal control agencies and animal euthanasia specialists to complete the renewal application and return it, along with the renewal fee to the board. It further requires all certified[registered] animal control agencies and animal euthanasia specialists to keep the board apprised of the legal name and current address of the licensee.

Section 1. (1) The board shall, not later than February 1 of each year, email or mail to each certified[registered] animal control agency[agencies] and animal euthanasia

specialist[specialists] a renewal notice.

(2) The renewal application shall be completed by the certified entity and returned to the board, including all required attachments and fees.

(3) Timely receipt of renewal application.

(a) Renewals bearing a postmark, or, if an[is in the case of] online renewal, a timestamp, of March 1 or earlier shall be considered received on time.

(b) Renewals bearing a postmark, or, if an[is in the case of] online renewal, a timestamp, between March 2 and April 30 shall be considered late and therefore incur a late fee pursuant to 201 KAR 16:514.

(4)[(5)] The renewal fee shall be attached to the completed renewal form when it is returned to the board.

(a) For certified animal control agencies, the renewal form shall be[is] the Renewal Application for Animal Control Agencies form as found in 201 KAR 16:700 or online equivalent form provided by the board, including all required attachments.

(b) For certified animal euthanasia specialists, the renewal form shall be[is] the Renewal Application for Animal Euthanasia Specialists form as found in 201 KAR 16:700 or online equivalent form provided by the board, including all required attachments.

(5) The renewal fee shall be paid in accordance with 201 KAR 16:514.

Section 2. The board shall not be held responsible or liable for lost renewal notices, or renewal notices not received, or not received on time. (1) Regardless of cause, the board shall not have [has no obligation] to refund money to a certificate holder who fails to renew in a timely manner pursuant to Section 1(3) of this administrative regulation.

(2) If a certificate holder fails to renew by the grace period deadline, the certificate shall expire. The former certificate holder may[has not more than five (5) years from the date of expiration to] apply for reinstatement of the license within five (5) years from the date of expiration in accordance with 201 KAR 16:550 and 201 KAR 16:560. A reinstatement application shall be[is] required during this period; an application for a new license shall[will] not be accepted until five (5) years after the last date of expiration.

Section 3. Current contact information shall[must] be on file with the board. (1)(a) Every certified animal control agency shall:

1. File a proper and current mailing address with the board at its principal office; and [shall]

2. Within thirty (30) days, notify the board of any changes of the agency's mailing address by submitting a completed Request for Name or Address Change form.

(b) 1. Every certified animal control agency shall file an update with the board to notify the board of any changes to the designated onsite manager tasked with management of controlled substances and the euthanasia program pursuant to 201 KAR 16:550, or of any changes of the onsite manger's legal name or personal address.

2. Updates may be filed on the annual Renewal Application for Animal Control Agencies form or online equivalent form, or on the Request to Designate a New Agency Onsite Manager form or online equivalent form, including all required attachments.

(c) Background checks. For new agency designated onsite managers, the board may[is authorized to] conduct a national or jurisdictional level background check on each designated onsite manager. The check shall[must] be processed by a board approved background check provider, and may include a copy of the designated manager's fingerprints captured at a board approved location. The board may reject background checks that do not have an official seal or watermark, or that are more than ninety (90) days old. The board may[has the power to] impose additional requirements as a condition of certification or [to] deny certification following the board's review of findings from a background check.[the certified animal control agency shall submit a complete national

~~background check from a board approved background check provider, which may include a copy of the applicant's fingerprints captured at a board approved office for the purpose of a national background check.]~~ The results shall be submitted to the board within thirty (30) days of designating a new onsite manager.

(2)(a) Every certified animal euthanasia specialist shall:

1. File his or her legal name and proper and current mailing address with the board at its principal office; and ~~[shall]~~

2. Within thirty (30) days, notify the board of any changes of his or her legal name or mailing address by submitting a completed Request for Name or Address Change form.

(b) Updates may be filed on the annual Renewal Application for Animal Euthanasia Specialists form or online equivalent form, or on the Request for Name or Address Change[to Designate a New Agency Onsite Manager] form or online equivalent form, including all required attachments.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Renewal Application for Animal Control Agencies", 3/2020;

(b) "Renewal Application for Animal Euthanasia Specialists", 3/2020;

(c) "Request to Designate a New Agency Onsite Manager", 3/2020; and

(d) "Request for Name or Address Change", 2/2020.

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BOARDS AND COMMISSIONS
Board of Veterinary Examiners
(As Amended at ARRS, March 9, 2020)

201 KAR 16:580. Board issued licenses and certificates, inactive and retired statuses.

RELATES TO: KRS 321.207, 321.211, 321.441

STATUTORY AUTHORITY: KRS 321.190, 321.211(8), 321.235(3), (6), 321.240(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.235(3) and 321.240(5) authorize the Kentucky Board of Veterinary Examiners to promulgate administrative regulations to implement KRS Chapter 321. KRS 321.235(6) authorizes the board to promulgate administrative regulations regarding the issuance and renewal of retired and inactive licenses[321.441 provides for the establishment of conditions under which retired or inactive licenses may be renewed]. This administrative regulation establishes the procedures for the issuance and renewal of retired and inactive licenses and certificates[sets forth those conditions].

Section 1. Inactive License Status for Veterinarians and Veterinary Technicians. (1) A veterinarian or veterinary technician licensee of the board with a license in active status may request inactive licensure status by:

(a) Submitting a completed application Request for Licensure Status Change form~~[as found in 201 KAR 16:700]~~ or online equivalent form~~[provided by the board]~~, including all required attachments; or

(b) Designating his or her intent to convert to inactive status on the appropriate renewal form for that license type during a renewal period in accordance with 201 KAR 16:570.

(2) A licensee whose license is designated with an inactive

status shall pay a renewal fee during each license cycle in accordance with 201 KAR 16:510 for veterinarians and 201 KAR 16:512 for veterinary technicians.

(3) ~~[No]~~ Continuing education credits shall not be~~are~~ required for licensees while in inactive status.

(4) A licensee whose license is in an inactive status may[shall] request reinstatement to an active license status by:

(a) 1. Completing and submitting the appropriate[as completed] reinstatement application or online equivalent form~~[provided by the board]~~, including all required attachments;

a. Reinstatement Application for Veterinarians; or

b. Reinstatement Application for Veterinary Technicians[;];

or

2. Designating intent to reinstate to active status on the appropriate renewal form for that license type during a renewal period in accordance with 201 KAR 16:570; and

(b) Completing and providing proof of continuing education in accordance with 201 KAR 16:590; and

(c) Paying the reinstatement fee pursuant to 201 KAR 16:510 for veterinarians and 201 KAR 16:512 for veterinary technicians[;]; and

~~(c) Providing a complete national background check from a board approved background check provider, which may include a copy of the applicant's fingerprints captured at a board approved office for the purpose of a national background check.]~~

(5) There shall be no time limit on the number of years a veterinarian's license or veterinary technician's license may remain in an inactive status.

(6) A licensee whose license is in an inactive status shall not practice his or her profession in any capacity within the Commonwealth of Kentucky as long as the license remains in inactive status.

Section 2. Inactive License Status for Animal Euthanasia Specialists. (1) A certified animal euthanasia specialist with a certificate in active status may request inactive licensure status by:

(a) Submitting a completed application Request for Licensure Status Change form~~[as found in 201 KAR 16:700]~~ or online equivalent form~~[provided by the board]~~, including all required attachments; or

(b) Designating his or her intent to convert to inactive status on the ~~[appropriate]~~ Renewal Application for Animal Euthanasia Specialists form as found in 201 KAR 16:572 during a renewal period.

(2) A certified animal euthanasia specialist with a certificate in active status shall[may] be moved to inactive licensure status by the board if:

(a) His or her employment is severed with the animal control agency of record in[with] the certificate holder's file; or

(b) The animal control agency employing the animal euthanasia specialist fails to renew its certificate in a timely manner.

(3) A certified animal euthanasia specialist whose certificate is designated with a status of inactive shall not pay a renewal fee.

(4) A certified animal euthanasia specialist whose certificate is in an inactive status pursuant to subsection (1) of this section may[shall] request reinstatement to an active certificate status by:

(a) 1. [; (a)] Submitting a completed Reinstatement Application for Animal Euthanasia Specialists form[on a form provided by the board], including all required attachments; or

2. [; or] Designating his or her intent to reinstate to active status on the [appropriate] Renewal Application for Animal Euthanasia Specialists form as found in 201 KAR 16:572[for that certificate type] during a renewal period; and

(b) Paying the reinstatement fee pursuant to 201 KAR 16:514[; and

(b) Providing a complete national background check from a board approved background check provider, which may include a copy of the applicant's fingerprints captured at a board approved office for the purpose of a national background check.]

(5)(a) A certified animal euthanasia specialist whose certificate

is in an inactive status due to a board action may request reinstatement to active certificate status if:

1. The certificate of the animal control agency of record has been reinstated; or

2. The certified animal euthanasia specialist is employed by another certified animal control agency.

(b) The request shall be made by submitting a completed Reinstatement Application for Animal Euthanasia Specialists form and paying the reinstatement fee pursuant to 201 KAR 16:514[can have their certificate reinstated to active status by an action of the board following the reinstatement of the certified animal control agency where the animal euthanasia specialist is employed].

(6) An animal euthanasia specialist certificate in inactive status shall expire after five (5) years.

(7) A certificate holder whose license is in an inactive status shall not practice his or her profession in any capacity within the Commonwealth of Kentucky as long as the certificate remains in inactive status.

Section 3. Background checks. The board may/is authorized to] conduct a national or jurisdictional level background check on each applicant for reinstatement of licensure or certification. The check shall/must] be processed by a board approved background check provider, and may include a copy of the applicant's fingerprints captured at a board approved location. The board may reject background checks that do not have an official seal or watermark, or that are more than ninety (90) days old. The board may/has the power to] impose additional requirements as a condition of licensure or certification or [to] deny licensure or certification following the board's review of findings from a background check.

Section 4. Retired License Status. (1) A licensee of the board may request retired status by:

(a) Submitting a completed application Request for Licensure Status Change form[as found in 201 KAR 16:700] or online equivalent form[provided by the board], including all required attachments; or

(b) Designating his or her intent to convert to retired status on the appropriate renewal form for that license type during a renewal period in accordance with 201 KAR 16:570.

(2) A licensee whose license is designated in a retired status shall pay a one-time fee in accordance with 201 KAR 16:510 for veterinarians and 201 KAR 16:512 for veterinary technicians.

(3) Once a license has been designated in a retired status, the license cannot be reinstated.

(a) The board shall not authorize a person whose license is in a retired status to reinstate his or her license.

(b) A person whose license is in a retired status who desires to practice again shall/must] complete and submit a new application for licensure to the board in accordance with 201 KAR 16:540.

(4) A person whose license is a retired status shall not be able to practice his or her profession in any capacity within the Commonwealth of Kentucky unless he or she holds a new, separate license issued by the board.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Request for Licensure Status Change", 2/ 2020;

(b) "Reinstatement Application for Veterinarians", 3/2020;

(c) "Reinstatement Application for Veterinary Technicians", 3/2020; and

(d) "Reinstatement Application for Animal Euthanasia Specialists", 3/2020.

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BOARDS AND COMMISSIONS
Board of Veterinary Examiners
(As Amended at ARRS, March 9, 2020)

201 KAR 16:590. Continuing education requirements, veterinarians and veterinary technicians.

RELATES TO: KRS 321.211, 321.221, 321.235, 321.441

STATUTORY AUTHORITY: KRS 321.211(7), 321.235(3), 321.240(5), 321.441(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.211(7) and 321.441(3) authorize[authorizes] the Kentucky Board of Veterinary Examiners to require a person applying for renewal or reinstatement to show evidence of completion of continuing education. KRS 321.235(3) and 321.240(5) authorize the board to promulgate administrative regulations to implement KRS Chapter 321. This administrative regulation establishes the requirements for continuing education hours relating to the practice of veterinary medicine and veterinary technicians.

Section 1. Continuing Education Requirements for License Renewal and Reinstatement.

(1) A veterinarian shall complete biennially thirty (30) hours of continuing education to be eligible for renewal of his or her license. At least twenty (20) of the thirty (30) hours shall be directly related to the practice of veterinary medicine. No more than ten (10) of the thirty (30) hours shall pertain to practice management or other topics that are not directly related to the practice of veterinary medicine.

(2) A veterinary technician shall annually complete six (6) hours of continuing education to be eligible for renewal of his or her license.

(3) In addition to attendance at a conference, lecture, or seminar, a veterinarian or veterinary technician may complete the hours of continuing education required for renewal by the completion of audio or video recordings or electronic, computer, or interactive material prepared or approved by any of the organizations established in Section 2(1) and (2) of this administrative regulation. There shall not be a[is-no] limit to the number of online hours a licensee may apply to his or her renewal.

(4) Continuing education shall be earned from October 1 of each renewal period until September 30 at the end of the period, or until November 30 at the end of the grace period with the addition of a late fee in accordance with 201 KAR 16:510 for veterinarians and 201 KAR 16:512 for veterinary technicians.

(a) A licensee may apply continuing education hours to only one (1) renewal cycle. Continuing education hours earned for a given course shall[may] not be applied to the total required hours again in the following renewal cycle.

(5) A veterinarian applying for renewal after completing his or her initial term of licensure after graduating from a veterinary college may complete a reduced number of hours of continuing education to be eligible for renewal as established in this subsection. This subsection shall not apply to applicants for licensure by endorsement under KRS 321.221 who graduated prior to the renewal biennium during which they were initially licensed.[:]

(a) A veterinarian completing his or her initial term of licensure who graduated from a veterinary college during the first year of the preceding biennium shall complete fifteen (15) hours of continuing education to be eligible for renewal. [This paragraph shall not apply to applicants for licensure by endorsement under KRS 321.221.]

(b) Continuing education requirements shall be waived for a veterinarian completing his or her initial term of licensure who graduated during the second year of the preceding biennium. [This paragraph shall not apply to applicants for licensure by

endorsement under KRS 321.221.]

(6) **For a veterinary technician, continuing education requirements shall be waived for a new licensee completing his or her initial term of licensure who also graduated within 12-months of initial licensure. This paragraph shall not apply to applicants for licensure by endorsement who graduated prior to the renewal cycle during which they were initially licensed.**

(7)(a) A veterinarian or veterinary technician may submit a written request to the board for approval of a fellowship, internship, or residency in lieu of the continuing education hours required for license renewal.

(b) The number of continuing education hours granted[requirements] shall be determined[waived when the written request has been approved] by the board.

(c) The request shall:[must]

1. Include a letter of verification from an authorized representative of the organization providing the fellowship, internship, or residency opportunity;

2.[must] Be printed on the organization's letterhead; and

3.[must] Provide a description of the position itself, a summary of assigned tasks, and the anticipated or completed beginning and ending dates of the position.

(8)(7)] Continuing education hours shall be required as follows[requirements] for reinstatement applications:

(a) For veterinarians, thirty (30) hours in a twenty four (24) month period prior to the date of application; and

(b) For veterinary technicians, six (6) hours in a twelve (12) month period prior to the date of application.

Section 2. Approved Continuing Education Courses. (1) The board hereby approves the following continuing education courses:

(a) All scientific programs of the American Veterinary Medical Association (AVMA), its constituent organizations, and its recognized specialty groups and accredited veterinary medical institutions whose meetings impart educational material directly relating to veterinary medicine;

(b) Programs approved by the Registry of Approved Continuing Education (RACE) of the American Association of Veterinary State Boards (AAVSB);

(c) Accreditation modules offered by the United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS);**]** and

(d) All programs approved by the board pursuant to subsection (2) of this section.

(2)(a) By a majority vote, the board may approve programs that are deemed to impart knowledge directly relating to the practice of veterinary medicine, including **[but not limited to]** the utilization and application of new techniques, scientific and clinical advances, and the achievement of research to assure expansive and comprehensive care to the public.

(b) To request approval, a completed Request for Continuing Education Approval form shall be submitted to the board.

Section 3. Continuing Education Documentation Requirements. (1) A licensee shall:

(a) Secure documentation of completed attendance at a course, detailing the hours earned;

(b) Submit on the Renewal Application for Veterinarians form or Renewal Application for Veterinary Technicians form as found in 201 KAR 16:700 or online equivalent forms**[provided by the board]**, as appropriate, the name, dates, and identifying information for each course he or she attended; **and**

(c) Retain copies of continuing education documentation for a period of four (4) years from the date of licensure renewal.

(2) The board may require an applicant or licensee to submit copies of documentation of his or her attendance at continuing education courses.

Section 4. Continuing Education Requirement Waivers. (1) The board may, in individual cases involving medical disability or illness, grant waivers of the continuing education requirements or

extensions of time within which to fulfill the same or make the required reports.

(a) A written request for an extension or waiver of continuing education requirements for medical disability or illness reasons waiver or extension of time shall be submitted by the licensee. The board may require a signed document from a physician or other health care provider to verify the licensee's claimed disability or illness.

(b) A waiver of the minimum continuing education requirements or an extension of time within which to fulfill the requirements shall not be granted by the board for a period of time exceeding one (1) calendar year.

(c) If the medical disability or illness upon which a waiver or extension has been granted persists beyond the period of the waiver or extension, the licensee shall have the option to apply for another extension.

(2) The board shall grant a waiver to a licensee who is unable to meet the continuing education requirements of this administrative regulation because of obligations arising from military duty.

(a) A licensee engaged in active military duty and deployed outside the United States for more than eight (8) months shall not be required to complete the continuing education requirement for licensure periods during which that status exists.

(b) A licensee who is called to active duty in the armed forces shall not be required to complete the continuing education requirement for licensure periods during which that status exists.

(c) The licensee requesting an extension or waiver pursuant to this subsection shall submit with his or her renewal or reinstatement paperwork, the appropriate military assignment form, deployment orders, or a statement from the licensee's unit commander confirming the call-up or deployment.

Section 5. Incorporation by Reference. (1) "Request for Continuing Education Approval", 2/2020, is incorporated by reference.

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**BOARDS AND COMMISSIONS
Board of Veterinary Examiners
(As Amended at ARRS, March 9, 2020)**

201 KAR 16:600. Prescription and dispensation of drugs for animal use.

RELATES TO: KRS **258.015**, 321.181(5)(b)

STATUTORY AUTHORITY: KRS 321.235(3), 321.240(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.181(5)(b) provides that the practice of veterinary medicine includes the prescribing, administering, or dispensing of drugs and medications for veterinary purposes. KRS 321.235(3) and 321.240(5) authorize the **Kentucky Board of Veterinary Examiners** to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 321. This administrative regulation establishes a procedure for the prescription and dispensation of drugs by licensed veterinarians for use in animals.

Section 1. Definitions. (1) "Legend drug" means **a** veterinary prescription drug.

(2) "Prescription" means an order from a veterinarian to a pharmacist or another veterinarian authorizing the dispensing of a veterinary prescription drug to a client for use on or in a patient.**]**

(3) "Veterinary drug" means:

(a) A drug for animal use recognized in the official United States Pharmacopoeia or official National Formulary of the United States;

(b) A drug intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals;

(c) A drug, other than feed, medicated feed, or a growth promoting implant intended to affect the structure or function of the body of an animal; or

(d) A drug intended for use as a component of a drug in paragraph (a), (b), or (c) of this subsection.

(4) "Veterinary prescription drug" means:

(a) A drug that is not safe for animal use without a veterinarian using or ordering the use of the product, and that is required by federal law to bear the following statement: "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian";

(b) A drug that is required by state law to be dispensed only on order or prescription of a licensed veterinarian;

(c) The extra-label use of an over-the-counter animal drug or human drug; and

(d) A medicament compounded by mixing two (2) or more legally-obtained over-the-counter or prescription drugs.

Section 2. Prescribing and Dispensing. (1) A veterinary prescription shall include all of the following:

(a) The name and address of the veterinarian and, if the prescription is a written order, the signature of the veterinarian;

(b) The name and address of the client;

(c) The species and identity of the patient for which the prescription is issued;

(d) The name, strength, and quantity of the drug prescribed;

(e) The date on which the prescription is issued;

(f) The directions for administering the drug;

(g) If the patient is a food producing animal, the withdrawal time for the veterinary drug;

(h) If the prescription authorizes extra-label use, the manner in which the client may use the drug;

(i) Any cautionary statements required by law; and

(j) Number of refills allowed, not to exceed the limitations established[set forth] in Section 6(2) of this administrative regulation.

(2) A veterinarian shall not prescribe for or dispense to a client a veterinary prescription drug or a drug for extra-label use without first personally examining the patient unless a veterinarian-client-patient relationship (VCPR) already exists between the prescribing veterinarian, client and patient, and the veterinarian determines that the client has sufficient knowledge to administer the drug properly.

(3) A veterinarian shall not prescribe or dispense a veterinary prescription drug to a client unless the veterinarian indicates in the appropriate records described in Section 4 of this administrative regulation, within seventy-two (72) hours after the prescription is issued or the drug is dispensed, that the prescription has been issued or that the drug has been dispensed.

(4) A veterinarian shall not prescribe a drug to a client for extra-label use on a patient unless all of the following apply:

(a) The VCPR exists between the veterinarian, client and patient, and the veterinarian has made a careful medical diagnosis of the condition of the patient within the context of that VCPR;

(b) The veterinarian determines that there is no drug that is marketed specifically to treat the patient's diagnosed condition, or determines that all of the drugs that are marketed for that purpose are clinically ineffective;

(c) The veterinarian recommends procedures to ensure that the identity of the patient[patient(s)] receiving the drug can be readily ascertained in the future; and

(d) If the patient is a food producing animal, the veterinarian prescribes a sufficient time period for drug withdrawal before the food from the patient may be marketed.

(5) A veterinarian shall not transmit a prescription electronically unless the client approves the transmission and the prescription is transmitted to a pharmacist or veterinarian designated by the client.

(6) A veterinarian shall not refuse to write an otherwise appropriate prescription for a patient with a valid VCPR solely because the prescription may be filled at an establishment other than the veterinarian's own clinic or pharmacy.

Section 3. Labeling. (1) A veterinarian shall not dispense a drug that has been prepared, mixed, formulated, or packaged by the veterinarian unless the veterinarian affixes to the container in which the drug is dispensed a label containing all of the information specified in Section 2(1) of this administrative regulation, except the address of the client.

(2) A veterinarian shall not dispense a veterinary prescription drug that has been prepackaged by its manufacturer for dispensing unless the veterinarian affixes to the container in which the drug is dispensed a label containing all of the information specified in Section 2(1) of this administrative regulation, except the address of the client.

(3) A veterinarian may dispense a veterinary over-the-counter drug without affixing any information to the container in which the drug is dispensed if a label that has been affixed to the container by its manufacturer provides adequate information for its use.

Section 4. Prescription Records. (1) A veterinarian shall maintain complete records of each veterinary prescription drug that the veterinarian receives, prescribes, dispenses, or administers, and of each prescription issued by the veterinarian that authorizes extra-label use.

(2) Records of each veterinary prescription drug shall include:

(a) The name of each veterinary prescription drug that is received;[,]

(b) The name and address of the person from whom the drug is received;[, and]

(c) The date and quantity received;[,]

(d) The name and address of the person to whom the drug is dispensed;[, and]

(e) The date and quantity dispensed;[,] and[,]

(f) If the veterinarian prescribes or administers the drug, the information specified in Section 2(1) of this administrative regulation.

(3) Records of each prescription authorizing extra-label use shall include the information specified in Section 2(1) of this administrative regulation.

(4) A veterinarian shall maintain records of each veterinary prescription drug for at least five (5) years after the date on which the veterinarian prescribes, dispenses, or administers the drug or extra-label use.

Section 5. (1) A veterinarian may refuse to write a prescription for controlled substances or a prescription for any medication that, in the veterinarian's medical judgment, is not appropriate for the patient's medical care.

(2) A veterinarian may refuse to write a prescription if it is not directly requested by a client with whom there is, in the veterinarian's opinion, a current and existing VCPR.

(3) A prescription shall be construed to include any manner of authorization for filling a prescription, including verbal or electronic communication.

(4) A veterinarian may delegate to an office employee the authority to communicate a refill of a legend drug to the pharmacy on behalf of the veterinarian pursuant to written protocol established prior to the delegation of that authority.

Section 6. (1) A veterinarian shall ensure that federal legend drugs and veterinary prescription drugs are maintained, logged, administered, prescribed, dispensed, and destroyed in compliance with state and federal laws.

(2) A veterinarian shall not prescribe or dispense a quantity of drug that is greater than that the amount required for one (1) year of treatment for an animal, herd, or flock.

(3) To prescribe, sell, distribute, or dispense any drug requiring a prescription for use in the context of an animal, herd, or flock, a veterinarian shall first do all of the following:

(a) Perform an appropriate history and physical examination;

(b) Make a diagnosis based upon the history, physical examination, and pertinent diagnostic and laboratory tests;

(c) Formulate a therapeutic plan, and discuss it with the animal's owner (or the owner's agent), along with the basis for it and the risks and benefits of various treatments options, a part of which might be a prescription drug; and

(d) Ensure availability of the veterinarian or the veterinarian's staff for appropriate follow-up care.

Section 7. **Rabies Vaccine Administration. The administration of a rabies vaccine shall/must be in accordance with the provisions of KRS 258.015 and 902 KAR 2:070.**

Section 8. (1) A veterinarian may dispense a prescription drug only if the prescribing veterinarian has established a VCPR.

(2) If the dispensing veterinarian does not have a VCPR, a licensed veterinary technician or a veterinary assistant may assist in the delivery of a veterinary drug, legend drug, or veterinary prescription drug only while he or she is under the direct supervision of a licensed veterinarian.

(3) If the dispensing veterinarian does have a VCPR, a licensed veterinary technician or veterinary assistant may assist in the delivery of a veterinary drug, legend drug, or veterinary prescription drug while he or she is under the indirect supervision of a licensed veterinarian.

(4) If a licensed veterinary technician or a veterinary assistant acts under the provisions of this section, ~~[it shall be the responsibility of]~~ the licensed veterinarian shall/to ensure that the requirements of this administrative regulation are met.

Section **9.[8.]** Enforcement. ~~[Except as provided in this section of this administrative regulation,]~~ If the board has reason to believe that a **veterinarian or person claiming to be a veterinarian[person]** is violating or has violated this administrative regulation, the board may:

(1) Inspect the premises on which the **veterinarian or person claiming to be a veterinarian[person]** possesses, prescribes, dispenses, labels or administers veterinary drugs;

(2) Inspect relevant records, equipment, materials, containers, or facilities;

(3) Collect samples of veterinary drugs found on the premises; and

(4) Conduct any other investigative activities necessary to open a case and issue a determination and, if necessary, hold hearings and enact discipline on the individual.

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BOARDS AND COMMISSIONS
Board of Veterinary Examiners
(As Amended at ARRS, March 9, 2020)

201 KAR 16:610. Procedures for grievances, investigations, and administrative charges.

RELATES TO: KRS **Chapter 13B, 61.870 - 61.884, 321.190, 321.235(2), 321.351, 321.353, 321.360**

STATUTORY AUTHORITY: KRS 321.235(2), **[321.235](3), 321.240(5), 321.351, 321.353, 321.360**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.235(2) authorizes the **Kentucky Board of Veterinary Examiners** to investigate an allegation of a practice **that/which** violates the provisions of KRS Chapter 321. **KRS 321.235(3) and 321.240(5) authorize the board to promulgate administrative regulations to implement KRS Chapter 321.** This administrative regulation establishes the procedures for handling grievances, investigations, and administrative charges.

Section 1. **Definition. "Grievance" means[Intake—of Grievances. (1)]** a complaint, grievance, or other allegation of misconduct **that/collectively, "grievance" which** might constitute a violation of KRS Chapter 321 or 201 KAR Chapter 16.

Section 2. Intake of Grievances. (1)(a) A grievance may be submitted by any individual, organization, or entity.

(b) The board may submit a grievance on its own initiative based on information in its possession that the board believes is sufficiently credible to justify a request for a response from the licensee (or other individual named in the grievance).

(2) The grievance shall be in writing on a Grievance Form **[as found in 201 KAR 16:700]** or online equivalent form provided by the board, and shall include the complaining party's name, address, telephone number, and signature. Electronic signatures shall be accepted.

(3) The board's chair, or the chair's designee, shall perform an initial screen of any grievance that was submitted without identifying the complaining party. The **[initial screen shall require]** the chair, or the chair's designee, **shall/to** determine whether the grievance contains sufficient details or other indicators of credibility to justify a request for a response from the licensee (or other individual named in the grievance). If sufficient details or other indicators of credibility are lacking, then the grievance shall be discarded without further action **or notice to the licensee or other named individual.**

(4) The board shall send a copy of the grievance to the licensee (or other individual named in the grievance) along with a request for a response. The response shall be required within thirty (30) days from the date of when the board sent a copy of the written grievance. Failure to respond in writing within thirty (30) days may constitute a violation of the Code of Ethical Conduct **pursuant to 201 KAR 16:500.**

Section **3[2].** Initial Review of Grievances. (1) After the time period for the licensee's (or named individual's) response has elapsed, at the next scheduled board meeting the Complaints Screening Committee shall consider the grievance, the response if one was received, and other relevant information that is available to the Committee.

(2) The Complaints Screening Committee shall determine if an investigation is warranted after reviewing the information that is available. An investigation shall be warranted if the committee determines, based on upon a totality of the circumstances, that a reasonable probability exists that the grievance has merit.

(3) If, in the opinion of the **Complaints Screening Committee[board]**, a grievance does not warrant an investigation, then the board shall notify the complaining party and the respondent that the grievance is being dismissed without investigation.

(4) The dismissal of a grievance without an investigation shall constitute a final action of the board. Following **the/such a/** dismissal, the grievance, the response from the individual named in the grievance, and correspondence **that/which** is intended to give notice of the dismissal shall be subject to disclosure pursuant to the Kentucky Open Records Act, **KRS 61.870 through 61.884.**

(5) If, in the opinion of the board, a grievance warrants an investigation, then the board shall open an investigation into the matter.

Section **4[3].** Investigations. (1) The Complaints Screening Committee shall have the authority to direct an investigation and shall exercise those powers possessed by the board in regard to investigations as provided by KRS 321.235.

(2) The Complaints Screening Committee shall have the authority to request the participation of any person in an investigation. The refusal or failure of any board licensee or certificate holder to participate when requested, or to provide information and documents requested by the committee within the requested timeframe, shall be considered a violation of 201 KAR 16:500.

(3) Investigative reports shall be reviewed at a meeting of the committee.

Section **5[4]**. Reports and Recommendations Following Investigation. (1) If the board determines that the results of an investigation do not warrant the issuance of an administrative charge against the individual named in the grievance, then the board shall notify the complaining party and the individual that the grievance is being dismissed without further action.

(2) The dismissal of a grievance following an investigation shall constitute a final action of the board. Following ~~the[such-a]~~ dismissal, the grievance, the response from the individual named in the grievance, correspondence ~~that[which]~~ is intended to give notice of the dismissal, and any other documents obtained or generated during the investigation (other than those documents that are subject to a legitimate claim of privilege or otherwise exempt from disclosure by law) shall be subject to disclosure pursuant to the Kentucky Open Records Act, KRS 61.870 through 61.884.

(3) If the board determines that the results of an investigation warrant the issuance of an administrative charge against a licensee, then the board shall cause an administrative charge to be prepared.

(4) If the board determines that the results of an investigation warrant proceedings against a person who is not a licensee, then the board shall cause a civil action to be prepared for filing in the Franklin Circuit Court or other court of competent jurisdiction.

Section **6[5]**. Administrative Charges. (1) The administrative charge shall:

(a) Be signed and dated by a member of the board or the board's authorized representative;

(b) Be designated with an administrative charge number; and

(c) State/Set forth:

1. The board's jurisdiction in regard to the subject matter of the administrative charge; and

2. In numerical paragraphs, sufficient information to apprise the named licensee or individual of the general nature of the charges.

2[1(d)] A licensee's written response shall be due within thirty (30) days after the issuance of the administrative charge. Failure to respond within that time period may be taken by the board as an admission of the charges.

3[1(2)] Each notice shall be issued in accordance with KRS 13B.050.

Section **7[6]**. Proceedings Following the Issuance of an Administrative Charge. (1) The board shall arrange for the appointment of a hearing officer in accordance with KRS 13B.030 and 13B.040.

(2) The board's legal counsel shall act as the prosecuting attorney in regard to any disciplinary proceeding unless the board appoints a special prosecuting attorney.

(3) The board may appoint a representative of the Attorney General's office or another attorney to act as advisory counsel to the board in regard to any deliberations of the board following the issuance of an administrative charge.

(4) The provisions of KRS Chapter 13B shall govern the conduct of the proceeding.

Section 8. Incorporation by Reference. (1) "Grievance Form", 2/2020, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subjected to applicable copyright law, at the Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material may also be obtained at www.kybve.com.

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**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, March 9, 2020)**

301 KAR 2:195. Falconry, raptor take, and raptor propagation.

RELATES TO: KRS 150.010, 150.180, 150.183, 150.290, 150.305, 150.320, 150.330, 150.360

STATUTORY AUTHORITY: KRS 150.025(1), 150.280(1), 50 C.F.R. Parts 13, 17, 21, 22

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations establishing open seasons for the taking of wildlife, bag limits, and methods of taking wildlife, and to make these requirements apply to a limited area. KRS 150.280(1) requires the department to promulgate administrative regulations establishing procedures for propagating and holding of protected wildlife. 50 C.F.R. Parts 13, 17, 21, and 22 establish requirements for permitting, taking, possessing, and selling of raptors and endangered and threatened species. This administrative regulation establishes permitting, taking, possessing, and reporting requirements for people engaged in falconry and raptor propagation.

Section 1. Definitions. (1) "Adult" means a raptor that is at least one (1) year old.

(2) "Captive-bred raptor" means a raptor, or the eggs thereof, hatched in captivity from parents in captivity.

(3) "Eyas" means a young raptor that is still in the nest and not capable of flight.

(4) "Falconry" means caring for and training wild or captive-bred raptors for the pursuit of wild game.

(5) "Hack" means the temporary release of a raptor held for falconry to the wild so that it can survive on its own.

(6) "Hybrid raptor" means an offspring produced by two (2) distinct raptor species.

(7) "Imprinted" means a raptor that has been hand-raised by a human in isolation from the sight of other raptors from two (2) weeks of age through fledging.

(8) "Native raptor" means a raptor species which has historically existed or currently exists in the wild in Kentucky without introduction by humans.

(9) "Passage bird" means a raptor less than one (1) year of age that is capable of sustained flight and is no longer dependent on parental care.

(10) "Wild raptor" means a raptor that was originally taken from the wild.

Section 2. Federal requirements. Except as established in Sections 3 through 11 of this administrative regulation, a person shall be in compliance with the federal requirements established in 50 C.F.R. Parts:

- (1) 13;
- (2) 17;
- (3) 21; and
- (4) 22.

Section 3. Permits and Licenses. (1) A person shall be required to obtain and possess a valid falconry permit to take or possess a raptor for use in falconry.

(2) A raptor obtained with a valid falconry permit shall not be used or kept for purposes other than falconry.

(3) A person with a valid state or federal falconry permit:

(a) May take wildlife pursuant to applicable statewide requirements if the falconer:

1. Has a valid Kentucky hunting license; or
2. Is hunting license exempt pursuant to KRS 150.170; and

(b) Shall not be required to obtain a wildlife transportation permit pursuant to 301 KAR 2:081 and 2:082 if the person:

1. Is importing or transporting a legally held falconry raptor into Kentucky; or
2. Is transporting a legally held falconry raptor into and through

Kentucky to a destination outside of Kentucky.

Section 4. Falconry Permit Requirements, Classes of Permits, and Apprentice Sponsors. (1) To obtain a falconry permit of any class, a person shall:

- (a) Complete a Kentucky Falconry Permit Application form provided by the Department; and
- (b) Submit to the department:
 1. The completed application;
 2. The appropriate fee, as established in 301 KAR 3:022; and
 3. A completed Raptor Facilities and Equipment Inspection Report form signed by a department[state] conservation officer, department biologist, or department approved representative.

(2) An apprentice falconry permit applicant shall:

- (a) Be at least twelve (12) years old;
- (b) Obtain a sponsor who holds a valid Kentucky general or master falconry permit pursuant to subsection (12) of this section;
- (c) If under eighteen (18) years old, have a parent or legal guardian co-sign the application;
- (d) Contact the department to schedule a time to take a written exam administered by the department;
- (e) Provide photo identification prior to taking the exam;
- (f) Complete the written exam within ninety (90) minutes;
- (g) Only take the written exam one (1) time in a given day; and
- (h) Pass the written examination by scoring a minimum of eighty (80) percent.

(3) An applicant shall not take more than three (3) exams in any twelve (12) month period.

(4) A person shall submit an application within twelve (12) months of passing the falconry exam, or the application shall be invalid.

(5) An apprentice class falconry permit holder shall:

- (a) Only possess one (1) of the following wild or captive-bred raptors at any given time:
 1. American kestrel (*Falco sparverius*);
 2. Red-tailed hawk (*Buteo jamaicensis*);
 3. Red-shouldered hawk (*Buteo lineatus*); or
 4. Harris's hawk (*Parabuteo unicinctus*);
- (b) Not possess a raptor:
 1. Taken from the wild as a nestling; or
 2. That is imprinted on humans; and
- (c) Only take a wild raptor under the direct supervision of the permit holder's sponsor.

(6) A general class falconry permit applicant shall:

- (a) Be at least sixteen (16) years old;
- (b) If under eighteen (18) years old, have a parent or legal guardian co-sign the application;
- (c) Have practiced falconry at the apprentice level for at least two (2) years; and
- (d) Have complied with all previous year reporting requirements, if applicable, pursuant to Section 7 of this administrative regulation.

(7) A first time general class permit applicant shall:

- (a) Submit to the department a completed Kentucky Apprentice Falconer Activity Report;
- (b) Practice falconry with a wild raptor at the apprentice level for at least two (2) years; and
- (c) Maintain, train, and hunt with a raptor for an average of six (6) months per year with at least four (4) months in each year.

(8) A general class falconry permit holder shall:

- (a) Be allowed to possess the following:
 1. A raptor obtained from the wild;
 2. A hybrid raptor; or
 3. A captive-bred raptor; and
- (b) Not possess more than three (3) of the following raptors at any given time:
 1. Great horned owl (*Bubo virginianus*); or
 2. Any member of the Order Falconiformes, except for the following species which shall not be possessed:
 - a. Golden eagle (*Aquila chrysaetos*);
 - b. Bald eagle (*Haliaeetus leucocephalus*);
 - c. White-tailed eagle (*Haliaeetus albicilla*); or
 - d. Stellar's sea eagle (*Haliaeetus pelagicus*).

(9) A master class falconry permit applicant shall:

- (a) Have held a valid general class falconry permit for at least five (5) years; and
- (b) Have complied with all previous year reporting requirements, pursuant to Section 7 of this administrative regulation.

(10) A first time master class permit applicant shall submit to the department a completed Kentucky General Falconer Upgrade Report, signed by the applicant and one (1) reference who is a permitted master or general class falconer, attesting that the applicant has practiced falconry:

(a) At the general class permit level for at least five (5) years; and

(b) For an average of four (4) months a year, in at least four (4) out of the last five (5) years.

(11) A master class falconry permit holder:

(a) Shall not possess more than five (5) of the following wild raptors at any given time:

1. Great horned owl; and
2. Any member of the Order Falconiformes except a bald eagle;

(b) Shall obtain prior approval from the department pursuant to the requirements of 50 C.F.R. 21 and 22 to possess any of the following raptors:

1. Golden eagle;
2. White-tailed eagle; or
3. Stellar's sea eagle; and

(c) May possess any number of captive-bred raptors of the species allowed in paragraph (a) and (b) of this subsection.

(12) An apprentice sponsor shall:

- (a) Not have more than three (3) apprentices at any given time;
- (b) Be at least eighteen (18) years old;
- (c) Possess a valid Kentucky general or master class falconry permit;
- (d) Have held a general class falconry permit for a minimum of two (2) years; and
- (e) Submit a signed letter to the department:
 1. Attesting that the sponsor will assist the apprentice in:
 - a. Learning about the husbandry and training of raptors held for falconry;
 - b. Learning relevant wildlife laws and regulations;
 - c. Deciding which species of raptor is most appropriate for the apprentice to possess;
 - d. Providing direct supervision to the apprentice while trapping wild raptors; and
 - e. Evaluating the apprentice's facility and bird a minimum of one (1) time every twelve (12) months; and
 2. Containing the sponsor's:
 - a. Name;
 - b. Falconry permit number;
 - c. Address; and
 - d. Telephone number.

(13) A sponsor who is withdrawing sponsorship of an apprentice shall:

- (a) Notify the department in writing within five (5) days of withdrawing the sponsorship; and
- (b) Provide the apprentice with a signed and dated document stating the length of time that the apprentice practiced falconry under the sponsor's guidance.

(14) An apprentice who loses sponsorship shall obtain a new sponsor within thirty (30) days from the sponsor's notification of withdrawal.

(15) A new sponsor shall be in compliance with the requirements established in subsection (7) of this section.

(16) If an apprentice fails to obtain a new sponsor within thirty (30) days, the department shall:

- (a) Revoke the apprentice's falconry permit; and
- (b) Confiscate any raptor in the apprentice's possession if the apprentice does not transfer ownership of the raptor to another licensed falconer.

(17) A non-resident falconer who moves to Kentucky to establish residency shall apply for the appropriate Kentucky falconry permit within thirty (30) days after moving.

(18) A resident falconry applicant who is a new resident of the United States shall obtain the appropriate Kentucky falconry permit by:

(a) Meeting the application requirements established in subsection (1) of this section;

(b) Contacting the department to schedule a time to take a written examination administered by the department;

(c) Passing the written examination by scoring a minimum of eighty (80) percent; and

(d) Providing to the department written documentation of previous falconry experience including:

1. The number of years the applicant has practiced falconry;
2. The raptor species used in falconry; and
3. The game species taken with falconry.

(19) A person who held a valid Kentucky falconry permit within the last five (5) years, but has allowed the permit to lapse, may apply for reinstatement at the class level previously held by:

(a) Complying with the application requirements established in subsection (1) of this section; and

(b) Providing the department with proof of previous certification at that class level.

(20) An apprentice or general falconer whose Kentucky falconry permit has lapsed for a period greater than five (5) years may apply for reinstatement at the class level previously held by:

(a) Complying with the application requirements established in subsection (1) of this section;

(b) Complying with the examination requirements established in subsection (2) of this section; and

(c) Providing the department with proof of previous certification at that class level.

(21) A master class permittee whose Kentucky falconry permit has lapsed for a period greater than five (5) years will be reinstated at the general class level, provided he satisfies the application requirements in subsection (1) of this section.

(a) A person formerly permitted at the master class level and reinstated at the general class level shall actively practice falconry for an average of four (4) months a year in at least two (2) out of the last three (3) years prior to upgrading to a master class permit.

(b) A person applying for master class reinstatement shall:

1. Submit to the department a Kentucky General Falconer Upgrade Report;

2. Have complied with all previous years' reporting requirements, as established in Section 7; and

3. Provide the department with proof of previous certification at the master class level.

(22) A falconry permit holder shall not be required to pay the permit fee established in 301 KAR 3:022 if the permit holder's current permit has not yet expired and the permit holder is applying for:

- (a) An upgrade to the next falconry class; or
- (b) A facility relocation.

Section 5. Facility, Equipment, and Care Requirements. (1) A falconry permit holder shall comply with all federal requirements established in 50 C.F.R. Part 21 for the permit holder's:

(a) Facility;

(b) Equipment; and

(c) Treatment and care for possessed raptors.

(2) A permittee shall keep all:

(a) Raptors in humane and healthy condition; and

(b) Facilities and equipment in serviceable, safe, and sanitary condition, as established in 50 C.F.R. Part 21.

(3) A falconry permit holder who is relocating a raptor facility shall:

(a) Notify the department within five (5) business days of relocation; and

(b) Have a relocated raptor facility inspected and approved by a department conservation officer, department biologist, or department approved representative within thirty (30) days of relocation.

(4) A department conservation officer, department biologist, or department approved representative shall only inspect a raptor facility:

(a) In the presence of the permit holder;

(b) On a weekday; and

(c) Between 8 a.m. and 8 p.m. local time.

Section 6. Banding, Tagging, and Telemetry Requirements. (1) A falconry permit holder shall comply with federal banding, tagging, and telemetry requirements established in 50 C.F.R. Part 21.

(2) A falconry permit holder who is required by federal regulations to band a raptor shall:

(a) Contact the department to request leg bands at least fifteen (15) days prior to obtaining a raptor; and

(b) Only use U.S. Fish and Wildlife Service leg bands that are issued by the department.

(3) A falconry permit holder shall attach at least two (2) radio transmitters to a hybrid raptor if the permit holder is flying it untethered in the wild.

Section 7. Raptor Take and Release, Recordkeeping, and Reporting Requirements. (1) Unless exempted by KRS 150.170, a Kentucky falconry permit holder shall have in possession a valid Kentucky hunting license when taking a raptor from the wild.

(2) When taking a raptor from the wild, a nonresident shall have in possession:

(a) A valid Kentucky nonresident hunting license;

(b) A valid falconry permit or equivalent from the nonresident's home state; and

(c) An approved Kentucky Nonresident Raptor Take Form.

(3) To obtain a Kentucky Nonresident Raptor Take Form, a person shall:

(a) Print a copy of the form from the department's Web site at fw.ky.gov; or

(b) Contact the department at 800-858-1549 and request a mailed copy.

(4) A person shall submit to the department a completed and signed Kentucky Nonresident Raptor Take Form at least fifteen (15) working days prior to the requested take date.

(5) A falconry permit holder shall be responsible for complying with all applicable federal requirements if taking raptors on federal land.

(6) A falconry permit holder who is a nonresident shall only take one (1) legal raptor in Kentucky per calendar year.

(7) An approved Kentucky Nonresident Raptor Take Form shall only be issued to a person whose state of residence allows a Kentucky resident to legally take a raptor from that state.

(8) A nonresident falconer who takes a raptor in Kentucky shall submit to the department a completed and signed Falconry Take Location Report within five (5) days of taking a bird.

(9) A licensed falconer shall comply with all raptor take requirements established in 50 C.F.R. 21 in addition to the requirements established in this section.

(10) A resident falconry permit holder shall not take more than two (2) raptors from the wild in any calendar year.

(11) An eyas shall only be taken:

(a) By a general or master class falconry permit holder; and

(b) From January 1 through July 31.

(12) A person shall not take more than one (1) sharp-shinned hawk (*Accipiter striatus*) eyas per calendar year.

(13) There shall be an annual maximum quota for sharp-shinned hawk eyases of:

(a) Ten (10) for Kentucky residents; and

(b) Five (5) for nonresidents.

(14) Prior to taking a sharp-shinned hawk eyas, a person shall be responsible for calling the department at 800-858-1549 to check if the sharp-shinned hawk eyas annual quota has been reached.

(15) A person shall not take a sharp-shinned hawk eyas from a nest unless there are at least three (3) eyases in the nest.

(16) Each person who takes a sharp-shinned hawk eyas shall submit to the department the Falconry Take Location Report within five (5) days of possession.

(17) Any permit class falconer may take a passage bird if it is a species the falconer is allowed to possess as established in Section 4 of this administrative regulation.

(18) The allowable period of take for:

(a) A passage bird, other than a great horned owl, shall be September 1 through January 31;

(b) An adult or passage bird great horned owl shall be September 1 through October 31; and

(c) An adult American kestrel shall only be taken from September 1 through January 31.

(19) An adult American kestrel or adult great horned owl shall only be taken by a:

(a) General class permit holder; or

(b) Master class permit holder.

(20) ~~[A person shall not take a peregrine falcon (*Falco peregrinus*) from the wild in Kentucky.~~

(21) A person shall not release the following raptors into the wild:

(a) A non-native raptor;

(b) A hybrid raptor; or

(c) A captive-bred, native raptor.

(21)(22) Prior to releasing a raptor into the wild, a person shall remove all leg bands from the bird, except that a falconer who intends to release a wild caught peregrine falcon previously used in falconry shall contact the department's Falconry Coordinator to:

(a) Have the department band the bird with a permanent band; and

(b) Release the bird only in a county approved in writing by the department's Falconry Coordinator.

(22)(23) A falconry permit holder shall complete and submit to the department a federal form 3-186A or enter the required information in the federal database at <https://epermits.fws.gov/falcP/> [<http://permits.fws.gov/186A>] within five (5) days if a raptor is:

(a) Acquired;

(b) Transferred;

(c) Released;

(d) Lost;

(e) Rebanded;

(f) Microchipped;

(g) Stolen; or

(h) Dead.

(23)(24) A falconer shall retain copies of each submitted 3-186A form or the electronically submitted data for a minimum of five (5) years following a raptor's:

(a) Transfer;

(b) Release;

(c) Loss; or

(d) Death.

Section 8. Transfer of Ownership and Propagation. (1) A falconry permit holder may transfer ownership of a wild-caught raptor pursuant to 50 C.F.R. Part 21, but shall not engage in the following activities with wild-caught raptors:

(a) Selling;

(b) Purchasing;

(c) Trading; or

(d) Bartering.

(2) A falconry permit holder may transfer a wild-caught raptor to a person who possesses a valid federal raptor propagation permit if:

(a) 1. The raptor has been used in falconry for at least one (1) year for the following species:

a. Sharp-shinned hawk;

b. Cooper's hawk (*Accipiter cooperii*);

c. Merlin (*Falco columbarius*); or

d. American kestrel; or

2. The raptor has been used in falconry for at least two (2) years for all other legal species of raptor; and

(b) The person receiving the transferred bird possesses a valid state captive wildlife permit.

(3) A person who legally possesses a captive-bred raptor may engage in the activities listed in subsection (1)(a) through (d) of this section if:

(a) 1. The transferred bird is marked with a metal leg band; or

2. The transferred bird is implanted with a microchip pursuant to 50 C.F.R. Part 21; and

(b) The person in receipt of the bird possesses:

1. The appropriate class falconry permit; or

2. A valid federal raptor propagation permit.

(4) A person shall not breed or propagate a native raptor without first obtaining:

(a) A federal raptor propagation permit, pursuant to 50 C.F.R. Part 21; and

(b) The appropriate Kentucky captive wildlife permit, pursuant to 301 KAR 2:081.

(5) A person who is propagating a native raptor shall submit to the department copies of all the following materials required by 50 C.F.R. Part 21:

(a) The raptor propagation application;

(b) Propagation records; and

(c) Propagation reports.

(6) The materials required in subsection (5) of this section shall be submitted to the department by the same dates required in 50 C.F.R. Part 21.

Section 9. Other Activities. (1) A falconry permit holder may use a raptor for conservation education programs, pursuant to 50 C.F.R. Part 21.

(2) A falconry permit holder who is in compliance with the permit requirements for Special Purpose Abatement, pursuant to 50 C.F.R. Part 21, may receive payment for nuisance wildlife control work if the permit holder also possesses a valid Kentucky Commercial Nuisance Wildlife Control permit, pursuant to 301 KAR 3:120.

(3) A person may assist a permitted wildlife rehabilitator, as established in 301 KAR 2:075, in conditioning raptors for subsequent release into the wild if the person is:

(a) A general or master class falconry permit holder; and

(b) Working with a species the falconry permit holder is allowed to possess.

(4) A general or master class permit holder may hack a raptor, previously used for falconry, if the permit holder is in compliance with 50 C.F.R. 21 and contacts the department to provide the information established in paragraph (a) through (d) of this subsection.

(a) The hack site location;

(b) The species of raptor;

(c) The origin of the raptor; and

(d) The planned hacking dates.

Section 10. Passage Tundrius Peregrine Falcon Take Opportunity Drawing. (1) Dependent upon the number of passage tundrius peregrine falcon take opportunities allocated to the department by the U.S. Fish and Wildlife Service, the department shall administer a random drawing annually for the passage tundrius peregrine falcon take opportunities allocated.

(2) One passage tundrius peregrine falcon take opportunity, authorizing the take of one (1) passage tundrius peregrine falcon, will be awarded per drawn falconer.

(3) To be eligible for the passage tundrius peregrine falcon take opportunity drawing, falconers shall:

(a) Be a resident of Kentucky;

(b) Have a valid Kentucky resident hunting license or be license exempt, as established in KRS 150.170;

(c) Have a valid Kentucky master class falconry permit, pursuant to Section 4 of this administrative regulation;

(d) Submit to the department a complete and accurate online application at fw.ky.gov by July 31; and

(e) Not have been convicted of violating any Kentucky falconry regulation in the past five (5) years.

(4) The department will notify the drawn falconer, by their preferred method of contact as indicated on the application, no later than August 15.

(5) Upon notification, drawn falconers must contact the department's Falconry Coordinator by phone or email within ten (10) calendar days to accept the passage tundrius peregrine falcon take opportunity. Failure to accept a passage tundrius peregrine falcon take opportunity within ten (10) calendar days will result in a forfeiture of the passage tundrius peregrine falcon take opportunity.

(6) If the passage tundrius peregrine falcon take opportunity is forfeited, the department shall conduct additional random drawings until the passage tundrius peregrine falcon take opportunity is accepted or until the take period has passed, as established in this section.

(7) If a passage tundrius peregrine falcon take opportunity is awarded and accepted, the drawn falconer shall:

(a) Carry on his or her person an authorization letter provided by the department to take one (1) passage tundrius peregrine falcon;

(b) Only take a passage tundrius peregrine falcon between September 20 and October 20 of the year the passage tundrius peregrine falcon take opportunity is awarded;

(c) Not take or attempt to take a passage tundrius peregrine falcon from a county in which the trapping of a passage tundrius peregrine falcon is prohibited, as established by the department;

(d) Immediately release any captured peregrines of non-tundrius subspecies or birds with a band or research marker, except that bands and research marker information must be photographed or otherwise recorded and reported to the department within forty-eight (48) hours of release;

(e) Report to the department's Falconry Coordinator the take of a passage tundrius peregrine falcon within twenty-four (24) hours by phone or email at FWFalconry@ky.gov;

(f) Within ten (10) calendar days of taking of a passage tundrius peregrine falcon, make arrangements for the department to:

1. Inspect the passage tundrius peregrine falcon;

a. If the captured falcon is determined not to be a passage tundrius peregrine falcon, the bird shall be surrendered to the department on site; and

2. Band the captured passage tundrius peregrine falcon with a U.S. Fish and Wildlife Service falconry band; and

(g) Not be eligible to participate in the random drawing for the subsequent two (2) years.

(8) The passage tundrius peregrine falcon take opportunity is nontransferable.

Section 11[40]. Revocation of Permits and Appeal Procedure.

(1) The department shall revoke the permit, deny the issuance of a new permit, or deny a renewal of an existing or lapsed permit for a period of one (1) year of a person who:

(a) Violates any provision of KRS Chapter 150;

(b) Violates any department regulation;

(c) Violates any federal statute or regulation related to hunting, fishing, or wildlife; or

(d) Falsifies a falconry permit application.

(2) A person whose permit is denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B.

(3) A request for a hearing shall be in writing and postmarked or delivered in person to the department no later than ~~thirty (30)~~ ten (10) days after notification of the denial or revocation.

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

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

Section 12[44]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Falconry Permit Application", 2018 edition;

(b) "Raptor Facilities and Equipment Inspection Report", 2013 edition;

(c) "Falconry Take Location Report", 2013 edition;

(d) "Kentucky Nonresident Raptor Take Form", 2013 edition;

(e) "Kentucky Apprentice Falconer Activity Report", 2018 edition; [and]

(f) "Kentucky General Falconer Upgrade Report", 2018 edition;

(g) "Kentucky Passage Tundrius Peregrine Falcon Falconry Take Opportunity Application", 2019 edition; and

(h) "Kentucky Counties Where Trapping Of Passage Tundrius Peregrine Falcons Is Prohibited", 2019 edition.

(2) This material may be inspected, copied, or obtained,

subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Eastern Time.

CONTACT PERSON: Jessica Tyler, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

**TOURISM, ARTS AND HERITAGE CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, March 9, 2020)**

301 KAR 2:300. Black bear seasons and requirements.

RELATES TO: KRS 150.010, 150.092, 150.170, 150.175, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.390(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply to a limited area. KRS 150.390(1) prohibits the taking of bears in any manner contrary to any provisions of KRS Chapter 150 or KAR Title 301. This administrative regulation establishes bear hunting and chasing seasons, bear hunting areas, legal methods of take, and permitting, checking, and recording requirements.

Section 1. Definitions. (1) "Adult" means an individual who is at least eighteen (18) years of age.

(2) "Archery equipment" means a long bow, recurve bow, or compound bow incapable of holding an arrow at full or partial draw without aid from the archer.

(3) "Arrow" means the projectile fired from a bow or crossbow.

(4) "Baited area" means an area where feed, grains, or other substances capable of luring black bears have been placed.

(5) "Bear" means the species *Ursus americanus*.

(6) "Bear chase permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows the holder to use dogs to chase a bear.

(7) "Bear permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows the holder to harvest one (1) black bear of either sex.

(8) "Bear Zone 3" means Adair, Bath, Boyd, Carter, Casey, Clark, Cumberland, Elliot, Estill, Fleming, Garrard, Greenup, Lee, Lewis, Lincoln, Madison, Menifee, Montgomery, Morgan, Powell, Rowan, and Wolfe counties.

(9) "Bell Zone" means Bell County.

(10) "Chase-only season" means a designated season when a person may use dogs to chase a bear, without killing or intentionally injuring a bear.

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

(12) "East Zone 2" means Breathitt, Clay, Floyd, Johnson, Knott, Knox, Lawrence, Leslie, Magoffin, Martin, Owsley, Perry, and Pike counties.

(13) "Firearm" means a breech or muzzle-loading rifle, shotgun, or handgun.

(14) "Harlan Zone" means Harlan County.

(15) "Letcher Zone" means Letcher County.

(16) "License year" means the period from March 1 through the last day of February.

(17) "McCreary Zone" means McCreary County.

(18) "Modern gun" means a rifle, handgun, or shotgun loaded from the rear of the barrel.

(19) "Muzzleloader" means a rifle, shotgun, or handgun loaded from the discharging end of the barrel or discharging end of the receiver.

(20) "Wayne Zone" means Wayne County.

(21)[(20)] "West Zone 2" means Clinton, Jackson, Laurel, Pulaski, Rockcastle, Russell, [Wayne,] and Whitley counties.

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~~(22)~~~~(24)~~ "Youth" means a person under the age of sixteen (16) on the day of the hunt.

~~(23)~~~~(22)~~ "Youth bear chase permit" means a permit, which in conjunction with appropriate licenses, seasons, and methods, allows a youth to use dogs to chase a bear.

Section 2. Feeding Black Bears. A person shall not engage in any direct or indirect feeding of black bears.

Section 3. Bear Chase Requirements. (1) Unless exempted by KRS 150.170, a person, while using dogs to chase a bear, shall carry on his or her person~~[proof of purchase of]~~ a valid Kentucky hunting license and a valid:

- (a) Bear chase permit; or
- (b) Youth bear chase permit.

(2) A bear chase permit or youth bear chase permit shall only be purchased by a resident of Kentucky.

(3) A person shall not:

(a) Kill or intentionally injure a bear during a chase-only season;

(b) Chase a bear except during daylight hours while a chase season is open;

(c) Chase a bear from a baited area:

- 1. While bait is present; or
- 2. For thirty (30) days after the bait has been removed; or

(d) Disturb a bear in a den.

(4) A person shall only use a dog to chase a bear on public hunting areas, or on private land with permission of the landowner, [or public hunting areas] in all bear zones, except that it shall be prohibited to chase bears with dogs in the areas established in paragraphs (a) through (h) of this subsection:

- (a) McCreary Zone;
- (b) Daniel Boone National Forest;
- (c) Miller-Welch Central Kentucky Wildlife Management Area;
- (d) Beaver Creek Wildlife Management Area;
- (e) Cane Creek Wildlife Management Area;
- (f) Mill Creek Wildlife Management Area;
- (g) Pioneer Weapons Wildlife Management Area;
- (h) Redbird Wildlife Management Area.

Section 4. Chasing Bears with Dogs. A person shall not use a dog to chase a bear except during the seasons established in subsections (1) and (2) of this section.

(1) The chase-only season shall be from:

- (a) June~~July~~ 1 through August 31; and
- (b) September 9 through September 30; and

(2) The bear quota hunt with dogs season shall be pursuant to Section 8(1) of this administrative regulation.

Section 5. Bear Permit Requirements. Unless exempted by KRS 150.170, a person hunting a bear shall carry on his or her person~~[possess proof of purchase of]~~ a valid Kentucky hunting license and the appropriate valid bear permit or permits while hunting during the seasons established in Section 8(1) of this administrative regulation.

Section 6. Hunter Restrictions. (1) A person shall not:

(a) Harvest a bear except during daylight hours;

(b) Use a dog during the modern gun, muzzleloader, or archery and crossbow~~[archery – crossbow, or muzzleloader]~~ season for bears, except leashed tracking dogs may be used to recover a wounded or dead bear;

(c) Hunt bear on a baited area:

- 1. While bait is present; or
- 2. For thirty (30) days after the bait has been removed;

(d) Harvest:

- 1. A female bear that has a cub; or
 - 2. A bear that weighs less than seventy-five (75) pounds;
- (e) Harvest a bear that is swimming;

(f) Harvest a bear if the person is in a vehicle, boat, or on horseback, except that a hunter in possession of a disabled hunting exemption permit issued by the department may use a stationary vehicle as a hunting platform;

(g) Harvest a bear in a den;

(h) Disturb a bear in a den for the purpose of taking the bear if the bear exits the den; or

(i) Use radio telemetry equipment to locate a bear that is equipped with a radio-tracking collar.

(2) An adult shall accompany and maintain control of a youth who is hunting bear with a firearm.

Section 7. Weapon Restrictions. (1) A person shall only use the weapons and ammunition established in paragraphs (a) through (e) of this subsection to take a bear:

(a) A crossbow or archery equipment loaded with a broadhead of seven-eighths (7/8) inch or wider upon expansion;

(b) A firearm:

1. With an action that fires a single round of ammunition upon each manipulation of the trigger;

2. Of .270 caliber or larger; and

3. Loaded with centerfire, single projectile ammunition designed to expand upon impact;

(c) A muzzleloader of .50 caliber or larger;

(d) A shotgun of twenty (20) gauge or larger loaded with a shell containing one (1) projectile; or

(e) A handgun loaded with:

1. Centerfire cartridges;

2. Bullets of .270 caliber or larger designed to expand upon impact; and

3. Cartridges with a case length of 1.285 inches or larger.

(2) A crossbow shall contain a working safety device.

(3) A bear hunter shall not use a magazine capable of holding more than ten (10) rounds.

(4) A bear hunter may use archery, crossbow, or muzzleloader equipment to take a bear during bear modern gun season.

Section 8. Bear Season Dates and Bag Limits. (1) A legal bear hunter shall only kill a bear in the open bear zones during the seasons established in paragraphs (a) through (c) of this subsection:

(a) The archery and crossbow ~~[—crossbow]~~ season for bears, which shall be for seven (7) consecutive days beginning on the fourth Saturday in October in all bear zones, except Bear Zone 3;

(b) The modern gun season for bears, which shall be for seven (7) consecutive days beginning on the second Saturday in December in all bear zones; and

(c) The bear quota hunt with dogs season, which shall be for fourteen (14) consecutive days beginning on the third Monday in October in all bear zones, except the McCreary Zone.

(2) A person shall not harvest more than one (1) bear in a license year.

Section 9. Bear Season Closure. (1) The archery and crossbow ~~[—crossbow]~~ season for bears in each open bear zone shall close after daylight hours on the day the quotas established in paragraphs (a) through (f) of this subsection have been reached.

(a) Bell Zone, two (2) female bears;

(b) East Zone 2, two (2) female bears;

(c) Harlan Zone, two (2) female bears;

(d) Letcher Zone, two (2) female bears;

(e) McCreary Zone, one (1) female bear; ~~and~~

(f) Wayne Zone, two (2) female bears; and

(g) West Zone 2, one (1) female bear~~[two (2) female bears]~~.

(2) The modern gun season for bears in each open bear zone shall close after daylight hours on the day the quotas established in paragraphs (a) through (g) of this subsection have been reached.

(a) Bell Zone, two (2) female bears;

(b) East Zone 2, three (3) female bears;

(c) Harlan Zone, two (2) female bears;

(d) Letcher Zone, two (2) female bears;

(e) McCreary Zone, one (1) female bear;

(f) Wayne Zone, two (2) female bears;

(g) West Zone 2, two (2) female bears; and

(h) Zone 3, two (2) female bears.

(3) The quota hunt with dogs season for bears in each open

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bear zone will close after daylight hours on the day the quotas established in paragraphs (a) through (f) of this subsection have been reached.

- (a) Bell Zone, one (1) female bear;
- (b) East Zone 2, two (2) female bears;
- (c) Harlan Zone, two (2) female bears;
- (d) Letcher Zone, two (2) female bears;
- (e) Wayne Zone, two (2) female bears; and
- (f) West Zone 2, one (1) female bear; and
- (g) Zone 3, one (1) female bear.

(4) A bear hunter shall call 800-858-1549 after 9 p.m. each day of any open bear season to determine if the quota has been reached for that season.

Section 10. Bear Quota Hunt with Dogs Requirements. (1) A person shall only harvest a bear using a legal weapon with the use of unleashed dogs that are actively pursuing, chasing, baying, or treeing a bear prior to harvest.

(2) A dog used to harvest bears shall be a purebred or a crossbreed of the recognized dog breeds established in paragraphs (a) through (l) of this subsection.

- (a) Airedale;
- (b) American black and tan coonhound;
- (c) Black mouth cur;
- (d) Bluetick coonhound;
- (e) English coonhound;
- (f) Leopard cur;
- (g) Majestic tree hound;
- (h) Mathis;
- (i) Mountain cur;
- (j) Plott hound;
- (k) Redbone coonhound; or
- (l) Treeing walker coonhound.

(3) The bear quota hunt with dogs season shall also be open as a chase-only season for any person who possesses a valid bear chase permit, even if the quota has been met.

Section 11. Hunter Orange Clothing Requirements. (1) During any modern gun or muzzleloader season for bears, a person hunting any species, and any person accompanying a hunter, shall display solid, unbroken hunter orange visible from all sides on the head, back, and chest, except these requirements shall not apply to a person hunting:

- (a) Waterfowl; or
- (b) Furbearers at night during a legal furbearer season.

(2) The hunter orange portions of a garment worn to fulfill the requirements of this section:

- (a) May display a small section of another color; and
- (b) Shall not have mesh weave openings exceeding one-fourth (1/4) inch by any measurement.

Section 12. Bear Reserves. The areas established in subsections (1) through (3) of this section shall be closed to all bear hunting and bear chase with dogs.

- (1) Cumberland Gap National Historical Park;
- (2) Hensley-Pine Mountain Wildlife Management Area; and
- (3) Big South Fork National River and Recreation Area.

Section 13. Harvest Recording and Check-in Requirements. (1) Immediately after harvesting a bear, and before moving the carcass, a person shall record on a hunter's log the:

- (a) Species taken;
- (b) Date taken;
- (c) County where taken; and
- (d) Sex of the bear.

(2) A person who has harvested a bear shall:

- (a) Retain a completed hunter's log;
- (b) Telecheck the bear by 8 p.m. Eastern Standard Time the day the bear was harvested by:

1. Calling 800-245-4263 and completing the telecheck process or checking the bear on the department's Web site at fw.ky.gov; and

- 2. Recording the confirmation number on the hunter's log;

(c) Arrange for department personnel to inspect the bear by:

- 1. Calling the department at 800-858-1549 within twenty-four (24) hours of harvest; and
- 2. Presenting to department personnel the bear carcass or an intact hide that contains the skull and proof of sex by including the attached:

- a. Testicles, scrotum, or penis for a male bear; or
- b. Udder or vulva for a female bear; and
- (d) Attach to the carcass a department issued tag after having the bear inspected by department personnel.

FILED WITH LRC: December 13, 2019 at 8 a.m.

CONTACT PERSON: Jessica Tyler, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

DEPARTMENT OF AGRICULTURE
Office of the State Veterinarian
(As Amended at ARRS, March 9, 2020)

302 KAR 22:010. Procedures for inspection, testing, identification, removal, and disposition~~[Authority to inspect, test, identify, remove and dispose]~~ of livestock, ~~[and]~~ poultry, and fish.

RELATES TO: KRS 257.010, 257.020, 257.030, 257.120

STATUTORY AUTHORITY: KRS 246.210, 246.220, ~~[257.010]~~, 257.020, 257.030, 257.110

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 257.020(3) requires the Board of Agriculture to prevent, control, and eradicate any communicable disease of livestock, poultry, and fish.** KRS 257.030(4) authorizes the board ~~[of Agriculture]~~ to promulgate administrative regulations necessary to administer KRS Chapter 257. This administrative regulation establishes **procedures for the Office of the State Veterinarian** ~~[the authority]~~ to access farms or other places for the purpose of testing, inspecting, or examining livestock, poultry, and fish for communicable disease.

Section 1. After reasonable notice and upon suspicion of communicable disease that presents a risk to livestock, poultry, fish, or public health, the State Veterinarian or the State Veterinarian's representative may enter upon any farm, stockyard, auction barn, or any other place or premises, market, or conveyance where livestock, poultry, or fish are handled, for the purpose of inspecting, examining, or testing the livestock, poultry, or fish for infectious or communicable diseases. The State Veterinarian may brand, tag, or otherwise identify the livestock, poultry, or fish found diseased or exposed to disease and may order quarantine, and after reasonable notice and appraisal, removal or disposition of the livestock, poultry, or fish found to be diseased.

Section 2. The State Veterinarian or an authorized representative may enter any sale or exhibition premises for the purpose of surveillance testing. Surveillance testing may be done at sale and exhibition events for infectious or communicable diseases that present a risk to animal health or to public health.

(1) Testing may be done randomly.

(2) The owner of the animals shall provide premises of origin information, either by an identifier given by the State Veterinarian or a physical road address, on the species being tested, as well as the physical and mailing address of the owners and contact information.

(3) The owner of the animals shall not be responsible for any testing fees for any surveillance program, unless expressly a condition of the sale or event.

(4) Test results shall be provided to the owner, if requested at the time of the sample collection.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky

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Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, fax (502) 564-2133, email clint.quarles@ky.gov.

DEPARTMENT OF AGRICULTURE
Office of the State Veterinarian
(As Amended at ARRS, March 9, 2020)

302 KAR 22:020. Restriction of transportation of livestock, poultry, and fish.

RELATES TO: KRS 257.020

STATUTORY AUTHORITY: KRS 257.030

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 257.030(2) authorizes the Board of Agriculture to establish necessary quarantines and other measures to control the movement of animals into, through, or within Kentucky. KRS 257.030(4) authorizes the board to promulgate administrative regulations necessary to administer KRS Chapter 257. This administrative regulation establishes restrictions for the transportation of livestock, poultry, and fish through or within Kentucky** to prevent and control the spread of communicable disease ~~[in livestock, poultry and fish by restricting movement of animals]~~.

Section 1. ~~[The movement or transportation of]~~ Livestock, poultry, and fish known or suspected to be infected with, or exposed to, a communicable or reportable disease or exhibiting clinical symptoms of a communicable or reportable disease, shall not be moved or transported through or within Kentucky without authorization from [until such time as] the State Veterinarian [shall authorize such livestock's movement].

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, fax (502) 564-2133, email clint.quarles@ky.gov.

DEPARTMENT OF AGRICULTURE
Office of the State Veterinarian
(As Amended at ARRS, March 9, 2020)

302 KAR 22:040. Carcass transport and composting.

RELATES TO: KRS 257.030, 257.160, **Chapter 263**

STATUTORY AUTHORITY: KRS 257.030, **257.160**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.160 authorizes the ~~[State]~~ Board of Agriculture to **promulgate administrative regulations to** establish ~~[the]~~ requirements for ~~the~~ disposition of livestock, fish, and poultry carcasses. This administrative regulation **establishes requirements [creates guidelines]** for carcass movement and other disposition details.

Section 1. Carcass Transportation. (1) In fulfilling the requirements of KRS 257.160, a carcass shall only be transported **if [when]:**

(a) The carcass is covered with a tarpaulin or other heavy material so that no portion of the dead carcass can be exposed; and

(b) The bottom and sides of the truck or trailer used for transport are made of solid material that will not allow for leaks.

(2) The carcass shall not be transported in a truck or trailer with no sides or with sides made of slat material with openings between slats.

(3) Commercial collection services shall follow the requirements found in KRS **Chapter 263.**

Section 2. Composting Site Registration. (1) Commercial or regional composting facilities, not on an agriculture operation, shall register with the State Veterinarian by submitting in writing the name and address of the composting facility owner, the location of

the composting facility, and a description of the facility.

(2) Registration of composting facilities shall not be required for an agriculture operation, if composting is not for a commercial purpose.

Section 3. Composting Facilities. (1) All composting facilities shall be constructed to meet:

(a) Guidelines established by the University of Kentucky College of Agriculture Cooperative Extension Service publication "On-Farm Composting of Animal Mortalities: ID-166"; and

(b) The requirements of the Kentucky Agriculture Water Quality Plan.

(2) All processing of dead livestock, fish, and poultry shall be done within the composting facility.

(3) Hazardous materials shall not be used in the composting procedure.

(4) Reasonable and cost-effective efforts shall be taken to prevent odor, insects, and pests. All carcasses shall be inaccessible to scavengers, livestock, and poultry.

(5) Ruminant livestock may have the rumen vented prior to composting.

(6) Any carcasses not completely composted shall be disposed of in a manner consistent with KRS 257.160.

(7) All composting facilities shall be subject to inspection by the State Veterinarian or his representative.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) University of Kentucky College of Agriculture Cooperative Extension Service publication "On-Farm Composting of Animal Mortalities: ID-166", 5-2013; and

(b) **"Kentucky Agriculture Water Quality Plan," [(7)December 2018]]**.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Division of Animal Health, 111 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, fax (502) 564-2133, email clint.quarles@ky.gov.

DEPARTMENT OF AGRICULTURE
Office of the State Veterinarian
(As Amended ARRS, March 9, 2020)

302 KAR 22:070. Restrictions on biological materials in Kentucky.

RELATES TO: KRS 257.020

STATUTORY AUTHORITY: KRS 257.030

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 257.030(4) authorizes the Board of Agriculture to promulgate administrative regulations to carry out the provisions of KRS Chapter 257. This administrative regulation establishes requirements** to prevent and control the spread of communicable disease in livestock, poultry, and fish by restricting unauthorized use of biological materials in Kentucky.

Section 1. **[No]** Live pathogenetic bacteria, virus, or disease producing agents of animal origin shall **not** be shipped, transported, or cause to be imported into the Commonwealth of Kentucky without prior written consent **based on material type** of the Office of the State Veterinarian (OSV). Requests for consent by the OSV shall be emailed or sent by U.S. mail to the Office of the State Veterinarian.

Section 2. All biological materials for immunization, treatment, or diagnostic purposes for livestock, poultry, or fish in the Commonwealth shall be approved in advance of use by the OSV

or the United State Department of Agriculture upon[when] written notice being[is also] provided to the OSV.

Section 3. Any entity distributing BVD-PI diagnostic tests shall request approval from the OSV, and shall maintain records for at least five (5) years after the sale, and shall make these records available to the Office of the State Veterinarian upon demand.

Section 4. Disease-producing[No disease-producing] organisms shall not be sold in or shipped to the Commonwealth of Kentucky unless the buyer or recipient is a licensed veterinarian, pharmacist, or entity authorized under Kentucky Revised Statutes to receive, hold, and sell biologics.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, fax (502) 564-2133, email clint.quarles@ky.gov.

**DEPARTMENT OF AGRICULTURE
Office of the State Veterinarian
(As Amended at ARRS, March 9, 2020)**

302 KAR 22:080. Feed restrictions.

RELATES TO: KRS 257.020, 257.990(1)(a)

STATUTORY AUTHORITY: KRS 257.020(3), 257.600

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.600 requires the Department of Agriculture to promulgate administrative regulations governing the feeding of untreated garbage to swine to prevent the transmission of disease. KRS 257.020(3) requires the Board of Agriculture to prevent, control, and eradicate any communicable disease of livestock. This administrative regulation prohibits the feeding of treated or untreated garbage to swine to prevent the transmission of viral, bacterial, and parasitical diseases to people and animals.

Section 1. Definition.[Feeding Garbage to Swine Prohibited. A person shall not feed treated or untreated garbage to swine.] "Garbage" means:

(1) All animal and vegetable waste resulting from the handling, preparation, consuming, and cooking of food;

(2) Unconsumed food in all public and private establishments and residences; and

(3) The offal and carcasses of dead animals, poultry, and fish or parts thereof.

Section 2. Feeding Garbage to Swine Prohibited. A person shall not feed treated or untreated garbage to swine.

Section 3. Penalties. The department may file an action in the court of jurisdiction to seek injunctive relief for a violation of this administrative regulation. Each day upon which a violation occurs shall constitute a separate violation.

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**ENERGY AND ENVIRONMENT CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended at ARRS, March 9, 2020)**

401 KAR 63:010. Fugitive emissions.

RELATES TO: KRS[Chapter] 224.20, 224.10-100, 42 U.S.C. 7407

STATUTORY AUTHORITY: KRS 224.10-100(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-

100(5) authorizes the[requires the Environmental and Public Protection] cabinet to promulgate[prescribe] administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes requirements[provides] for the control of fugitive emissions.

Section 1.[Applicability. The provisions of this administrative regulation are applicable to each affected facility as defined in Section 2 of this administrative regulation.

Section 2.] Definitions. Except as defined in this section, terms used in this administrative regulation[not defined herein] shall have the meaning established[given to them] in 401 KAR 50:010.

(1) "Affected facility" means an apparatus, operation, or road that[which] emits or could[may] emit fugitive emissions[provided that the fugitive emissions from such facility are] not elsewhere subject to an opacity standard within 401 KAR Chapters 50 through 68[the administrative regulations of the Division for Air Quality].

(2)["Classification date" means June 29, 1979. (3)] "Emission time" means the accumulated amount of time that emissions are visible during the observation period.

(3)[(4)] "Fugitive emissions" means the emissions of any air contaminant into the open air other than from a stack or air pollution control equipment exhaust.

(4)[(5)] "Observation period" means the accumulated time period during which observations are conducted.

(5)[(6)][(3)] "Open air" means the air outside buildings, structures, and equipment.[(4)] "Classification date" means June 29, 1979.]

Section 2. Applicability. The provisions of this administrative regulation shall be applicable to each "affected facility" as defined by[is] Section 1 (1) of this administrative regulation.

Section 3. Standards for Fugitive Emissions. (1) A[No] person shall not cause, suffer, or allow any material to be handled, processed, transported, or stored; a building or its appurtenances to be constructed, altered, repaired, or demolished[;] or a road to be used without taking reasonable precaution to prevent particulate matter from becoming airborne. [Such]Reasonable precautions shall include, as[when] applicable[, but not be limited to the following]:

(a) Use, if[where] possible, of water or suitable chemicals for control of dust in the demolition of existing buildings or structures, construction operations, the grading of roads, or the clearing of land;

(b) Application and maintenance of asphalt, oil, water, or suitable chemicals on roads, materials stockpiles, and other surfaces that[which] can create airborne dusts;

(c) Installation and use of hoods, fans, and fabric filters to enclose and vent the handling of dusty materials, or the use of water sprays or other measures to suppress the dust emissions during handling. Adequate containment methods shall be employed during sandblasting or other similar operations;

(d) Covering, at all times while[when] in motion, open bodied trucks transporting materials likely to become airborne;

(e) The maintenance of paved roadways in a clean condition; or

(f) The prompt removal of earth or other material from a paved street to which earth or other material has been transported [thereto]by trucking or earth moving equipment or erosion by water.

(2) A[No] person shall not cause, suffer, or allow[permit the discharge of] visible fugitive dust emissions beyond the lot line of the property on which the emissions originate, as determined by Reference Method 22 of Appendix A in 40 C.F.R. Part 60, for:

(a) More than five (5) minutes of emission time during any sixty (60) minute observation period; or

(b) More than twenty (20) minutes of emission time during any twenty-four (24) hour period.

(3) If[When] dust, fumes, gases, mist, odorous matter, vapors, or any combination thereof escape from a building or equipment in [such]a manner and amount as to cause a nuisance or to violate

any administrative regulation, the secretary may, based on the cause, type, or amount of a fugitive emission, order that the building or equipment in which processing, handling, and storage are done be tightly closed and ventilated in [such] a way that all air and gases and air or gas-borne material leaving the building or equipment are treated by removal or destruction of air contaminants before discharge to the open air.

(4) The provisions of this section ~~[this administrative regulation]~~ shall not apply to agricultural practices, such as tilling of land or application of fertilizers, which take place on a farm. Agricultural practices, such as tilling of land or application of fertilizers, which take place on a farm, shall be conducted in [such] a manner as to not create a nuisance to others residing in the area.

Section 4. Additional Requirements. In addition to the requirements of Section 3 of this administrative regulation, the requirements established in subsections (1) through (3) of this section ~~[following]~~ shall apply. ~~[:]~~

(1) At all times while ~~[when]~~ in motion, open bodied trucks, operating outside company property, transporting materials likely to become airborne shall be covered.

(2) ~~[Agricultural practices, such as tilling of land or application of fertilizers, which take place on a farm shall be conducted in such a manner as to not create a nuisance to others residing in the area. Agricultural practices are not subject to the opacity standard.]~~

(3) The provisions of Section 3(1) and (2) of this administrative regulation shall not be applicable to temporary blasting or construction operations.

(3) A person ~~[(4) No one]~~ shall not cause, suffer, or allow earth or other material being transported by truck or earth moving equipment to be deposited onto a paved street or roadway.

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**JUSTICE AND PUBLIC SAFETY CABINET
Kentucky State Corrections Commission
(As Amended at ARRS, March 9, 2020)**

500 KAR 10:001. Definitions for 500[501] KAR Chapter 10.

RELATES TO: KRS 196.700 - 196.736 ~~[196.740]~~

STATUTORY AUTHORITY: KRS 15A.160, 196.035, 196.710

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.702 and 196.710 require the Kentucky State Corrections Commission to administer the community corrections grant program. KRS 15A.160 and 196.035 authorize the secretary of the Justice and Public Safety Cabinet to promulgate administrative regulations necessary or suitable for the proper administration of the functions vested in the cabinet or any division in the cabinet. ~~[The Kentucky State Corrections Commission shall award grants for]~~ make grants to assist local jurisdictions in [the implementation and operation of community corrections programs.] This administrative regulation defines the terms to be used in 500 KAR Chapter 10.

Section 1. Definitions.

(1) "Administrator" means the person designated to manage the information involved with the grants awarded under KRS 196.710 and assist the Kentucky State Corrections Commission with its duties.

(2) "Board" means the community corrections board specified in KRS 196.725 or the alternate board described in KRS 196.710(3) approved by the commission to act in the place of a community corrections board. ~~[board specified in KRS 196.725.]~~

(3) "Cabinet" is defined by KRS 196.010(1).

(4) "Commission" is defined by KRS 196.700(1).

(5) "Community corrections program plan" or "program plan" is defined by KRS 196.700(3).

(6) "Department" is defined by KRS 196.010(3). [

(2) "Cabinet" means the Justice Cabinet.

(3) "Commission" means the Kentucky State Corrections Commission.

(4) "Department" means the Department of Corrections.]

~~[(7)(6)]~~ (5) "Eligible applicant" means any local government agency or combination of agencies, private nonprofit, or charitable organization that ~~[who]~~ has an established a community corrections board.

~~[(8)(7)]~~ (6) "Grant funds" means funds awarded by the commission in accordance with KRS 196.710 for implementing a community corrections ~~[for implementing a]~~ program plan. [

~~[(8)]~~ (7) "Program plan" means a written plan describing the proposed community-based correctional programs to be offered in a judicial district, for the purpose of diverting felony ~~[felon] [offenders from prison.]~~

The Kentucky State Corrections Commission reviewed and approved this administrative regulation on September 12, 2019 prior to its filing by the Justice and Public Safety Cabinet as required by KRS 13A.120(3), 13A.220(6)(a), and 196.704(8).

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**JUSTICE AND PUBLIC SAFETY CABINET
Kentucky State Corrections Commission
(As Amended at ARRS, March 9, 2020)**

500 KAR 10:020. Administration and application procedure for community corrections grant program.

RELATES TO: KRS 196.700 - 196.736 ~~[196.740]~~

STATUTORY AUTHORITY: KRS 15A.160, 196.035, 196.710

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.702 and 196.710 require the Kentucky State Corrections Commission to administer the community corrections grant program. KRS 15A.160 and 196.035 authorize the secretary of the Justice and Public Safety Cabinet to promulgate administrative regulations necessary or suitable for the proper administration of the functions vested in the cabinet or any division in the cabinet. This administrative regulation establishes ~~[provides]~~ [is necessary to provide] the application process and administrative procedures for the community corrections grant programs ~~[enacted by the General Assembly]~~ [in KRS 196.740].

Section 1. Application Process. (1) The administrator ~~[director]~~ shall notify eligible applicants of the availability of grant funds, requirements of the program, grant application format, and deadline for receiving applications by sending ~~[mailing]~~ notices to each county government and judicial circuit.

(2) The grant program requirements may be reviewed in full at the Justice and Public Safety Cabinet website under the Grants Management Branch and Kentucky State Corrections Commission grants.

(3) An applicant shall:

(a) Develop a community corrections program plan in compliance with KRS 196.720;

(b) Have:

1. A community corrections board established and functioning pursuant to KRS 196.725; or

2. An alternate board as described in KRS 196.710(3). If an applicant seeks to operate its community corrections program with oversight by an alternate board instead of a community corrections board pursuant to KRS 196.710(3), it shall operate under the following requirements in KRS 196.725:

a. The board shall provide direction and assistance to the community corrections program in the design, implementation and evaluation of the community corrections program plan;

b. The board members ~~[member]~~ shall not receive

compensation for their duties as board members, but this shall not include the normal salary received by an employee if the employee is not hired to be a board member;

c. The board shall be subject to the open meetings law, KRS 61.800 et seq., for any discussion or decision concerning the community corrections program, plan, or grant;

d. The board shall be subject to the open records law, KRS 61.870 et seq., for any records concerning the community corrections program, plan, or grant;

e. The board shall meet on a regular basis; and

f. Its duties shall include duties (1) through (4) as stated in KRS 196.725; and

(c) Submit a completed application through the grant management system used by the cabinet on the Justice and Public Safety Cabinet Web site under the Grants Management Branch and Kentucky State Corrections Commission grants.

(4) The community corrections program plan shall include:

(a) A project overview containing a description of the cities and counties to be served and the general format of the programs;

(b) A projected budget detailing the manner in which the funds will be expended;

(c) Any local funds or contributions allocated to the development and implementation of the program plan; and

(d) Letters of certification of need and support from the circuit judge, Commonwealth attorney, and the chief executive officer of the governmental unit.

(5) The community corrections program plan shall be approved by the board before an application is submitted.

(6) The application shall include:

(a) The community corrections program plan;

(b) 1. Records showing the creation of the community corrections board with meeting minutes; or

2. Request for approval of alternate board by commission;

(c) The following information for the board:

1. A list of board members and their area of representation, for example: crime victim, community leader;

2. Board meeting schedule;

3. Articles of incorporation, unless the board is an alternate board that is not incorporated; and

4. A letter of good standing for the corporation from the Secretary of State, unless the board is an alternate board that is not incorporated;

(d) A description of the function and operation of the board, for an alternate board;

~~(e)(c)~~ Contact information;

~~(f)(d)~~ A project narrative;

~~(g)(e)~~ The specific objectives and operations of the proposed project;

~~(h)(f)~~ Performance indicators;

~~(i)(g)~~ A proposed budget narrative; and

~~(j)(h)~~ Supporting documentation as required within the application.

Section 2. Eligibility Requirements. [(4)] The following programs shall be[are] eligible to apply for funding pursuant to KRS 196.705:

~~(1)(a)~~ Victim restitution;

~~(2)(b)~~ Community service work;

~~(3)(c)~~ Home confinement;

~~(4)(d)~~ Electronic monitoring;

~~(5)(e)~~ Drug and alcohol counseling program;

~~(6)(f)~~ Day reporting centers; and

~~(7)(g)~~ Other programs that are for a purpose outlined in KRS 196.705. [

(2) Eligible applicants may apply for a grant to implement a program plan in a judicial circuit. Prior to submitting a program plan, the board shall approve the application which shall include:

(a) Project overview containing a description of the cities and counties to be served and the general format of the programs;

(b) Letters of certification of need and support from the circuit judge, Commonwealth attorney and the chief executive officer of the governmental unit;

(c) A projected budget detailing the manner in which the funds

shall be expended; and

(d) Any local funds or contributions allocated to the development and implementation of the program plan;

(e) All of these topics are contained in the form entitled "Kentucky Community Corrections Act Grant Application" which is hereby incorporated by reference. The "Kentucky Community Corrections Act Grant Application" is available for inspection and copying at the Division of Administrative Services, Kentucky Department of Corrections, 5th Floor, State Office Building, Frankfort, Kentucky between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

Section 3. Department Assistance. The department shall provide consultation and technical assistance for the development of program plans within budget and staffing limitations of the department.]

Section 3.[Section 4.] Funds Restrictions. Grant funds shall be used for the development and implementation of new or enhanced programs and services for the targeted offenders. ~~The[Such]~~ funds shall not be used to supplant funds previously committed to ~~the[said]~~ programs and services by local or state government.

(1) Grant funds shall not be used in a manner prohibited by KRS 196.730 for jail operations or confinement, the renovation or construction of jail facilities, or the acquisition of land.

(2) Grant funds shall be disbursed on a quarterly basis, but the board shall not spend any funds unless services have been rendered.

Section 4.[Section 5.] Award Procedure.

(1) The administrator shall forward copies of the grant applications to [director shall forward copies of the grant application form hereby incorporated by reference to members of] the commission who shall meet and determine which applications will be awarded grants within 100 days of the grant application [vote on the applications within sixty (60) days of the final] deadline.

(2) The commission shall make its[their] decision based on:

(a) The requirements in KRS 196.710;

(b) Assessment of the proposed program's ability to meet the purposes of community corrections programs stated in KRS 196.705;

(c) Strength of proposed program plan, including project overview and proposed budget;

(d) If applicable, whether grant requirements were met for a previous grant, including the proper submission of quarterly reports;

(e) An area of specific grant focus determined by the commission, if any; and

~~(f)(e)~~ Other factors of similar importance in assessing the strength of an application.

(3) The administrator[priorities established by the commission. The director] shall notify the recipient of a grant award[recipient(s) of the grant(s) award(s)] within two (2) weeks of the decision.

(4)[(2)] Grants shall be made on a year-to-year basis with consideration for continued funding [until June 30, 1994] after review of submitted progress reports and audit reports. Funding shall not [No continuation funding shall] be provided to a program, which has failed to demonstrate:

(a) An effective sentencing alternative to incarceration;

(b) Successful program completions;

(c) Low arrest and supervision revocation rates;

(d) Cost savings; or

(e) Other positive outcomes supporting KRS 196.702(4)[reduce prison commitments].

The Kentucky State Corrections Commission reviewed and approved this administrative regulation on September 12, 2019 prior to its filing by the Justice and Public Safety Cabinet as required by KRS 13A.120(3), 13A.220(6)(a), and 196.704(8).

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JUSTICE AND PUBLIC SAFETY CABINET
Kentucky State Corrections Commission
(As Amended at ARRS, March 9, 2020)

500 KAR 10:030. Community Corrections Board and grant recipient requirements.

RELATES TO: KRS 196.700 - 196.736[196.740]

STATUTORY AUTHORITY: KRS 15A.160, 196.035, 196.710, 196.725[196.740]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.702 and 196.710 require the Kentucky State Corrections Commission to administer the community corrections grant program. KRS 15A.160 and 196.035 authorize the secretary of the Justice and Public Safety Cabinet to promulgate[This] administrative regulations[regulation-is] necessary or suitable for the proper administration of the functions vested in the cabinet or any division in the cabinet. This administrative regulation establishes the procedures and reporting requirements for a Community Corrections Board or alternate board pursuant to KRS 196.725 and KRS 196.710(3)to provide for the makeup and duties of the Community Corrections Board enacted by the General Assembly in KRS 196.710].

Section 1. [Appointments. The appointment of members to the Community Corrections Board shall be in accordance with KRS 196.710.

Section 2]. Meetings and Duties. (1) The board shall meet at least quarterly to review the status of:

- (a) The goals stated in KRS 196.702(4);
- (b) The board's grant application for Community Corrections funding;
- (c) Expenditures and revenue for each awarded grant; and
- (d) Operation of the community corrections program plan[Meeting times and duties of the Community Corrections Board shall be in accordance with KRS 196.710].

(2) The board shall obtain the audit required by KRS 196.725.

Section 2.[Section 3.] Reporting Requirements. (1) The board shall review and approve a report before it is submitted to the administrator or commission. The board shall submit progress reports at least quarterly detailing program and fiscal information for the period to the administrator in a format approved by the commission. The format for the report, report deadlines, and other requirements for the report shall be posted in the grant requirements on the Justice and Public Safety Cabinet website under the Grants Management Division and Kentucky State Corrections Commission grants. The report shall include the:

(a) Number of participants served during period with the type of service received;

(b) Number successfully completing the program during the period;

- (c) Number of unsuccessful participants;
- (d) Number of incarceration days avoided;
- (e) Number of participants with new arrests or revocations;
- (f) Amount expended during the period for:
 - 1. Personnel;
 - 2. Contract services;
 - 3. Travel;
 - 4. Training;
 - 5. Operating expenses; and
 - 6. Equipment;
- (g) Total amount expended for the period;
- (h) Remaining balance of the grant; and
- (i) The progress toward expending the award prior to the end of the award.[submit a minimum of quarterly progress reports to the director in a format approved by the department.]

(2) A grant recipient may request a budget modification from

the commission by sending the request to the administrator. A deviation [Deviations] from the approved plan or budget shall not be implemented until the commission approves the budget modification and the modification has been processed through the Justice and Public Safety Cabinet grants management system[first be approved by the director. An annual independent audit shall be completed and submitted to the director].

(3) If the audit addressed in 500 KAR 10:040 has not been completed when the submission for final disbursement of funds for the grant is made, the board shall provide with the submission a letter certifying that it has reviewed the expenditures for the grant and that they have been expended in compliance with the grant requirements.

The Kentucky State Corrections Commission reviewed and approved this administrative regulation on September 12, 2019 prior to its filing by the Justice and Public Safety Cabinet as required by KRS 13A.120(3), 13A.220(6)(a), and 196.704(8).

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JUSTICE AND PUBLIC SAFETY CABINET
Kentucky State Corrections Commission
(As Amended at ARRS, March 9, 2020)

500 KAR 10:040. Program[Annual] Review[for compliance].

RELATES TO: KRS 196.700 - 196.736[196.740]

STATUTORY AUTHORITY: KRS 15A.160, 196.035, 196.710

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.735 requires the Kentucky State Corrections Commission to evaluate each community corrections program on an annual basis. KRS 15A.160 and 196.035 authorize the secretary of the Justice and Public Safety Cabinet to promulgate[This] administrative regulations[regulation-is] necessary or suitable for the proper administration of the functions vested in the cabinet or any division in the cabinet. This administrative regulation provides for[to provide for the annual] review of the community corrections program [enacted by the General Assembly][in KRS 196.710].

Section 1. Review Process. (1) During each fiscal year, the administrator[director] shall inspect and examine the fiscal and program records of each grant to determine compliance with the program plan and prepare a compilation of the reports for the commission. The administrator shall provide the compilation and the grant reports each quarter to the Commission[submit a report to the commission].

(2) Each fiscal year, the administrator shall compile the grant program results into an annual report. The commission shall review this report and may adopt all or portions of it for the annual evaluation required by KRS 196.735.

Section 2. Additional Information. (1) A grantee shall present the progress of its program and oversight by the board to the commission at its meeting upon request.

(2) The administrator shall obtain an annual independent audit of each grant recipient. The administrator shall provide a summary of the audit results to the commission.

Section 3. Compliance Issues. (1) If the administrator[director] determines that there is [a] reasonable cause to believe that a program or facility is not in substantial compliance with current requirements of the grant, or the program plan under which it was funded, notice of the[such] findings shall be submitted to the commission.

(2) If information concerning a compliance issue is received and the chair of the commission determines that there is a significant risk of dissipation of funds, the chair may suspend all or

~~any portion a grant until the commission meets and considers the matter. [Thirty (30) days following such notice, the board shall determine if there is substantial compliance or satisfactory progress being made to achieve compliance.]~~

(3) The ~~commission~~[director] may suspend all or any portion of a grant ~~or revoke the grant~~ if it is determined by the commission that the board is not in substantial compliance or has not made satisfactory progress in achieving substantial compliance.

(a) Suspension.

1. Notice of the suspension shall be sent in writing to the grant recipient and board.

2. The notice shall provide specific actions for the grant recipient to correct deficiencies during the suspension and address compliance with the grant requirements.

3. The grant recipient shall provide progress reports as indicated in the suspension notice to the administrator.

4. The administrator shall monitor the grant recipient's progress in correcting the deficiencies and shall provide a report to the commission of the grant recipient's progress.

5. The commission shall review the grant recipient's progress as soon as practicable, but not more than ninety (90) days, after the sending of the report by the administrator to determine whether to:

a. Continue the suspension with instructions to the grant recipient concerning correction of the deficiencies;

b. End the suspension and resume the grant funding because the grant recipient has:

i. Sufficiently corrected the deficiencies; or

ii. Put into place satisfactory steps to achieve compliance within a reasonable time; or

c. Revoke the grant recipient's funding for that fiscal year.

(b) Revocation. If the commission decides to revoke funding:

1. a. The administrator shall provide written notice to the grant recipient and board within seven (7) days; and

b. Additional funds shall not be dispersed to the grant recipient for that fiscal year; and

2. The commission may require the return of unexpended grant monies.

(4) If the grant recipient is instructed to return the unexpended funds, the grant recipient shall provide a check made payable to the Kentucky State Treasurer as soon as practicable, but not later than thirty (30) days, after receipt of the notice.

The Kentucky State Corrections Commission reviewed and approved this administrative regulation on September 12, 2019 prior to its filing by the Justice and Public Safety Cabinet as required by KRS 13A.120(3), 13A.220(6)(a), and 196.704(8).

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EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, March 9, 2020)

702 KAR 7:125. Pupil attendance.

RELATES TO: KRS 157.320, 157.350, 157.360, 158.030, 158.070, 158.100, 158.240, 159.010, 159.030, 159.035, 159.140, 159.170, 161.200

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.320, 158.070

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 150.160 requires the Kentucky Board of Education to promulgate administrative regulation establishing standards which school districts shall meet in student, program, service, and operational performance.** KRS 157.320 defines average daily attendance of pupils for funding purposes under the Support Education Excellence in Kentucky (SEEK) Program. KRS 157.360

bases SEEK funding upon average daily attendance. KRS 158.030, 158.100, and 159.010 establish the age for compulsory school attendance. KRS 158.070 defines the school term. KRS 158.240 and 159.035 define attendance credit for moral instruction and 4-H activities. KRS 161.200 requires attendance records to be kept by teachers. This administrative regulation establishes a uniform method of recording pupil attendance.

Section 1. Daily Attendance. (1) Daily attendance of pupils in elementary schools shall be determined by taking attendance one (1) time each day prior to the start of instruction and maintaining a pupil entry and exit log at each school.

(2) Daily attendance of pupils in middle and high schools shall be determined by taking attendance by class period and maintaining a pupil entry and exit log at each school.

(3) The pupil entry and exit log shall include the date, pupil name, grade or homeroom, time of late arrival, time of early departure (with the reason for both listed), and other information required by the local board of education. For elementary pupils who are signed out, the pupil entry and exit log shall also include a signature of:

(a) A parent;

(b) A legal guardian; or

(c) An adult with proof of identification and for whom the school has received a written authorization from the parent or legal guardian.

(4) Pupils shall be physically present in the school to be counted in attendance except under the following conditions:

(a) The pupil is a participant in a co-curricular instructional activity that has been authorized by the local board of education and is a definite part of the instructional program of the school;

(b) The pupil is a participant in an activity as provided in either KRS 158.240 or 159.035;

(c) The pupil is participating in an off-site virtual high school class or block. A pupil may be counted in attendance for a virtual high school class or block for the year or semester in which the pupil initially enrolled in the class or block if the pupil demonstrates proficiency in accordance with local policies required by 704 KAR 3:305, Section 7[5(2)(b)-or-(3)];

(d) The pupil's mental or physical condition prevents or renders inadvisable attendance in a school setting, and the pupil meets the requirements of KRS 159.030(2). A pupil being served in the home/hospital program shall receive, at a minimum, the instruction required pursuant to KRS 157.270[~~a minimum of one (1) hour of instruction two (2) times per five (5) instructional days;~~];

(e) The pupil has been court ordered to receive educational services in a setting other than the classroom. A pupil being served through a court order shall receive at a minimum, the instruction required pursuant to **paragraph (d) of this subsection [(d) of this Section]**~~a minimum of one (1) hour of instruction two (2) times per five (5) instructional days;~~

(f) The pupil has an individual education program[plan] (IEP) that requires less than full-time instructional services;

(g) The pupil is participating in standards-based, performance-based credit that is awarded in accordance with 704 KAR 3:305, Section 7[5(2)(b)] and that falls within one (1) or more of the categories of standards-based course work outlined in 704 KAR 3:305[~~Section 2~~]. A pupil may be counted in attendance for performance-based credit for a class or block for the year or semester in which the pupil initially enrolled in the class or block if the pupil demonstrates proficiency in accordance with local policies required by 704 KAR 3:305, Section 7[5(3)]; or

(h) The pupil participates in a school that is authorized by the commissioner to design and deliver an educational program so that all graduation requirements are based on pupil proficiency of standards and performance, rather than time and Carnegie units, as authorized in 704 KAR 3:305, Section 7[5].

(5) Even if a pupil's absence or tardy is due to factors beyond the pupil's control, including inclement weather or failure of the transportation system to operate, the pupil shall be counted absent or tardy.

(6) The local board of education shall determine by local board policy what constitutes an excused and an unexcused absence.

(7) A pupil shall not be allowed to make up absences for the purpose of including make-up activities in the calculation of average daily attendance.

Section 2. Calculation of Attendance. The guidelines in this section shall be used to calculate pupil attendance for state funding purposes.

(1) A full day of attendance shall be recorded for a pupil who is in attendance at least sixty-five (65) percent of the regularly-scheduled school day for the pupil's grade level.

(2) A tardy shall be recorded for a pupil who is absent thirty-five (35) percent or less of the regularly-scheduled school day for the pupil's grade level.

(3) A half day absence shall be recorded for a pupil who is absent thirty-six (36) percent to eighty-four (84) percent of the regularly-scheduled school day for the pupil's grade level.

(4) A full day absence shall be recorded for a pupil who is absent more than eighty-four (84) percent of the regularly-scheduled school day for the pupil's grade level.

Section 3. Shortened School Day. A local board of education may permit an arrangement whereby a pupil has a shortened school day in accordance with KRS 158.060[~~f~~] or local board of education policy. The time a pupil is in attendance shall be included in calculating the district's average daily attendance.

Section 4. Dual Enrollment. A local board of education may permit an arrangement in which a pupil pursues part of the pupil's education under the direction and control of one (1) public school and part of the pupil's education under the direction and control of another public or nonpublic school. The time a pupil is served by each public school shall be included when calculating the district's average daily attendance.

Section 5. Private School Placement. If a local school district, under the provisions of KRS 157.360(7), enrolls a child with a disability in a private school or agency, the private school or agency shall certify the attendance of the child to the local school district at the close of each school month.

Section 6. Age of Pupil. ~~(1) If[(1) Prior to the 2017-18 school year, if a local school district enrolls in the entry level program a pupil who will not be five (5) years of age on or before October 1 of the year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district's average daily attendance. Beginning with the 2017-18 school year, if] a local school district enrolls in the entry level program a pupil who will not be five (5) years of age on or before August 1 of the year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district's average daily attendance except under the conditions established in subsection (3) of this section.~~

~~(2) If[Prior to the 2017-18 school year, if a local school district enrolls in the second level of the primary program a pupil who will not be six (6) years of age on or before October 1 of the year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district's average daily attendance except under the conditions established in this subsection. Beginning with the 2017-18 school year, if] a local school district enrolls in the second level of the primary program a pupil who will not be six (6) years of age on or before August 1 of the year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district's average daily attendance except under the conditions established in this subsection (3) of this section.~~

(3)(a) The local board of education shall have determined that the pupil is eligible for enrollment in the appropriate[second] level of the primary program after academic, social, and developmental progress records from multiple data sources are reviewed by a team and determined to support accelerated placement. These sources shall include:

1. Anecdotal records;
2. A variety of pupil work samples, including evidence of pupil

self-reflection; and

3. Standardized test results.

(b) The team shall be comprised of three (3) members who have knowledge of the pupil's developmental skills and abilities. Team members shall be chosen from these categories:

1. Teachers;
2. Parents;
3. Psychologists;
4. Principals; or
5. District specialists.

(c) At least one (1) team member shall represent the district office and have an understanding of early childhood development and knowledge of developmentally-appropriate practices.

(d) If a pupil is recommended by the local board of education for accelerated placement into the entry or second level of the primary program, the district shall forward that recommendation to the department for approval with:

1. A list of data sources used in making the decision;
2. A list of all individuals who submitted the data sources;
3. A list of team members; and
4. The data needed to create a pupil attendance record.

(3) A local school district shall enroll any resident pupil, not holding a high school diploma, under the age of twenty-one (21) years who wishes to enroll. The days attended after the pupil's 21st birthday shall not be included in the calculation of the district's average daily attendance.

Section 7. Due Dates for Certain Reports. (1) The Growth Factor Report for the first two (2) school months of the school year created pursuant to KRS 157.360(9) shall be submitted to the department through the statewide student information system within ten (10) business days following the last day of the second school month or by November 1 of each year, whichever occurs first.

(2) Pursuant to KRS 157.360(2), the Superintendents Annual Attendance Report (SAAR) for the school year shall be submitted to the department through the statewide student information system by June 30 of each year.

Section 8. Nonresident Pupils. (1)(a) A written agreement executed by local boards of education for enrollment of nonresident pupils as provided by KRS 157.350(4)(a) shall be filed in both the attending district and the resident district no later than October[February] 1 of the school year prior to the school year to which it will apply.

(b) The written agreement shall include the specific terms to which the districts have agreed.

(c) A list of the names of all nonresident pupils enrolled in the attending district covered by the agreement shall be filed in both the attending district and the resident district not later than November 1 of the school year covered by the agreement.

(d) A change may be made to the original nonresident pupil agreement up to the close of the school year to include the nonresident pupils enrolling after the close of the second school month. The amendment shall be filed in both the attending district and the resident district no later than June 30 of each year.

(2) A list of the names of all nonresident pupils whose parent is an employee of the district as provided by KRS 157.350(4)(b) and who are not covered by the nonresident agreement shall be filed in both the attending district and the resident district not later than November 1 of the school year.

(3)(a) If an agreement cannot be reached for the enrollment of nonresident pupils as provided in KRS 157.350(4)(a), a local board of education may file an appeal to the commissioner no later than October 15 of the school year prior to the school year to which an agreement would apply.

(b) A local board of education shall file its appeal to the commissioner in person or by mail at the following address: Commissioner of Education; Nonresident Student Appeal; 300 Sower Boulevard, 5th Floor; Frankfort, Kentucky 40601. A local board of education filing an appeal to the commissioner shall include written arguments and documents in support of its position.

(c) Upon receipt of an appeal pursuant to KRS 157.350(4)(a),

the commissioner shall notify the local boards of education involved in the dispute and provide a deadline not to exceed twenty (20) calendar days for the responding local board of education to file written arguments and documents supporting its position. The commissioner shall issue a written decision settling the dispute within thirty (30) calendar days following the deadline for the responding local board of education to file written arguments and documents supporting its position.

(4)(a) A local board of education may appeal the commissioner's written decision to the state board of education by filing a notice of appeal and request for hearing no later than fifteen (15) calendar days following issuance of the commissioner's written decision.

(b) A notice of appeal and request for hearing from a local board of education shall include:

1. the name of the school district filing the notice of appeal and request for hearing;

2. the case number, if any, assigned to the commissioner's written decision;

3. the date of the commissioner's written decision;

4. a statement of the issues which form a basis for the notice of appeal and request for hearing; and

5. the signature of the local board of education chair or counsel authorized to act on behalf of the local board of education.

(c) A local board of education shall file its notice of appeal and request for hearing in person or by mail at the following address: Kentucky Board of Education; General Counsel; Nonresident Student Appeal; 300 Sower Boulevard, 5th Floor; Frankfort, Kentucky 40601.

(5)(a) Upon receipt of a notice of appeal and request for hearing, a notice of hearing pursuant to KRS 13B.050 shall be issued and a hearing officer shall be assigned pursuant to KRS 13B.030.

(b) Following issuance of a notice of hearing and assignment of a hearing officer as set forth in subsection (5)(a) of this Section, the hearing officer shall preside over the matter and schedule an administrative hearing pursuant to KRS Chapter 13B to conclude no later than sixty (60) calendar days following the notice of hearing described in subsection (5)(a) of this Section.

(c) Following conclusion of administrative hearings not conducted before a quorum of the state board, the hearing officer shall issue a recommended order to the state board of education pursuant to KRS 13B.110.

(d) Parties may file exceptions to the hearing officer's recommended order pursuant to KRS 13B.110.

(e) Following receipt of the hearing officer's recommended order and any exceptions filed by the parties, or following conclusion of the administrative hearing if conducted before a quorum of the state board of education, the state board of education shall issue a final order pursuant to KRS 13B.120.

Section 9. Weather-related Low Attendance Days. (1) The SAAR ~~may~~shall be considered:

(a) ~~Substitute the~~The request to substitute prior year's average daily attendance for up to ten (10) designated weather-related low attendance days; and

(b) Shall constitute certification [Certification] that the low attendance was due to inclement weather, in accordance with KRS 157.320(17).

(2) Documentation that the low attendance was due to inclement weather shall be retained at the central office.

Section 10. Nontraditional Instruction Program Health and Safety Closings. (1) The SAAR ~~may~~shall be considered:

(a) ~~Substitute the~~The request to substitute prior year's average daily attendance for up to ten (10) designated instructional days, in accordance with KRS 158.070(10); and

(b) Shall constitute certification[Certification] that the low attendance was due to health and safety reasons.

(2) Documentation that the low attendance was due to health and safety reasons shall be retained at the central office.

(3) Days granted in this section shall be in addition to any days granted under Section 9 of this administrative regulation.

Section 11. Original Source of Attendance Data. (1) The school's records of daily attendance and teacher's monthly attendance reports, daily and class period absentee lists, pupil entry and exit logs, and the Home/Hospital Program Form, shall be the original source of attendance data for all pupils enrolled in the public common schools and shall be verified at the end of each school month.

(2) The school's records of daily attendance and teachers' monthly attendance reports shall be signed by a designated certified person within the elementary or secondary school who shall be responsible for verifying and certifying the state attendance documents for accuracy.

(3) The school's records of daily attendance and tenth month teacher's monthly attendance reports shall be retained at least twenty (20) years. The daily and class period absentee lists, and pupil entry and exit logs shall be retained at least two (2) full school years after the current school year.

Section 12. Enrollment Codes. The following entry, reentry, and withdrawal codes shall be used to indicate the enrollment status of pupils:

(1) E01 - A pupil enrolled for the first time during the current year in either a public or nonpublic school in the United States;

(2) E02 - A pupil previously enrolled during the current school year in either a public or nonpublic school in another state who has not previously enrolled in Kentucky during the current school year;

(3) E03 - A pupil enrolling for the first time during the current school year in either a public or nonpublic school, who withdrew ~~as a W06, W07, W13, W16, or W18 during the 2004-2005 school year or~~ as a W07, W24 or W25 for previous school years;

(4) R01 - A pupil received from another grade or grade level in the same school year, or having a change in schedule structure or enrollment service type;

(5) R02 - A pupil received from another public school in the same public school district;

(6) R06 - A pupil reentering the school after dropping out, discharge, or expulsion from a school district in Kentucky during the current school year, who has not entered any other school during the intervening period;

(7) R20 - A pupil previously enrolled in a home school in Kentucky during the current school year;

(8) R21 - A pupil previously enrolled in any public or nonpublic school (excluding home schools) in Kentucky during the current school year;

(9) W01 - A pupil transferred to another grade in the same school or with grade level changes in the same school mid-year, or with a change in schedule structure or enrollment service type. The reentry code to use with W01 shall be R01;

(10) W02 - A pupil transferred to another public school in the same public school district. The reentry code to use with W02 shall be R02;

(11) W07 - A pupil withdrawn due to those communicable medical conditions that pose a threat in school environments listed in 902 KAR 2:020, Section 2(1), accompanied by a doctor's statement certifying the condition, or any other health-related condition for which the pupil is too ill to participate in regular school attendance, ~~or~~ local homebound instructional services or hospital setting instructional services, or if the pupil has obtained a doctor's statement certifying the condition. The reentry code to use with W07 shall be R06;

(12) W08 - A pupil withdrawn due to death;

(13) W12 - A pupil under the jurisdiction of the court. For purposes of the W12 code, a pupil may be considered under the jurisdiction of the court on the day the petition is filed with the court. The reentry code to use with W12 shall be R06. For accountability purposes, a W12 shall be considered a dropout if the district cannot substantiate enrollment in the proper educational setting as designated by the court;

(14) W17 - An entry level pupil in the primary program, withdrawn during the first two (2) months enrolled due to immaturity or mutual agreement by the parent, guardian or other custodian and the school in accordance with 704 KAR 5:060;

(15) W20 - A pupil transferred to a home school. The reentry code to use with W20 shall be R20;

(16) W21 - A pupil transferred to a nonpublic school (excluding home school). The reentry code to use with W21 shall be R21;

(17) W22 - A pupil who has transferred to another Kentucky public school district and for whom a request for pupil records has been received or enrollment has been substantiated;

(18) W23 - A pupil withdrawn for a second or subsequent time who initially withdrew as a W24 or W25 during the current school year;

(19) W24 - A pupil who has moved out of this public school district for whom enrollment elsewhere has not been substantiated or failed to attend on the first day of school in a district but thereafter enrolled in the district;

(20) W25 - ~~[Prior to the 2017-18 school year, a pupil who is at least the local board policy's minimum age for withdrawal and has withdrawn from public school; beginning with the 2017-18 school year, a]~~ A pupil who is at least eighteen (18) years of age and has withdrawn from public school;

(21) W26 - A pupil who has withdrawn from school after completing a secondary GED program and receiving a GED certificate;

(22) W27 - A pupil who has withdrawn from school and subsequently received a GED;

(23) W28 - A pupil who has reached the maximum age for education services without receiving a diploma or an alternative high school diploma;

(24) W29 - A pupil who has moved out of state or out of the United States;

(25) W30 - A pupil with an IEP enrolled in Grade 14 who has previously received an alternative high school diploma, re-enrolled, and withdrew in the middle of the reporting school year;

(26) C01 - A pupil who completes the school year in the school of the most current enrollment;

(27) G01 - A pupil who graduates in less than four (4) years;

(28) G02 - A pupil who graduates in four (4) years;

(29) G03 - A pupil who graduates in five (5) or more years;

(30) G04 - A pupil who graduates in six (6) or more years; and

(31) NS - A pupil who completed the prior year with a C01 and was expected to enroll in the district but did not enroll by October 1 of the current year whose enrollment elsewhere cannot be substantiated.

Section 13. Suspension. (1) For a pupil who has been suspended, a code of S shall be used to indicate the days suspended.

(2) Suspension shall be considered an unexcused absence.

Section 14. Ethnicity. The ethnicity of each pupil shall be designated as either Hispanic/Latino or not Hispanic/Latino. The designation shall be "Hispanic/Latino" if the person is of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture of origin regardless of race. The term "Spanish origin" may be used in addition to "Hispanic/Latino".

Section 15. Racial Category Codes. One (1) or more of the following racial codes shall be used to indicate the racial category of pupils:

(1) White - A person having origins in any of the original peoples of Europe, North Africa, or the Middle East;

(2) Black or African American - A person having origins in any of the black racial groups of Africa;

(3) Asian - A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, or Vietnam;

(4) American Indian or Alaskan Native - A person, having origins in any of the original peoples of North America and South America (including Central America), who maintains cultural identification through tribal affiliation or community attachment; and

(5) Native Hawaiian or other Pacific Islander - A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

Section 16. Withdrawal and Transfer Records. (1) ~~[The Student Dropout Questionnaire shall be completed during the one (1) hour counseling session mandated in accordance with KRS 159.010.~~

(2) The request for records and other information involving the withdrawal and transfer of pupils shall be processed by the local superintendent or his or her designee pursuant to KRS 159.170, and shall be maintained in the pupil's permanent file.

Section 17. Incorporation by Reference. (1) ~~[The following material is incorporated by reference:~~

~~(a)] "Home/Hospital Program Form", October 2019, is incorporated by reference~~ November 2013;

~~(b) "Student Dropout Questionnaire", November 2013;~~

~~(c) "Growth Factor Report", November 2013; and~~

~~(d) "Superintendent's Annual Attendance Report (SAAR)", November 2013].~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, 300 Sower Boulevard, 5th Floor~~[15th Floor, Capital Plaza Tower, 500 Mero Street]~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

CONTACT PERSON: Deanna Durrett, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
(As Amended at ARRS, March 9, 2020)**

704 KAR 3:370. Kentucky Framework for Personnel Evaluation.

RELATES TO: KRS 156.557, 156.800(7), 161.740

STATUTORY AUTHORITY: KRS 156.070, 156.557(2), (5)(c), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.557(2) and (5)(c), and (7) require the Kentucky Board of Education to promulgate administrative regulations to establish a statewide framework for the purposes of supporting and improving the performance of all certified school personnel, to develop written guidelines for local school districts to follow in implementing a system of evaluation for certified school personnel, and to establish an appeals procedure for certified school personnel. This administrative regulation establishes a statewide framework to support and improve the performance of all certified school personnel as well as an appeals procedure for certified school personnel.

Section 1. Definitions. (1) "Assistant principal" means a certified school personnel who devotes the majority of employed time in the role of assistant principal, for which administrative certification is required by the Education Professional Standards Board pursuant to 16 KAR Chapter 3.

(2) "Certified administrator" means a certified school personnel, other than principal or assistant principal, who devotes the majority of employed time in a position for which administrative certification is required by the Education Professional Standards Board pursuant to 16 KAR Chapter 3.

(3) "Certified evaluation plan" means the procedures and forms for evaluation of certified school personnel below the level of superintendent developed by an evaluation committee and meeting all requirements of the Kentucky Framework for Personnel Evaluation.

(4) "Certified school personnel" means a certified school

employee, below the level of superintendent, who devotes the majority of employed time in a position in a district for which certification is required by the Education Professional Standards Board pursuant to Title 16 KAR and includes certified administrators, assistant principals, principals, other professionals, and teachers.

(5) "Conference" means a meeting between the evaluator and the evaluatee for the purposes of providing feedback, analyzing the results of an observation or observations, reviewing other evidence to determine the evaluatee's accomplishments and areas for growth, and leading to the establishment or revision of a professional growth plan.

(6) "Evaluatee" means the certified school personnel who is being evaluated.

(7) "Evaluation committee" means a group, consisting of an equal number of teachers and administrators, who develop personnel evaluation procedures and forms for a local school district pursuant to KRS 156.557(5)(c)(1).

(8) "Evaluator" means the primary evaluator pursuant to KRS 156.557(5)(c)2.

(9) "Evaluator certification" means successful completion of certified evaluation training to ensure that certified school personnel who serve as observers of evaluatees demonstrate proficiency in rating teachers and other professionals for the purposes of evaluation and feedback.

(10) "Formative evaluation" is defined by KRS 156.557(1)(a).

(11) "Job category" means a group or class of certified school personnel positions with closely related functions.

(12) "Kentucky Framework for Personnel Evaluation" means the statewide framework a school district uses to develop a local certified school personnel evaluation system.

(13) "Observation" means a data collection process conducted by a certified evaluator, in person or through video, for the purpose of evaluation, including notes, professional judgments, and examination of the data collected during one (1) or more classroom or worksite visits of any duration.

(14) "Other professionals" means certified school personnel, except for teachers, administrators, assistant principals, or principals for which certification is required by the Education Professional Standards Board pursuant to KAR Title 16.

(15) "Peer observation" means observation and documentation by certified school personnel below the level of principal or assistant principal and trained to perform such observations.

(16) "Performance criteria" means the areas, skills, or outcomes on which certified school personnel are evaluated as described in KRS 156.557(4).

(17) "Performance measure" means one (1) of four (4) measures defined in the Kentucky Framework for Personnel Evaluation. Measures include planning, environment, instruction, and professionalism.

(18) "Performance rating" means the rating for each performance measure for a teacher, other professional, principal, or assistant principal as determined by the local district certified evaluation plan aligned to the Kentucky Framework for Personnel Evaluation. Ratings shall be exemplary, accomplished, developing, and ineffective.

(19) "Personnel Evaluation System" or "system" means an evaluation system to support and improve the performance of certified school personnel that meets the requirements of KRS 156.557 and that uses clear and timely formative feedback to guide professional growth.

(20) "Principal" means a certified school personnel who devotes the majority of employed time in the role of principal, for which administrative certification is required by the Education Professional Standards Board pursuant to KAR Title 16.

(21) "Sources of evidence" or "source of evidence" means the district-approved evidence aligned to the performance measure and used by evaluators to inform performance measure ratings listed in Section 8 of this administrative regulation.

(22) "Summative evaluation" is defined by KRS 156.557(1)(b)(d).

(23) "Summative rating" means the overall rating for certified school personnel below the level of superintendent as determined

by the district certified evaluation plan aligned to the Kentucky Framework for Personnel Evaluation.

(24) "Teacher" means a certified school personnel who has been assigned the responsibility for student learning in a classroom, grade level, subject, or course and holds a teaching certificate pursuant to KAR Title 16.

Section 2. District Evaluation Procedures and Forms. (1) An evaluation committee~~[, as defined in this administrative regulation,]~~ shall develop the certified evaluation plan for the evaluation of certified school personnel below the level of superintendent. The evaluation committee shall submit the certified evaluation plan to the local board of education for review and approval.

(2) The local board of education shall review and approve the certified evaluation plan that meets the requirements of KRS 156.557 (5)(c) and this administrative regulation.

(a) The district certified evaluation plan may require the use of additional trained administrative personnel to observe and provide information to the evaluator.

(b) Peer observations may be used as a source of evidence to inform a summative rating only if requested by the teacher or other professional being evaluated.

(c) The district certified evaluation plan shall establish uniform requirements for the length, frequency, and nature of observations conducted by an evaluator for the purpose of evaluation. The district certified evaluation plan shall require a conference between the evaluator and the evaluatee within five (5) working days following each observation.

(d) The district certified evaluation plan shall require the summative evaluation to include all applicable system data and be held at the end of the evaluation cycle pursuant to KRS 156.557.

(e) The district certified evaluation plan shall require a summative evaluation to occur annually for each certified school personnel below the level of superintendent who has not attained continuing service status pursuant to KRS 161.740 or continuing status pursuant to KRS 156.800(7) and shall incorporate the formative data collected during the Kentucky Teacher Internship Program, pursuant to 16 KAR 7:010, in the summative evaluation of a teacher intern.

(f) The district certified evaluation plan shall require a summative evaluation at least once every three (3) years for a teacher, other professional, principal, or assistant principal who has attained continuing service status pursuant to KRS 161.740 or continuing status pursuant to KRS 156.800(7).

(g) The evaluation criteria and process used to evaluate certified school personnel shall be explained to and discussed with the evaluatee no later than the end of the evaluatee's first thirty (30) calendar days of reporting for employment each school year.

(h) The district certified evaluation plan shall require a summative evaluation of certified school personnel to be documented in writing and to be included in the evaluatee's official personnel record.

(i) All evidence used to produce certified school personnel's overall performance rating shall be included in the documentation of the summative evaluation.

(j) The district certified evaluation plan shall provide an opportunity for the evaluatee to submit a written statement in response to the summative rating and require the response to be included in the official personnel record.

Section 3. District Personnel Evaluation Policies. (1) Each local school district shall establish a written policy for implementing the certified evaluation plan for all certified school personnel below the level of superintendent in the district, consistent with the requirements of KRS 156.557 and this administrative regulation. The local board of education shall develop, adopt, and submit to the department for approval a policy and procedure for evaluation of the district superintendent.

Section 4. Department Approval of District Personnel Evaluation Plan. The department shall review each local school district's certified evaluation plan and approve a certified evaluation

plan that is consistent with the requirements of KRS 156.557 and this administrative regulation.

Section 5. Revisions to Previously Approved District Evaluation Plan. (1) The local board of education shall review, as needed, the district's certified evaluation plan to ensure compliance with KRS 156.557 and this administrative regulation.

(2) If a source of evidence is added or removed from the certified evaluation plan or if a decision rule or calculation is changed in the summative rating formula, the revised certified evaluation plan shall be reviewed and approved by the local board of education. If the local board of education determines the changes do not meet the requirements of KRS 156.557, the certified evaluation plan shall be returned to the certified evaluation committee for revision.

Section 6. Training and Testing of Evaluators. (1) The district shall include evaluator certification and observation training in the district's certified evaluation plan submitted to the department for approval pursuant to Section 3 of this administrative regulation.

(2) The district shall ensure an evaluator meets the requirements in the district's evaluation plan prior to conducting a formative or summative evaluation.

(3) An evaluator shall be trained, tested, and approved according to this administrative regulation and the district's certified evaluation plan.

(4) Evaluator training shall include:

(a) Initial certified evaluation training and testing provided by the Kentucky Department of Education or a provider approved by the department;

(b) Training on KRS 156.557 and the requirements of this administrative regulation;

(c) Training in effective observation and conferencing techniques, in providing clear and timely feedback, in establishing and assisting with a professional growth plan, and in summative decision techniques; and

(d) A minimum of six (6) hours annually of personnel evaluation system training approved by the Effective Instructional Leadership Act established in 704 KAR 3:325.

Section 7. Training of Peer Observers. (1) The district shall require peer observations be performed by individuals who are trained in peer observation techniques and responsibilities prior to the first peer observation.

(2) Peer observation training shall include training in effective observation and conferencing techniques and the roles and responsibilities of peer observers, evaluatees, and certified school personnel.

Section 8. Performance Measure. (1) The district's certified evaluation plan shall utilize the Kentucky Framework for Personnel Evaluation pursuant to KRS 156.557 and the requirements of this administrative regulation and shall include the following performance measures:

- (a) Planning;
- (b) Environment;
- (c) Instruction; and
- (d) Professionalism.

(2) The district's certified evaluation plan shall define criteria for each performance measure from the Kentucky Framework for Teaching, the Kentucky Framework for Teaching ~~with[-]~~ Specialist Frameworks for Other Professionals, and the Professional Standards for Educational Leaders [Principal and Assistant Principal Performance Standards] that characterize effective practice and apply to the evaluatee.

(3) The evaluator shall use sources of evidence, in combination with professional judgment, to inform the teacher's or other professional's rating on each of the four (4) performance measures listed in subsection (1) of this section.

(4) The evaluator shall use the following ratings:

- 1. "Exemplary" shall be the rating for performance that consistently exceeds expectations for effective performance;
- 2. "Accomplished" shall be the rating for performance that

consistently meets expectations for effective performance;

3. "Developing" shall be the rating for performance that inconsistently meets expectations for effective performance; and

4. "Ineffective" shall be the rating for performance that consistently fails to meet expectations for effective performance. Because individual education program (IEP) goals are student-specific, IEP goals may inform, but shall not be used as a single source of evidence for any performance measure.

Section 9. Summative Rating of Teachers, Other Professionals, Principals, and Assistant Principals. (1) The overall performance category for teachers or other professionals, principals, and assistant principals shall be a district-determined rating by combining the four (4) performance measures provided in Section 8 of this administrative regulation.

Section 10. Evaluation of Certified School Personnel Assigned to the District Level for Purposes of Evaluation. (1) The district's certified evaluation plan for certified school personnel assigned to the district level for purposes of evaluation shall:

(a) Utilize the performance criteria established in KRS 156.557(4), comply with KRS 156.557 and the requirements of this administrative regulation; and

(b) List the performance criteria applicable to the evaluatee that characterizes professional effectiveness.

(2) The district certified evaluation plan for certified personnel assigned to the district level for purposes of evaluation shall be specific to the evaluatee's job category.

Section 11. District Evaluation Appeals Panel. The district shall provide the following in its system plan for an appeal to the district evaluation appeals panel:

(1) A right to a hearing as to every appeal;

(2) An opportunity, five (5) days in advance of the hearing, for the evaluator and evaluatee to adequately review all documents that are to be presented to the district evaluation appeals panel; and

(3) A right to have the evaluatee's chosen representative present at the hearing.

Section 12. State Evaluation Appeals Panel. (1) A certified school personnel who believes that the local district is not properly implementing the district certified evaluation plan as approved by the department shall have the opportunity to appeal to the Kentucky Board of Education.

(2) The appeal procedures shall be as established in this subsection.

(a) The Kentucky Board of Education shall appoint a committee of three (3) state board members to serve on the state evaluation appeals panel (SEAP). The SEAP's jurisdiction shall be limited to procedural matters already addressed by the local appeals panel related to the district's alleged failure to implement an evaluation plan as approved by the department. The SEAP shall not have jurisdiction of a complaint involving the professional judgment conclusion of an evaluation, and the SEAP's review shall be limited to the record of proceedings and documents therein, or lack thereof, at the local district level.

(b) No later than thirty (30) calendar days after the final action or decision at the local district level, a certified school personnel may submit a written request to the chief state school officer for a review before the SEAP. If a certified school personnel does not appeal within the time frame listed in this paragraph, the request shall not be considered. A specific description of the complaint and grounds for appeal shall be submitted with the request.

(c) A brief, written statement or other document that a party wishes to submit for consideration by the SEAP shall be filed with the panel and served on the opposing party at least twenty (20) days prior to the scheduled review.

(d) A decision of the SEAP shall be rendered within fifteen (15) working days after the review.

(e) A determination of district noncompliance with the district evaluation plan or absence of a district local evaluation plan shall render the evaluation void.

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Kentucky Framework for Teaching", February 2014;
- (b) "Kentucky Framework for Teaching with Specialist Frameworks for Other Professionals", June 2015; and
- (c) "Professional Standards for Educational Leaders", 2015 ["Principal and Assistant Principal Performance Standards", May 2014.]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, [Office of Teaching and Learning,] 300 Sower Blvd, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

CONTACT PERSON: Deanna Durrett, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

**KENTUCKY COMMUNITY AND TECHNICAL COLLEGE
SYSTEM
Kentucky Fire Commission
(As Amended at ARRS, March 9, 2020)**

739 KAR 2:140. Fire[Volunteer fire] department reporting requirements.

RELATES TO: KRS Chapter 65A, 75.430, Chapter 95A
STATUTORY AUTHORITY: KRS 95A.050(3), 95A.055(13)[(9)]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 95A.055(13) requires the commission to promulgate administrative regulations to implement KRS 75.430 and KRS 95A.055. This administrative regulation establishes ~~the volunteer~~ fire department reporting requirements.

Section 1. Definitions. (1) "Commission" means the Commission on Fire Protection Personnel Standards and Education established in KRS 95A.020[Chapter 95A].

(2) "Reporting fire department" means "fire department" as[is] defined by KRS 95A.055(1) which is obligated to report to the commission.

Section 2. Reporting Requirements. Each reporting fire department shall comply with KRS 95A.055(3[2]) and shall submit:

(1) ~~[Submit]~~A list of[List] the elected or appointed members of the board of the reporting fire department, if applicable;

(2) ~~[Submit]~~The budget adopted by the reporting fire department, if applicable; and

(3) ~~[Submit]~~Current year budget estimates, prior year amendments or transfers, and prior year end actual financial data for ~~the following categories~~:

(a) Revenue calculations for ~~the following categories~~:

- 1. Taxes;
- 2. Permits and licenses;
- 3. Payments made to governmental authorities in lieu of taxes;
- 4. Intergovernmental revenues;
- 5. Charges for services;
- 6. Other revenues; and
- 7. Interest earned;

(b) ~~Receipts~~[Receipt] and cash calculations for ~~the following categories~~:

- 1. Carryover cash from the prior reporting year;
- 2. Bonded debt;
- 3. Transfers to other funds;
- 4. Transfers from other funds;
- 5. Borrowed funds;

6. Government Leasing Act funds; and

7. Loans obtained from the commission[commissions]; and

(c) Appropriations[Appropriation] calculations for ~~the following categories~~:

- 1. Personnel;
- 2. Operations;
- 3. Administration and reserves;
- 4. Capital outlay; and
- 5. Debt service.

Section 3. Reporting Procedure. (1) Each reporting fire department shall, on or before August 31 of each calendar year[last day of each fiscal year], complete and submit an updated Financial Disclosure Report to~~the office of~~ the commission electronically via Web site access, by regular U.S. Mail, or through electronic mail to fdstateaid@kctcs.edu.

(2) Upon receipt of a reporting fire department's Financial Disclosure Report, ~~the office of~~ the commission shall review the Financial Disclosure Report for accuracy and compliance with the requirements established[set forth] in this administrative regulation and in KRS 95A.055.

~~(a) If the commission finds that~~a reporting fire department's Financial Disclosure Report does not comply with the requirements established[set forth] in this administrative regulation or in KRS 95A.055, the commission shall notify the reporting fire department in writing.

~~(b) The written notification shall state~~[describe] of the specific deficiencies identified and the process and timeframe for correcting[timeline that the reporting fire department shall follow to correct] the deficiencies.

(3) On or before[By] October 1 of each calendar year,~~the office of~~ the commission shall produce a cumulative report of all reporting fire departments' actual revenues, receipts, and appropriations and their averages, as reported on the reporting fire departments' Financial Disclosure Report[Reports] for that year, and of. This report shall detail the compliance of the reporting fire departments with the requirements of this administrative regulation and KRS 95A.055(3).~~;~~ This report also shall be filed with the Legislative Research Commission~~;~~ and shall be published on the commission's Web site within seven (7) days of[immediately upon] its production.

Section 4. Financial Reviews and Audits. (1) At least once every four (4) years, every reporting fire department shall be subject to a financial review consistent with KRS 65A.030, 95A.055, and the Kentucky Fire Commission Internal Audit Procedures[that includes procedures developed by the commission and approved by the Auditor of Public Accounts].

(2) The commission shall[may] require reporting fire departments to undergo an independent audit in accordance with the Fire Department Annual Audit Schedule[with the higher of annual receipts from all sources or annual expenditures equal to or greater than \$100,000 but less than \$500,000 to undergo an independent audit in the manner specified in KRS 65A.030(2) once every four (4) years].

~~(3) Every reporting fire department with the higher of annual receipts from all sources or annual expenditures equal to or greater than \$500,000 for two (2) consecutive fiscal years shall be audited annually in the manner specified in KRS 65A.030(2) until its annual revenues or expenditures are less than \$500,000.~~

~~(3)[4]~~ If a reporting fire department is audited pursuant to KRS 95A.055 and as established in[under] this section, the reporting fire department[it] shall submit a copy of the audit report and all related documents to the commission within seven (7) days of receiving the completed audit report.

Section 5. Penalties. (1)~~(a)~~ If the commission identifies any irregularities relating to the finances or operations of a reporting fire department, the commission[it] shall report the irregularities[them] to the Attorney General and Auditor of Public Accounts.

~~(b)~~ The commission may also notify any other public official

with jurisdiction over fire departments for further investigation and follow-up action.

(2) If a reporting fire department fails to comply with the requirements of this administrative regulation, KRS 95A.055, or 75.430, the commission shall/may, for substantial noncompliance or abuse, withhold[take] one (1) or more of the following[actions]:

(a)[(1)–Withhold] Incentive pay to qualified firefighters as established in/under KRS 95A.250;

(b)[(2)–Withhold] Volunteer fire department aid, funds used to purchase workers compensation insurance for fire departments, and low-interest loans under KRS 95A.262;

(c)[(3)–Withhold] Thermal Vision Grant program funds as established in/under KRS 95A.400 through/to 95A.440; and

(d)[(4)–Withhold] Any other funds controlled by the commission.];

(5) Report any irregularities identified by the office of the commission relating to the finances or operations of a reporting fire department to the Attorney General, Auditor of Public Accounts, or any other public official with jurisdiction over fire departments for further investigation and follow-up action; or

(6) Prescribe corrective actions to bring a reporting fire department that is not in compliance with KRS Chapter 65A or this administrative regulation as of July 15, 2016 into compliance.]

Section 6.[5.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Financial Disclosure Report," [(2019)4/16] edition[f], Kentucky Fire Commission;

(b) "Kentucky Fire Commission Internal Audit Procedures", May 2015; and

(c) "Fire Department Annual Audit Schedule", March 2020, is incorporated by reference].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Kentucky Fire Commission, 118 James Court[Gt.], [Suite 50.]Lexington, Kentucky 40505, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Jonathan L. Gay, Counsel for the Kentucky Fire Commission, phone (859) 225-4714, fax (859) 225-1493, email administrativeregulations@wgmfirm.com.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, March 9, 2020)

780 KAR 2:060. Discipline of students.

RELATES TO: KRS 156.802(3)[154B.025(3)], 158.150, 158.444

STATUTORY AUTHORITY: KRS 156.802(3)[154B.025(3)], 156.852 [154B.150]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.802(3) authorizes[154B.025(3)] [gives] the Kentucky Department of Education to haveOffice of Career and Technical Education] [the] responsibility for all administrative functions of the state in relation to the management, control, and operation of state-operated secondary area technology centers. KRS 156.852[154B.150] authorizes the Kentucky Board of Education[Executive Director of the office] to promulgate administrative regulations to implement career and technical education in Kentucky. KRS 158.150 establishes the grounds and procedures for discipline from the state's common schools. This administrative regulation establishes the procedure for the suspension and expulsion of students from Kentucky TECH schools for disciplinary reasons following the grounds and procedures established in KRS 158.150 for the common schools.

Section 1. Definition. "Kentucky TECH" means the system of state-operated secondary career and technical education programs in the area technology centers.

Section 2. Teachers and administrators employed in or assigned to work in a Kentucky TECH school shall be responsible for the supervision and discipline of students during the time the students are in attendance at a Kentucky TECH [state-operated career and]/[vocational-] [technical] facility.

Section 3. All students shall comply with the policies of the Kentucky TECH school in which they are enrolled. The following actions, subject to due process requirements set forth in KAR Title 707, shall constitute[be] cause for disciplinary suspension or expulsion:

(1) Willful disobedience or defiance of the authority of a teacher or administrator;

(2) Assault, battery, or abuse of another student or school personnel;

(3) Threat of force or violence;

(4) Use or possession of illicit drugs or alcohol;

(5) Stealing, destroying, or defacing school or personal property;

(6) Possessing or using a dangerous weapon or instrument; or

(7) Other incorrigible [bad] conduct on school property or at school-sponsored activities.

Section 4. (1) Except as provided in subsection (2) of this section, any secondary student subject to disciplinary action shall be referred by the school administrator of a Kentucky TECH school to the principal of the sending[parent] school in which the student is enrolled, where pursuant to KRS 158.444, the incident must be recorded within the student information system.

(2) The Kentucky TECH school administrator or his or/ her designee shall have the authority to immediately suspend secondary students from the Kentucky TECH[area technology] center[for a maximum of three (3) days,] without action by the sending[parent] school, to:

(a) Protect persons or property; or

(b) Avoid disruption of the ongoing academic programs.

(3) The Kentucky TECH school administrator shall submit in writing to the principal of the sending[parent] high school the reason for disciplinary action and recommend any further action.

(4) The principal of the sending[parent] high school shall respond to the Kentucky TECH school administrator as to the action to be taken.

(5) The due process procedures outlined in KRS 158.150(5) shall follow the suspension as soon as practicable, but no later than three (3) school days after the suspension.

Section 5. A secondary student who is suspended[or expelled] from a participating local high school or expelled from a participating local school district shall be suspended or expelled from the Kentucky TECH school in which the student is enrolled.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

CONTACT PERSON: Deanna Durrett, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, phone 502-564-4474, fax 502-564-9321, email regcomments@education.ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Audits and Investigations
(As Amended at ARRS, March 9, 2020)

902 KAR 55:130. Electronic prescribing of controlled substances.

RELATES TO: KRS 13B.050, 13B.080, 13B.090, 13B.110, 13B.120, 218A.182

STATUTORY AUTHORITY: KRS 218A.182

NECESSITY, FUNCTION, AND CONFORMITY: In accordance with KRS 218A.182, which takes effect on January 1, 2021,

electronic prescribing for all schedule II-V controlled substances is required by each practitioner who issues the prescription to a pharmacy. KRS 218A.182(1) identifies certain prescriptions that are exempt from the electronic prescribing mandate, including a temporary waiver for entities that demonstrate economic hardship, technological limitations, or other exceptional circumstances. KRS 218A.182(3) requires the cabinet to promulgate administrative regulations to implement the electronic prescribing mandate, including enforcement mechanisms, waivers of requirements, and the appropriate penalties for violations. This administrative regulation establishes requirements related to the electronic prescribing of controlled substances (EPCS).

Section 1. Prescription Requirements. (1) Beginning January 1, 2021, a prescription for a controlled substance shall:

(a) [Shall] Be transmitted electronically to a pharmacy, except as provided by KRS 218A.182(1)(a)-(l); and

(b) [Shall] Contain the:

1. Full legal name, gender, address, and date of birth of the person [ultimate user] for whom the controlled substance is intended;

2. Name, address, Drug Enforcement Administration (DEA) registration number, telephone number, and electronic signature of the prescribing practitioner;

3. Drug name, strength, dosage form, quantity prescribed, specific directions for use, and number of refills (if authorized); and

4. Date upon which the prescription was issued and signed electronically by the prescribing practitioner.

(2) In accordance with KRS 218A.182(2), a pharmacist who receives a written, oral, or faxed prescription for a controlled substance:

(a) Shall not be required to verify that the prescription is subject to an exception provided in KRS 218A.182(1)(a)-(l); and

(b) May dispense a controlled substance pursuant to an otherwise valid written, oral, or fax prescription.

Section 2. Waiver from the EPCS Mandate. (1) A practitioner who is unable to comply with the EPCS mandate may petition the cabinet for a temporary waiver based upon:

(a) Economic hardship;

(b) Technological limitations that are not reasonably within the control of the practitioner; or

(c) Other exceptional circumstances.

(2) A practitioner seeking an initial waiver from the EPCS mandate shall submit a completed Temporary Exemption Form, no later than November 1, 2020.

(3) A request for renewal of an approved waiver shall be submitted on the Temporary Exemption Form at least sixty (60) days in advance of the expiration of the waiver.

(4) A completed Temporary Exemption Form shall include:

(a) The name, practice address, phone number of the practice point of contact, professional license number, and Drug Enforcement Administration (DEA) registration number of the practitioner seeking the waiver;

(b) The practitioner's current electronic prescribing capabilities;

(c) The reason the practitioner is seeking the waiver;

(d) Supporting documentation to justify the reason for the waiver, including the following mandatory documentation:

1. For an economic hardship exemption:

a. Attestation of the practitioner's current gross annual income; and

b. At least two (2) quotes documenting the cost to the practitioner of implementing EPCS;

2. For a technological limitation exemption:

a. Documentation showing the:

(i) Available internet service providers;

(ii) Speed and bandwidth available from each provider; and

(iii) Any data caps imposed by the internet service provider; and

b. Documentation showing the minimum technological requirements from at least two (2) electronic prescribing platform vendors;

(e) The anticipated date of compliance with the EPCS

mandate; and

(f) If the practitioner is requesting renewal of an approved waiver:

1. Information relating to the practitioner's actions during the previous waiver period to work toward compliance with the EPCS mandate; or

2. An explanation as to why no progress has been made.

(5) Upon consideration of all information provided by the practitioner on a Temporary Exemption Form, the cabinet shall approve or deny the request for an initial or renewal waiver based on the criteria established by this subsection.

(a) If the reason for the waiver is economic hardship and the cost, to the practitioner, of compliance with the EPCS mandate would exceed five (5) percent of the practitioner's gross annual income as self-reported, the cabinet shall approve the request.

(b) If the reason for the waiver is technological limitations and the internet service providers available do not have the technological capabilities required by the electronic prescribing platform, the cabinet shall approve the request.

(c) If the reason for the waiver is other exceptional circumstances, the cabinet shall evaluate the description of the exceptional circumstances on a case-by-case basis.

(d) If the practitioner seeks renewal of a previous waiver, the cabinet shall consider:

1. Updated information as it relates to the practitioner working toward compliance with the EPCS mandate; or

2. The explanation as to why no progress has been made.

(6)(a) The cabinet may approve a waiver, or the renewal of a current waiver, for a specified period of time not to exceed one (1) year from the date of approval.

(b) The cabinet shall not approve more than two (2) renewal waivers.

Section 3. Enforcement. It shall be the duty of the cabinet to enforce the provisions of this administrative regulation.

Section 4. Penalties. (1) The cabinet shall make a referral to the appropriate professional licensing board and impose a fine of \$1,000 against a practitioner for each violation, not to exceed \$2,000 during a twelve (12) month period, in which the cabinet substantiates that the practitioner has:

(a) Falsified information on the Temporary Exemption Form or the form's supporting documentation;

(b) Failed to request a timely waiver in accordance with KRS 218A.182(1)(i) and Section 2(1) to (4) of this administrative regulation and the practitioner is noncompliant with the EPCS mandate; or

(c) Failed to transmit a prescription for a controlled substance electronically to a pharmacy after expiration of the practitioner's waiver, except for prescriptions that meet the exemption criteria of KRS 218A.182(a)-(h) and (j)-(l).

(2) A practitioner may file an appeal with the cabinet within twenty (20) calendar days of the cabinet's written notice of the violation and fine.

(3) If the practitioner requests an administrative hearing, the cabinet shall:

(a) Appoint a hearing officer; and

(b) Proceed pursuant to KRS 13B.050.

(4) The administrative hearing shall be conducted by a hearing officer appointed by the secretary and held in accordance with KRS 13B.080, 13B.090, and 13B.110.

(5) The secretary shall issue a final order in accordance with KRS 13B.120.

Section 5. Incorporation by Reference. (1) The OIG 55:130, "Temporary Exemption Form", October 2019 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Inspector General, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Donna Little, Deputy Executive Director,

Office of Legislative and Regulatory Affairs, 275 East Main Street 5
W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-
564-7091; email CHFSregs@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Provider Integrity
(As Amended at ARRS, March 9, 2020)

**907 KAR 5:005. Health Insurance Premium Payment (HIPP)
Program.**

RELATES TO: 42 C.F.R. 400.203, 430.10, 26 U.S.C. 4980B,
5000(b)(1), 29 U.S.C. 1161-1169, 42 U.S.C. 1396e(a)-(e)

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2),
194A.050(1), 205.520(3), 205.560(2), 42 U.S.C. 1396e(a)-(e)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet
for Health and Family Services, Department for Medicaid Services
has responsibility to administer the Medicaid Program. KRS
205.520(3) authorizes the cabinet, by administrative regulation, to
comply with a requirement that may be imposed or opportunity
presented by federal law for the provision of medical assistance to
Kentucky's indigent citizenry. 42 U.S.C. 1396e(a) through (e)
authorizes states to establish a health insurance premium
payment, or HIPP, program to provide health insurance coverage
outside of Medicaid to Medicaid enrollees, and any family member
of Medicaid enrollees, if the department determines that HIPP
program participation would be cost effective for the department.
This administrative regulation establishes the Kentucky integrated
health insurance premium payment program requirements as
authorized by 42 U.S.C. 1396e(a) through (e).

Section 1. Definitions.

(1) "Buying in" means purchasing benefits from Medicare on
behalf of an individual.

(2) "Department" means the Department for Medicaid Services
or its designee.

(3) "Federal financial participation" is defined in 42 C.F.R.
400.203.

(4) "Group health insurance plan" means any plan, including a
self-insured plan, of, or contributed to by, an employer to provide
health care directly or otherwise to the employer's employees,
former employees, or the families of the employees or former
employees, if the plan:

(a) Meets the criteria established in 26 U.S.C. 5000(b)(1); and

(b) Includes continuation coverage pursuant to 26 U.S.C.
4980B or 29 U.S.C. 1161 to 1169.

(5) "Income" means:

(a) Wages, salary, or compensation for labor or services;

(b) Money received from a statutory benefit including Social
Security, Veteran's Administration pension, black lung benefit, or
railroad retirement benefit; or

(c) Money received from any pension plan, rental property, or
an investment including interest or dividends.

(6) "Income deduction" means a deduction from an individual's
income for the
purpose of obtaining or trying to obtain Medicaid eligibility.

(7) "Kentucky integrated health insurance premium payment
program participant" or "KI-HIPP program participant" means an
individual receiving health insurance benefits in accordance with
this administrative regulation.

(8) "Medicaid" means the Kentucky Medicaid program.

(9) "Medicaid enrollee" means an individual eligible for and
participating in Medicaid pursuant to 907 KAR 1:005, 907 KAR
20:010, 907 KAR 20:020, and 907 KAR 20:025.

(10) "Spend-down program" means a program by which an
individual becomes eligible for Medicaid benefits:

(a) By spending down income in excess of the Medicaid
income threshold; and

(b) In accordance with 907 KAR 20:020.

(11) "State plan" is defined in 42 C.F.R. 430.10.

(12) "Wrap-around coverage" means coverage of a benefit not

covered by an individual's group health insurance plan.

Section 2. KI-HIPP Program Eligibility and Enrollment.

(1) ~~If a Medicaid enrollee, or a person acting on the Medicaid
enrollee's behalf, **elects to participate, or attempt to participate,**
in the KI-HIPP program, the enrollee or person acting on the
Medicaid enrollee's behalf~~ shall cooperate in providing
information to the department necessary for the department to
establish availability and cost effectiveness of a group health
insurance plan by:

(a) Completing the Kentucky Health Insurance Premium
Payment Program Application; and

(b) Submitting the Kentucky Health Insurance Premium
Payment Program Application to the individual's local Department
for Community Based Services office, the office administering the
Kentucky integrated health insurance premium payment program,
or on-line via the Kentucky Online Gateway self-service portal.

(2) A Medicaid enrollee or beneficiary ~~may~~**[shall]** participate in
the KI-HIPP program if the department determines in accordance
with this administrative regulation that the Medicaid enrollee or
beneficiary's participation in the KI-HIPP program would be cost-
effective.

(3) If a Medicaid enrollee, KI-HIPP program applicant,
participant, parent, guardian, or caretaker fails to provide
information to the department, within thirty (30) days of the
department's request, necessary to determine availability and cost
effectiveness of a group health insurance plan, the department
shall:

~~{a} not enroll the applicant in the KI-HIPP program unless
good cause for failure to cooperate is demonstrated to the
department within thirty (30) days of the department's denial; and~~

~~{b} Terminate the individual from the Medicaid program
pursuant to 907 KAR 20:060].~~

(4) Good cause for failure to cooperate shall exist if:

(a) There was a serious illness or death of the applicant,
participant, parent, guardian, or caretaker or of a member of the
applicant's, participant's, parent's, guardian's, or caretaker's
immediate family;

(b) There was a fire, tornado, flood, or similar family
emergency or household disaster affecting the applicant,
participant, parent, guardian, or caretaker or member of his or her
immediate family;

(c) The applicant, participant, parent, guardian, or caretaker
demonstrates that a good cause beyond that individual's control
has occurred; or

(d) There was a failure to receive the department's request for
information or notification for a reason not attributable to the
applicant, participant, parent, guardian, or caretaker. The lack of a
forwarding address shall be attributable to the applicant,
participant, parent, guardian, or caretaker.

(5) For a Medicaid enrollee who is a KI-HIPP program
participant:

(a) The department shall pay all group health insurance plan
premiums and deductibles, coinsurance and other cost-sharing
obligations for items and services otherwise covered under
Medicaid, up to the Medicaid allowed amount, minus any Medicaid
cost-sharing that would normally be paid, including the cost-
sharing required under ~~[895 KAR 1:010, 1:015, and]~~ 907 KAR
1:604, as applicable; and

(b)1. The individual's group health insurance plan shall be the
primary payer; and

2. The department shall be the payer of last resort.

(6) For a KI-HIPP program participating family member who is
not a Medicaid enrollee:

(a) The department shall pay a KI-HIPP program premium; and

(b) The department shall not pay a deductible, coinsurance or
other cost-sharing obligation.

(7) If an individual who was a Medicaid enrollee at the time the
department initiated a KI-HIPP program cost effectiveness review
for the individual loses Medicaid eligibility by the time the cost
effectiveness review has been conducted, the department shall not
enroll the individual or any family member into the KI-HIPP
program.

Section 3. Wrap-around Coverage.

(1) If a service to which a health insurance premium payment program participant would be entitled via Medicaid is not provided by the individual's group health insurance plan, the department shall reimburse for the service.

(2) For a service referenced in subsection (1) of this section, the department shall reimburse:

(a) The provider of the service; and

(b) In accordance with the department's administrative regulation governing reimbursement for the given service. For example, a wrap-around dental service shall be reimbursed in accordance with 907 KAR 1:626.

Section 4. Cost Effectiveness.

(1) Enrollment in a group health insurance plan shall be considered cost effective if the cost of paying the premiums, coinsurance, deductibles and other cost-sharing obligations, and additional administrative costs is estimated to be less than the amount paid for an equivalent set of Medicaid services.

(2) When determining cost effectiveness of a group health insurance plan, the department shall consider the following information:

(a) The cost of:

1. The insurance premium;
2. The coinsurance;
3. Medicaid's anticipated expenses for the:
 - a. KI-HIPP program participant;
 - b. KI-HIPP program participant's household; or
 - c. KI-HIPP program participant's subdivision of a household;

and

4. The deductible;

(b) The scope of services covered under the insurance plan, including exclusions for pre-existing conditions, exclusions to enrollment, and lifetime maximum benefits imposed;

(c) The average anticipated Medicaid utilization:

1. By age, sex, and coverage group for persons covered under the insurance plan; and
 2. Using a statewide average for the geographic component;
- and

(d) Annual administrative expenditures of an amount determined by the department per Medicaid participant covered under the group health insurance plan.

(3)(a) An eligible recipient shall be provided the opportunity to:

1. Ask the employer to complete a Loss of Medicaid or KI-HIPP Eligibility as a Qualifying Event to End Coverage form;

2. Submit the completed form to the department; and

3. Retain a copy of the completed form.

(b) If the recipient loses Medicaid or KI-HIPP eligibility, and no longer wishes to participate in the employer sponsored insurance plan, the recipient may use the completed form to end coverage in the employer sponsored insurance plan by providing written notice to the employer.

(c) The department shall inform KI-HIPP applicants of the potential financial risks of participation if loss of Medicaid or KI-HIPP eligibility is not treated as a qualifying event to end coverage by the employer of the recipient.

(4) An employer may complete and submit an Employer Certification that Loss of Medicaid or KI-HIPP Eligibility is a Qualifying Event to End Coverage form to the Department for Medicaid Services for all employees or future employees.

Section 5. Cost Effectiveness Review.

(1) The department shall complete a cost effectiveness review at least annually for an employer-related group health insurance plan or a non-employer-related group health insurance plan.

(2) The department shall perform a cost effectiveness re-determination if:

(a) A predetermined premium rate, deductible, or coinsurance increases;

(b) Any of the individuals covered under the group health insurance plan lose full Medicaid eligibility; or

(c) There is a:

1. Change in Medicaid eligibility;
2. Loss of employment if the insurance is through an employer;

or

3. Decrease in the services covered under the policy.

(3)(a) A health insurance premium payment program participant who is a Medicaid enrollee, or a person on that individual's behalf, shall report all changes concerning health insurance coverage to the Third Party Liability Branch office within the Department for Medicaid Services that administers the Kentucky Integrated Health Insurance Premium Payment program, or to the participant's local Department for Community Based Services (DCBS), Division of Family Support, within thirty (30) days of the change.

(b) Except as allowed in subsection (4) of this section, if a Medicaid enrollee who is a health insurance premium payment program participant fails to comply with paragraph (a) of this subsection, the department shall[:

4.] disenroll the KI-HIPP program participating Medicaid enrollee, and any family member enrolled in the KI-HIPP program directly through the individual, if applicable, from the KI-HIPP program[; and

2. Terminate the KI-HIPP program participating enrollee, and any family member enrolled in the KI-HIPP program directly through the individual from the Medicaid program unless the family member qualifies for Medicaid eligibility independently of the KI-HIPP participating enrollee].

(4) The department shall not disenroll [or terminate] an individual, or any family member enrolled in the KI-HIPP program directly through the individual, from KI-HIPP program participation if the individual demonstrates to the department, within thirty (30) days of notice of KI-HIPP program disenrollment, good cause for failing to comply with subsection (3) of this section.

(5) Good cause for failing to comply with subsection (3) of this section shall exist if:

(a) There was a serious illness or death of the individual, parent, guardian, or caretaker or a member of the individual's, parent's guardian's, or caretaker's immediate family;

(b) There was a fire, tornado, flood, or similar family emergency or household disaster affecting the applicant, participant, parent, guardian, or caretaker or member of his or her immediate family;

(c) The individual, parent, guardian, or caretaker demonstrates that a good cause beyond that individual's control has occurred; or

(d) There was a failure to receive the department's request for information or notification for a reason not attributable to the individual, parent, guardian, or caretaker. The lack of a forwarding address shall be attributable to the individual, parent, guardian, or caretaker.

Section 6. Provider Participation. Unless a KI-HIPP patient's care needs are outside of the regular scope of practice, level of care, or the provider's ability to safely meet the care needs of the individual, a Medicaid enrolled provider shall not refuse to accept a new patient who is a KI-HIPP participating Medicaid member if the provider is:

(1) Accepting any new:

(a) Medicaid patients; or

(b) Patients who have coverage under the group health insurance plan that meets criteria for KI-HIPP participation;

(2) Enrolled with the department;

(3) Listed on the most recent version of the Medicaid Provider Directory; and

(4) A participating provider within the group health insurance plan determined to meet criteria for KI-HIPP participation[Kentucky HEALTH participation in KI-HIPP.

(1) A Kentucky HEALTH member who has access to employer-sponsored health insurance through an employer shall be eligible for mandatory enrollment within KI-HIPP as follows:

(a) After concurrently or consecutively completing:

1. Twelve (12) months of Kentucky HEALTH enrollment;

and

~~2. Twelve (12) months of employment with access to compatible employer-sponsored health insurance;~~

~~(b) If the employer-sponsored health insurance is compatible with the KI-HIPP program; and~~

~~(c) If the employer-sponsored health insurance is cost-effective for the entire household.~~

~~(2) A Kentucky HEALTH member who is not currently required to participate in KI-HIPP pursuant to subsection (1) of this section may elect to participate in KI-HIPP and submit documentation for an eligibility determination as provided in Section 2 of this administrative regulation.~~

~~(3)(a) A Kentucky HEALTH member may elect to participate in KI-HIPP as an employee if the beneficiary's employer-sponsored insurance program is determined to be cost-effective for the employee, but not for the entire household; or~~

~~(b) A Kentucky HEALTH member may elect to participate in KI-HIPP as a cost-effective subdivision of the beneficiary's household if the employee participates in KI-HIPP but the entire household is determined to not be cost-effective.~~

~~(4) A Kentucky HEALTH beneficiary participating in the KI-HIPP program shall:~~

~~(a) Receive a MyRewards Account pursuant to 895 KAR 1:030;~~

~~(b) Accrue dollars in a MyRewards account by completing any applicable activities pursuant to 895 KAR 1:030;~~

~~(c) Receive an exemption from the PATH requirement established in 895 KAR 1:020;~~

~~(d) Receive wraparound services as provided pursuant to 895 KAR 1:010 depending on the beneficiary's benefits under the beneficiary's employer-sponsored insurance program; and~~

~~(e) Comply with any cost-sharing requirement established pursuant to KAR Title 895 or 907 KAR 1:604].~~

Section 7. Coverage of Non-Medicaid Family Members.

(1) If determined to be cost effective, the department shall enroll a family member who is not a Medicaid enrollee into the KI-HIPP program if the family member has group health insurance plan coverage through which the department can obtain health insurance coverage for a Medicaid-enrollee in the family.

(2) The needs of a family member who is not a Medicaid enrollee shall not be taken into consideration when determining cost effectiveness of a group health insurance plan.

(3) The department shall:

(a) Pay a KI-HIPP program premium on behalf of a KI-HIPP program participating family member who is not a Medicaid enrollee; and

(b) Not pay a deductible, coinsurance, or other cost-sharing obligation on behalf of a KI-HIPP program participating family member who is not a Medicaid enrollee.

Section 8. Exceptions. The department shall not pay a premium:

(1) For a group health insurance plan if the plan is designed to provide coverage for a period of time less than the standard one-year coverage period;

(2) For a group health insurance plan if the plan is a school plan offered on the basis of attendance or enrollment at the school;

(3) If the premium is used to meet a spend-down obligation and all persons in the household are eligible or potentially eligible only under the spend-down program pursuant to 907 KAR 20:020. If any household member is eligible for full Medicaid benefits, the premium shall:

(a) Be paid if it is determined to be cost effective when considering only the household members receiving full Medicaid coverage; and

(b) Not be allowed as a deduction to meet the spend-down obligation for those household members participating in the spend-down program.

(4) For a group health insurance plan if the plan is an indemnity policy which supplements the policy holder's income or pays only a predetermined amount for services covered under the policy.

Section 9. Duplicate Policies.

(1) If more than one (1) group health insurance plan or policy is available, the department shall pay only for the most cost-effective plan except as allowed in subsection (2) of this section.

(2) If the department is buying in to the cost of Medicare Part A or Part B for an eligible Medicare beneficiary, the cost of premiums for a Medicare supplemental insurance policy shall also be paid if the department determines that it is likely to be cost effective to do so.

Section 10. Discontinuance of Premium Payments.

(1) If all Medicaid-enrollee household members covered under a group health insurance plan lose Medicaid eligibility, the department shall discontinue KI-HIPP program payments as of the month of Medicaid ineligibility.

(2) If one (1) or more, but not all, of a household's Medicaid-enrollee members covered under a group health insurance plan lose Medicaid eligibility, the department shall re-determine cost effectiveness of the group health insurance plan in accordance with Section 5(2) of this administrative regulation.

Section 11. Kentucky Integrated Health Insurance Premium Payment Program Payment Effective Date.

(1)(a) KI-HIPP program payments for cost-effective group health insurance plans shall begin with the month the health insurance premium payment program application is received by the department, or the effective date of Medicaid eligibility, whichever is later.

(b) If an individual is not currently enrolled in a cost effective group health insurance plan, premium payments shall begin in the month in which the first premium payment is due after enrollment occurs.

(2) The department shall not make a payment for a premium which is used as an income deduction when determining individual eligibility for Medicaid.

Section 12. Premium Refunds. The department shall be entitled to any premium refund due to:

(1) Overpayment of a premium; or

(2) Payment for an inactive policy for any time period for which the department paid the premium.

Section 13. Notice. The department shall inform a Kentucky integrated health insurance premium payment program:

(1) Applicant, in writing, of the department's initial decision regarding cost effectiveness of a group health insurance plan and KI-HIPP program payment; or

(2) Participating household, in writing:

(a) If KI-HIPP program payments are being discontinued due to Medicaid eligibility being lost by all individuals covered under the group health insurance plan;

(b) If the group health insurance plan is no longer available to the family; or

(c) Of a decision to discontinue KI-HIPP program payment due to the department's determination that the policy is no longer cost effective.

Section 14. Federal Financial Participation.

(1) The Kentucky integrated health insurance premium program shall be contingent upon the receipt of federal financial participation for the program.

(2) If federal financial participation is not provided to the department for the Kentucky integrated health insurance premium program, the program shall cease to exist.

(3) If the Centers for Medicare and Medicaid Services (CMS) disapproves a provision stated in an amendment to the state plan, which is also stated in this administrative regulation, the provision shall be null and void.

Section 15. Incorporation by Reference.

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

(a) "Kentucky Health Insurance Premium Payment Program

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Application", KIHIPP-100, April 2019;

(b) "Loss of Medicaid or KI-HIPP Eligibility as a Qualifying Event to End Coverage", KIHIPP-024, January 2020; and

(c) "Employer Certification that Loss of Medicaid or KI-HIPP Eligibility is a Qualifying Event to End Coverage", KIHIPP-025, January 2020[edition, is incorporated by reference].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m., or from the department's Web site at **<https://chfs.ky.gov/agencies/dms/Pages/reqsmaterials.aspx>** [**<http://www.chfs.ky.gov/dms/incorporated.htm>**].

CONTACT PERSON: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

GENERAL GOVERNMENT CABINET
Kentucky Board of Dentistry
(Amended After Comments)

201 KAR 8:550. Anesthesia and sedation related to dentistry.

RELATES TO: KRS 313.035

STATUTORY AUTHORITY: KRS 313.035(1)

NECESSITY, FUNCTION AND CONFORMITY: KRS 313.035(1) requires the board to promulgate administrative regulations related to [conscious] anesthesia and sedation permits. **The administration of local anesthesia, sedation, and general anesthesia is an integral part of dentistry and the foundation of pain control.** This administrative regulation establishes requirements for permits to perform [conscious] sedation or anesthesia **associated with dentistry.**

Section 1. Definitions. (1) "Analgesia" means the diminution or elimination of pain.

(2) "ADA" means American Dental Association.

(3) "ASA" means American Society of Anesthesiologists.

(4) **"Competency" means displaying special skill or knowledge derived from training and experience.**

(5) **"Continual" means repeated regularly and frequently in steady succession.**

(5[6]) "Continuous" means prolonged without any interruption. [

(1) "Advanced Cardiac Life Support" or "ACLS" means a certification that an individual has successfully completed an advanced cardiac life support course that meets or exceeds the standards established by the American Heart Association and incorporated by reference in 201 KAR 8:532.

(2) "Anesthesia" means an artificially induced insensibility to pain usually achieved by the administration of gases or drugs.

(3) "Anesthesia and sedation" means:

(a) Minimal sedation;

(b) Moderate sedation;

(c) Deep sedation; and

(d) General anesthesia.

(4) "Board" means the Kentucky Board of Dentistry.

(5) "Certified registered nurse anesthetist" means a registered nurse who is currently certified to practice nurse anesthesia in Kentucky.

(6) "Conscious sedation permit" means a permit that was issued by the board prior to February 1, 2011, that authorized the dentist to whom the permit was issued to administer parenteral sedation for the practice of dentistry.]

(6[7]) "Deep sedation" means a drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function **could[may]** be impaired. The patient **might[may]** require assistance in maintaining a patent airway, and spontaneous ventilation **could[may]** be inadequate. Cardiovascular function is usually maintained.

(7[8]) "Enteral" means a technique of administration in which the agent is absorbed through the gastrointestinal (GI) tract or oral mucosa (oral, rectal, or sublingual).

(8[9]) "General anesthesia" means a drug-induced loss of consciousness during which a patient is not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation **could[may]** be required because of depressed spontaneous ventilation or drug-f-induced depression of neuromuscular function. Cardiovascular function **might[may]** be impaired.

(9[10]) "Immediately available" means onsite at the facility and available for immediate use. [

(11) **"Independently practicing qualified anesthesia provider" means an individual with a valid Kentucky license or**

permit to provide sedation.]

(10[12]) "Local anesthesia" means the elimination or diminution of sensation, especially pain, in one (1) part of the body by the topical application or regional injection of a drug.

(11[13]) "Maximum Recommended Dose" or "MRD" means the maximum FDA-recommended dose of a drug for minimal sedation, as printed in FDA-approved labeling for unmonitored home use.

(12[14]) "Minimal sedation" means a minimally depressed level of consciousness produced by a pharmacological method **that[which]** retains the patient's ability to independently and continuously maintain an airway and respond normally to tactile stimulation and verbal command. Although cognitive function and coordination **might[may]** be modestly impaired, ventilatory and cardiovascular functions are unaffected. [

(9) "Facility" means a location in which anesthesia or sedation is administered for the practice of dentistry.

(10) "Facility inspection" means an on-site inspection by the board or its designee to determine if a facility where the applicant proposes to provide anesthesia and sedation is adequately supplied, equipped, staffed, and maintained in a condition to support the provision of anesthesia and sedation services in a manner that meets the requirements of this administrative regulation.

(11) "General anesthesia" means a drug-induced loss of consciousness during which patients are not arousable even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation, drug-induced depression, or changes in neuromuscular function. Cardiovascular function may be impaired.

(12) "General anesthesia permit" means a permit that was issued by the board prior to February 1, 2011, that authorized the dentist to whom the permit was issued to administer general anesthesia for the practice of dentistry.

(13) "Incident" means dental treatment performed on a patient under minimal sedation, moderate sedation, deep sedation, or general anesthesia with unforeseen complications.

(14) "Incremental dosing" means administration of multiple doses of a drug until a desired effect is reached.

(15) "Minimal sedation" means a drug-induced state, with or without nitrous oxide to decrease anxiety, in which patients respond normally to tactile stimulation and verbal commands. Although cognitive function and coordination may be impaired, ventilatory and cardiovascular functions are maintained and do not require assistance.

(16) "Moderate enteral sedation" means a drug-induced depression of consciousness through the gastrointestinal tract or oral mucosa during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. Intervention is not required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.

(17) "Moderate parenteral sedation" means a drug-induced depression of consciousness that bypasses the gastrointestinal tract or oral mucosa during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. Intervention is not required to maintain a patent airway and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.]

(13[15])(18) "Moderate sedation" means a drug-induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. Intervention is not required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained. **This term includes the enteral administration of drugs exceeding the maximum recommended dose during a single appointment.**

(14[16])(19) "Nitrous oxide sedation" or "N2O sedation" means a technique of inhalation sedation with nitrous oxide and

oxygen.

(15)(17) "Operating dentist" means a **licensed dentist with primary responsibility for providing dental care during a procedure while a separate qualified dentist or independently practicing qualified anesthesia provider administers minimal, moderate, or deep sedation, or general anesthesia.**

(18)(20) "Parenteral" means a technique of administration in which the drug bypasses the gastrointestinal (GI) tract, that is, through an intramuscular, intravenous, intranasal, submucosal, subcutaneous, intraosseous administration.]

(16)(19) "Pediatric patient" means a patient twelve (12) years of age or younger.

(17) "Qualified anesthesia provider" means a **licensed anesthesiologist, Certified Nurse Anesthetist, or dentist with an applicable sedation permit.**

(18)(20) "Qualified dentist" means a **licensed dentist with an applicable sedation permit. A qualified dentist can also be an operating dentist if they fulfill the requirement of subsection (15) of this section [the appropriate training and permits to provide sedation and anesthesia in compliance with state rules and regulations].**

(19)(21) "Time-oriented anesthesia record" means documentation at appropriate time intervals of drugs administered, doses of drugs administered, and physiologic patient data obtained during patient monitoring.]

(21) "Pediatric Advanced Life Support" or "PALS" means a certification that an individual has successfully completed a pediatric advanced life support course that meets or exceeds the standards established by the American Heart Association and incorporated by reference in 201 KAR 8:532.

(22) "Sedation" means the reduction of stress or excitement by the administration of a drug that has a soothing, calming, or tranquilizing effect.]

(20) "Trained individual" means **personnel with an active certification in Basic Life Support for Healthcare Providers, and has been trained in monitoring EKG's, pulse oximetry, blood pressures, airway management, and capnography. Training, whether formal or internal, shall be documented in employee records.**

Section 2. Scope and Applicability. (1) The board shall be [Statement of Policy. (1) The administration of local anesthesia, sedation, and general anesthesia is an integral part of dental practice. The board is] committed to the safe and effective use of sedation and anesthesia by licensed, [these modalities by appropriately] educated, and trained dentists.

(2) Because large doses of local anesthetics, especially in combination with sedative agents, carry the risk of central nervous system depression, each licensed dentist shall [The use of local anesthetics is the foundation of pain control in dentistry; dentists must] be aware of the maximum, safe dosage limits for each patient. [Large doses of local anesthetics carry the risk of central nervous system depression, especially in combination with sedative agents.]

(3) Level of sedation shall be [is] independent of the route of administration. Moderate or deep sedation, or general anesthesia, may be achieved via any route of administration.

(4) Because sedation and general anesthesia are a continuum and [;] it is not always possible to predict how an individual patient will respond, **each licensed dentist [Practitioners] intending to produce a given level of sedation shall be able to diagnose and manage the physiologic consequences for patients whose level of sedation becomes deeper than initially intended. For all levels of sedation, the qualified dentist shall have the training, skills, drugs, and equipment to identify and manage such an occurrence until either:**

(a) Assistance arrives; [;] or

(b) The patient returns to the intended level of sedation without airway or cardiovascular complications.

(5) Because new [New] indications, agents, and techniques [will] lead to changes in anesthesia and sedation practices, [;] the board shall evaluate [such] changes for safety, efficacy, and to what extent [such] changes become accepted practice within the

profession of dentistry.

Section 3. [Section 2.] Nitrous Oxide Sedation. (1) Nitrous oxide sedation may be used by a Kentucky-licensed dentist without a [specific] sedation permit or by a Kentucky-licensed dental hygienist **who is registered [permitted] to deliver nitrous oxide analgesia under the direct supervision of a dentist as per KRS 313.060(10) [certified to administer block and infiltration anesthesia and nitrous oxide analgesia].**

(2) Equipment used in the administration of nitrous oxide sedation shall have functional safeguard measures that:

(a) Limit the minimum oxygen concentration to thirty (30) percent; and

(b) Provide for scavenger elimination of nitrous oxide gas.

(3) The dentist shall:

(a) **Ensure [Insure]** that a patient receiving nitrous oxide is constantly monitored; and

(b) Be present in the office while nitrous oxide is being used.

(4) A Kentucky-registered dental assistant shall not independently administer nitrous oxide sedation, but may initiate nitrous oxide sedation if the dentist is in the office and gives the dental assistant specific instructions regarding the mode of administration and the titration, rate, and dosage of the anesthetic agent [A dental assistant may only deliver nitrous oxide at a rate specified by direct orders of a dentist].

Section 4. [Section 3.] Minimal Sedation [Without a Permit]. (1) **A sedation permit shall not be [No license or permit is] required for a Kentucky-licensed dentist to provide minimal sedation as defined by Section 1(12) of this [Minimal Sedation as described in this administrative regulation].**

(2) A patient [Patients] whose only response is reflex withdrawal from repeated painful stimuli shall not be considered to be in a state of minimal sedation.

(3) The enteral administration of drugs exceeding the maximum recommended dose during a single appointment is considered to be moderate sedation, and Section 5 of this administrative regulation shall apply.

(4) Nitrous oxide, **if [when]** used in combination with a sedative agent, **may be considered** to produce minimal, moderate, or deep sedation, or general anesthesia.

(5) If more than one (1) drug is administered enterally to achieve the desired sedation effect, with or without the concomitant use of nitrous oxide, Section 5 of this administrative regulation shall apply.

(6) A dentist who administers minimal sedation shall do so within a sufficient margin of safety to avoid an unintended loss of consciousness. The use of the MRD to guide dosing for minimal sedation is intended to create this margin of safety.

(7) If minimal sedation is administered to a patient who is taking another substance known to increase the sedative **effects on [properties of]** the patient, Section 5 of this administrative regulation shall apply.

(8) An operating dentist shall not be required to complete additional training to administer minimal sedation.

(9) The administration of minimal sedation by another **[qualified] dentist or [independently practicing] [qualified] anesthesia provider shall require the operating dentist to maintain current certification in Basic Life Support for Healthcare Providers.**

(10) Clinical guidelines [Guidelines].

(a) Patient history and evaluation [History and Evaluation]. Patients considered for minimal sedation shall be **[suitably] evaluated prior to the start of any sedative procedure. In healthy or medically stable individuals (ASA I, II), this evaluation shall consist of a review of the patient's current medical history and medication use. In addition, patients with significant medical considerations (ASA III, IV) should, unless otherwise documented by the provider, [may] require a consultation with their treating physician prior to being administered minimal sedation.**

(b) Pre-operative evaluation and preparation [Operative Evaluation and Preparation]

1. The patient [;] or the patient's parent, legal guardian, or

caregiver, shall be advised regarding the planned procedure and any other anticipated possible procedures associated with the delivery of any sedative agents. Informed consent for the proposed sedation shall be obtained prior to its administration.

2. Adequate oxygen supply and the equipment necessary to deliver oxygen under positive pressure shall be determined prior to the administration of minimal sedation.

3. The patient shall be physically examined prior to the administration of minimal sedation. Baseline vital signs including body weight, height, blood pressure, and pulse rate~~[-and respiration rate]~~ shall be obtained unless rendered impractical by the nature of the patient, procedure, or equipment. Body temperature shall be measured if clinically indicated.

4. Preoperative dietary restrictions shall be considered based on the sedative technique prescribed.

5. The patient~~[-]~~ or the patient's parent, legal guardian, or caregiver, shall be given pre-operative verbal and written instructions regarding the patient's sedation and procedure.

(c) Personnel and equipment requirements[Equipment Requirements].

1. Personnel. **All clinical staff participating in the care of a minimally sedated patient shall be certified in[at least one (1) additional person trained in] Basic Life Support for Healthcare Providers shall be present throughout the administration of minimal sedation, in addition to the operating dentist[.]**

2. Equipment.

a. A positive-pressure oxygen delivery system suitable for the patient being treated shall be immediately available.

b. All equipment shall be examined for proper performance prior to each administration of sedation.

c. If inhalation equipment is used, it shall have a fail-safe system **that shall be[which is appropriately] examined and calibrated and a functioning device that shall prohibit[which prohibits] the delivery of less than thirty (30) percent oxygen, or a[an appropriately] calibrated and functioning in-line oxygen analyzer with audible alarm.**

d. **A[An appropriate] scavenging system shall be used if gases other than oxygen or air are delivered to a patient.**

3. Monitoring and documentation[Documentation].

a. Monitoring. **The~~[-]~~ A qualified dentist~~[-]~~ or a[an appropriately] trained individual chosen by the~~[-]operating] dentist, shall remain in the treatment room[operating area] during active dental treatment to monitor the patient continuously until the patient meets the criteria for discharge to the recovery area.[The qualified dentist or other individual monitoring the treatment shall be familiar with monitoring techniques and equipment.] The following shall be monitored unless precluded or invalidated by the nature of the patient:~~**

(i)[a.] Consciousness. The patient's level of sedation and responsiveness to verbal commands shall be continually assessed;[-]

(ii)[b.] Oxygenation. Oxygen saturation by pulse oximetry shall be continually evaluated;[may be clinically useful and shall be considered.]

(iii)[c.] Ventilation. The patient's chest excursions shall be monitored;[-] and [their] respirations shall be verified; and;[-]

(iv)[d.] Circulation. Blood pressure and heart rate shall be evaluated pre-operatively and post-operatively.[Intraoperative monitoring of blood pressure may be clinically useful and shall be considered.]

b. Documentation. **A[An appropriate] sedative record shall be maintained for each patient to whom sedation is administered. The sedative record[which] shall include the names of all drugs administered including local anesthetics, the time administered, the route of administration, dosages, and monitored physiological parameters.**

4. Recovery and discharge[Discharge].

a. Oxygen and suction equipment shall be immediately available if a separate recovery area is utilized.

b. **The dentist or a[A qualified dentist or an appropriately] trained individual chosen by the [operating -]dentist shall monitor the patient during recovery until the patient is ready for discharge[by the operating dentist].**

c. The dentist shall examine the patient and document[A qualified dentist shall determine and document whether] the patient's level of consciousness, oxygenation, ventilation, and circulation [are satisfactory]prior to discharge.

d. The patient, parent, escort, legal guardian, or caregiver shall be given post-operative verbal and written instructions prior to or upon discharge.

(d) Emergency management[Management].

1. If a patient enters a deeper level of sedation than the dentist is qualified to provide, the dentist shall stop the dental procedure until the patient is returned to the intended level of sedation.

2. The operating dentist shall be responsible for the sedative management, adequacy of the facility and staff, equipment, protocols, and diagnosis and treatment of emergencies related to the administration of minimal sedation and patient rescue.

Section 5. Moderate Sedation. (1) A Moderate Sedation Permit issued by the board shall be required for a Kentucky-licensed dentist to administer[The board shall issue a license or permit to a dentist prior to the administration of] moderate sedation as defined by Section 1(13) of this administrative regulation[to a patient].

(2) A dentist who administers moderate sedation shall do so within a sufficient margin of safety to avoid an unintended loss of consciousness.

(3) A qualified dentist shall be aware that repeated dosing of an agent before the effects of previous dosing can be fully appreciated **could[may] result in a greater alteration of the state of consciousness than intended. A dentist who administers moderate sedation shall refrain from administering an additional drug increment before the previous dose has taken full effect.**

(4) A patient whose only response is reflex withdrawal from a painful stimulus shall not be considered to be in a state of moderate sedation.

(5) To qualify for a Moderate Sedation Permit, a dentist shall:

(a) Submit an Application for Sedation or Anesthesia Permit;

(b) Pay the fee required by 201 KAR 8:520; and

(c) Provide documentation that the dentist meets the educational requirements of subsection (6) or (7) of this section.

(6)[(5)] Education requirements for [adult -]moderate sedation.

(a) To administer moderate sedation to an adult patient, a dentist shall have current certifications in Basic Life Support for Healthcare Providers and Advanced Cardiac Life Support, and complete one of the following[successfully completed]:

1. A comprehensive training program in moderate sedation **that complies with the requirements established[which satisfies the requirements described] in the Moderate Sedation section of the ADA Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students at the time training was commenced; or**

2. An advanced education program accredited by the Commission on Dental Accreditation **that[which] provides comprehensive [and appropriate]training necessary to administer and manage moderate sedation commensurate with this administrative regulation.[-] and**

3. Current certifications in Basic Life Support for Healthcare Providers, and Advanced Cardiac Life Support, and Pediatric Advanced Life Support.

(b) Any person currently holding a permit to provide adult moderate sedation prior to the effective date of this administrative regulation who fails to meet the requirements of this subsection shall have until December 31, 2023 to comply with the requirements of this subsection. Any valid moderate sedation permits issued prior to this administrative regulation shall remain active until their expiration or renewal date, at which time the requirements of this subsection shall have to be met prior to renewal.

(6) Educational requirements for pediatric moderate sedation.

(a)]

b. To administer moderate sedation to a pediatric patient, a dentist shall have successfully completed:

1. An advanced education program accredited by the Commission on Dental Accreditation ~~that[which]~~ provides comprehensive ~~[and appropriate]~~ training necessary to administer and manage moderate sedation commensurate with this administrative regulation; and

2. Current certifications in Basic Life Support for Healthcare Providers ~~and[, and Advanced Cardiac Life Support and, if administering sedation to pediatric patients,]~~ Pediatric Advanced Life Support.

(c)(b) The operating dentist or the facility at which the moderate sedation is being administered shall maintain a current certification in Basic Life Support for Healthcare Providers in order for a qualified ~~anesthesia provider[dentist]~~ to provide moderate sedation.

(d) Any valid moderate sedation permits issued prior to this administrative regulation shall remain active until their expiration date and shall comply with the requirements of this section, except:

1. Moderate adult enteral and parenteral permit holders shall have until December 31, 2023 to comply with subsection (6)(a)1 and 2 of this section.

(7) Clinical guidelines: patient history and evaluation.

(a)[Guidelines. Patient History and Evaluation] Patients considered for moderate sedation shall be ~~[suitably]~~ evaluated prior to the start of any sedative procedure. In healthy or medically stable individuals (ASA I, II), this evaluation shall consist of a review of the patient's current medical history, medication use, body mass index, airway evaluation, and ASA status.

(b) Patients~~[In addition, patients]~~ with significant medical considerations (ASA III, IV) should, unless otherwise documented by the provider,~~[may]~~ require a consultation with their treating physician prior to being administered moderate sedation.

(8) Pre-operative evaluation and preparation~~[Operative Evaluation and Preparation]~~.

(a) ~~[Pre-Operative Evaluation and Preparation. 1.]~~ The patient~~[,]~~ or the patient's parent, legal guardian, or caregiver, shall be advised regarding the planned procedure and any other anticipated possible procedures associated with the delivery of any sedative agents. Informed consent for the proposed sedation shall be obtained prior to its administration.

(b)~~[2.]~~ Adequate oxygen supply and the equipment necessary to deliver oxygen under positive pressure shall be determined prior to the administration of moderate sedation.

(c)~~[3.]~~ The patient shall be physically examined prior to the administration of minimal sedation. Baseline vital signs including body weight, height, blood pressure, ~~and pulse rate[, and respiration rate]~~ shall be obtained unless rendered impractical by the nature of the patient, procedure, or equipment. Body temperature shall be measured if clinically indicated.

(d)~~[4.]~~ Preoperative dietary restrictions shall be considered based on the sedative technique prescribed.

(e)~~[5.]~~ The patient~~[,]~~ or the patient's parent, legal guardian, or caregiver, shall be given pre-operative verbal and written instructions regarding the patient's sedation and procedure, including pre-operative fasting instructions based on the ADA Guidelines for the Use of Sedation and General Anesthesia by Dentist, adopted October 2016.

(9) Personnel and equipment requirements~~[Equipment Requirements]~~.

(a) Personnel. All clinical staff participating in the care of a moderately sedated patient shall be certified in Basic Life Support for Healthcare Providers. ~~At least one (1) additional person certified in Advanced Cardiac Life Support shall be present throughout the administration of moderate sedation to an adult patient, in addition to the operating dentist. At least one (1) additional person certified in Pediatric Advanced Life Support shall be present throughout the administration of moderate sedation to a pediatric patient, in addition to the operating dentist.]~~

(b) Equipment.

1. A positive-pressure oxygen delivery system suitable for the patient being treated shall be immediately available.

2. All equipment shall be examined for proper performance prior to each administration of sedation.

3. If inhalation equipment is used, it shall have a fail-safe system ~~that shall be[which is appropriately]~~ examined and calibrated and a functioning device ~~that shall prohibit[which prohibits]~~ the delivery of less than thirty (30) percent oxygen, or ~~a[an appropriately]~~ calibrated and functioning in-line oxygen analyzer with audible alarm.

4. ~~A[An appropriate]~~ scavenging system shall be used if gases other than oxygen or air are delivered to a patient.

5. Equipment necessary to establish intravascular or intraosseous access and a defibrillator or automated external defibrillator shall be immediately available until the patient meets discharge criteria.

(10) Monitoring and documentation~~[Documentation]~~.

(a) Monitoring. ~~If leaving the room, a qualified dentist must have at least one month of general anesthesia training and shall select a trained individual to continuously monitor the patient. Otherwise, a qualified anesthesia provider shall remain in the treatment room during active treatment until the patient meets the criteria for discharge to the recovery area. The operating dentist shall remain in the operating room to monitor the patient continuously until the patient has recovered to a minimally sedated level. When active treatment concludes and the patient recovers to a minimally sedated level, the dentist may choose an appropriately trained individual to remain with and continue to monitor the patient until the patient is discharged from the facility. The operating dentist shall not leave the facility until the patient is discharged from the facility.]~~

(b) The following shall be monitored:

1. Consciousness. The patient's level of sedation and responsiveness to verbal commands shall be continually assessed;[.]

2. Oxygenation. Oxygen saturation by pulse oximetry shall be continually evaluated;[.]

3. Ventilation: The ~~qualified anesthesia provider [operating dentist]~~ shall be responsible for the observation of ventilation and breathing by monitoring end tidal CO2 unless precluded or invalidated by the nature of the patient. In addition, ventilation shall be monitored by continual observation of qualitative signs, which may include auscultation of breath sounds with a precordial or pretracheal stethoscope, or observation of chest excursions;[.]

4. Circulation. The ~~qualified anesthesia provider[operating dentist]~~ shall continually evaluate blood pressure and heart rate unless invalidated by the nature of the patient and noted in the time-oriented anesthesia record; ~~and[.]~~

5. The patient's pulse oximetry, heart rate, end tidal CO2, ~~[respiratory rate]~~, blood pressure, and level of consciousness shall be monitored continually and recorded at least every five (5) minutes.

~~[6. The operating dentist shall consider the continuous ECG monitoring of a patient with significant cardiovascular disease.]~~

(c) Documentation. ~~A[An appropriate]~~ sedative record shall be maintained for each patient to whom sedation is administered. The sedation record~~[which]~~ shall include the names of all drugs administered including local anesthetics, the time administered, the route of administration, dosages, and monitored physiological parameters.

(11) Recovery and discharge~~[Discharge]~~.

(a) Oxygen and suction equipment shall be immediately available if a separate recovery area is utilized.

(b) When active treatment concludes and the patient recovers to a minimally sedated level, the qualified anesthesia provider or a trained individual chosen by the qualified anesthesia provider shall remain with and continue to monitor the patient until the patient is discharged from the facility. The qualified anesthesia provider shall not leave the facility until the patient is discharged.

(c) The qualified anesthesia provider or a~~The operating~~

~~dentist or appropriately]~~ trained individual ~~chosen by the qualified anesthesia provider~~ shall continually monitor the patient's blood pressure, heart rate, oxygenation, and level of consciousness during recovery.

~~(d) The qualified anesthesia provider [(c) A qualified dentist]~~ shall determine and document ~~[whether]~~ the patient's level of consciousness, oxygenation, ventilation, and circulation ~~[are satisfactory]~~ prior to discharge.

~~(e[d])~~ The patient, parent, escort, legal guardian, or caregiver shall be given post-operative verbal and written instructions prior to or upon discharge.

~~(f) Because re-sedation could occur after the effects of a reversal agent have waned,[(e)] If a pharmacological reversal agent is administered before the patient's discharge criteria have been met, the patient's escort shall be notified of the risk of re-sedation[patient shall be monitored for a longer period than usual before discharge, since re-sedation may occur once the effects of the reversal agent have waned].~~

~~(12) Emergency management[Management].~~

~~(a) If a patient enters a deeper level of sedation than the qualified anesthesia provider [dentist] is qualified to provide, the procedure shall stop[dentist shall stop the dental procedure]until the patient is returned to the intended level of sedation.~~

~~(b) The [operating dentist]qualified anesthesia provider shall be responsible for the sedative management, adequacy of the facility and staff, equipment, protocols, and diagnosis and treatment of emergencies related to the administration of moderate sedation and patient rescue.~~

Section 6. Deep Sedation and General Anesthesia. (1) A Deep Sedation and General Anesthesia Permit issued by the board shall be required for a Kentucky-licensed dentist to administer deep sedation and general anesthesia as defined by Section 1 of this administrative regulation.

(2) To qualify for a deep sedation and general anesthesia permit, a dentist shall:

(a) Submit an Application for Sedation or Anesthesia Permit;

(b) Pay the fee required by 201 KAR 8:520; and

(c) Provide documentation that the dentist meets the educational requirements of subsection (3) of this section [The board shall issue a license or permit to a dentist prior to the administration of moderate sedation to a patient].

(3[2]) Education requirements.

(a) To administer deep sedation or general anesthesia, a dentist shall have successfully completed:

1. An advanced education program accredited by the Commission on Dental Accreditation, which provides comprehensive [and appropriate]training necessary to administer and manage deep sedation or general anesthesia; and

2. Current certifications in the following:

a. Basic Life Support for Healthcare Providers;

b. [,and]Advanced Cardiac Life Support if administering sedation to adult patients; and

c. Pediatric Life Support [,if administering sedation to pediatric patients[, Pediatric Advanced Life Support].

(b) The operating dentist or the facility at which deep sedation or general anesthesia is being administered shall maintain a current certification in Basic Life Support for Healthcare Providers in order for a qualified anesthesia provider[dentist] to provide deep sedation or general anesthesia [moderate sedation, with at least one (1) additional person certified in Advanced Cardiac Life Support or an equivalent].

(4) Clinical guidelines; for patient history and evaluation. Each patient [(3) Clinical Guidelines. Patient History and Evaluation. Patients] considered for deep sedation or general anesthesia shall be suitably evaluated prior to the start of any sedative procedure. In healthy or medically stable individuals (ASA I, II), this evaluation shall consist of a review of the patient's current medical history, medication use, body mass index, airway evaluation, nothing by mouth status, and ASA status. In addition, patients with significant medical considerations (ASA III, IV)

should, unless otherwise documented by the provider,[may] require a consultation with their treating physician prior to being administered deep sedation or general anesthesia.[moderate sedation. Patients with elevated BMI could [may] be at increased risk for airway associated morbidity, particularly if in association with other factors, such as obstructive sleep apnea.]

(5)[(4) Pre-operative evaluation and preparation[Operative Evaluation and Preparation].

(a) [Pre-Operative Evaluation and Preparation. 1.]The patient[,] or the patient's parent, legal guardian, or caregiver, shall be advised regarding the planned procedure and any other anticipated possible procedures associated with the delivery of any sedative agents. Informed consent for the proposed sedation shall be obtained prior to its administration.

(b)[2.] Adequate oxygen supply and the equipment necessary to deliver oxygen under positive pressure shall be confirmed[determined] prior to the administration of deep[moderate] sedation or general anesthesia.

(c)[3.] The patient shall be physically examined prior to the administration of deep[minimal] sedation or general anesthesia. Baseline vital signs including body weight, height, blood pressure, blood oxygen saturation, and pulse rate[,and respiration rate] shall be obtained unless rendered impractical by the nature of the patient, procedure, or equipment. Body temperature shall be measured if clinically indicated.

(d)[4.] The patient[,] or the patient's parent, legal guardian, or caregiver, shall be given pre-operative verbal and written instructions regarding the patient's sedation and procedure, including pre-operative fasting instructions based on the ASA Summary of Fasting and Pharmacologic Recommendations.

(e)[5.] An intravenous line shall be established and secured throughout the procedure, except for patients with special needs as per subsection (9)[provided in subsection (8)] of this section.

(6[5]) Personnel and equipment requirements[Equipment Requirements].

(a) Personnel. All clinical staff participating in the care of a deeply sedated patient or a patient who has been administered general anesthesia shall be certified in Basic Life Support for Healthcare Providers. [At least one (1) additional person certified in Advanced Cardiac Life Support shall be present throughout the administration of moderate sedation to an adult patient, in addition to the operating dentist. At least one (1) additional person certified in Pediatric Advanced Life Support shall be present throughout the administration of moderate sedation to a pediatric patient, in addition to the operating dentist.]

(b) A minimum of three (3) individuals shall be present while a patient is being treated with deep sedation or general anesthesia. If[When] a pediatric patient is being treated with deep sedation or general anesthesia, in addition to the operating dentist, a separate qualified anesthesia provider[,in addition to the operating dentist,] shall manage the patient's anesthesia unless the anesthesia is performed by an oral and maxillofacial surgeon.

(c) Equipment.

1. A positive-pressure oxygen delivery system suitable for the patient being treated shall be immediately available.

2. All equipment shall be examined for proper performance prior to each administration of sedation.

3. If inhalation equipment is used, it shall have a fail-safe system that shall be[which is appropriately] examined and calibrated and a functioning device that shall prohibit[which prohibits] the delivery of less than thirty (30) percent oxygen, or a[an appropriately] calibrated and functioning in-line oxygen analyzer with audible alarm.

4. A[An appropriate] scavenging system shall be used if gases other than oxygen or air are delivered to a patient.

5. Equipment necessary to establish intravenous access and to monitor end tidal CO2 and auscultation of breath sounds shall be immediately available.

6. Resuscitation medications, a[medications, an appropriate] defibrillator, [and]equipment and drugs necessary to provide advanced airway management and advanced cardiac life support

shall be immediately available.

(7)(6) Monitoring and documentation[Documentation].

(a) Monitoring. If leaving the room, a qualified dentist must have at least one month of general anesthesia training and shall select a trained individual to continuously monitor the patient. Otherwise, a qualified anesthesia provider shall remain in the treatment room during active treatment until the patient meets the criteria for discharge to the recovery area[A qualified dentist administering deep sedation or general anesthesia shall remain in the operating room to monitor the patient continuously until the patient meets the criteria for recovery. The qualified dentist shall not leave the facility until the patient is discharged from the facility.]

(b) The following shall be monitored:

1. Oxygenation. Oxygen saturation by pulse oximetry shall be continually evaluated;[.]

2. Ventilation. For an intubated patient, end-tidal CO₂ shall be continually monitored and evaluated. For a non-intubated patient, end-tidal CO₂ shall be continually monitored and evaluated unless precluded or invalidated by the nature of the patient. In addition, ventilation shall be monitored by continual observation of qualitative signs, which may include auscultation of breath sounds with a precordial or pretracheal stethoscope, or observation of chest excursions;[.]

3. Circulation. The qualified **anesthesia provider[dentist]** shall continually evaluate heart rate and rhythm by ECG throughout the procedure, as well as the patient's pulse rate by pulse oximetry;[.]

4. Temperature. A device capable of measuring body temperature shall be readily available during the administration of deep sedation or general anesthesia. Equipment necessary to continually monitor body temperature shall be available and used **if[whenever]** triggering agents associated with malignant hyperthermia are administered; **and** [.]

5. The patient's respiration rate and blood pressure shall be continually monitored and evaluated.]

5(6). The patient's pulse oximetry, heart rate, end tidal CO₂, **[respiratory rate,]** blood pressure, and level of consciousness shall be monitored continually and recorded at least every five (5) minutes.

(b) Documentation. A[An appropriate] sedative record shall be maintained for each patient to whom sedation is administered. The sedative record[which] shall include the names of all drugs administered, including local anesthetics, the time administered, the route of administration, dosages, and monitored physiological parameters.

(8)(7) Recovery and discharge[Discharge].

(a) Oxygen and suction equipment shall be immediately available if a separate recovery area is utilized.

(b) When active treatment concludes and the patient recovers to a minimally sedated level, the qualified anesthesia provider or a trained individual chosen by the qualified anesthesia provider shall remain with and continue to monitor the patient until the patient is discharged from the facility. The qualified anesthesia provider shall not leave the facility until the patient is discharged.

(c) The qualified anesthesia provider or a trained individual chosen by the qualified anesthesia provider[The qualified dentist] shall continually monitor the patient's blood pressure, heart rate, oxygenation, and level of consciousness during recovery.

(d)(c) The qualified anesthesia provider[dentist] shall determine and document [whether]the patient's level of consciousness, oxygenation, ventilation, and circulation [are satisfactory]prior to discharge.

(e)(d) The patient, parent, escort, legal guardian, or caregiver shall be given post-operative verbal and written instructions prior to or upon discharge.

(9)(8) Patients with special needs[Special Needs].

(a) Because many dental patients undergoing deep sedation or general anesthesia are mentally or physically challenged, it is not always possible to administer a comprehensive physical examination or appropriate laboratory tests prior to sedation. In this

circumstance, the dentist responsible for administering the deep sedation or general anesthesia shall document the reasons preventing the examination of the patient in the patient's medical record.

(b) Deep sedation or general anesthesia may be administered without first establishing an indwelling intravenous line if the establishment of intravenous access after deep sedation or general anesthesia is rendered necessary because of poor patient cooperation.

(10) Emergency management. The qualified anesthesia provider [(9) Emergency Management. The operating dentist] shall be responsible for the sedative management, adequacy of the facility and staff, equipment, protocols, and diagnosis and treatment of emergencies related to the administration of patient rescue and deep sedation or general anesthesia. [

(1) A permit shall not be required for a dentist to administer minimal enteral sedation for patients age thirteen (13) and older.

(2) A dentist who intends to administer minimal sedation shall indicate the intent to administer minimal sedation in the patient's record.

(3) Medication used to produce minimal sedation shall not exceed the manufacturer's recommended dose (MRD) for unmonitored use by the individual. Additional dosing shall be within the MRD limits.

(4) A dentist who administers minimal sedation shall maintain a margin of safety and a level of consciousness that does not approach moderate sedation and other deeper states of sedation and general anesthesia.

(5) Nitrous oxide may be combined with an oral medication. If nitrous oxide is combined with an oral medication, the level of sedation shall be maintained at the level of minimal sedation.

Section 4. Permit and Location Certificate Required. (1) A dentist shall not administer an anesthetic technique in order to attain a level beyond minimal sedation for the practice of dentistry unless:

(a) The dentist holds an appropriate Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, or Deep Sedation or General Anesthesia permit issued by the board; or

(b) The dentist holds a conscious sedation or general anesthesia permit that shall be converted to a Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, or Deep Sedation or General Anesthesia permit at the next license renewal.

(2) A dentist shall not administer an anesthetic technique under a Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, Deep Sedation or General Anesthesia, conscious sedation, or general anesthesia permit issued by the board at a facility unless:

(a) The facility has a current Anesthesia and Sedation Facility Certificate issued by the board; or

(b) The facility passed an inspection by the board for the purpose of issuing a conscious sedation or general anesthesia permit.

(3) A treating dentist who does not hold an anesthesia and sedation permit shall not allow a physician anesthesiologist, another dentist who holds an anesthesia and sedation permit, or a certified registered nurse anesthetist to administer an anesthetic technique in order to attain a level beyond minimal sedation for the practice of dentistry at a facility owned or operated by the treating dentist unless:

(a) The facility has a current Anesthesia and Sedation Facility Certificate issued by the board; or

(b) The facility passed an inspection by the board for the purpose of issuing a conscious sedation or general anesthesia permit.

Section 5. Classifications of Anesthesia and Sedation Permits. The following permits shall be issued by the board to a qualified licensed dentist:

(1) Minimal Pediatric Sedation permit that authorizes a dentist to use minimal enteral sedation for patients age five (5) to twelve (12) Medication or medications used to produce minimal sedation

shall not exceed the manufacturer's recommended dose (MRD) for unmonitored use by the individual. Incremental dosing shall be prohibited. All dosing shall be administered in the dental office. A dentist who administers minimal sedation shall maintain a margin of safety and a level of consciousness that does not approach moderate sedation and other deeper states of sedation and general anesthesia. Nitrous oxide may be combined with an oral medication. If nitrous oxide is combined with an oral medication, the level of sedation shall be maintained at the level of minimal sedation;

(2) Moderate Enteral Sedation permit that authorizes a dentist to use moderate enteral sedation for patients age thirteen (13) and older;

(3) Moderate Parenteral Sedation permit that authorizes a dentist to use moderate parenteral sedation for patients age thirteen (13) and older;

(4) Moderate Pediatric Sedation permit that authorizes a dentist to use moderate sedation by any route of administration for patients age twelve (12) and under; and

(5) Deep Sedation or General Anesthesia permit that authorizes a dentist to use:

- (a) General anesthesia; or
- (b) Deep sedation.

Section 6. Qualifications for Obtaining a Minimal Pediatric Sedation Permit. To qualify for a Minimal Pediatric Sedation permit, an applicant shall:

(1) Submit an Application for Sedation or Anesthesia Permit;

(2) Pay the fee required by 201 KAR 8:520;

(3) Hold current certification in either ACLS or PALS or successfully complete a six (6) hour board-approved course that provides instruction on medical emergencies and airway management; and

(4) Provide proof of successful completion of: (a) a Commission on Dental Accreditation (CODA) accredited postdoctoral training program that affords comprehensive and appropriate training necessary to administer and manage minimal sedation; or

(b) Provide proof of successful completion of a board-approved course that shall consist of a minimum of twenty-four (24) hours of didactic instruction on pediatric minimal sedation by the enteral route or the combination enteral and nitrous oxide route.

Section 7. Qualifications for Obtaining a Moderate Enteral Sedation Permit. To qualify for a Moderate Enteral Sedation permit, an applicant shall:

(1) Submit an Application for Sedation or Anesthesia Permit;

(2) Pay the fee required by 201 KAR 8:520;

(3) Hold current certification in either ACLS or PALS or successfully complete a six (6) hour board-approved course that provides instruction on medical emergencies and airway management; and

(4) Provide proof of successful completion of: (a) A Commission on Dental Accreditation (CODA) accredited postdoctoral training program that affords comprehensive and appropriate training necessary to administer and manage moderate sedation; or

(b) Provide proof of successful completion of a board-approved course that shall consist of a minimum of twenty-four (24) hours of didactic instruction plus management of at least ten (10) adult case experiences by the enteral route or the combination enteral and nitrous oxide route. These ten (10) cases shall include at least three (3) live (on sight) clinical dental experiences managed by participants in groups that shall not exceed five (5) individuals. These three (3) live (on-sight) experiences may be obtained by observing a permit level dentist in his or her office, and the remaining cases may include simulations and video presentations and shall include at least one (1) experience in returning a patient from deep to moderate sedation.

Section 8. Qualifications for Obtaining a Moderate Parenteral Sedation Permit. To qualify for a Moderate Parenteral Sedation permit, an applicant shall:

(1) Submit an Application for Sedation or Anesthesia Permit;

(2) Pay the fee required by 201 KAR 8:520;

(3) Hold current certification in either ACLS or PALS or successfully complete a six (6) hour board-approved course that provides instruction on medical emergencies and airway management; and

(4) Provide proof of successful completion of: (a) A CODA-accredited postdoctoral training program that affords comprehensive and appropriate training necessary to administer and manage moderate parenteral sedation; or

(b) Provide proof of successful completion of a board-approved course that shall consist of a minimum of sixty (60) hours of didactic instruction plus management of at least twenty (20) patients per course participant in moderate parenteral sedation techniques.

Section 9. Qualifications for Obtaining a Moderate Pediatric Sedation Permit. To qualify for a Moderate Pediatric Sedation permit, an applicant shall:

(1) Submit an Application for Sedation or Anesthesia Permit;

(2) Pay the fee required by administrative regulation;

(3) Hold current certification in either ACLS or PALS or successfully complete a six (6) hour board-approved course that provides instruction on medical emergencies and airway management; and

(4) Provide proof of successful completion of a CODA-accredited postdoctoral training program that affords comprehensive and appropriate training necessary to administer and manage moderate sedation for patients age twelve (12) and under.

Section 10. Qualifications for Obtaining a Deep Sedation or General Anesthesia Permit. To qualify for a Deep Sedation or General Anesthesia permit, an applicant shall:

(1) Submit an Application for Sedation or Anesthesia Permit;

(2) Pay the fee required by administrative regulation;

(3) Hold current certification in either ACLS or PALS; and (4) Provide proof of successful completion of:

(a) A board-approved Accreditation Council for Graduate Medical Education (ACGME) accredited post doctoral training program in anesthesiology which affords comprehensive and appropriate training necessary to administer deep sedation and general anesthesia;

(b) A board-approved nurse anesthesia program accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs that affords comprehensive and appropriate training necessary to administer deep sedation and general anesthesia;

(c) Successful completion of a minimum of two (2) years advanced clinical training in anesthesiology from a Joint Commission on Accreditation of Healthcare Organization (JCAHO) accredited institution that meets the objectives set forth in part two (2) of the American Dental Association's Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry; or

(d) Provide proof of successful completion of a CODA-accredited postdoctoral training program that affords comprehensive and appropriate training necessary to administer and manage deep sedation and general anesthesia.]

Section 7.[14.] Multiple Application Levels. A dentist [Permitted. Dentists] with the required education and training to provide[for] more than one (1) level of sedation may mark the[their] levels of qualification on the Application for Sedation or Anesthesia Permit[, based on the requirements of Sections 6 through 10 of this administrative regulation].

Section 8. Renewal of a Sedation or Anesthesia Permit. (1)
A qualified dentist applying for renewal of an active permit to administer moderate sedation, or deep sedation or general anesthesia shall:

(a) Submit an Application for Renewal of Sedation or Anesthesia Permit;

(b) Pay the fee required by 201 KAR 8:520;

(c) Complete at least four (4) hours of clinical continuing

education related to sedation or anesthesia in a classroom setting during the two (2) year term of the permit; and

(d) Maintain ACLS or PALS certification as required by Sections 5 and 6 of this administrative regulation.

(2) The continuing education requirements of this section shall be in addition to the license renewal requirements of 201 KAR 8:532.

(3) Unless properly renewed, each permit issued under this administrative regulation shall expire on December 31 of odd-number years.

Section 9[8].[42.] Location Requirement. A dentist holding a[Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, Deep Sedation or General Anesthesia, conscious sedation, or general anesthesia] permit in accordance with[under] this administrative regulation shall advise the board of the name and address of each facility where the dentist intends to or has ceased to administer anesthesia and sedation by submitting the Sedation or Anesthesia [and Sedation] Permit Location Notification Form within ten (10) business days of the change.

Section 10[9].[13.—Anesthesia and Sedation] Facility Certificates. (1) The owner or operator of a facility shall obtain an Anesthesia or Sedation Facility Certificate[a facility certificate][an Anesthesia and Sedation Facility Certificate] from the board for any location at which:

(a) a dentist holding a sedation or[Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, Deep Sedation or General Anesthesia, conscious sedation, or] general anesthesia permit provides moderate sedation, deep sedation, or general anesthesia. A facility certificate shall not be[is not] required for minimal sedation or nitrous oxide sedation alone.[may administer anesthesia and sedation under the permit; or

(b)[(2)] A facility certificate shall be required if a dentist allows an independently practicing qualified anesthesia provider to administer sedation or general anesthesia in a dental office[The treating dentist may allow a physician anesthesiologist, another dentist who holds an anesthesia and sedation permit, or a certified registered nurse anesthetist to administer an anesthetic technique in order to attain a level beyond minimal sedation for the practice of dentistry].

(3)[(2)] A facility owner or operator desiring to obtain an Anesthesia or[and] Sedation Facility Certificate shall:

(a) Submit an Application for Sedation or Anesthesia[a] Facility Certificate[an Anesthesia and Sedation Facility Certificate]; and

(b) Pay the fee required by 201 KAR 8:520.[-; and

(c) Attest that the facility meets the requirements of this administrative regulation][Successfully pass a facility inspection as outlined in Section 14 of this administration. (3) A dentist currently in an advanced training course for sedation may request the Board of Dentistry complete a Sedation Facility Inspection prior to completion of the course].

(4[3]).[(4)] The owner or operator of a facility shall not allow an individual to administer anesthesia or sedation unless the individual is permitted to do so as established by[under] this administrative regulation.

(5[4]).[(5)] The owner or operator of a facility shall maintain for at least seven (7)[five (5)] years, for inspection by the board, the name and license number of each dentist or independently practicing qualified anesthesia provider[,—physician anesthesiologist, or certified registered nurse anesthetist] who has administered anesthesia or moderate sedation at that location.

(6[5]) The owner or operator of a facility shall ensure that the facility remains [properly]equipped and staffed for the duration of time that moderate sedation, deep sedation, or general anesthesia is provided at the facility.[(6) The owner or operator of a facility shall ensure that the facility:

(a) Remains properly equipped in accordance with Section 14 of this administrative regulation; and

(b) Remains properly staffed in accordance with Section 15 of

this administrative regulation.]

(7[6]).[(7) In addition to the requirements contained in subsection (6) of this section,] The owner or operator of a facility shall ensure that the facility has [appropriate]nonexpired emergency and sedation medications.

Section 11[10]. Renewal of Facility Certificate. (1) All active[Active] facility certificates[issued prior to the effective date of this administrative regulation] shall expire on December 31 of odd-numbered years[the second year following the date of issuance].

(2) Any valid[new] facility certificates issued prior to this administrative regulation shall remain active until their original expiration date, at which time the requirements of this regulation shall have to be met prior to renewal[on December 31, 2021 remain active for a period of two (2) years].

(3) To renew a facility certificate, the owner or operator shall:

(a) Submit an[a completed and signed] Application for Renewal of Sedation or Anesthesia Facility Certificate; and

(b) Pay the fee required by 201 KAR 8:520[-; and

(c) Attest that the facility [meets] the requirements of this administrative regulation].

Section 12[11].[14.] Facility[Inspection] Criteria. (1) To qualify for a facility certificate[an Anesthesia and Sedation Facility Certificate], the owner or operator of a facility shall attest in the Application for Sedation or Anesthesia Facility Certificate that the facility has[the following][pass an evaluation of facility equipment, medications, and clinical records:

(a) The following shall be provided by the facility to qualify]:

[a][4.-] An oxygen and gas delivery system with fail-safe backup[, backup system fail-safe];[2. Gas storage facility];

[b][3.-] A safety indexed gas system;

[c][4.-] A suction and backup system;

[d][5.-] An auxiliary lighting system;

(e) An operating[6. Suitability of operating] room to include:

1. At[a Size, which shall be at] a minimum, ten (10) feet by eight (8) feet or eighty (80) square feet in size;

2.[b.-] An operating primary light source and secondary portable back-up source, unless a back-up generator is available; and

3.[c.-] Accessibility by emergency medical staff;

[f][7.-] A recovery area, including oxygen, suction, and[visual and] electronic monitoring, which may be a part of[include] the operating room;

[g][8.-] Preoperative medical history and physical evaluation form; and

[h][9.-] Anesthesia and monitoring equipment checked to ensure[insure proper] working order and calibration, if applicable.

(2) The following shall be maintained in [proper]working order by the facility or by the qualified individual administering sedation or anesthesia at or on behalf of the facility.[(b) The following shall be provided by the facility or by an individual listed in Section 22 of this administrative regulation:]

[a][4.-] [Appropriate]Drugs for each procedure, all of which shall be unexpired, including reversal agents and emergency medications;

[b][2.-] [Appropriate]Devices to maintain an airway with positive pressure ventilation;

[c][3.-] Anesthesia records, including monitoring and discharge records[and a check sheet.

a. The check sheet shall be signed by the provider and the dentist and placed in each record.

b. If the dentist is the provider, only the dentist's signature shall be required];

[d][4.-] Monitoring equipment, including pulse oximeter, blood pressure monitor, and end tidal CO2 monitor. An electrocardiogram (EKG) shall be required for facilities providing deep sedation or general anesthesia;

[e] Defibrillator or automated external defibrillator (AED); and

[f] Precordial stethoscope or pretracheal stethoscope for deep sedation or general anesthesia in pediatric patients.[and blood

pressure monitoring;

5. Electrocardiogram (EKG):

a. May be present for use by Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, and Moderate Pediatric Sedation permit holders for patients with significant cardiac history; and

b. Shall be present for use by Deep Sedation or General Anesthesia permit holders;

6. Defibrillator or automated external defibrillator (AED) for moderate and Deep Sedation or General Anesthesia permits; and

7. For deep sedation or general anesthesia in pediatric patients:

a. A precordial stethoscope; or

b. A pretracheal stethoscope.

(2) During a facility inspection, inspectors shall:

(a) Examine the facility's equipment to determine if it is in proper working order;

(b) Determine if appropriate emergency drugs are present; and

(c) Determine if emergency drugs are nonexpired.

Section 15. Inducing a Level of Sedation for a Patient. (1) Administration of minimal pediatric sedation, moderate enteral sedation, moderate parenteral sedation, moderate pediatric sedation, deep sedation, or general anesthesia to a patient requires at least the following appropriately trained individuals:

(a) The treating dentist;

(b) An individual trained and competent in basic life support (BLS) or its equivalent to assist the treating dentist; and

(c) Another individual trained and competent in BLS or its equivalent in close proximity to assist if needed.

(2) A dentist administering minimal pediatric sedation, moderate enteral sedation, moderate parenteral sedation, moderate pediatric sedation, deep sedation, or general anesthesia to a patient shall not leave the site until the patient:

(a) Is conscious;

(b) Is spontaneously breathing;

(c) Has stable vital signs;

(d) Is ambulatory with assistance; and

(e) Is under the care of a responsible adult.

(3) A treating dentist who allows a physician, another dentist, or certified registered nurse anesthetist to administer minimal pediatric sedation, moderate enteral sedation, moderate parenteral sedation, moderate pediatric sedation, deep sedation, or general anesthesia under Section 22 of this administrative regulation shall ensure that the physician, dentist, or certified registered nurse anesthetist shall not leave the site until the patient:

(a) Is conscious;

(b) Is spontaneously breathing;

(c) Has stable vital signs;

(d) Is ambulatory with assistance; and

(e) Is under the care of a responsible adult.

Section 16. Conscious Sedation Permits and General Anesthesia permits. (1) A dentist who holds a current general anesthesia permit may continue to administer anesthesia and sedation consistent with a Deep Sedation or General Anesthesia permit until the expiration date of the permit.

(2) A dentist who holds a current conscious sedation permit and meets the requirements of Section 9(4) of this administrative regulation may continue to administer anesthesia and sedation consistent with a Moderate Pediatric Sedation permit until the expiration date of the permit.

(3) A dentist who holds a current conscious sedation permit and meets the requirements of Section 8 of this administrative regulation may continue to administer anesthesia and sedation consistent with a Moderate Parenteral Sedation permit until the expiration date of the permit.

(4) During the license renewal process, current general anesthesia permit holders shall convert the permit to a Deep Sedation or General Anesthesia permit.

(5) During the license renewal process, current conscious sedation permit holders shall convert the permit to a minimal

pediatric sedation, moderate enteral sedation, moderate parenteral sedation, or moderate pediatric sedation permit.

(6) A dentist who currently practices enteral sedation without a permit may continue without a permit until January 1, 2012 and shall receive a Moderate Enteral Sedation permit by the submission of:

(a) Twenty-four (24) hours of didactic education plus twenty (20) sedation records documenting their experience; and

(b) Satisfactory completion of an on-site inspection as outlined in Section 14 of this administrative regulation.

Section 17. Issuance and Expiration of Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation and Deep Sedation or General Anesthesia Permits.

(1) Once an applicant has met the qualifications for obtaining a Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, or Deep Sedation or General Anesthesia permit the board shall issue a permit in sequential numerical order.

(2) Each permit issued under this administrative regulation shall expire on the same date as the permit holder's license to practice dentistry.

Section 18. Renewal of Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, and Deep Sedation or General Anesthesia Permits. An individual desiring renewal of an active Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, and Deep Sedation or General Anesthesia permits shall:

(1) Submit a completed and signed Application for Renewal of Sedation or Anesthesia Permit;

(2) Pay the fee required by 201 KAR 8:520; and

(3) Provide evidence to the board that the applicant meets the continuing education requirements outlined in Section 19 of this administrative regulation. [

Section 13. Continuing Education Requirements for Renewal of a Permit. A qualified dentist applying for renewal of an active permit to administer moderate or deep sedation or general anesthesia shall:

(1) Complete at least four (4) hours of clinical continuing education related to sedation or anesthesia in a classroom setting during the two (2) year term of the permit; and

(2) Maintain ACLS or PALS certification as required by Sections 5 and 6 of this administrative regulation. [Section 19. Continuing Education Requirements for Renewal of a Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation, or Deep Sedation or General Anesthesia Permit.]

(1) An individual desiring renewal of an active Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, or Moderate Pediatric Sedation permit shall:

(a) Complete at least six (6) hours of clinical continuing education related to sedation or anesthesia in a classroom setting that includes hands-on airway management during the two (2) year term of the permit; or

(b) Maintain ACLS or PALS certification.

(2) An individual desiring renewal of an active Deep Sedation or General Anesthesia permit shall:

(a) Complete not less than four (4) hours of on-site clinical continuing education related to sedation or anesthesia during the two (2) year term of the permit; and

(b) Maintain ACLS or PALS certification.

(3) Continuing education required by this administrative regulation shall:

(a) Not be used to satisfy other continuing education requirements; and

(b) Be in addition to other continuing education requirements of 201 KAR 8:532.

Section 20. Facilities Inspected Prior to February 1, 2011. A

facility owner or operator desiring to obtain an Anesthesia and Sedation Facility Certificate for a facility which passed an inspection by the board prior to February 1, 2011 shall provide proof to the board of having passed a facility inspection for the purpose of issuing a conscious sedation or general anesthesia. Section 21. Issuance of an Anesthesia and Sedation Facility Certificate. Once an applicant has met the qualifications for obtaining an Anesthesia and Sedation Facility Certificate the board shall issue a certificate in sequential numerical order.

Section 22. Administration by a Physician Anesthesiologist, Dentist, or Certified Registered Nurse Anesthetist at the Facility of a Treating Dentist.

(1) A treating dentist may allow at his or her dental facility, administration of sedation or anesthesia by a:

- (a) Kentucky-licensed physician anesthesiologist or a Kentucky-licensed Certified Registered Nurse Anesthetist; or
- (b) Dentist who holds an anesthesia and sedation permit.

(2) Administration by an individual listed in subsection (1)(a) of this section shall:

- (a) Comply with this administrative regulation; and
- (b) Not require board review.

(3) Nothing in this section shall preclude a dentist from working with a Kentucky-licensed physician anesthesiologist or a Kentucky-licensed Certified Registered Nurse Anesthetist in an ambulatory care center or hospital.]

Section 13[14][23]. Morbidity and Mortality Incident Reports.

(1) A dentist shall report to the board, in writing, any death caused by or resulting from the dentist's administration of minimal sedation, moderate sedation, deep sedation, or general anesthesia within seven (7) days after the death[its occurrence].

(2) A dentist shall report to the board, in writing, any incident that resulted in hospital in-patient admission or emergency room visit caused by or resulting from the dentist's administration of minimal sedation, moderate sedation, deep sedation, or general anesthesia within thirty (30) days after the hospitalization or emergency room visit[its occurrence].

(3) The written report to the board required in subsections (1) and (2) of this section shall include:

- (a) The date of the incident;
- (b) The name, age, and address of the patient;
- (c) The patient's original complete dental records;
- (d) The name and permit[license] number of the dentist[licensee] and the name and address of all other persons present during the incident;
- (e) The address where the incident took place;
- (f) The preoperative physical condition of the patient;
- (g) The type of anesthesia and dosages of drugs administered to the patient;
- (h) The techniques used in administering the drugs;
- (i) Any adverse occurrence including:
 - 1. The patient's signs and symptoms;
 - 2. The treatment instituted in response to adverse occurrences;
 - 3. The patient's response to the treatment; and
 - 4. The patient's condition on termination of any procedures undertaken; and
- (j) A narrative description of the incident including approximate times and evolution of symptoms.

(4) The duties established[outlined] in this section shall apply to every dentist who administers any type of sedation or anesthesia.

Section 14[15][24]. Registered Dental Assistant Duties while Working [permitted when working] with Sedation Permit Holders[holders]. A registered dental assistant working with a qualified dentist administering sedation or anesthesia in accordance with under this administrative regulation may, under direct supervision:

- (1) Apply noninvasive monitors on the patient;
- (2) Perform continuous observation of patients and

noninvasive monitors appropriate to the level of sedation, during the pre-operative, intra-operative, and post-operative (recovery) phases of treatment;

(3) Report monitoring parameters at pre-determined intervals, and if to the operating dentist on a periodic basis and when changes in monitored parameters occur;

(4) Record vital sign measurements in the sedation record;

(5) Establish and remove intravenous lines if the registered dental assistant has completed training in intravenous access;

(6) Assist in the management of a patient emergency; and

(7) Administer medications into an existing intravenous line upon the verbal order and direct supervision of a qualified dentist in accordance with this administrative[under this] regulation.

Section 15[16]. Administration by [an Independently Practicing] Qualified Anesthesia Provider. (1) An operating dentist may authorize[permit] the administration of sedation or anesthesia by a qualified anesthesia provider;

(a) Kentucky-licensed independently practicing qualified anesthesia provider; or

(b) Kentucky-licensed dentist qualified to administer sedation or anesthesia.

(2) The administration of anesthesia or sedation by an individual established[listed] in subsection (1) of this section shall:

(a) Comply with the requirements of this administrative regulation; and

(b) Not require board review prior to the administration of sedation or anesthesia.

(3) Nothing in this section shall preclude a dentist from working with a [Kentucky-licensed independently practicing] qualified anesthesia provider to provide care in an ambulatory care center or hospital.];

(1) A registered dental assistant working with Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation and Deep Sedation or General Anesthesia permit holders may, under direct supervision:

- (a) Apply noninvasive monitors;
- (b) Perform continuous observation of patients and noninvasive monitors appropriate to the level of sedation, during the pre-operative, intra-operative and post-operative (recovery) phases of treatment;
- (c) Report monitoring parameters to the operating dentist on a periodic basis and when changes in monitored parameters occur;
- (d) Record vital sign measurements in the sedation record; and
- (e) Remove IV lines (Moderate Parenteral Sedation, Moderate Pediatric Sedation and Deep Sedation or General Anesthesia Permit holders only).

(2) A registered dental assistant working with Minimal Pediatric Sedation, Moderate Enteral Sedation, Moderate Parenteral Sedation, Moderate Pediatric Sedation and Deep Sedation or General Anesthesia Permit holders, may under direct supervision assist in the management of emergencies.

(3) A registered dental assistant working with Moderate Parenteral Sedation, Moderate Pediatric Sedation and Deep Sedation or General Anesthesia Permit holders may, under direct supervision:

- (a) Administer medications into an existing IV line upon the verbal order and direct supervision of a dentist with a Moderate Parenteral Sedation, Moderate Pediatric or Deep Sedation or General Anesthesia permit; and
- (b) Establish an IV line under direct supervision if they have completed a course approved by the Board of Dentistry in intravenous access.]

Section 16[25]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Sedation or Anesthesia Permit", March 2020[February 2014];

(b) "Application for Sedation or Anesthesia Facility Certificate", March 2020[February 2014]; and

(c) "Sedation or[ef] Anesthesia Permit Location Notification Form", March 2020[February 2014].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, Monday through Friday 8 a.m. through 4:30 p.m. This material is also available on the board's Web site at <http://dentistry.ky.gov>.

JEFF ALLEN, Executive Director

APPROVED BY AGENCY: March 13, 2020

FILED WITH LRC: March 13, 2020 at noon

CONTACT PERSON: Jeff Allen, Executive Director, Kentucky Board of Dentistry, 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222, phone (502) 429-7280, fax (502) 429-7282, email jeffrey.allen@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jeff Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: establishes requirements for permits to perform sedation or anesthesia.

(b) The necessity of this administrative regulation: KRS 313.035(1) requires the board to promulgate administrative regulations related to anesthesia and sedation permits

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes requirements for permits to perform sedation or anesthesia.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes requirements for permits to perform sedation or anesthesia in conformity with its authorizing statute.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the requirements for permits to perform sedation or anesthesia.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to better protect the public and bring the administrative regulation up-to-date with current best practices, including the ADA Guidelines for the Use of Sedation and General Anesthesia by Dentists, adopted in 2016.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment updates the requirements for permits to perform sedation or anesthesia in conformity with its authorizing statute.

(d) How the amendment will assist in the effective administration of the statutes: The amendment ensures that the requirements for permits to perform sedation or anesthesia are up-to-date in compliance with applicable law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will primarily affect the approximately three thousand prescribing dentists licensed in Kentucky who can provide minimal sedation, especially the almost 400 dentists who have a current sedation permit. There will also be some minor impact on Non-dentist anesthesia providers who provide services to patients in cooperation with an operating dentist. Patients who are administered sedation or anesthesia by a Kentucky licensed dentist may also be affected, but will likely not notice any changes.

(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 an amendment, including:

(a) List the actions that each of the related entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each entity will be required to administer sedation or anesthesia in accordance with applicable law and administrative regulations.

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

question (3): No costs will be accrued as a result of the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment will result in a healthier patient population and the avoidance of potentially costly violations of applicable law and administrative regulations.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

(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.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No.

(9) TIERING: Is tiering applied? No; this amendment impacts all similarly situated practitioners equally.

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? None.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 313.021 and 313.060.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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? No cost.

(d) How much will it cost to administer this program for subsequent years? No cost.

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

Revenues (+/-): None.

Expenditures (+/-): None.

Other explanation: Not applicable.

DEPARTMENT OF AGRICULTURE Office of the State Veterinarian (Amended After Comments)

302 KAR 22:150. Cervids.

RELATES TO: KRS 257.020, 257.030, 257.080
STATUTORY AUTHORITY: KRS 257.550, KRS 257.552
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.720(1), 246.295(1), and 257.550 require the Department of Agriculture in cooperation with the Department of Fish and Wildlife Resources to promulgate administrative regulations pertaining to health requirements, eradication of diseases, and identification of privately-owned and farm-raised cervids maintained for the production of meat and other products. This administrative regulation establishes criteria and health requirements necessary to prevent the introduction of chronic wasting disease into Kentucky and develop a herd monitoring system, and establishes requirements for intrastate and interstate movement of farmed

cervids.

Section 1. Definitions.

(1) "USDA-accredited veterinarian" means a veterinarian accredited by the USDA in accordance with the provisions of 9 C.F.R. 161.1 to 161.4.

(2) "Adjacent herd" means:

(a) A herd of cervids occupying premises that share a border or boundary line with premises occupied by a positive herd, to include herds separated by roads or streams; or

(b) A herd of cervids occupying premises that were previously occupied by a positive herd within the past five (5) years.

(3) "Animal identification number" or "AIN" means a numbering system for the official identification of individual animals in the United States that provides a nationally unique identification number for each animal. The AIN consists of fifteen (15) digits, with the first three (4) being the country code (either 840 for the United States at large or a unique code for any U.S. territory that elects to use it in place of the 840 code).

(4) "APHIS" means the Animal and Plant Health Inspection Service of the United States Department of Agriculture.

(5) "Approved laboratory" means the National Veterinary Service Laboratory in Ames, Iowa, or any other laboratory approved by the Administrator of the Cervid and Plant Health Inspection Service of the USDA.

(6) "Certificate of Veterinary Inspection" or "CVI" means an official document, on a form approved by the chief animal health official of the state of origin or by USDA APHIS Veterinary Services for verification of veterinary inspection that is issued by a licensed and accredited veterinarian.

(7) "Certified" means the status achieved by a herd that has met the standards of the Chronic Wasting Disease Herd Certification Program continuously for at least five (5) years.

(8) "Certified Chronic Wasting Disease (CWD) Herd" means a herd of cervids that has achieved "Certified" status in the Kentucky Herd Certification Program, the federal Chronic Wasting Disease Herd Certification Program, or a state Chronic Wasting Disease Certification Program approved by APHIS or the State Veterinarian.

(9) "Cervid" means deer, elk, moose, caribou, reindeer, and related species and hybrids thereof, including all members of the Cervidae family and hybrids thereof.

(10) "Cervid Chronic Wasting Disease Surveillance and Identification" or "CCWDSI" means a Cervid Management Plan that includes two (2) programs:

(a) The Chronic Wasting Disease HCP; and

(b) The Chronic Wasting Disease HMP.

(11) "Cervid Herd Plan" means a written herd management agreement or premises management agreement:

(a) Developed by OSV in collaboration with the herd owner to address compliance issues within a HCP or HMP herd; and

(b) Which sets out the steps needed to eradicate CWD from a CWD positive herd, to control the risk of CWD in a CDD exposed or CWD-suspect herd, or to prevent introduction of CWD into that herd or any other herd.

(12) "Chronic Wasting Disease" or "CWD" means a transmissible spongiform encephalopathy of cervids.

(13) "Chronic Wasting Disease Herd Certification Program" or "HCP" means a program established by this administrative regulation to determine the CWD status of farmed cervid herds.

(14) "Chronic Wasting Disease Herd Monitoring Program" or "HMP" means a program established by this administrative regulation to monitor farmed cervids in harvesting facilities for CWD.

(15) "Farmed cervid" means cervid livestock that are enrolled in a CCWDSI program and are maintained for propagation, selling, trade, or barter or for taking by any harvest or slaughter method. Farmed cervid shall exclude any cervid that has not originated from and been continuously maintained within a herd that is enrolled in and complies with a HCP or HMP.

(16) "Exposed" means a cervid that is part of a CWD positive herd, or that has been exposed to a CWD-positive cervid or contaminated premises within the previous five (5) years.

(17) "Harvest" means to slaughter or take by hunting farmed cervids for meat and other products.

(18) "Herd" means a group of cervids that are:

(a) Under common ownership or supervision and are grouped on one (1) or more parts of any single permitted premises (lot, farm, or ranch); or

(b) Under common ownership or supervision on two (2) or more premises which are geographically separated but on which animals have been interchanged or had direct or indirect contact with one another.

(19) "Identification" means a device or means of identification approved for use under this administrative regulation by the State Veterinarian.

(20) "Interstate movement" means movement from another state into Kentucky.

(21) "Intrastate movement" means movement solely within the boundaries of Kentucky.

(22) "Licensed and accredited veterinarian" means a veterinarian:

(a) Approved by the Deputy Administrator of USDA APHIS VS and the State Veterinarian, in accordance with 9 C.F.R. Part 161, to perform functions required by cooperative state-federal cervid disease control and eradication programs; and

(b) Who is licensed to practice veterinary medicine in Kentucky under KRS Chapter 321.

(23) "Move" means to carry, enter, import, mail, ship, or transport; to aid, abet, cause, or induce carrying, entering, importing, mailing, shipping, or transporting; to offer to carry, enter, import, mail, ship, or transport; to receive in order to carry, enter, import, mail, ship, or transport; or to allow any of these activities.

(24) "National Uniform Eartagging System" or "NUES" means a numbering system for the official identification of individual animals in the United States that provides a nationally unique identification number for each animal.

(25) "Official identification" means a device or means of cervid identification approved for use under 9 C.F.R. Part 55 by APHIS and the state veterinarian to uniquely identify individual cervids.

(26) "Official Chronic Wasting Disease test" means any test for the diagnosis of Chronic Wasting Disease approved by APHIS and conducted in a laboratory approved by APHIS in accordance with 9 C.F.R. Part 55.

(27) "Official eartag" means an identification tag approved by APHIS that bears an official identification number for individual animals. Beginning March 11, 2014, all official eartags manufactured shall bear an official eartag shield. Beginning March 11, 2015, all official eartags applied to animals shall bear an official eartag shield. The design, size, shape, color, and other characteristics of the official eartag will depend on the needs of the users, subject to the approval of the USDA Administrator. The official eartag shall be tamper-resistant and have a high retention rate in the animal.

(28) "Official identification number" or "OID" means a nationally unique number that is permanently associated with a cervid that adheres to one (1) of the following systems:

(1) National Uniform Eartagging System (NUES);

(2) Animal Identification Number (AIN);

(3) Any other numbering system approved by the Administrator for the official identification of animals, including a group identification number.

(29) "Office of State Veterinarian" or "OSV" means that office within the Kentucky Department of Agriculture in KRS 246.030(4).

(30) "Owner" is defined by KRS 257.010(11) and means any person owning or leasing from another, or having in charge any cervid.

(31) "Person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or other legal entity.

(32) "POL" or "Premises of Origin Location" means the land, farm or specific parts of a farm where the cervid are physically located.

(33) "Positive" means a cervid that has had a diagnosis of CWD confirmed by means of two (2) official CWD tests.

(34) "Premises identification number" or "PIN" means a

nationally unique number assigned by a State, Tribal, and/or Federal animal health authority to a premises that is, in the judgment of the State, Tribal, and/or Federal animal health authority, a geographically distinct location from other premises. The PIN may be used in conjunction with a producer's own livestock production numbering system to provide a nationally unique and herd-unique identification number for an animal. It may be used as a component of a group/lot identification number (GIN).

(35) "Quarantine" means an imposed restriction prohibiting movement of live or dead cervids, or parts thereof, to any location without specific written approval of the State Veterinarian.

(36) "Radio Frequency Identification Device" or "RFID" means a device electronically encoded with a unique identification and that meets the applicable International Standards Organization (ISO) standards.

(37) "State" means any state of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, or Guam.

(38) "USDA" means the United States Department of Agriculture.

Section 2. All Farmed Cervids Shall Be in a Program. Every farmed cervid in Kentucky shall be enrolled in either the Chronic Wasting Disease Herd Certification Program or the Chronic Wasting Disease Herd Monitoring Program. All farm cervids are required to follow the Chronic Wasting Disease program standards from the USDA.

Section 3. Chronic Wasting Disease Herd Certification Program (HCP)

(1) A HCP permit shall be required to participate in the HCP program. A HCP permit is valid from January 1 to December 31 of each year, regardless of the date of application or enrollment.

(a) The applicant for the HCP shall submit the following:

1. A complete Chronic Wasting Disease Surveillance Identification Herd Certification Program (HCP) Application;

2. A written statement by a Kentucky-licensed and USDA accredited veterinarian certifying that the veterinarian and the herd owner have a valid veterinarian-client-patient relationship; and

3. A fee of \$150.

(b) The OSV shall grant a HCP permit within thirty (30) days after it receives the completed application package with the required fee. Incomplete applications or insufficient fees will be returned to the applicant without approval. The OSV shall not approve any application where the applicant owes fees or fines to the KDA.

(c) A HCP participant whose permit expires prior to renewal shall be subject to the penalties set forth in Section 14 of this administrative regulation.

(2) Annual HCP permit renewal required. Renewal applicants shall:

(a) Submit a complete Chronic Wasting Disease Surveillance Identification Herd Certification Program (HCP) Application by November 30 of each year.

(b) Pay a fee of \$135 for herds up to fifty (50) cervids, **\$250 for herds between fifty-one (51) and one hundred (100),** or \$450 for herds containing more than **101 [fifty (50)]** cervids, for applications submitted prior to December 1, preceding the applicable permit year.

(c) Pay a fee of \$150 for herds up to fifty (50) cervids, **\$275 for herds between fifty-one (51) and one hundred (100),** or \$500 for herds containing more than **101 [fifty (50)]** cervids, for applications submitted between December 1 and December 31, preceding the applicable permit year.

(d) Pay a fee of \$250 for herds up to fifty (50) cervids, **\$375 for herds between fifty-one (51) and one hundred (100),** or \$600 for herds containing more than **101 [fifty (50)]** cervids, for applications submitted late, January 1 and after of the applicable permit year.

(e) Submit a current herd inventory as of the time of application submission, and the most recent reporting documents due to the OSV as required in Section 11(3) if not already on file with the OSV.

(3) HCP Requirements.

(a) Herds enrolled in this program shall meet the requirements

set forth in this section and the requirements set forth in 9 C.F.R. Part 55, Subpart B.

1. After an initial permit is issued, the participant shall enroll the herd into the HCP by obtaining movement permits for those cervids moving into the premises. Any additions subsequent to the initial delivery shall be recorded and submitted according to the other timelines in this regulation.

2. After the first year in the HCP, the participant shall:

a. Conduct the physical inventory and continuously identify cervids as required;

b. Provide any records to the OSV for the cervids that are required in this administrative regulation; and

c. Maintain and complete the provisions of this administrative regulation and a Cervid Herd Plan if developed.

(b) Cervid identification requirement.

1. Each cervid ~~[six (6) months of age or older]~~ shall have at least two (2) forms of cervid identification **prior to or at the time of the annual herd inventory**, one (1) of which shall be an official identification and one (1) form shall be a visual type of identification, both of which shall be unique to that cervid within the herd.

2. A cervid of any age shall have official identification before being moved from the premises for any purpose.

(c) Cervid inventory.

1. The baseline herd inventory shall consist of the cervids that were delivered initially after program enrollment.

2. An annual herd inventory shall be conducted that reviews all records and includes observation of all cervids in an enclosed area, including physical restraint if necessary, to reconcile all visible identification devices with available records. This required inventory shall be conducted in January, February, ~~[or] March~~ **or April**. Beginning ~~May~~**April** 1, the herd shall be placed in quarantine and no movement shall be permitted until the physical inventory is completed for those herds not completing a physical inventory January, February, ~~[or] March~~ **or April**.

3. The state veterinarian or an APHIS representative may request additional physical inventories to verify herd compliance with program standards.

4. The owner shall be responsible for assembling, handling, and restraining the cervids, and for all risks and costs incurred, to present the cervids for inspection.

5. Additional herd inventory record inspections and reviews shall be conducted quarterly at the cervid premises or at another location mutually agreed to by the owner and the OSV.

(d) Herd Additions.

1. New cervids shall be introduced into the herd only from other herds enrolled in the Kentucky HCP or from a herd in a state with a USDA-approved CWD Certification Program where chronic wasting disease has never been confirmed.

2. No new cervids shall be introduced into the herd unless it has been approved by the State Veterinarian.

3. If cervids are introduced from a herd of lower status, the receiving herd status shall revert to the lower status.

(e) HCP Reporting requirements. The owner shall report to OSV any cervids that escape or disappear and all deaths (including cervids killed by harvest or slaughter) of cervids in the herd.

1. The reporting time frame shall be:

a. For cervids that escape or disappear, a report shall be made within forty-eight (48) hours.

b. For cervids taken by harvest, a report shall be submitted within seven (7) days.

c. For cervids that die from illness or any other reason, a report shall be submitted within seven (7) days.

d. A confirmation of no population changes have occurred in the preceding calendar month if no events that required reporting in a, b, or c above. This report shall be submitted to the OSV by the close of business on the first of each month for the activities of the previous calendar month.

2. The report shall include all applicable identification numbers, including the visual tag, and the date of the death, disappearance or escape.

3. Cervids that die or are harvested shall have the required

tissue specimens collected for Chronic Wasting Disease testing except where exempted by 9 C.F.R. 55.23.

4. In accordance with 9 C.F.R. 55.23, an APHIS or OSV representative shall investigate herds that fail to comply with testing requirements and shall evaluate the herd's status.

(f) Herd Veterinarian Notice Requirement. The herd veterinarian shall be notified within twenty-four (24) hours of observance of a cervid with clinical signs suggestive of Chronic Wasting Disease.

(g) An owner maintaining separate herds shall comply with the separate-herd requirements set forth in 9 C.F.R. 55.23.

(h) The herd premises shall have a valid Kentucky Department of Fish and Wildlife Resources permit and shall maintain perimeter fencing meeting the requirements set forth in KRS 150.730 through 150.735.

(i) The owner shall maintain and provide to the OSV representative upon request the following herd records:

1. Complete inventory of cervids including the OID and any other identification, and the age and sex of each cervid;

2. A record for each purchased or natural addition to the herd including:

a. The OID, species, age, and sex of the cervid;

b. The name and address of the person from whom the cervid was purchased;

c. The address of the herd from which the cervid was purchased;

d. A copy of the CVI that accompanied the cervid for intrastate or interstate movement;

e. Date the purchased addition entered the herd; and

f. Approximate date of birth, if a natural addition;

3. A record of each cervid leaving the herd, including:

a. The date of movement, the name of the person to whom it was shipped, the place to which it was shipped, and a copy of the Certificate of Veterinary Inspection related to the shipment;

b. A cervid deaths or harvest on the premises, including; the date of death, the apparent cause of death; the cervid's age, sex, and state-federal official individual cervid identification; date and laboratory submitted for CWD testing, if required; and the disposition of the cervid's carcass. If the carcass was removed from the premises, the record shall identify the carcass' destination and recipient;

4. A record of all individual CWD tests that were conducted on cervids in the herd;

5. Records received from the herd veterinarian related to the veterinary services he or she provided to the herd; and

6. All individual identification numbers (from tags, electronic implants, etc.) associated with each cervid.

(j) Herd status levels.

1. When a herd is first enrolled in the Herd Certification Program, it shall be placed in first-year status, except that if the herd is comprised solely of cervids obtained from herds already enrolled in the Herd Certification Program, the newly enrolled herd shall have the same status as the lowest status of any herd that provided cervids for the herd.

2. If a herd continues to meet the requirements of the Herd Certification Program, the herd status shall be upgraded by one (1) year on the anniversary of the program enrollment date.

3. One (1) year after the date when a herd was placed in fifth-year status, the herd status shall be changed to "certified". The herd shall remain in "certified" status as long as it remains enrolled in the program, if its status is not revoked or suspended in accordance with this administrative regulation or 9 C.F.R. 55.24.

4. A herd owner shall be issued a certificate of "Certified" status upon completing the Herd Certification Program requirements set forth in this administrative regulation.

5. Renewal of a Certified Cervid Herd. A herd is certified for twelve (12) months. For continuous certification, adherence to the provisions in this administrative regulation and all other state laws and administrative regulations pertaining to holding cervids shall be required.

6. The herd enrollment date is the date when the latter of these two events occurred:

a. The physical inventory was completed in accordance with

Section 11(3)(c) of this administrative regulation; or

b. The initial cervid delivery.

(k) Disease surveillance procedures. A cervid that is twelve (12) months or older that dies for any reason, including harvest, shall be tested for CWD. The herd owner shall be responsible for sample collection, submission, and testing. Samples for testing shall be properly collected, handled, and preserved, and shall be submitted to an approved laboratory within seven (7)[thirty (30)] days of death and collection. When incidents of mass casualty or mortality events are confirmed by the OSV, the OSV may waive the testing requirements for all cervids and instead only require testing based on risk.

(l) USDA Chronic Wasting Disease Program Standards deficiencies may require a Cervid Herd Plan in lieu of, or in addition to, administrative penalties.

Section 4. Chronic Wasting Disease Herd Monitoring Program (HMP).

(1) A HMP permit shall be required to participate in the HMP program. A HMP permit is valid from January 1 to December 31 of each year, regardless of the date of application or enrollment.

(a) The applicant for the HMP program shall submit the following:

1. A complete Herd Monitoring Program (HMP) Application;

2. A written statement by a Kentucky-licensed and USDA accredited veterinarian, certifying that the veterinarian and the herd owner have a valid veterinarian-client relationship; and

3. A fee of \$500.

(b) OSV shall grant the HMP permit within thirty (30) days after it receives the completed application package with the required fee. Incomplete applications or insufficient fees will be returned to the applicant without approval. The OSV shall not approve any application where the applicant owes any fees or fines to the KDA.

(c) HMP participants whose permit expires prior to renewal shall be subject to the penalties in Section 14 of this administrative regulation.

(2) Annual HMP permit renewal required. Renewal applicants shall:

(a) Submit a completed Herd Monitoring Program (HMP) application by November 30 of each year.

(b) Pay a fee of \$500.

(c) Submit a current herd inventory as of the moment of application, and the most recent reporting documents due to the OSV as required in Section 11(3) if not already on file with the OSV.

(d) The permit shall be effective January 1 through December 31 of each year.

(3) Restrictions and limitations on HMP-enrolled cervids and herds.

(a) No cervid shall leave an HMP-enrolled herd alive.

(b) No cervid shall be moved to another HMP-enrolled herd.

(c) No HMP herd, nor any cervid within a HMP-enrolled herd shall ever be eligible to enter the HCP.

(4) HMP Requirements.

(a) Herds enrolled in this program shall meet the requirements provided in this section and the requirements in 9 C.F.R. Part 55, Subpart B.

1. After an initial permit is issued, the participant shall enroll his herd into the HMP by obtaining movement permits for those cervids moving into the premises. Any additions subsequent to the initial delivery shall be recorded and submitted according to the other timelines in this regulation.

2. After the first year in the HMP, the participant shall:

a. Conduct the inventory and continuously identify cervids as required.

b. Provide any records to the OSV for the cervids that are required in this administrative regulation.

c. Maintain and complete the provisions of this administrative regulation and a herd-specific Cervid Herd Plan if developed.

(b) Cervid identification requirement.

1. Each cervid twelve (12)[six (6)] months of age or older shall have at least two (2) forms of cervid identification, one (1) of which shall be an official identification and one (1) form shall be a visual

type of identification, which shall be unique to that cervid within the herd.

2. A cervid of any age shall have official identification before being moved from the premises for any purpose.

3. Any untagged cervid that dies or is harvested shall be officially identified and shall be CWD tested.

(c) Cervid inventory.

1. The baseline herd inventory shall consist of the cervids that were delivered initially after program enrollment.

2. An annual herd inventory shall be conducted and submitted to the OSV that reviews all records and documents that would change the baseline herd inventory.

3. The state veterinarian or an APHIS representative may request a physical inventory to verify herd compliance with program standards.

4. The owner shall be responsible for assembling, handling, and restraining the cervids, and for all risks and costs incurred, to present the cervids for inspection.

(d) Herd Additions. New cervids shall be introduced into the herd only from other herds enrolled in the Kentucky HCP, or from a herd in a state with an USDA-approved CWD Certification Program where CWD has never been confirmed. If evidence of natural additions are found, a Cervid Herd Plan shall be developed to eliminate future breeding.

(e) HMP Participant Reporting requirements. The owner shall report to the OSV any cervids that escape or disappear, and all deaths (including cervids killed by harvest or slaughter) of cervids in the herd.

1. This report shall be submitted to the OSV by the close of business on the first business day of each month for the activities of the previous calendar month.

2. The report shall include applicable cervid identification numbers, including the visual tag, and the date of the death, disappearance, escape, and the dates when the CWD tests were submitted for testing.

3. All cervids that die or are harvested shall have the required tissue specimens collected for CWD testing.

4. In accordance with 9 C.F.R. 55.23, an APHIS or OSV representative shall investigate herds that fail to comply with testing requirements and shall evaluate the herd's status.

(f) Herd Veterinarian Notice Requirement. The herd veterinarian shall be notified within twenty-four (24) hours of observance of a cervid with clinical signs suggestive of Chronic Wasting Disease.

(g) An owner maintaining separate herds shall comply with the separate-herds requirements set forth in 9 C.F.R. 55.23.

(h) The herd premises shall have a valid Kentucky Department of Fish and Wildlife Resources permit and shall maintain perimeter fencing meeting the requirements set forth in KRS 150.730 through 150.735.

(i) The owner shall maintain and provide to the OSV representative upon request the following herd records:

1. Complete inventory of cervids including the OID and any other identification, and the age and sex of each cervid;

2. A record for each purchased or natural addition to the herd, including:

a. The OID, species, age, and sex of the cervid;

b. The name and address of the person from whom the cervid was purchased;

c. The address of the herd from which the cervid was purchased;

d. A copy of the CVI that accompanied the cervid for intra- or interstate movement;

e. Date the purchased addition entered the herd; and

f. Approximate date of birth, if a natural addition;

3. A record of each cervid leaving the herd including:

A record of each cervid that died or was harvested on the premises including: the date of death; the apparent cause of death; the cervid's age, sex; and state-federal official individual cervid identification, date and laboratory submitted for CWD testing, if required; and the disposition of the cervid's carcass. If the carcass left the premises, the record shall identify the carcass destination and recipient;

4. A record of all individual CWD tests that were conducted on cervids in the herd;

5. Records received from the herd veterinarian related to the veterinary services he or she provided to the herd; and

6. All individual identification numbers (from tags, electronic implants, etc.) associated with each cervid.

(k) Disease surveillance procedures. A cervid that is twelve (12) months or older that dies for any reason, including harvest, shall be tested for CWD. The herd owner shall be responsible for sample collection, submission, and testing. Samples for testing shall be properly collected, handled, and preserved, and shall be submitted to an approved laboratory within thirty (30) days of **death and** collection.

Section 5. Testing, Investigation, and Quarantine.

(1) Surveillance Testing Procedures.

(a) CWD testing shall be in accordance with the procedures set forth in 9 C.F.R. 55.8.

(b) A diagnosis of CWD by an approved laboratory shall be sent to the National Veterinary Service Laboratory for confirmation.

(c) If required tissues from test eligible cervids are not submitted for laboratory diagnosis by the cervid owner, the state veterinarian shall revoke the permit or implement a mutually agreed upon Cervid Herd Plan.

(2) Investigation of CWD-positive cervids.

(a) An epidemiological investigation in accordance with 9 C.F.R. 55.23 shall be conducted by OSV or APHIS VS for all cervids diagnosed at an approved laboratory CWD positive or suspect.

(b) All CWD-positive herds and all source, exposed, and adjacent herds and the premises where these herds are located shall be investigated epidemiologically by OSV.

(3) Duration of Quarantine. Quarantines issued by the State Veterinarian for CWD in accordance with this administrative regulation shall be removed as follows:

(a) A premises may be removed from quarantine after completion of the cervid herd plan and five (5) years of compliance with all provisions of 9 C.F.R. Part 55.

(b) An adjacent or exposed herd or premises may be removed from quarantine only after an epidemiological investigation and by order of the OSV.

Section 6. Certificate of Veterinary Inspection.

(1) A Certificate of Veterinary Inspection shall remain valid for thirty (30) days after date of inspection.

(2) A CVI shall contain the following information:

(a) Identification of each animal recorded on the certificate;

(b) An official identification (OID) for each cervid;

(c) The species, breed, sex, and age of each cervid;

(d) The name and address of the owner or agent shipping the cervid;

(e) The location from which the animal is loaded for movement;

(f) The name and address of the person receiving the cervid;

(g) The location at which the animal will be received;

(h) The purpose of the movement and the total number of cervids;

(i) All non-applicable data fields are crossed out by the USDA-accredited Veterinarian prior to signing;

(j) The movement permit number issued by the OSV.

(k) The following statement or one substantially similar: "I certify as an accredited veterinarian that the above described animals have been inspected by me on this date and that they are not showing signs of infection or communicable disease. The vaccinations and results of tests are as indicated on the certificate. The animals listed on this certificate meet the state of destination requirements and federal interstate requirements"; and

(l) The signature, USDA-accreditation number, and phone number of the veterinarian.

(3) Paper submitted Certificate of Veterinary Inspection

(a) The first physical page shall be mailed or otherwise delivered to the OSV within seven (7) days of the date it is written.

(b) An exact replica image (a scan in a PDF) of the first page may be submitted in lieu of the first physical page required in

subsection (1) by submitting via electronic mail within seven (7) days of the date it is written to Statevet@ky.gov.

(c) The second page shall physically accompany the cervid being moved and be readily accessible during the movement.

(d) The third page shall be sent to the Animal Health Official in the state of destination within seven (7) days of the date it is written.

(e) The fourth page shall be retained by the issuing veterinarian for at least five (5) years from the date of issuance.

(f) A legible copy of any supplemental pages shall be stapled to the original and each copy of the CVI.

(4) Electronically submitted CVIs.

(a) Certificate of Veterinary Inspection and Permit submission requirements may be submitted via an importable format as allowed by USAHA AHSIS Subcommittee on Data Standards' "standard XML schema document."

(b) Cervids moving with an electronically submitted Certificate of Veterinary Inspection shall be accompanied by a paper copy or have the electronic material stored on a device that may be read immediately upon request.

(5) No person shall issue a CVI bearing the seal of the Commonwealth of Kentucky unless that person is a Kentucky licensed and USDA-accredited veterinarian.

Section 7. Movement Permit.

(1) No person shall move a cervid within or into Kentucky without first obtaining a permit from the OSV at least forty-eight (48) hours prior to the movement.

(2) Proof of required vaccinations or other applicable health practices to ensure disease prevention based on place or origin, as found on the website www.kyagr.gov, shall be completed prior to permit issuance. Instructions for a permit may be obtained on the website.

(3) Movement permit instructions may be obtained by calling OSV at 502-573-0282, Monday through Friday, 8 a.m. EST to 4:30 p.m. EST.

(4) Required testing or vaccination. Required tests and vaccinations shall be performed or verified by one (1) of the following:

(a) A licensed and USDA-accredited veterinarian;

(b) A representative of the State Veterinarian; or

(c) A representative of the federal government.

(5) Required tests shall be conducted at no expense to the Commonwealth of Kentucky.

(6) Required laboratory tests shall be conducted in a state-federal approved laboratory.

Section 8. Official Identification and Other Required Identification.

(1) Methods of Official Identification. An official individual identification shall consist of a set of alphanumeric characters or physical characteristics which are uniquely associated with an individual cervid and which constitute the following:

(a) Official USDA NUES;

(b) An RFID if all the following apply:

1. The RFID uniquely identifies the animal, and is USDA approved;

2. The RFID is attached to or implanted in the animal;

3. The RFID is registered to a PIN or to a person; and

4. Only one (1) RFID is placed on an animal.

(2) Use of more than one (1) official eartag.

(a) More than one (1) official eartag is expressly permitted by the OSV for tagging events required by subsection (6) of this section.

(b) The person applying the additional official eartag shall record the following information about the event and maintain the record for five (5) years: The date the additional official eartag is added; the reason for the additional official eartag device; and the official identification numbers of the new official eartag and the one(s) already attached to the animal.

(c) An eartag with an Animal Identification Number (AIN) beginning with the 840 prefix (either radio frequency identification or visual-only tag) may be applied to a cervid that is already

officially identified with one (1) or more National Uniform Eartagging System tags. The person applying the Animal Identification Number eartag shall record the date the Animal Identification Number tag is added and the official identification numbers of any official eartags and shall maintain those records for five (5) years.

(3) Removal or loss of official identification devices.

(a) Official identification devices are intended to provide permanent identification

of cervids and to ensure the ability to find the source of animal disease outbreaks. Removal of these devices is prohibited except as approved by the OSV or a USDA area veterinarian in charge when a device needs to be replaced.

(b) If a cervid loses an official identification device and needs a new one:

1. A replacement tag with a different official identification number may be applied. The person applying a new official identification device with a different official identification number shall record the following information about the event and maintain the record for five (5) years: The date the new official identification device was added; the official identification number on the device; and the official identification number on the old device, if known.

2. Replacement of a temporary identification device with a new official identification device is considered to be a retagging event, and shall be noted on the Retag Form.

(4) Circumstances under which OSV may authorize replacement of an official identification device include, but are not limited to:

(a) Deterioration of the device such that loss of the device appears likely or the number can no longer be read;

(b) Infection at the site where the device is attached, necessitating application of a device at another location (e.g., a slightly different location of an eartag in the ear);

(c) Malfunction of the electronic component of a radio frequency identification (RFID) device; or

(d) Incompatibility or inoperability of the electronic component of an RFID device with the management system or unacceptable functionality of the management system due to use of an RFID device.

(e) 982 tags may be replaced with RFID after written permission from the OSV has been given.

(5) Removal of OID without prior written approval of the OSV is strictly prohibited.

(6) Replacement records required. Any time an official identification device is replaced, as authorized by OSV or the USDA, the person replacing the device shall record the following information about the event and maintain the record for five (5) years:

(a) The date on which the previous device was removed;

(b) Contact information for the location where the device was removed;

(c) The official identification number (to the extent possible) on the device that was removed;

(d) The type of device removed (e.g., metal eartag, RFID eartag);

(e) The reason for the removal of the former device;

(f) The new official identification number on the replacement device; and

(g) The type of replacement device that was applied to replace the former device.

(7) Beginning July 1, 2020, RFID OID shall be applied in any initial tagging event, retagging event, or anytime a cervid is restrained by any method, including permitted movements. All imported cervids shall require an RFID at the time of importation beginning July 1, 2020. This RFID shall be cross referenced with any other existing OID at the time of application. Existing OID shall not be removed.

Section 9. Premises of Origin Location.

(1) POL information shall be provided by the person seeking the permit for the premises from which the cervid are to be loaded when seeking the movement permit.

(2) The POL of the specific location the cervids were loaded

shall include:

- (a) A PIN issued by the USDA, or the Animal Health Official in the state of origin or a LID; and
- (2) The owner at the time of movement and that owner's address and contact information.

Section 10. Requirements for Interstate Movement into Kentucky.

(1) No person shall move a cervid into Kentucky without first obtaining a CVI and movement permit from the OSV at least forty-eight (48) hours prior to movement and scheduling by the OSV.

(2) An OSV representative, USDA representative, or an USDA-accredited veterinarian shall be present for the unloading of the cervids at the point of destination and shall be responsible for removing the transport seal.

(3) No entry permit shall be issued for a cervid that does not have certified status or an equivalent status, as documented by a certificate issued in accordance with 9 C.F.R. 81.4. No entry permit shall be issued for a cervid that originated in, or at any time resided, in a state where CWD has been confirmed in either wild or captive cervids.

(4) No entry permit shall be issued for a cervid that is not:

- (a) Negative to an official tuberculosis test within ninety (90) days of entry; or
- (b) Originating from a cervid tuberculosis accredited herd. The herd accreditation number and the last herd test date shall be listed on the CVI.

Section 11. Requirements for Movement Within Kentucky.

(1) A movement permit issued by the OSV and CVI shall be required prior to cervid movement within Kentucky.

(2) No CVI shall be required when the movement is from the same herd to a different permitted premises within the same farm, so long as the cervid has OID prior to the movement.

(3) Movement may not commence until forty-eight (48) hours after the issuance of the permit.

(4) An OSV representative, USDA representative, or an USDA-accredited veterinarian shall be present at the unloading of the cervids at the point of destination for movements to a different premises. For movements in (2), no representative at time of unloading is required.

Section 12. Requirements for Movement for Export from Kentucky.

(1) A movement permit issued by the OSV and CVI shall be required prior to cervid movement from Kentucky.

(2) Movement may not commence until forty-eight (48) hours after the issuance of the permit by the OSV and scheduling.

(3) All cervids being exported from Kentucky shall have movement documentation and any applicable permits as required by the state of destination, and have these documents immediately available for inspection.

Section 13. Requirements for Movement Through Kentucky. Cervids moving through Kentucky shall have movement documentation and any applicable permits as required by the state of destination, and have these documents immediately available for inspection. A Kentucky movement permit is not required for direct movement through Kentucky. Persons directly moving cervids through Kentucky may voluntarily obtain a permit from the OSV.

Section 14. Voluntary Accreditation and Certification Programs.

1. Owners of cervids wishing to seek a voluntary herd certification for brucellosis shall follow the provisions set forth in APHIS 91-45-16, Brucellosis in Cervidae.

2. Owners of cervids wishing to seek a voluntary herd accreditation for tuberculosis eradication shall follow the provisions set forth in APHIS 91-45-011, Bovine Tuberculosis Eradication.

3. After the completion of terms in APHIS 91-45-011 or APHIS 91-45-16, the OSV shall issue a certificate for the respective disease that shall be valid in Kentucky for a period of thirty-six (36)

months from issuance.

Section 15. Retention of Records.

(1) Intrastate movement or sales documents shall be maintained by both the buyer and the seller for at least five (5) years after the movement of the cervids.

(2) Official identification device distribution records. Any veterinarian who distributes OIDS shall maintain distribution lists and documents for at least five (5) years after issuance.

(3) Interstate movement records and documentation that is required by this administrative regulation shall be maintained for at least five (5) years.

(4) Herd plans, inventory records, and disposition of cervid records shall be maintained for at least five (5) years.

Section 16. Penalties.

(1) Penalties for failure to comply with standards established in this administrative regulation.

(a) OSV shall have the authority to revoke or suspend a herd's permit for the Herd Certification Program or the Herd Monitoring Program if:

1. A person falsifies information on an enrollment application, or falsifies subsequent information required for continued enrollment, or refuses to produce documents requested by a representative of OSV;

2. A person fails to comply with requirements in this administrative regulation on cervid identification, cervid inventory, herd records, testing, or cervid movement;

3. A person or facility fails to remain in compliance with KRS chapters 257 or 150, or any administrative regulation promulgated under the authority thereof;

4. A person fails to comply with an instruction from a representative of OSV; or

5. A person fails to produce any document required to be created or maintained by this administrative regulation.

(b) In accordance with KRS 257.990, a permit holder may be subject to a monetary fine for violation of this administrative regulation.

(2) Penalties for failure to comply with Section 6, 7, 8 or 9 of this administrative regulation:

(a) In accordance with KRS 150.740(6), a person shall be guilty of a Class D felony upon conviction; and

(b) Upon conviction of a second violation, a person shall be permanently ineligible for renewal of a captive cervid permit.

(3) In accordance with KRS 150.740(7), the Kentucky Department of Fish and Wildlife Resources shall have authority to seize captive cervids that were imported into the in violation of this administrative regulation and KRS 150.740 and 257.550.

(4) Any person whose permit is revoked shall not reapply to the HCP or HMP programs for a period of five (5) years.

(5) Herds enrolled in HMP or HCP programs whose permit holders fail to reapply for permits on or before the application deadline shall be immediately placed in quarantine. Such herds shall be subject to a physical herd inventory prior to permit issuance. **No hunting or harvest may take place during the quarantine period. Herds shall not be re-enrolled in any program without first paying the initial fee of \$150, and the renewal fee as required in either the HCP or HMP program.**

(6) Removal of OID from a cervid without written permission of the OSV shall result in the loss of status for all cervids inside the herd.

Section ~~17~~**[46.]** Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) Cervid Chronic Wasting Disease Surveillance Identification Herd Certification Program (HCP) or Herd Monitoring Program (HMP) Application;

(b) Deceased Animal Report;

(c) Herd/Flock Additions Form;

(d) Herd/Flock Deletion Form;

(e) Retag Form; and

(f) USDA Chronic Wasting Disease Program Standards;

(g) APHIS 91-45-16, Brucellosis in Cervidae; and

(h) APHIS 91-45-011, Bovine Tuberculosis Eradication.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Division of Animal Health, 111 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. ROBERT STOUT, Kentucky State Veterinarian

APPROVED BY AGENCY: March 12, 2020

FILED WITH LRC: March 13, 2020 at 10 a.m.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 782-0284, fax (502) 564-2133, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation creates the standards required for the farmed cervids industry in Kentucky.

(b) The necessity of this administrative regulation: This regulation is necessary to establish rules that comply with the USDA, that will allow for a farm cervid program in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 257.550 commands KDA to create a farmed cervids program, this filing does so.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by clearly identifying the steps required for producers to be in compliance with the KDA and federal programs.

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

(a) How the amendment will change this existing administrative regulation: This filing is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This filing is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This filing is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This filing is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Department of Agriculture, 96 HCP and 7 HMP producers.

(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: Entities will be required to follow the individual regulatory instructions in each section.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fees or costs are associated with this filing vary depending on program and timeliness.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease on behalf of the KDA and clear guidance for entities. Entities will also benefit by the ability to sell cervids outside of the Commonwealth.

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

(a) Initially: Approximately \$130,000 annually.

(b) On a continuing basis: Approximately \$130,000 annually.

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

(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: Fees are necessary at this time, and are included in the filing/

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

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

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? Kentucky Department of Agriculture shall be affected by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 257.550, 552

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Approximately \$17,000.

(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? Approximately \$17,000 this past year.

(c) How much will it cost to administer this program for the first year? Approximately \$130,000.

(d) How much will it cost to administer this program for subsequent years? Approximately \$130,000.

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

Revenues (+/-): \$17,000

Expenditures (+/-): Approximately \$130,000.

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET

Parole Board

(Amended After Comments)

501 KAR 1:040. [Conducting] Parole revocation hearing procedures [hearings].

RELATES TO: KRS 439.315, 439.330(1)(e), 439.3406, 439.341, 439.346, 439.390, 439.430, 439.440, 532.043, 532.400

STATUTORY AUTHORITY: KRS 439.340(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 439.340(3) requires the Parole Board to establish administrative regulations concerning parole revocation hearings. This administrative regulation contains the procedures for the revocation of parole, the probable cause hearing, and the issuance of parole violation warrants.

Section 1. Definitions.

(1) "Board" means the Kentucky Parole Board established in KRS 439.320.

(2) "Fact finder" means the person or entity that determines the facts at a hearing and includes the administrative law judge or the Parole Board depending on which conducts the hearing and issues findings of fact.

(3) "Final hearing" means a hearing before a fact finder to determine by a preponderance of the evidence that a violation occurred and to offer an opportunity to present mitigating evidence.

(4) ~~(2)~~ "Parole" means parole and other forms of supervision treated like parole in that the Parole Board has the authority to revoke supervision.

(5)(3) "Probable cause hearing" means a hearing before an administrative law judge to determine if there is probable cause that a parole violation has occurred.

Section 2. Notice of Probable Cause Hearing. Charges of a parole violation shall be initiated by a parole officer of the Department of Corrections by service of a notice of the probable cause hearing.

(1) The parole officer shall complete the following for the notice:

(a) Alleged violations;

(b) Evidence to be presented at the hearing;

(c) Witnesses upon whose statements revocation is based if disclosure of that information will not create a risk of harm to the witness;

(d) Time;

(e) Date; and

(f) Location of hearing.

(2) The notice shall also:

(a) State the purpose of the hearing;

(b) Inform the offender of his right to:

1. Be present;

2. Speak on his own behalf; and

3. Call witnesses and present evidence in defense of the charges;

(c) Inform the offender that he may have counsel present;

(d) Inform the offender that the hearing shall not be held sooner than five (5) **business** days after the offender is served with the notice of the hearing, unless the offender waives this time period; **and**

(e) Inform the offender that he may request a continuance of the hearing, if good cause is shown; **and**

(f) Include a copy of a blank subpoena that may be used to request documents.

Section 3. Probable Cause Hearing Preliminary Information.

(1) Hearing Date. A probable cause hearing shall not be conducted earlier than five (5) **business** days after service of the notice of the hearing, unless this period is waived by the offender.

(2) Representation by counsel. An offender appearing at a Preliminary Revocation Hearing may be represented by counsel. The offender may have a continuance for the purpose of obtaining the presence of counsel by making a motion for this purpose. More than two (2) appearances for hearing without counsel by an offender who is capable of retaining counsel may be deemed an implicit waiver of counsel.

(3) The offender may request a continuance of the hearing from the administrative law judge for good cause.

(4) Agency representation. A duly appointed probation and parole officer of the Commonwealth of Kentucky may appear before the administrative law judge as the representative of the Department of Corrections in matters relating to the revocation of parole in the absence of an attorney, pursuant to SCR 3.700 sub-rule 3.

Section 4. Waiver of Probable Cause Hearing.

(1) Except for offenders who are less than eighteen (18) years of age, an offender charged with a violation of parole may waive the probable cause hearing by waiving his appearance before an administrative law judge.

(2) An offender shall submit the waiver in writing to the offender's Probation and Parole Officer who shall forward it to the board or its administrative law judge for approval.

(3) The waiver may be accepted at the discretion of the board or its administrative law judges.

(4) A waiver shall not be accepted unless it is found that the offender:

(a) Made the waiver:

1. Knowingly; and

2. Voluntarily; and

(b) Understands that the offender admits probable cause exists for the violations charged.

(5) Notwithstanding the submission and acceptance of a

waiver of the probable cause hearing, the offender may still have a final revocation hearing.

(6) After approval of the waiver, the matter shall proceed in the same manner as if a hearing was held and probable cause determined.

(7) If an offender being supervised in another state signs a waiver of probable cause hearing in that state, the waiver shall be reviewed by an administrative law judge of the board to determine if the waiver meets the requirements of subsections (1) - (6) of this section. If the administrative law judge determines that the waiver does not comply with subsections (1) - (6) of this section, the board chair or designee shall refer the matter back to the Division of Probation and Parole and request that it take action necessary to insure compliance with this administrative regulation.

Section 5. Conduct of Probable Cause Hearing.

(1) A probable cause hearing shall be conducted by an administrative law judge who shall have control over the proceedings and the reception of evidence at the hearing.

(2) Hearing Record. A probable cause hearing shall be conducted on the record. The hearing may be recorded and preserved by any means practical, including electronically, mechanically, or stenographically. If requested by the board, the record of the proceedings shall be transcribed.

(3) Hearing Procedure.

(a) The administrative law judge may take judicial notice of acts of the board, including the conditions of parole, and all other matters which may be judicially noticed in the courts of this Commonwealth pursuant to KRE 201. **Matters for which judicial notice was taken shall be included in the administrative law judge's findings of facts.**

(b) A witness shall testify under oath, administered by the administrative law judge, and shall be available for examination by the other party or the administrative law judge, unless good cause dictates otherwise. **The party arguing that a witness should not be available for examination shall submit documentation to the fact finder at least twenty-four (24) hours prior to the hearing date stating the name of the witness and the basis upon which the party argues the witness should not be made available for examination by the other party.**

(c) The parole officer shall bear the burden of proof in establishing the elements of the violation.

(d) The parole officer shall present evidence first and the offender shall be given the opportunity to present evidence in defense. Any further proceedings shall be conducted at the discretion of the administrative law judge.

(4)(3) Amend Notice of Hearing. The notice of the hearing may be amended at any time prior to the close of the record of the preliminary hearing, within the discretion of the administrative law judge, if a finding is made that the substantial rights of the parolee shall not be prejudiced by the amendment. If the notice is amended, a continuance of the hearing may be granted if the interest of justice so requires. Failure to object to any defect in the notice prior to the close of the hearing shall be deemed a waiver.

(5)(4) Continuance of Hearing. The probable cause hearing may be continued or recessed with further proof to be taken at any time prior to the close of the record for good cause shown. At the request of either party, the administrative law judge may, within his or her discretion, leave the record open for reception of additional evidence provided that no substantial rights are prejudiced. **The record shall not be left open for longer than fourteen (14) business days unless good cause is shown and approved by the administrative law judge.**

Section 6. Probable Cause Determination.

(1) The administrative law judge shall make a determination whether probable cause exists to believe that the offender has committed any or all of the violations alleged in the notice of probable cause hearing.

(2) The determination shall be made from the evidence produced at the hearing and any evidence for which judicial notice is taken.

(3) The determination shall be rendered at the close of the

hearing or within a reasonable time thereafter.

(4) If probable cause is not found by the administrative law judge:

(a) The offender shall continue on parole without further action by the board, if no parole violation warrant has been issued; or

(b) The matter shall be referred to the board pursuant to Section 7 of this administrative regulation for the warrant to be rescinded, if a parole violation warrant has been issued.

(5) If probable cause is found by the administrative law judge, the matter shall be referred to the board for issuance of a parole violation warrant, if one has not been issued, and a final revocation hearing.

(6) The administrative law judge shall not consider matters of bail or any other form of release from custody for an offender accused of parole or probation violations, in the absence of any specific statutory authorization.

(7) Written Decision. The administrative law judge shall issue **within seven (7) business days** a written decision stating the determination concerning probable cause, the reasons for the determination, and the evidence relied upon. The decision shall be sent to the parole officer and the offender or counsel if represented at the probable cause hearing.

Section 7. Referral for Parole Violation Warrant.

(1) If probable cause is determined to exist, the case shall be referred to the board for issuance of a parole violation warrant and a final revocation hearing.

(2) New Criminal Conviction.

(a) If the alleged violation of parole, as set forth in the notice of probable cause hearing, is new criminal conduct which does not also constitute a technical violation of the conditions of supervision, or the conditions of parole, the case shall not be referred to the board for parole revocation consideration unless the:

1. Offender has received a conviction in a court of law;

2. Offender had pled guilty to the alleged criminal conduct;

3. Offender has made some other form of judicial admission; or

4. Criminal conduct, or a substantial part of it, was committed in the presence of a duly appointed probation and parole officer of the Commonwealth of Kentucky.

(b) Nothing in this subsection shall prevent revocation of parole for a technical violation, which also happens to partially or wholly involve criminal conduct.

Section 8. Parole Violation Warrant. Parole violation warrants shall be issued as set forth below:

(1) If a case is referred to the board by the administrative law judge under the provisions of Section 6(5) of this administrative regulation, the board chair shall issue the parole violation warrant. A vote of the board shall not be necessary.

(2) If it appears that an offender has absconded from parole supervision, it otherwise appears that a parolee is a fugitive from justice, or a parole violation warrant is necessary to effect the return of the parolee to the state of Kentucky, the board chair may issue a warrant, if the chair receives documentation from the supervising parole officer, setting forth facts sufficient to conclude there are reasonable grounds to believe that some violation has occurred, and the commissioner or his designee submits to the board a recommendation that a warrant be issued.

(3) If the offender is being supervised outside the state of Kentucky, the board chair shall determine whether to issue a parole violation warrant based upon:

(a) A written report from the supervising state setting forth facts sufficient to conclude that there are reasonable grounds to believe that a violation of parole has occurred; and

(b) The commissioner or his designee submits to the board a recommendation that a warrant be issued.

(4) The board may decline any request for a parole violation warrant made pursuant to any section of this administrative regulation except subsection (1) of this section. Any parole violation warrant, issued under any section of this administrative regulation, may be rescinded by majority vote of the board at any time.

(5) The board chair shall issue parole violation warrants for the

board without a board vote.

(6) Any member of the board designated by the board chair may sign a parole violation warrant in the absence of the chair.

Section 9. Probable Cause Hearing Conducted Subsequent to Issuance of the Parole Violation Warrant or for Offenders Supervised in Another State.

(1) (a) This subsection shall not apply if a parolee is being supervised by another state and if that supervisory state held a probable cause hearing for the parolee.

(b) A probable cause hearing shall be conducted, if:

1. A parole violation warrant was issued for an offender without a probable cause hearing; and

2. The offender is apprehended or returns to the Commonwealth of Kentucky.

(c) Except as provided by paragraph (e) of this subsection, following the hearing, the offender shall be ordered returned to the appropriate institution of the Kentucky Department of Corrections for further consideration by the board if the administrative law judge finds that there is probable cause to believe that the:

1. Offender committed any of the violations contained in the warrant; and

2. Warrant was validly issued as to any of the charges contained within it.

(d) If the administrative law judge finds no probable cause, the case shall be referred to the board to withdraw the warrant and return the offender to supervision.

(e) If probable cause is found:

1. The administrative law judge shall refer the case to the board to decide whether the warrant should be exercised or withdrawn if:

a. The parole officer moves for a referral; or

b. The administrative law judge finds that there are overwhelming mitigation factors present that were not known to the board at the time of the warrant's issuance.

2. If the board decides to withdraw the warrant, the offender shall be returned to normal parole supervision, subject to any additional conditions the board may impose.

3. If the board decides to exercise the warrant, the parolee shall be ordered returned to the appropriate institution.

(2) If a probable cause hearing is held by the supervising state for an offender being supervised in another state, and the supervising state concludes as a result of the hearing that a violation has occurred:

(a) The case shall first be reviewed by an administrative law judge for the board to determine whether the proceeding held in the supervising state and the conclusions reached in the hearing comply with due process;

(b) After the review, the administrative law judge shall refer the case to the board for:

1. Issuance of a parole violation warrant as set forth in Section 7 of this administrative regulation if one has not been issued; or

2. A final hearing as set forth in Section 11 of this administrative regulation if a warrant has been issued.

Section 10. Notice of Final Revocation Hearing. The final revocation hearing process shall be initiated by service of a notice of final revocation hearing.

(1) The parole officer shall complete the following for the notice:

(a) Alleged violations;

(b) Evidence against the offender to be presented at the hearing;

(c) Witnesses upon whose statements revocation is based if disclosure of that information will not create a risk of harm to the witness;

(d) Time;

(e) Date; **[and]**

(f) Location of hearing; **and**

(g) The notice shall include a copy of a blank subpoena that can be used to request documents.

(2) The notice shall also inform the offender that:

(a) A hearing will be conducted on the alleged violations;

(b) The standard of proof for the hearing shall be a preponderance of the evidence;

(c) The offender may call witnesses and present evidence in defense and mitigation of the charges;

(d) The offender may be entitled to have counsel present at the final revocation hearing; and

(e) If the offender wants to have counsel present at the final revocation hearing, he shall request the presence of counsel at the hearing in writing prior to the hearing date. The fact finder shall respond to his request within five (5) **business** days of receipt.

Section 11. Final Revocation Hearing Preliminary Information.

(1) Hearing Date. A final revocation hearing shall be held within thirty (30) days after the return of the parolee to a state institution. The offender may request a delay or continuance for good cause from the board.

(2) The purpose of the final revocation hearing shall be to determine if the offender's parole will be revoked.

(3) Requests to have counsel present at the final revocation hearing.

(a) A determination of whether the offender may have counsel present at the final revocation hearing shall be made on a case-by-case basis by the board within five (5) days after the request is received by the fact finder.

(b) In making this determination, the board shall consider whether the offender:

1. Has articulated a timely and colorable claim that he did not commit the alleged violation of the conditions of supervision;

2. Has articulated substantial reasons that:

a. Justify or mitigate the violation;

b. Make the revocation inappropriate; and

c. Are complex or otherwise difficult to develop or present; and

3. Appears to be capable of speaking effectively for himself.

(c) If the offender is allowed counsel at the final hearing, the offender may have a continuance for the purpose of obtaining the presence of counsel by making a motion for this purpose. More than two (2) appearances for hearing without counsel by an offender who is capable of retaining counsel may be deemed an implicit waiver of counsel.

(4) Limited Request for Final Revocation Hearing.

(a) If an offender had a final revocation hearing on or after July 5, 2018 and before October 24, 2019, the offender may request a new final revocation hearing by sending a request for a new final revocation hearing in writing to the board. The request shall include:

1. The date of the offender's probable cause hearing;

2. The date of the revocation decision; and

3. Any documentation of the revocation decision in the offender's possession.

(b) A request for a final hearing under this section shall not be accepted if a final revocation hearing was held on or after October 24, 2019.

Section 12. Waiver of Final Revocation Hearing.

(1) With the exception of offenders who are less than eighteen (18) years of age, an offender being held pursuant to a parole violation warrant may request to waive his final revocation hearing, after his probable cause hearing or acceptance of a waiver of the final revocation hearing.

(2) Waiver Procedure.

(a) An offender shall submit the waiver in writing to the board or its fact finder for approval.

(b) The waiver may be accepted at the discretion of the board or its fact finder.

(c) A waiver shall not be accepted unless it is found that the offender:

1. Made the waiver:

a. Knowingly; and

b. Voluntarily; and

2. Understands that the offender admits the violations charged occurred.

(d) In the event that waiver of the final revocation hearing is accepted, the final decision on the revocation of the offender's

parole shall be made by the board without any further proceedings.

Section 13. Conduct of Final Revocation Hearing.

(1) Hearing Procedure.

(a) The charges of violations and the evidence against the offender shall be explained to offender.

(b) The offender shall then have the opportunity to present evidence in defense and mitigation of the charges.

(c) The standard of proof shall be a preponderance of the evidence.

(d) The hearing may be continued or recessed with further proof to be taken at any time prior to the close of the record for good cause shown and provided no substantial rights are prejudiced.

(e) The hearing shall be conducted on the record and may be recorded and preserved by any means practical, including electronically, mechanically, or stenographically. If requested by the Board, the record of the proceedings shall be transcribed.

(2) Written Findings of Fact and Decision.

(a) The fact finder shall provide the offender with written findings of fact concerning the alleged violations within twenty-one (21) days of the final revocation hearing.

(b) The board chair or designee may extend the time period for good cause. **Notice of an extension shall be sent to the offender.**

(c) The fact finder shall include a:

1. Determination of whether the fact finder found the offender to have committed the alleged violations by a preponderance of the evidence; and

2. List of:

a. Mitigating evidence presented at the hearing; and

b. Any findings of fact made concerning mitigating evidence presented at the hearing.]The findings of fact shall include a determination of whether the fact finder:

1. Found the offender to have committed the alleged violations by a preponderance of the evidence; and

2. Recommends that parole be revoked with the evidence relied on and the reasons for recommending the revocation of parole, if the fact finder is not the board.]

(d) The board shall issue a decision in writing to determine whether parole is revoked or not:

1. Based on the findings of fact determined at the final revocation hearing; or[and]

2. Based on its own review of the facts and reasoning; and

3. The Board's decision shall include an analysis of whether the offender's violation constitutes a significant risk to the offender's victim or the community at large and whether the offender can be appropriately managed in the community.[a. Adopt the recommendation of the administrative law judge; or

b. Determine to revoke or not based on its own reasoning;]

(e) A copy of the decision shall be provided to the offender.

[Preliminary Revocation Hearings. Preliminary revocation hearings shall be conducted by an administrative law judge of the Parole Board who shall have control over the proceedings and the reception of evidence at these hearings.

(1) Charges of parole violation shall be initiated by a parole officer of the Department of Corrections by service of a notice of preliminary hearing which sets forth the alleged violations. This notice may be amended at any time prior to the close of the record of the preliminary hearing, within the discretion of the administrative law judge, if a finding is made that the substantial rights of the parolee shall not be prejudiced by the amendment. A continuance of the proceeding may be granted in the event of this amendment, if the interest of justice so requires. Failure to object to any defect in the notice prior to the close of the hearing shall be deemed a waiver of this objection.

(2) Pursuant to SCR 3.700 Sub-rule 3, in the absence of an attorney to represent the Department of Corrections, Division of Probation and Parole, before the board and the administrative law judge, any duly appointed probation and parole officer of the Commonwealth of Kentucky may appear before the board or its

administrative law judge as representative of the Department of Corrections in matters relating to the revocation of probation or parole.

(3) Unless the waiting period is waived by a parolee, a preliminary hearing shall not be conducted earlier than five (5) days of service of notice of the hearing. The preliminary hearing may be continued or recessed with further proof to be taken at any time prior to the close of the record for good cause shown. At the request of either party, the administrative law judge may, within his discretion, leave the record open for reception of additional evidence provided that no substantial rights are prejudiced.

(4) All preliminary revocation hearings shall be conducted on the record. The hearing may be recorded and preserved by any means practical, including electronically, mechanically, or stenographically. If requested by the board, the record of the proceedings shall be transcribed.

(5) The administrative law judges may take judicial notice of acts of the Parole Board, including the conditions of parole, and all other matters which may be judicially noticed in the courts of this Commonwealth pursuant to KRE 201. Witnesses appearing at the preliminary hearing to give testimony shall do so under oath, administered by the administrative law judge, and shall be available for examination by the other party or the administrative law judge, unless good cause dictates otherwise. The parole officer shall bear the burden of proof in establishing the elements of the violation. The parole officer shall present evidence first and the parolee shall be given the opportunity to present evidence in defense or mitigation. Any further proceedings shall be conducted at the discretion of the administrative law judge. The parolee may, within reasonable limits, present evidence solely for the purpose of mitigation of his conduct, including evidence of his mental condition. If presented, this evidence shall be subject to rebuttal by the parole officer.

(6)(a) At the close of the hearing, or within a reasonable time thereafter, the administrative law judge shall make a determination, from the evidence produced at the hearing, as well as any evidence of which judicial notice is taken, whether there exists probable cause to believe that the parolee has committed any or all of the violations alleged in the notice of preliminary hearing.

(b) Except as provided by paragraph (c) of this subsection, if probable cause is found to exist, the case shall then be referred to the Parole Board which shall then issue a parole violation warrant which shall cause the parolee to be brought before the Parole Board for a final parole revocation hearing.

(c) Notwithstanding a finding of probable cause, leniency may be granted in any form deemed appropriate by the administrative law judge if all parties agree to the leniency, and if the parolee agrees to any additional conditions of his parole as set forth by the administrative law judge after consultation with the parole officer.

(7) If the administrative law judge finds probable cause to believe that a violation of parole has been committed and the case is referred to the Parole Board for the issuance of a parole violation warrant, the administrative law judge shall issue a written decision and may issue a recommendation, along with reasons in support of that recommendation, as to what action should be taken concerning the parolee's parole, including recommendations concerning the terms and conditions of any future parole. This recommendation shall be advisory only and shall not be binding on the board. If the administrative law judge finds that there exists substantial mitigating factors or a viable alternative to reincarceration, the administrative law judge may recommend that the parolee not be returned as a parole violator. If the administrative law judge makes that finding and recommendation, the case shall be referred to the Parole Board for their vote on the issuance of the parole violation warrant.

(8) In preliminary revocation hearings conducted on probation cases or on cases in which the releasing authority is other than the Kentucky Parole Board, upon a finding of probable cause, the matter may be referred to the releasing authority for further revocation consideration, or leniency may be considered on the same basis as a case in which the Kentucky Parole Board is the releasing authority.

(9) If the alleged violation of parole, as set forth in the notice of preliminary hearing, is new criminal conduct which does not also constitute a technical violation of the conditions of supervision, or the conditions of parole, the case shall not be referred to the board for

parole revocation consideration unless it is shown that the parolee has received a conviction in a court of law or there exists some other form of judicial admission, such as a plea of guilty, concerning the alleged criminal conduct, or it is found that the criminal conduct, or a substantial part of it, was committed in the presence of a duly appointed probation and parole officer of the Commonwealth of Kentucky. Nothing in this subsection shall prevent revocation of parole for a technical violation, which also happens to partially or wholly involve criminal conduct.

(10) Any party appearing before an administrative law judge of the Kentucky Parole Board may be represented by counsel if he so desires. The party may have, upon motion thereof, a continuance for the purpose of obtaining the presence of counsel; except that chronic appearance for hearing without counsel by a parolee who is capable of retaining counsel may be deemed an implicit waiver of counsel.

(11) The administrative law judges, in the absence of any specific statutory authorization, shall not consider matters of bail or any other form of release from custody for those persons accused of parole or probation violations.

Section 2. Good Cause Hearings. KRS 439.315 requires the imposition of a supervision fee on all parolees and the establishment of a good cause hearing if the supervision fee is not paid. This section describes the good cause hearing.

(1) Upon nonpayment of any installment of the monthly supervision fee, the parole officer shall serve a notice of preliminary hearing on the parolee and also shall serve the supplemental notice of good cause hearing on the parolee.

(2) The good cause hearing shall be scheduled as any other preliminary revocation hearing.

(3) If the parolee makes the required supervision fee payment prior to the scheduled good cause hearing, the hearing shall be cancelled.

(4) The parolee shall be permitted legal representation at the good cause hearing.

(5) The burden of proof to show good cause for nonpayment of the supervision fee shall be placed upon the parolee.

(6) The administrative law judge of the Kentucky Parole Board shall determine whether good cause exists for the nonpayment of the supervision fee.

(7) If the administrative law judge finds that good cause exists for the nonpayment of the supervision fee, the charges shall be dismissed and the parolee shall be returned to parole supervision with the previously imposed supervision fee.

(8) If the administrative law judge finds that good cause does not exist, the parole officer may request that the hearing be continued sine die with the condition that the parolee pay the arrears and agrees to pay the supervision fee on a monthly basis.

(9) If the administrative law judge finds that good cause does not exist for nonpayment of the supervision fee, absent any motion from the parole officer, the hearing shall immediately continue and become a preliminary parole revocation hearing, and shall be conducted as described in Section 1 of this administrative regulation.

Section 3. Parole Violation Warrant. Parole violation warrants shall be issued as set forth below:

(1) If a case is referred to the Parole Board by the administrative law judge under the provisions of Section 1(6) of this administrative regulation, the Parole Board shall issue the parole violation warrant. A vote of the board shall not be necessary.

(2) If a case is referred to the full Parole Board by the administrative law judge with a recommendation that the parolee not be returned to the institution as a parole violator, pursuant to Section 1(7) of this administrative regulation, the board may issue a parole violation warrant, if upon review a majority of the board concurs that probable cause exists to believe a parole violation has taken place. If the board votes to issue the warrant, the warrant shall be issued.

(3) If it appears that a parolee has absconded from parole supervision, it otherwise appears that a parolee is a fugitive from justice, or a parole violation warrant is necessary to effect the return of the parolee to the state of Kentucky, the Parole Board may issue a warrant, if it receives documentation from the supervising parole officer, setting forth facts sufficient to conclude there are reasonable

grounds to believe that some violation has occurred, and the commissioner or his designee submits to the board a recommendation that a warrant be issued.

(4) If the parolee is being supervised outside the state of Kentucky, a parole violation warrant may be issued upon a vote of the Parole Board based upon a written report from the supervising state setting forth facts sufficient to conclude that there are reasonable grounds to believe that a violation of parole has occurred, and the commissioner or his designee submits to the board a recommendation that a warrant be issued.

(5) In all other cases parole violation warrants may be issued only upon majority vote of the board, except as set forth in subsection (7) of this section. If the board votes to issue any warrant, the warrant shall be issued.

(6) The board may decline any request for a parole violation warrant made pursuant to any section of this administrative regulation except subsection (1) of this section. Any parole violation warrant, issued under any section of this administrative regulation, may be rescinded by majority vote of the board at any time.

(7) If a vote of the board is required to issue a parole violation warrant, and if there is no quorum of the board present to concur that probable cause exists and the warrant should be issued, any member of the Parole Board may issue a parole violation warrant if he, upon review concurs that probable cause exists to issue said warrant. If a parole violation warrant is issued under these circumstances, the board shall vote, as soon as is reasonable, on whether or not to concur in the issuance of the warrant. If a majority of the board does not concur, the warrant shall be voided by the board.

(8) Any member of the Parole Board may sign warrants.

Section 4. Preliminary Hearings Conducted Subsequent to the Issuance of the Parole Violation or for Parolees Supervised in Another State. (1)(a) This subsection shall not apply if a parolee is being supervised by another state and if that supervisory state held a preliminary parole revocation hearing for the parolee.

(b) A preliminary revocation hearing shall be conducted pursuant to Section 1 of this administrative regulation, if:

1. A parole violation warrant has been issued for a parolee without a preliminary revocation hearing; and

2. The parolee is apprehended or returns to the state of Kentucky.

(c) Except as provided by paragraph (e) of this subsection, following the hearing, the parolee shall be ordered returned to the appropriate institution of the Kentucky Department of Corrections for further consideration by the Parole Board if the administrative law judge finds that there is probable cause to believe that:

1. The parolee committed any of the violations contained in the warrant; and

2. The warrant was validly issued as to any of the charges contained within it.

(d) If the administrative law judge finds no probable cause, the case shall be referred to the Parole Board which shall withdraw the warrant and return the parolee to supervision.

(e) 1. If probable cause is found, the administrative law judge may refer the case back to the Parole Board to decide whether the warrant should be exercised or withdrawn if:

a. The parole officer moves for a referral; or

b. The administrative law judge finds that there are overwhelming mitigation factors present that were not known to the board at the time of the warrant's issuance.

2. If referred back to the Parole Board, the administrative law judge may include a recommendation that the warrant be rescinded. This recommendation shall be advisory only and shall not be binding on the board.

3. If the Parole Board decides to withdraw the warrant, the parolee shall be returned to normal parole supervision, subject to any additional conditions the Parole Board may impose.

4. If the Parole Board decides to exercise the warrant, the parolee shall be ordered returned to the appropriate institution.

(2) If a preliminary parole revocation hearing is held by the supervising state for a parolee being supervised in another state, and the supervising state concludes as a result of the hearing that

a violation has occurred, the case shall first be reviewed by an administrative law judge of the board who shall determine whether or not the proceeding held in the supervising state, and the conclusions reached in the hearing, complies with due process. After the review, the administrative law judge shall refer the case to the Parole Board as set forth in Section 1(6) of this administrative regulation.

Section 5. Waiver of Preliminary Parole Revocation Hearings. (1) Any parolee charged with a violation of his parole may waive appearance before an administrative law judge of the Parole Board and by so doing waive his preliminary parole revocation hearing. Parolees desiring to waive this hearing shall submit their waivers in writing to the board or its administrative law judge for approval. These waivers may be accepted within the discretion of the board or its administrative law judges. No waiver shall be accepted unless it is found that the waiver was entered into by the parolee knowingly, and voluntarily and that the parolee is, and clearly understands that he is admitting guilt as to the violations charged. Notwithstanding the submission and acceptance of a waiver of the preliminary parole revocation hearing, the parolee may still submit evidence in mitigation of his conduct. After approval of the waiver, the matter shall proceed in the same manner as after a hearing before an administrative law judge.

(2) If a parolee being supervised in another state signs a waiver of preliminary hearing in that state, this waiver shall be reviewed by an administrative law judge of the board to determine if the waiver meets the requirements of subsection (1) of this section. If the administrative law judge determines that the waiver does not comply with subsection (1) of this section, the executive director shall refer the matter back to the Division of Probation and Parole and request that they take action necessary to insure compliance with this administrative regulation.

Section 6. Final Parole Revocation Hearings. Final parole revocation hearings shall be held within thirty (30) days after the return of the parolee to a state institution. At this hearing, the parolee shall have the charges, specified in the warrant, explained to him and he shall be given the opportunity to admit or deny them. If the inmate admits to the charges, then the board shall receive proof in mitigation of the charges. If the parolee wishes to present new or different information than presented at the preliminary hearing, and shows that this information could not have been presented at the preliminary hearing, he may request a special hearing. The grant or denial of a special hearing shall be totally within the discretion of the board. If granted by the board, a short deferment shall be given so the special hearing can be scheduled in central office and the parolee can secure legal counsel. The request for a special hearing by a parolee shall occur at the beginning of the final parole revocation hearing, before he admits or denies guilt. The parolee shall be notified of his right to request a special hearing at his preliminary parole revocation hearing. It is the responsibility of the parolee, and his alone, to request a special hearing if he so desires one.

Section 7. Special Hearings. (1) Special hearings shall be conducted in the central office of the Parole Board, unless the Parole Board changes the site for security or other factors it deems pertinent. In cases so heard, if the parole officer or the parolee requests the issuance of subpoenas to compel the appearance of witnesses or production of documents, the board shall issue them pursuant to KRS 439.390, if no claims for expenses incurred by these witnesses shall be submitted to the board, as it has no authorization to pay these expenses.

(2) At the special hearing, the following order of proceedings shall be followed:

(a) The parolee, parole officer, and all witnesses shall be sworn in by the Parole Board.

(b) The board shall present a short statement of the charges against the parolee.

(c) The parole officer shall present proof to substantiate the charges, subject to cross-examination by the parolee.

(d) The parolee shall present proof to rebut the parole officer's

charges, subject to cross-examination by the parole officer.

(e) The parole officer may put on any rebuttal proof subject to cross-examination.

(f) The board may question both the parolee and the parole officer and any witnesses.

(g) The board shall then make a determination as to whether the parolee has violated his parole.

(h) If the parolee is found in violation or if he admits the violation and has proof in mitigation, the board shall receive proof from the parolee in mitigation of the violation subject to cross-examination.

(i) At the conclusion of the special hearing, the board shall make a determination as to the disposition of the case and notify the parolee in person or in writing as soon as practical.

Section 8. Waiver of Final Parole Revocation Hearing. A parolee being held pursuant to a parole violation warrant may, subsequent to his preliminary parole revocation hearing, or acceptance of a waiver thereof, request that he be allowed to waive his final parole revocation hearing. Parolees desiring to waive this hearing shall submit their waivers in writing to the board. Acceptance of this waiver shall be totally within the discretion of the board and shall be based only upon a finding that the waiver is entered into knowingly and voluntarily and that the parolee is admitting guilt as to the violations charged. Waiver of the right to the final hearing shall also be considered as waiver of any rights to a special hearing as provided for in Sections 6 and 7 of this administrative regulation. In the event that waiver of the final hearing is accepted, the final decision on the revocation of the parolee's parole shall be made by the board without any further proceedings.]

The Chair of the Kentucky Parole Board, with the authorization and approval of a majority of the members of the Kentucky Parole Board on March 10, 2020, approves the promulgation of the regulation on behalf of the Kentucky Parole Board, as indicated by her signature below.

LELIA A. VANHOOSE, Chair

APPROVED BY AGENCY: March 4, 2020

FILED WITH LRC: March 11, 2020

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, 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 procedures for parole revocation.

(b) The necessity of this administrative regulation: This regulation is required to comply with 439.340(3)(b).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 439.340(3) requires the Kentucky Parole Board to promulgate administrative regulations with respect to the eligibility of prisoners for parole, the conduct of parole and parole revocation hearings and all other matters that come before it, or conditions to be imposed upon parolees. This administrative regulation establishes the procedures for the revocation of parole.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides direction to offenders and administrative law judges concerning the process to revoke parole for violation of conditions of parole.

(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 totally rewrites the regulation to update the parole revocation process and make changes required by Jones v. Bailey, 576 S.W.3d 128 (2019).

(b) The necessity of the amendment to this administrative regulation: The amendment is required to comply with case law.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 439.340(3)(b) requires the Kentucky Parole Board to promulgate administrative regulations governing parole revocation. The amendment changes the requirements involving parole revocation hearings.

(d) How the amendment will assist in the effective administration of the statutes: The amendment allows compliance with case law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects the nine Parole Board members, the staff that assist the Board, and approximately 5,722 offenders involved in parole revocation proceedings.

(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: Parole Board members, staff that assist the Board, offenders, and administrative law judges involved in parole revocation proceedings will have to follow the changes made 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): The Department of Corrections (DOC) provides administrative and staff services for the Parole Board pursuant to KRS 439.320(1). Costs for the DOC to provide two additional administrative law judges, new clerical staff, equipment, supplies, offender management system programming costs, and other expenses are estimated to be \$350,200.00. Inmates who are not indigent or who choose to hire private attorneys will incur attorney fees in an unknown amount for defense at the final revocation hearings.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The new requirements for final revocation hearings will allow compliance with case law.

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

(a) Initially: \$350,200.00

(b) On a continuing basis: \$335,200.00

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

(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: The DOC may need an increase in funds to cover these estimated costs.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are created by this regulation.

(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 administrative regulation and the amendment to it will impact the operations of the Parole Board, the Department of Corrections, and jails and prisons within Kentucky.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 439.320 and 439.340

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is generated by this regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is generated by this regulation.

(c) How much will it cost to administer this program for the first year? The amendment is expected to increase costs by \$350,200.00.

(d) How much will it cost to administer this program for subsequent years? The amendment is expected to increase costs by \$335,200.00.

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:

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Human Resource Management
Division of Employee Management
(Amended After Comments)

920 KAR 1:070. Deaf and hard of hearing services.

RELATES TO: KRS 2.110, 163.500, 163.506, 194A.005(1), 194A.030(9)(10), 194A.060, 278.548, 309.300-309.319, 344.500(1), 28 C.F.R. 35.160, 29 U.S.C. 794, 42 U.S.C. 12131-12213, 45 C.F.R. 160, 162, 164, Pub.L. 104-191, 110-325[–EO 2009-544]

STATUTORY AUTHORITY: KRS 12.290, 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for proper administration of the cabinet and its programs. In accordance with federal mandates in 28 C.F.R. 35.160, 29 U.S.C. 794, 42 U.S.C. 12131-12213, as amended by Pub.L. 110-325, and KRS 12.290(1) and 344.500(1), the Cabinet for Health and Family Services has a responsibility to provide accessibility to program services delivered directly by the cabinet or indirectly through a contractual or other arrangement to an individual who is deaf or hard of hearing. This administrative regulation establishes cabinet procedures for the provision of interpreting services to a client who is deaf or hard of hearing.

Section 1. Definitions. (1) "Assignment" means interpreting for a client as approved by a cabinet program.

(2) "Cabinet" is defined by KRS 194A.005(1).

(3) "Cabinet program" means a program of service, financial aid, or other benefit administered by the cabinet and provided:

(a) Directly by the cabinet; or

(b) Indirectly by the cabinet through a contractual or other arrangement.

(4) "Client" means a person who:

(a) Applies in writing, electronically, verbally, or through a designated representative for participation in a cabinet program; or

(b) Receives a service, financial aid, or other benefit from a cabinet program.

(5) "Deaf" and "hard of hearing" are defined by KRS 163.500.

(6) "Emergency" means a situation of an urgent nature in which a client determines that a delay of the event for more than twenty-four (24) hours is likely to result in loss of service, financial aid, or other benefit in a cabinet program.

(7) "Interpreter" is defined by KRS 309.300(4).

(8) "Interpreting" is defined by KRS 309.300(5).

(9) "Kentucky Board of Interpreters for the Deaf and Hard of

Hearing" means:

(a) "Board" defined by KRS 309.300(1); and

(b) The board established by KRS 309.302.

(10) "Kentucky Commission on the Deaf and Hard of Hearing" or "KCDHH" means the commission established by KRS 163.506.

(11) "Office of Human Resource Management" or "OHRM" means the major organizational unit of the cabinet established by KRS 194A.030(9)(10) and EO 2009-544.

(12) "Ongoing interpreting services" means interpreting services required to meet the needs of a client in a cabinet program in accordance with the client's plan of care, case plan, or program eligibility.

(13) "Time-limited interpreting services" means interpreting services which are provided to a client at a specific time and location in order to access a cabinet program.

Section 2. Provision of Interpreting Services. (1) A cabinet program shall make available interpreting services to a client who is deaf or hard of hearing.

(2) Interpreting services provided by a cabinet program shall be at no charge to a client.

(3) Interpreting provided by a cabinet program shall be in accordance with KRS 309.301.

(4) On behalf of a client who is deaf or hard of hearing and does not waive interpreting services in accordance with Section 4(2) of this administrative regulation, a cabinet program shall:

(a) Access an interpreter licensed by the Kentucky Board of Interpreters for the Deaf and Hard of Hearing in accordance with KRS 309.300-309.319 and 201 KAR Chapter 39; or

(b) Request interpreting services:

1. In accordance with 735 KAR 2:050; and

2. Through the Interpreter Referral Service Program established by KCDHH in 735 KAR Chapter 2.

(5) A cabinet program may utilize an employee for interpreting as an alternative to the requirement of subsection (4) of this section if:

(a) The cabinet program employs an individual who is licensed by the Kentucky Board of Interpreters for the Deaf and Hard of Hearing in accordance with KRS 309.300-309.319 and 201 KAR Chapter 39; and

(b) No actual or perceived conflict exists between the employee's job duties and the provision of interpreting services for a client, as approved by the employee's supervisor.

(6) A cabinet program or a client may access the Kentucky Telephone or Video Relay Service Program established in accordance with KRS 278.548.

Section 3. Interpreter Selection. (1) In the selection of an interpreter, a cabinet program shall give consideration to:

(a) An interpreter's:

1. Licensure;

2. Certification;

3. Years of experience; and

4. Exposure to the cabinet program or familiarity with the jargon of the cabinet program;

(b) Prior use of the interpreter by the cabinet program for the same client;

(c) Any preference of the client; and

(d) The estimated cost for the interpreting services.

(2) An interpreter who provides interpreting services to a cabinet program shall:

(a) Comply with:

1. 735 KAR 2:040 if the interpreter is retained through KCDHH Interpreter Referral Services Program; and

2. Licensure requirements of the Kentucky Board of Interpreters for the Deaf and Hard of Hearing in accordance with KRS 309.300-309.319 and 201 KAR Chapter 39; and

(b) Agree to confidentiality in the provision of interpreting services in accordance with KRS 194A.060, 45 C.F.R. 160, 162, 164, and Pub.L. 104-191.

Section 4. Client Rights. (1) A cabinet program shall inform a client who is deaf or hard of hearing of the client's right to effective

communication through the provision of the CHFS-OHRM-EEO-2, Your Right to Equally Effective Communication.

(2)(a) A client who is deaf or[øf] hard of hearing shall have the right to waive interpreting services provided by a cabinet program.

(b) To waive interpreting services:

1. A client shall complete and sign the CHFS-OHRM-EEO-3, Waiver of Free Interpreting Services; and

2. The cabinet program shall provide a copy of the signed CHFS-OHRM-EEO-3 to the client.

(c) A client may rescind the CHFS-OHRM-EEO-3 at any time.

(3) If a client refuses a specific interpreter, a cabinet program shall attempt to find a replacement but shall not guarantee a replacement.

Section 5. Payment for Interpreting Services. (1)(a) Unless an emergency exists, a cabinet program shall approve payment for interpreting services, whether time-limited or ongoing interpreting services, with an interpreter prior to the provision of interpreting services to a client.

(b) The total payment approved shall:

1. Be documented in writing;

2. Be copied or shared with the interpreter and the cabinet program;

3. Include identifying information about the cabinet program and the assignment; and

4. Include a breakdown of the interpreter's:

a. Hourly rate in accordance with subsection (3) of this section;

b. Projected number of hours for the assignment in accordance with subsection (4) of this section;

c. Projected mileage;

d. Meal required during the assignment; and

e. Overnight lodging requested for the assignment in accordance with paragraph (c) of this subsection.

(c) An overnight lodging request for interpreting services shall include:

1. A justification for the overnight lodging;

2. The estimated length of the lodging;

3. A preferred lodging establishment; and

4. Projected lodging costs.

(2) Mileage and meal reimbursement shall be in accordance with 200 KAR 2:006.

(3)(a) A cabinet program shall pay an interpreter an hourly rate:

1. For interpreting services provided Monday through Friday between the hours of 8 a.m. and 5 p.m.; and

2. Consistent with the prevailing rate for the service area.

(b) In addition to the hourly rate established in paragraph (a) of this subsection, a cabinet program shall pay an enhanced hourly rate consistent with the prevailing enhanced rate for the service area if the interpreter's assignment falls:

1. Between 5 p.m. and 8 a.m. Monday through Friday;

2. Between 5 p.m. Friday and 8 a.m. Monday; or

3. On a state holiday established in accordance with KRS 2.110.

(c) The cabinet shall consult annually with KCDHH regarding accessibility and the provision of accommodations.

(4)(a) With the exception of mileage, a meal, and lodging, the hourly rate established in accordance with subsection (3) of this section, shall include:

1. Time on the assignment; and

2. Reasonable time traveling for the assignment.

(b) A cabinet program shall determine an interpreter's time traveling as reasonable based on:

1. Mileage; and

2. Road and driving conditions on the date of the interpreter's assignment.

(5) If an interpreter's assignment in a cabinet program is less than two (2) hours, the cabinet program shall pay:

(a) Two (2) hours for the assignment; or

(b) Less than two (2) hours in accordance with the invoice submitted for the assignment.

(6)(a) A cabinet program shall pay an interpreter for the assignment in accordance with the payment approved pursuant to

subsection (1) of this section if:

1. A client does not appear for an appointment or cancels an appointment with less than twenty-four (24) hours' notice; or

2. The cabinet fails to notify the interpreter of the cancellation twenty-four (24) hours or more in advance of the appointment.

(b) The cabinet shall re-schedule an appointment if:

1. A request to re-schedule is received two (2) business days in advance of the appointment; or

2.a. The cabinet determines that staff of the cabinet program, the interpreter, or the client is not at fault for failure to keep the appointment; and

b. The client requests re-scheduling of the appointment.

(7)(a) An interpreter shall:

1. Document actual costs of interpreting services to a cabinet program; and

2. Submit an invoice to the cabinet program for verification and payment.

(b) For each assignment, an interpreter's invoice shall contain the following:

1. The purpose of the assignment, including the client's name or an identifier for the client's case;

2. For each date of the assignment, the:

a. Hours of the day during which the interpreting services were provided;

b. Total number of hours of the interpreting services;

c. Hourly rate for the interpreting services;

d. Mileage for the assignment; and

e. Rate per mile in accordance with subsection (2) of this section;

3. The total cost for any lodging;

4. A grand total for all costs;

5. Contact information for an employee with the cabinet program to verify:

a. The provision of interpreting services; and

b. Costs approved in accordance with subsection (1) of this section;

6. The interpreter's:

a. Name;

b. Social Security number or federal identification number;

c. Contact number;

d. Email address, if one is available; and

e. Mailing address;

7. The date of the invoice; and

8. A number for the invoice.

(c) If an interpreter submits an invoice to a cabinet program that includes lodging, the interpreter shall attach the original receipt from the lodging establishment.

(8)(a) Payment for interpreting services shall be available to an interpreter who is not:

1. A volunteer; or

2. An employee of a cabinet program.

(b) An employee of a cabinet program, who is utilized in accordance with Section 2(5) of this administrative regulation, shall not receive payment for interpreting services in addition to the employee's:

1. Pay and employee benefits from the cabinet program; and

2. Reimbursement for travel in accordance with 200 KAR 2:006.

Section 6. Complaints. If an individual is aggrieved by a cabinet program's provision of, or failure to provide, interpreting services in accordance with this administrative regulation, the individual may submit a:

(1) Grievance to the KCDHH in accordance with 735 KAR 2:060; or

(2) Client Civil Rights complaint, if discriminatory action by a cabinet program is alleged, to the:

(a) Office of Human Resource Management in accordance with 920 KAR 1:090;

(b) U.S. Department of Health and Human Services' Office for Civil Rights;

(c) U.S. Department of Agriculture's Office of Assistant Secretary for Civil Rights or Food and Nutrition Service Southeast

Regional Office;

- (d) U.S. Department of Education's Office for Civil Rights;
- (e) U.S. Department of Labor's Civil Rights Center;
- (f) U.S. Department of Justice's Civil Rights Division;
- (g) Kentucky Commission on Human Rights; or
- (h) Another federal, state, or local agency with jurisdiction over the cabinet program involved in the alleged discrimination.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "CHFS-OHRM-EEO-2, Your Right to Equally Effective Communication", edition 2020[2040]; and
- (b) "CHFS-OHRM-EEO-3, Waiver of Free Interpreting Services", edition 2020[2040].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Office of Human Resource Management, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

TRESA STRAW, Chief of Staff

ADAM M. MEIER, Secretary

APPROVED BY AGENCY: November 4, 2019

FILED WITH LRC: November 8, 2019 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 27, 2020, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by January 17, 2020, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until January 31, 2020. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091, CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: H. Jay Klein, phone (502) 564-7770 x3368, email: Jayh.klein@ky.gov.; and Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation establishes Cabinet for Health and Family Services procedures for the provision of interpreting services to a client who is deaf or hard of hearing.

(b) The necessity of this administrative regulation: Federal law requires the provision of interpreting services to a client who is deaf or hard of hearing.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation provides detailed procedures for the provision of such services and includes clients' rights, details as to payment for interpreting services, complaint options and specific forms.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides the specifics as to definitions, the provision of interpreting services, interpreter selection, client rights, payment for interpreting services, complaints and forms.

(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 makes a technical correction to a state statute citation and revises the two forms incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: The United States Department of Agriculture, Office of Civil Rights through an audit has identified the necessity of revising the two forms incorporated by reference.

(c) How the amendment conforms to the content of the authorizing statutes: The revised forms will better inform a client of the right to equally effective communication and provide a better understanding when choosing to waive free interpreting services.

(d) How the amendment will assist in the effective administration of the statutes: The revised forms will have more details and include the United States Department of Agriculture nondiscrimination statement.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Cabinet for Health and Family Services and its clients.

(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 Cabinet for Health and Family Services will need to replace the outdated forms with the revised forms in each of its departments and offices.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost, for the various cabinet entities will be printing the revised forms as needed instead of the old forms.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The cabinet will be in compliance with the United States Department of Agriculture, Office of Civil Rights requirements.

(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: Not applicable.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: None.

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation will be applied in a like manner statewide.

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? None.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 28 C.F.R. 35.160, 29 U.S.C. 794, 42 U.S.C. 12131 – 12213, KRS 12.290, and KRS 344.500(1).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

(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? Not applicable.

(d) How much will it cost to administer this program for subsequent years? Not applicable.

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:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 28 C.F.R. 35.160, 29 U.S.C. 794, and 42 U.S.C. 12131 – 12213.

2. State compliance standards. KRS 12.290 and KRS 344.500(1).

3. Minimum or uniform standards contained in the federal mandate. The requirement to provide accessibility to program services to an individual who is deaf or hard of hearing.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Child Care (Amended After Comments)

922 KAR 2:090. Child-care center licensure.

RELATES TO: KRS Chapter 13B, Chapter 157, 158.030, 199.011(3), (4), (16), 199.892, 199.894(1), (3), 199.895, 199.896-
[.]199.898, 214.010, 214.036, 314.011(5), 600.020(1), 620.020(8),
620.030, 45 C.F.R. 98.2, 98.43, 42 U.S.C. 601-619, 9831-9852,
9857-9858r [42 U.S.C. 9857-9858q]

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2), (6)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.896(2) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations to establish license fees and standards for a child-care center. KRS 199.896(6) requires the cabinet to establish an informal dispute resolution process. This administrative regulation establishes licensure standards for a child-care center and describes the informal dispute resolution process.

Section 1. Definitions. (1) "Applicant" means an individual or entity applying to become a licensee or renew status as a licensee.

(2) "Cabinet" is defined by KRS 199.011(3) and 199.894(1).

(3) "Child" is defined by KRS 199.011(4).

(4) "Child care" means care of a child in a center or home that regularly provides full or part-time care, day or night, and includes developmentally appropriate play and learning activities.

(5) "Child-care center" is defined by KRS 199.894(3).

(6) "Contract substitute staff member" means a person who temporarily assumes the duties of a regular staff person, meets the requirements established in Section 12 of this administrative regulation, and receives payment from a contract entity rather than the child care center.

(7) "Director" means an individual who meets the education and training requirements established in Section 10 of this administrative regulation.

(8)[(7)] "Finding of fraud" means a suspected intentional program violation referred in accordance with 922 KAR 2:020, Section 4(4)(a)1, that is accepted for investigation and substantiated by the cabinet's Office of the Inspector General.

(9)[(8)] "Health professional" means a person actively licensed as a:

(a) Physician;

(b) Physician assistant;

(c) Advanced practice registered nurse; or

(d) Registered nurse as defined by KRS 314.011(5) under the supervision of a physician or advanced practice registered nurse.

(10)[(9)] "Infant" means a child who is less than twelve (12) months of age.

(11)[(40)] "Licensee" means the owner or operator of a child-care center to include:

(a) Sole proprietor;

(b) Corporation;

(c) Limited liability company;

(d) Partnership;

(e) Association; or

(f) Organization, such as:

1. Board of education;[.]

2. Private school;

3. Faith-based organization;

4. Government agency; or

5. Institution.

(12)[(41)] "Nontraditional hours" means the hours of:

(a) 7 p.m. through 5 a.m. Monday through Friday; or

(b) 7 p.m. on Friday until 5 a.m. on Monday.

(13)[(42)] "Parent" is defined by 45 C.F.R. 98.2.

(14)[(43)] "Parental or family participation" means a child-care center's provision of information or inclusion of a child's parent in the child-care center's activities, including:

(a) Distribution of a newsletter;

(b) Distribution of a program calendar; or

(c) A conference between the provider and a parent.

(15)[(44)] "Pediatric abusive head trauma" is defined by KRS 620.020(8).

(16)[(45)] "Premises" means the building and contiguous property in which child care is licensed.

(17)[(46)] "Preschool-age" means a child who is older than a toddler and younger than school-age.

(18)[(47)] "Qualified substitute" means a person who meets the requirements of a staff person established in Section 11 of this administrative regulation.

(19)[(48)] "School-age" means a child who meets the age requirements of KRS 158.030 or who attends kindergarten, elementary, or secondary education.

(20)[(49)] "Secretary" is defined by KRS 199.011(16).

(21)[(20)] "Toddler" means a child between the age of twelve (12) and thirty-six (36) months.

Section 2. Child-Care Centers. The following child-care centers shall meet the requirements of this administrative regulation:

(1) A Type I child-care center. This child-care center shall be licensed to regularly provide child care services for:

(a) Four (4) or more children in a nonresidential setting; or

(b) Thirteen (13) or more children in a designated space separate from the primary residence of a licensee; and

(2) A Type II child-care center. This child-care center shall be the primary residence of the licensee in which child care is regularly provided for seven (7), but not more than twelve (12), children including children related to the licensee.

Section 3. Exempt Child Care Settings. The following child-care settings shall be exempt from licensure requirements of this administrative regulation, 922 KAR 2:120, and 922 KAR 2:280:

(1) Summer camps permitted [certified] by the cabinet as youth camps that serve school-age children;

(2) Kindergarten through grade 12 in private schools while

school is in session;

(3) All programs and preschools regulated by the Kentucky Department of Education governed by KRS Chapter 157;

(4) Summer programs operated by a religious organization that a child attends no longer than two (2) weeks;

(5) Child care provided while parents are on the premises, other than the employment and educational site of parents;

(6) Child care programs operated by the armed services located on an armed forces base;

(7) Child care provided by educational programs that include parental involvement with the care of the child and the development of parenting skills;

(8) Facilities operated by a religious organization while religious services are being conducted;

(9) A program providing instructional and educational programs that:

(a) Operates for a maximum of twenty (20) hours per week; and

(b) A child attends for no more than ten (10) hours per week;

(10) A child-care center that meets requirements of KRS 199.896(19) or (20); and

(11) An after-school program, which is:

(a) A continuation of the school day during the academic year;

(b) Operated and staffed by an accredited private or public school under the purview of the Kentucky Department of Education; and

(c) Not participating in the Child Care Assistance Program in accordance with 922 KAR 2:160.

Section 4. Application. (1) An applicant for a license shall submit to the cabinet a completed OIG-DRCC-01, Initial Child-Care Center License Application.

(2) Approval of an applicant for initial licensure shall result in the issuance of a preliminary license for a probationary period not to exceed six (6) months.

(3) The issuance of a preliminary license, or the issuance or reapproval of a regular license, shall be governed under the provisions of this section and Sections 6 and 7 of this administrative regulation.

(4) If the applicant for licensure is a:

(a) Corporation or a limited liability company, the application shall include a current certificate of existence or authorization from the Secretary of State; or

(b) Partnership, the application shall include:

1. A written statement from each partner assuring that the partnership is current and viable; and

2. Proof that each individual is twenty-one (21) years or older by photo identification or birth certificate.

(5) If the status of a corporation, partnership, or ownership of the child-care center changes, the new entity shall submit a completed OIG-DRCC-01.

(6) If ownership of a child-care center changes and the cabinet approves preliminary licensure upon inspection of the child-care center under the new ownership, the effective date on the preliminary license shall be the date of the approved inspection under the new ownership.

(7) The cabinet shall return the OIG-DRCC-01 and accompanying fee to an applicant if the applicant:

(a) Has an ownership interest in a facility that is licensed or regulated by the cabinet, and that is subject to a finding of fraud or is involved in an investigation of alleged fraud by:

1. The cabinet's Office of the Inspector General; or

2. An agency with investigative authority; and

(b) Is requesting a:

1. Change in ownership; or

2. License for a new facility.

(8) An applicant shall submit to background checks in accordance with 922 KAR 2:280.

(9) A child may include a person eighteen (18) years of age if the person has a special need for which child care is required.

Section 5. Evacuation Plan. (1) A licensed child-care center shall have a written evacuation plan in the event of a fire, natural

disaster, or other threatening situation that may pose a health or safety hazard for a child in care in accordance with KRS 199.895 and 42 U.S.C. 9858c(c)(2)(U).

(2) The cabinet shall post an online template of an evacuation plan that:

(a) Fulfills requirements of KRS 199.895;

(b) Is optional for a child-care center's use; and

(c) Is available to a licensed child-care center without charge.

Section 6. License Issuance. (1) The cabinet shall monitor a child-care center that operates under a preliminary license issued pursuant to Section 4(2) of this administrative regulation.

(2) Upon completion of the probationary period required in Section 4(2) of this administrative regulation, the cabinet shall:

(a) Approve regular licensure for a child-care center operating under a preliminary license; or

(b) If a condition specified in Section 17 [46] of this administrative regulation exists, deny regular licensure.

(3) A preliminary or regular license shall not be issued unless each background check required by 922 KAR 2:280 has been completed on behalf of an applicant for licensure.

(4) Background checks in accordance with 922 KAR 2:280 shall apply to:

(a) An applicant;

(b) A director;

(c) An employee who is present during the time a child is receiving care;

(d) Any person with supervisory or disciplinary control over a child in care; or

(e) A person in accordance with 42 U.S.C. 9858f and 45 C.F.R. 98.43.

(5) If an applicant for licensure has had a previous ownership interest in a child-care provider that has had a prior certification, license, or registration denied, revoked, or voluntarily relinquished as a result of an investigation or pending adverse action, the cabinet shall grant the applicant a license if:

(a) A seven (7) year period has expired from the:

1. Date of the prior denial or revocation;

2. Date the certification, license, or registration was voluntarily relinquished as a result of an investigation or pending adverse action;

3. Last day of legal remedies being exhausted; or

4. Administrative hearing decision; and

(b) The applicant has:

1. Demonstrated compliance with the provisions of this administrative regulation, 922 KAR 2:120, 922 KAR 2:280, and KRS 199.896;

2. Completed, since the time of the prior denial, revocation, or relinquishment, sixty (60) hours of training in child development and child care practice, approved by the cabinet or its designee; and

3. Not had an application, certification, license, or registration denied, revoked, or voluntarily relinquished as a result of an investigation or pending adverse action:

a. For one (1) of the reasons set forth in:

(i) KRS 199.896(19); or

(ii) 922 KAR 2:280; or

b. Due to a disqualification from:

(i) The Child Care Assistance Program established by 922 KAR 2:160, including an intentional program violation in accordance with 922 KAR 2:020; or

(ii) Another governmental assistance program for fraud, abuse, or criminal conviction related to that program.

(6) If a license is granted after the seven (7) year period specified in subsection (5)(a) of this section, the licensee shall serve a two (2) year probationary period during which the child-care center shall be inspected no less than semi-annually.

(7) A preliminary or regular license shall specify:

(a) A particular premises;

(b) A designated licensee;

(c) Age category of the children in care;

(d) The maximum number of children allowed under center supervision at one (1) time, including a child related to the licensee

or an employee, based upon:

1. Available space as determined by the State Fire Marshal's Office in conjunction with the cabinet;
2. Adequacy of program;
3. Equipment; and
4. Staff;
 - (e) If provided, nontraditional hours;
 - (f) If provided, transportation; and
 - (g) A list of services to be provided by the child-care center.
- (8) To qualify for a preliminary license, or maintain a regular license, a child-care center shall:
 - (a) Provide written documentation from the local authority showing compliance with local zoning requirements;
 - (b) Be approved by the Office of the State Fire Marshal or designee;
 - (c) Have an approved water and sewage system in accordance with local, county, and state laws;
 - (d) Provide written proof of liability insurance coverage of at least \$100,000 per occurrence;
 - (e) Comply with provisions of this administrative regulation, 922 KAR 2:120, and 922 KAR 2:280;
 - (f) Cooperate with the cabinet, the cabinet's designee, or another agency with regulatory authority during:
 1. An investigation of an alleged complaint, including an allegation of child abuse or neglect pursuant to KRS 620.030 [620.030(4)]; and
 2. Unannounced inspections; and
 - (g) Have a director who meets the requirements listed in Section 10 of this administrative regulation.
- (9) A child-care center shall allow the cabinet or its designee, another agency with regulatory authority, and a parent of an enrolled child unannounced access to the child-care center during the hours of operation.
- (10) Denial of access, including any effort to delay, interfere with, or obstruct an effort by a representative of the cabinet or another agency with regulatory authority, to enter the child-care center or deny access to records relevant to the inspection shall result in the cabinet pursuing adverse action in accordance with Section [15,] 16, [or] 17, or 18 of this administrative regulation.
- (11) A regular license shall be issued if the center has met the requirements contained in this administrative regulation, 922 KAR 2:120, 922 KAR 2:280, and KRS 199.896(3), [(+3,)] (15), (16), (18), [and] (19), and (21).
- (12) A preliminary or regular license shall not be sold or transferred.
- (13) A child-care center shall not begin operation without a preliminary license to operate from the cabinet.
- (14) A child-care center operating without a preliminary or regular license shall be subject to legal action.
- (15) The voluntary relinquishment of a preliminary or regular license shall not preclude the cabinet's pursuit of adverse action.

Section 7. Fees. (1) A nonrefundable initial licensing fee of fifty (50) dollars shall be charged according to KRS 199.896(3).

(2) A nonrefundable renewal fee of twenty-five (25) dollars shall be charged in accordance with KRS 199.896(3).

(3) Licensing fees shall be:

- (a) Payable to the Kentucky State Treasurer;
- (b) Attached to the licensure application; and
- (c) Paid by:
 1. Cashier's check;
 2. Certified check;
 3. Business check; or
 4. Money order.

Section 8. General. (1) A licensee shall:

(a) Be [be] responsible for the operation of the child-care center pursuant to this administrative regulation, 922 KAR 2:120, and 922 KAR 2:280; and

(b) Protect and assure the health, safety, and comfort of each child.

(2) Child-care center staff shall be:

- (a) Instructed by the child-care center's director regarding

requirements for operation; and

(b) Provided with a copy of this administrative regulation, 922 KAR 2:120, and 922 KAR 2:280.

(3) A volunteer or board member shall comply with the policies and procedures of the child-care center.

(4) Program policies and procedures shall:

(a) Be in writing; and

(b) Include:

1. Staff policies;
2. Job descriptions;
3. An organization chart;
4. Chain of command; and
5. Other procedures necessary to ensure implementation of:
 - a. KRS 199.898, Rights for children in child-care programs and their parents, custodians, or guardians - posting and distribution requirements;
 - b. 922 KAR 2:120, Child-care center health and safety standards;
 - c. 922 KAR 2:280, Background checks for child care staff members, reporting requirements, and appeals; and
 - d. This administrative regulation.

(5) An activity of a person living in a child-care center that is a dwelling unit shall not interfere with the child-care center program.

(6) In addition to the posting requirement of KRS 199.898(3), a child-care center shall post the following in a conspicuous place and make available for public inspection:

(a) The provider's preliminary or regular license;

(b) Each statement of deficiency and civil penalty notice issued by the cabinet during the current licensure year;

(c) Each plan of correction submitted by the child-care center to the cabinet during the current licensure year;

(d) Information on the Kentucky Consumer Product Safety Program and the program's Web site as specified in KRS 199.897;

(e) A description of services provided by the child-care center, including:

1. Current rates for child care; and

2. Each service charged separately and in addition to the basic rate for child care;

(f) Minimum staff-to-child ratios and group size established in 922 KAR 2:120; and

(g) Daily planned program.

(7) If a director, employee, volunteer, or any person with supervisory or disciplinary control over, or having unsupervised contact with a child in care is named as the alleged perpetrator in a child abuse or neglect report accepted by the cabinet in accordance with 922 KAR 1:330, the individual shall be removed from direct contact with a child in care:

(a) For the duration of the assessment or investigation; and

(b) Pending completion of the administrative appeal process for a cabinet substantiation of child abuse or neglect in accordance with 922 KAR 1:320 or 922 KAR 1:480.

Section 9. Records. (1) A child-care center shall maintain:

(a) A current immunization certificate for each child in care within thirty (30) days of the child's enrollment, unless an attending physician or the child's parent objects to the immunization of the child pursuant to KRS 214.036;

(b) A written record for each child:

1. Completed and signed by the child's parent;

2. Retained on file on the first day the child attends the child-care center; and

3. To contain:

a. Identifying information about the child, which includes, at a minimum, the child's name, address, and date of birth;

b. Contact information to enable a person in charge to contact the child's:

(i) Parent at the parent's home or place of employment;

(ii) Family physician; and

(iii) Preferred hospital;

c. The name of each person who is designated in writing to pick-up the child;

d. The child's general health status and medical history including, if applicable:

- (i) Allergies;
- (ii) Restriction on the child's participation in activities with specific instructions from the child's parent or health professional; and
- (iii) Permission from the parent for third-party professional services in the child-care center;
 - e. The name and phone number of each person to be contacted in an emergency involving or impacting the child;
 - f. Authorization by the parent for the child-care center to seek emergency medical care for the child in the parent's absence; and
 - g. A permission form for each trip off the premises signed by the child's parent in accordance with 922 KAR 2:120, Section 12;
- (c) Daily attendance records documenting the arrival and departure time of each child, including records that are required in accordance with 922 KAR 2:160, Section 13, if a child receives services from the child-care center through the Child Care Assistance Program;
- (d) A written schedule of staff working hours;
- (e) A current personnel file for each child-care center staff person to include:
 1. Name, address, date of birth, and date of employment;
 2. Proof of educational qualifications;
 3. Record of annual performance evaluation;
 4. Documentation of compliance with tuberculosis screening in accordance with Section 11(1)(b) of this administrative regulation; and
 5. The results of background checks conducted in accordance with 922 KAR 2:280;
- (f) A written annual plan for child-care staff professional development;
- (g) A written evacuation plan in accordance with Section 5 of this administrative regulation;
- (h) A written record of quarterly practiced earthquake drills and tornado drills detailing the date, time, and children who participated in accordance with 922 KAR 2:120, Section 3;
- (i) A written record of practiced fire drills conducted monthly detailing the date, time, and children who participated in accordance with 922 KAR 2:120, Section 3;
- (j) A written plan and diagram outlining the course of action in the event of a natural or manmade disaster, posted in a prominent place;
- (k) A written record of reports to the cabinet required in Section 13 [12] of this administrative regulation; and
- (l) A written record of transportation services provided in accordance with 922 KAR 2:120, Section 12.
- (2) A child-care center shall:
 - (a) Maintain the confidentiality of a child's record and information concerning a child or the child's parent;
 - (b) Maintain all records for five (5) years; and
 - (c) Provide the cabinet access and information in the completion of the investigation pursuant to KRS 620.030 [620.030(4) and (5)].

Section 10. Director Requirements and Responsibilities. (1) A director shall:

- (a) Be at least twenty-one (21) years of age;
- (b) Have a high school diploma, a general equivalency diploma (GED), or qualifying documentation from a comparable educational entity;
- (c) Not be employed in a position other than an onsite child care director, or director of multiple facilities, during the hours the child-care center is in operation;
- (d) Ensure:
 1. Compliance with 922 KAR 2:120, 922 KAR 2:280, and this administrative regulation; and
 2. The designation of one (1) adult staff person in charge to carry out the director's duties if the director is not present in the child-care center during operating hours. The director shall be responsible for the actions of the designee during the director's absence;
- (e) Manage the staff in their individual job descriptions;
- (f) Assure the development, implementation, and monitoring of child-care center plans, policies, and procedures;

- (g) Supervise staff conduct to ensure implementation of program policies and procedures;
- (h) Post a schedule of daily activities, to include dates and times of activities to be conducted with the children in each classroom;
- (i) Conduct, manage, and document in writing recurring staff meetings;
- (j) Assess each staff person's interaction with children in care and classroom performance through an annual written performance evaluation;
- (k) Assure that additional staff are available during cooking and cleaning hours, if necessary, to maintain staff-to-child ratios pursuant to 922 KAR 2:120;
- (l) ~~Assure the health, safety, and comfort of each child;~~
- ~~(m)~~ Notify the parent immediately of an accident or incident requiring medical treatment of a child;
- ~~(n)~~~~(o)~~ Assure that a person acting as a caregiver of a child in care shall not be left alone with a child, if the licensee has not received the results of the background checks as established [described] in 922 KAR 2:280;
- ~~(o)~~~~(p)~~ Assure each mandatory record specified in Section 9 of this administrative regulation has not been altered or falsified;
- ~~(p)~~~~(q)~~ Coordinate at least one (1) annual activity involving parental or family participation; and
- ~~(r)~~~~(s)~~ Not have had previous ownership interest in a child-care provider that had its certification, license, or registration denied or revoked.
- (2) The director of a Type I child-care center shall meet one (1) of the following educational requirements:
 - (a) Master's degree in education or child development field;
 - (b) Bachelor's degree in education or child development field;
 - (c) Master's degree or a bachelor's degree in a field other than education or child development, including a degree in pastoral care and counseling, plus twelve (12) clock hours of child development training;
 - (d) Associate degree in Early Childhood Education and Development;
 - (e) Associate degree in a field other than Early Childhood Education and Development, plus twelve (12) clock hours of child development training, and two (2) years of verifiable full-time paid experience working directly with children;
 - (f) A Director's Credential in Early Childhood Development and one (1) year of verifiable full-time paid experience working directly with children in:
 1. A school-based program following Department of Education guidelines;
 2. An early childhood development program, such as Head Start; or
 3. A licensed or certified child-care program;
 - (g) Child development associate plus one (1) year of verifiable paid experience working directly with children in:
 1. A school-based program following Department of Education guidelines;
 2. An early childhood development program, such as Head Start; or
 3. A licensed or certified child-care program.
 - (3) The director of a Type II child-care center shall:
 - (a) Meet the requirements in subsection (2) of this section; or
 - (b) Meet two (2) of the following:
 1. Have twelve (12) hours of orientation and child development training;
 2. Have one (1) year of verifiable full-time paid experience working directly with children in:
 - a. A school-based program following Department of Education guidelines;
 - b. An early childhood development program, such as Head

Start; or

- c. A licensed or certified child-care program; or
- 3. Obtain six (6) additional hours of training in child day care program administration.

Section 11. Staff Requirements. (1) Child-care center staff:

(a) Hired after January 1, 2009, who have supervisory power over a minor and are not enrolled in secondary education, shall have a:

- 1. High school diploma;
- 2. GED or qualifying documentation from a comparable educational entity; or
- 3. Commonwealth Child Care Credential as described in 922 KAR 2:250; and

(b) Shall provide, prior to employment and every two (2) years thereafter:

- 1. A statement from a health professional that the individual is free of active tuberculosis; or
- 2. A copy of negative tuberculin results.

(2)(a) A child-care center shall not employ a person:

- 1. With a disqualifying background check result in accordance with 922 KAR 2:280; or

2. Determined by a physician to have a health condition that renders the person unable to care for children.

(b) An individual described in Section 6(4) of this administrative regulation shall report to the licensee if the individual:

- 1. Meets a disqualifying criterion or has a disqualifying background check result as specified in 922 KAR 2:280;
- 2. Is the subject of a cabinet child abuse or neglect investigation; or

3. Is determined by a physician to have a health condition that renders the person unable to care for children.

(3) For a child-care center licensed for infant, toddler, or preschool-age children, at least one (1) person on duty and present with the children shall be currently certified by a cabinet-approved training agency in the following skills:

- (a) Infant and child cardiopulmonary resuscitation; and
- (b) Infant and child first aid.

(4) For a child-care center licensed for school-age children, at least one (1) person on duty and present with the children shall be currently certified by a cabinet-approved training agency in the following skills:

- (a) Adult cardiopulmonary resuscitation; and
- (b) First aid.

(5) Cardiopulmonary resuscitation (CPR) and first aid training shall be in addition to the fifteen (15) clock hours requirement in subsection (16) of this section.

(6) Child-care centers shall have available in case of need:

- (a) One (1) qualified substitute staff person for a Type II child-care center; or
- (b) Two (2) qualified substitute staff persons for a Type I child-care center.

(7) Each qualified substitute staff person shall:

- (a) Meet the staff requirements of this administrative regulation; and
- (b) Provide the required documentation to verify compliance with this administrative regulation.

(8) A qualified substitute who works in more than one (1) licensed child-care center shall provide the required documentation to verify compliance with this administrative regulation at the time of employment with each child-care center.

(9) If the operator of a Type II child-care center is unable to provide care in accordance with this administrative regulation, 922 KAR 2:280, or 922 KAR 2:120, the Type II child-care center shall:

- (a) Close temporarily until the operator is able to resume compliance; and
- (b) Immediately notify parents of enrolled children of the temporary closure.

(10) The minimum number of adult workers in a child-care center shall be sufficient to ensure that:

- (a) Minimum staff-to-child ratios in accordance with 922 KAR 2:120 are followed;
- (b) Each staff person under eighteen (18) years of age and

each student trainee are under the direct supervision of a qualified staff person who meets the requirements of this section; and

(c) Unless providing care with a qualified staff person, a person under the age of eighteen (18) shall not be counted as staff for the staff-to-child ratio.

(11) Except for medication as prescribed by a physician, a controlled substance shall not be permitted on the premises during hours of operation.

(12) Alcohol shall:

(a) Not be consumed by any person on the licensed child-care center's premises during hours of operation; and

(b) Be kept out of reach and sight of a child in care.

(13) Each staff person shall remain awake while on duty except as specified in 922 KAR 2:120, Section 2(11)(f).

(14) For each adult residing at a Type II child-care center, the results of the following shall be maintained on file at the center:

(a) Background checks conducted in accordance with 922 KAR 2:280; and

(b) A copy of negative tuberculin results or a health professional's statement documenting that the adult is free of tuberculosis. Every two (2) years, the adult shall provide negative tuberculin results or health professional's statement documenting that the adult is free of tuberculosis.

(15) If a new adult begins residing in a Type II child-care center, the adult shall submit to background and health checks within thirty (30) calendar days of residence within the household.

(16) In accordance with KRS 199.896(15) and (16), a staff person with supervisory authority over a child shall complete the following:

(a) Six (6) hours of cabinet-approved orientation completed within the first three (3) months of employment in a child care program;

(b) Nine (9) hours of cabinet-approved early care and education training within the first year of employment in a child care program, including one and one-half (1 1/2) hours of cabinet-approved pediatric abusive head trauma training; and

(c) Fifteen (15) hours of cabinet-approved early care and education training completed between July 1 and the following June 30 of [during] each subsequent year of employment in a child care program, including one and one-half (1 1/2) hours of cabinet-approved pediatric abusive head trauma training completed once every five (5) years.

(17) A staff person's compliance with training requirements of this section shall be verified through the cabinet-designated database maintained pursuant to 922 KAR 2:240.

Section 12. Contract Substitute Staff **Member** Requirements.

(1) A contract substitute staff member shall:

(a) Comply with the training requirements established in Section 11 of this administrative regulation;

(b) Be employed by an outside agency and provide the required documentation to verify the contractual agreement between the licensed child-care center and the outside agency;

(c) Provide a hard copy file containing all required staff records to be kept on-site at the licensed child-care center and maintained at the center for five (5) years;

(d) Be entered into the cabinet-designated database as a staff member of the outside organization in accordance with 922 KAR 2:240;

(e) Be the responsibility of the licensed child-care center while working on-site; and

(f) Have supervisory authority over a child only if the requirements of 922 KAR 2:120, 922 KAR 2:280, and this administrative regulation are met.

(2) Except for an employee of a child-care center program authorized by 42 U.S.C. 9831-9852, an owner or employee of a contract agency possessing a Kentucky Early Care and Education Trainer's Credential shall not train an employee of the same contract agency in order to meet the training requirements established in:

- (a) KRS 199.896(15) and (16), 922 KAR 2:180, 922 KAR 2:240, 922 KAR 2:250, 922 KAR 2:270, or this administrative regulation; or

(b) A child development associate credential.

Section 13. Reports. (1) The following shall be reported to the cabinet or designee and other agencies specified in this section within twenty-four (24) hours from the time of discovery:

(a) Communicable disease, which shall also be reported to the local health department pursuant to KRS 214.010;

(b) An accident or injury to a child that requires medical care initiated by the child-care center or the child's parent;

(c) An incident that results in legal action by or against the child-care center that:

1. Affects a child or staff person; or

2. Includes the center's discontinuation or disqualification from a governmental assistance program due to fraud, abuse, or criminal conviction related to that program;

(d) An incident involving fire or other emergency, including a vehicular accident when the center is transporting a child receiving child care services;

(e) A report of child abuse or neglect that:

1. Has been accepted by the cabinet in accordance with 922 KAR 1:330; and

2. Names a director, employee, volunteer, or person with supervisory or disciplinary control over, or having unsupervised contact with, a child in care as the alleged perpetrator; or

(f) An individual specified in Section 6(4) of this administrative regulation meeting a disqualifying criterion or background check result pursuant to 922 KAR 2:280.

(2) An incident of child abuse or neglect shall be reported to the cabinet pursuant to KRS 620.030.

(3) A licensee shall report to the cabinet within one (1) week:

(a) Any resignation, termination, or change of director; and

(b) The name of the acting director who satisfies the requirements of Section 10 of this administrative regulation.

(4)(a) Written notification of the following shall be:

1. Made to the cabinet, in writing, to allow for approval before implementation:

a. Change of ownership;

b. Change of location;

c. Increase in capacity;

d. Change in hours of operation;

e. Change of services in the following categories:

(i) Infant;

(ii) Toddler;

(iii) Preschool-age;

(iv) School-age;

(v) Nontraditional hours; or

(vi) Transportation; or

f. Addition to or reduction of the square footage of a child-care center's premises; and

2. Signed by each owner listed on the preliminary or regular license.

(b) The cabinet or its designee shall not charge a fee for acting upon reported changes.

(5) The death of a child in care shall be reported to the cabinet within one (1) hour.

(6) The cabinet and the parent of a child enrolled in a child-care center shall receive notice as soon as practicable, and prior to, a child-care center's temporary or permanent closure.

Section 14[13]. Annual Renewal. (1)(a) A regular license shall expire one (1) year from the effective date or last renewal date unless the licensee renews the regular license in accordance with this section and KRS 199.896(3).

(b) A preliminary license shall expire six (6) months from the date of issuance.

(c) A regular license that expires shall lapse and shall not be subject to appeal.

(2) A licensee seeking renewal of a regular license shall:

(a) Submit one (1) month prior to the anniversary of the regular license's effective date, an OIG-DRCC-06, Child-Care Center License Renewal Form;

(b) Meet the requirements specified in Sections 4 through 13 [12] of this administrative regulation; and

(c) Pay the nonrefundable renewal fee in accordance with Section 7 of this administrative regulation.

(3) If requirements of subsection (1) of this section are met, the cabinet shall renew the license in the form of a validation letter.

(4) An application for renewal shall be denied in accordance with Section 17 [46] of this administrative regulation.

Section 15[14]. Statement of Deficiency and Corrective Action Plans. (1) If a center is found not to be in regulatory compliance, the cabinet or its designee shall complete a written statement of deficiency in accordance with KRS 199.896(5).

(2) Except for a violation posing an immediate threat as handled in accordance with KRS 199.896(5)(c), a child-care center shall submit a written corrective action plan to the cabinet or its designee within fifteen (15) calendar days of the date of the statement of deficiency to eliminate or correct the regulatory violation.

(3) A corrective action plan shall include:

(a) Specific action undertaken to correct a violation;

(b) The date action was or shall be completed;

(c) Action utilized to assure ongoing compliance;

(d) Supplemental documentation requested as a part of the plan; and

(e) Signature of the licensee or designated representative of the licensee and the date of signature.

(4) The cabinet or its designee shall review the plan and notify the child-care center within thirty (30) calendar days of receipt of the plan, in writing, of the decision to:

(a) Accept the plan;

(b) Not accept the plan; or

(c) Deny, suspend, or revoke the child-care center's license, in accordance with Section 17 [46] of this administrative regulation.

(5) A notice of unacceptability shall state the specific reasons the plan is unacceptable.

(6) A child-care center notified of the unacceptability of its plan shall:

(a) Within fifteen (15) calendar days of the notification's date, submit an amended plan; or

(b) Have its license revoked or denied for failure to:

1. Submit an acceptable amended plan in accordance with KRS 199.896(4); or

2. Implement the corrective measures identified in the plan of correction.

(7) The cabinet shall not review or accept more than three (3) corrective action plans from a licensed child-care center in response to the same written statement of deficiency.

(8) If a licensed child-care center fails to submit an acceptable corrective action plan or does not implement corrective measures in accordance with the corrective action plan, the cabinet shall deny or revoke the center's license.

(9) The administrative regulatory violation reported on a statement of deficiency that poses an immediate threat to the health, safety, or welfare of a child shall be corrected within five (5) working days from the date of the statement of deficiency in accordance with KRS 199.896(5)(c).

Section 16[15]. Directed Plan of Correction (DPOC). If the cabinet determines that a child-care center is in violation of this administrative regulation, 922 KAR 2:120, or 922 KAR 2:280, based on the severity of the violation, the cabinet:

(1) Shall enter into an agreement with the provider detailing the requirements for remedying a violation and achieving compliance;

(2) Shall notify or require the provider to notify a parent of a child who may be affected by the situation for which a DPOC has been imposed;

(3) Shall increase the frequency of monitoring by cabinet staff;

(4) May require the provider to participate in additional training; and

(5) May amend the agreement with the provider if the cabinet identifies an additional violation during the DPOC.

Section 17[16]. Basis for Denial, Suspension, or Revocation.

(1)(a) The cabinet shall deny, suspend, or revoke a preliminary or regular license in accordance with KRS 199.896 if the applicant for

licensure, director, employee, or a person who has supervisory authority over, or unsupervised contact with, a child fails to meet the requirements of this administrative regulation, 922 KAR 2:120, 922 KAR 2:280, or 922 KAR 2:190.

(b) A licensee whose regular license is suspended or revoked shall:

1. Receive a new license certificate indicating that the license is under adverse action; and

2. Post the new license certificate in accordance with Section 8(6) of this administrative regulation.

(2) Emergency Action.

(a) The cabinet shall take emergency action in accordance with KRS 199.896(4) by issuing an emergency order that suspends a child-care center's license.

(b) An emergency order shall:

1. Be served to a licensed child-care center in accordance with KRS 13B.050(2); and

2. Specify the regulatory violation that caused the emergency condition to exist.

(c) Upon receipt of an emergency order, a child-care center shall surrender its license to the cabinet.

(d) The cabinet or its designee and the child-care center shall make reasonable efforts to:

1. Notify a parent of each child in care of the center's suspension; and

2. Refer a parent for assistance in locating alternate child care arrangements.

(e) A child-care center required to comply with an emergency order issued in accordance with this subsection may submit a written request for an emergency hearing within twenty (20) calendar days of receipt of the order to determine the propriety of the licensure's suspension in accordance with KRS 199.896(7).

(f) The cabinet shall conduct an emergency hearing within ten (10) working days of the request for hearing in accordance with KRS 13B.125(3).

(g)1. Within five (5) working days of completion of the hearing, the cabinet's hearing officer shall render a written decision affirming, modifying, or revoking the emergency order to suspend licensure.

2. The emergency order shall be affirmed if there is substantial evidence of an immediate threat to public health, safety, or welfare.

(h) A provider's license shall be revoked if the:

1. Provider does not request a hearing within the timeframes established in paragraph (e) of this subsection; or

2. Condition that resulted in the emergency order is not corrected within thirty (30) calendar days of service of the emergency order.

(3) Public information shall be provided in accordance with KRS 199.896(10) and (11), and 199.898(2)(d) and (e).

(4) Unless an applicant for a license meets requirements of Section 6(5) of this administrative regulation, the cabinet shall deny an applicant for a preliminary or regular license if:

(a) The applicant has had previous ownership interest in a child-care provider that had its certification, license, or registration denied or revoked;

(b) Denial, investigation, or revocation proceedings were initiated, and the licensee voluntarily relinquished the license;

(c) An appeal of a denial or revocation is pending;

(d) The applicant previously failed to comply with the requirements of KRS 199.896, 922 KAR 2:120, 922 KAR 2:280, 922 KAR 2:190, this administrative regulation, or another administrative regulation effective at the time;

(e) An individual with ownership interest in the child-care center has been discontinued or disqualified from participation in:

1. The Child Care Assistance Program established by 922 KAR 2:160, including an intentional program violation in accordance with 922 KAR 2:020; or

2. Another governmental assistance program due to fraud, abuse, or criminal conviction related to that program;

(f) The applicant is the parent, spouse, sibling, or child of a previous licensee whose license was denied, revoked, or voluntarily relinquished as described in paragraphs (a) through (d) of this subsection, and the previous licensee will be involved in the

child-care center in any capacity;

(g) The applicant listed as an officer, director, incorporator, or organizer of a corporation or limited liability company whose child-care center license was denied, revoked, or voluntarily relinquished as described in paragraph (a) through (d) of this subsection within the past seven (7) years;

(h) The applicant knowingly misrepresents or submits false information on a form required by the cabinet;

(i) The applicant interferes with a cabinet or other agency representative's ability to perform an official duty pursuant to Section 6(8)(f) or 6(9) of this administrative regulation;

(j) The applicant's background check reveals that the applicant is disqualified in accordance with 922 KAR 2:280;

(k) The applicant has been the subject of more than two (2) directed plans of correction during a three (3) year period; or

(l) The applicant has failed to comply with payment provisions in accordance with 922 KAR 2:190.

(5) A child-care center's license shall be revoked if:

(a) A representative of the center interferes with a cabinet or other agency representative's ability to perform an official duty pursuant to Section 6(8)(f) or 6(9) of this administrative regulation;

(b) A cabinet representative, a representative from another agency with regulatory authority, or parent is denied access during operating hours to:

1. A child;
2. The child-care center; or
3. Child-care center staff;

(c) The licensee is discontinued or disqualified from participation in:

1. The Child Care Assistance Program as a result of an intentional program violation in accordance with 922 KAR 2:020; or
2. A governmental assistance program as a result of fraud, abuse, or criminal conviction related to that program;

(d) The licensee fails to meet a condition of, or violates a requirement of a directed plan of correction pursuant to Section 16[45] of this administrative regulation;

(e) The applicant or licensee knowingly misrepresents or submits false information on a form required by the cabinet;

(f) The licensee is the subject of more than two (2) directed plans of correction during a three (3) year period; or

(g) The licensee has failed to comply with payment provisions in accordance with 922 KAR 2:190.

(6) The cabinet or its designee shall suspend the license if:

(a) A regulatory violation is found to pose an immediate threat to the health, safety, and welfare of the children in care as described in KRS 199.896(4); or

(b) The child care-center fails to comply with the approved plan of correction.

Section 18[47]. Civil Penalty. The cabinet shall assess and enforce a civil penalty in accordance with 922 KAR 2:190.

Section 19[48]. Right of Appeal. (1) If an application has been denied or a licensee receives notice of suspension, revocation, or civil penalty, the cabinet shall inform the applicant for licensure or licensee by written notification of the right to appeal the notice of adverse action in accordance with KRS Chapter 13B and 199.896(7).

(2) An adverse action may be appealed by filing form OIG-DRCC-02, Licensed Provider Request for Appeal **[Hearing and/or Informal Dispute Resolution]**. The request shall:

(a) Be submitted to the secretary of the cabinet or designee within twenty (20) calendar days of the notice of adverse action; and

(b) Specify if an applicant for licensure or licensee requests an opportunity to informally dispute the notice of adverse action.

(3) If an applicant for licensure or a licensee files an OIG-DRCC-02 for a hearing, the cabinet shall:

- (a) Appoint a hearing officer; and
- (b) Proceed pursuant to KRS 13B.050.

(4) If an applicant for licensure or a licensee files a request for a hearing and a request for an informal dispute resolution, the cabinet shall:

- (a) Abate the formal hearing pending completion of the informal dispute resolution process; and
- (b) Proceed to informal dispute resolution.

Section 20[49]. Informal Dispute Resolution. (1) A request for informal dispute resolution shall:

- (a) Accompany the request for a hearing;
 - (b) Identify the licensure deficiency in dispute;
 - (c) Specify the reason the applicant for licensure or licensee disagrees with the deficiency; and
 - (d) Include documentation that disputes the deficiency.
- (2) Upon receipt of the written request for informal dispute resolution, the regional program manager or designee shall:
- (a) Review documentation submitted by the applicant for licensure or licensee; and
 - (b) If requested, schedule an informal dispute resolution meeting with the applicant for licensure or licensee.
- (3) The informal dispute resolution meeting shall be held within ten (10) calendar days of receipt of the request by the cabinet, unless both parties agree in writing to an extension of time.
- (4) The informal dispute resolution meeting shall be conducted by:

- (a) The regional program manager or designee; and
 - (b) A child care surveyor who did not participate in the survey resulting in the disputed deficiency.
- (5) Within ten (10) calendar days of completion of the informal dispute resolution meeting or request, the regional program manager or designee shall:
- (a) Issue a decision by written notification to the return address specified in the request for informal dispute resolution;
 - (b) If a change is made to the statement of deficiencies, issue an amended statement of deficiencies; and
 - (c) Specify whether the adverse action has been rescinded.
- (6) An applicant or a licensee may:
- (a) Accept the determination; or
 - (b) Proceed to a hearing according to KRS 13B.050.
- (7) A request for informal dispute resolution shall not:
- (a) Limit, modify, or suspend enforcement action against the applicant for licensure or licensee; or
 - (b) Delay submission of a written plan of correction.
- (8) Emergency action taken in accordance with Section 17(2) [46(2)] of this administrative regulation shall conform to the requirements of KRS 199.896(4). The informal dispute resolution process shall not restrict the cabinet's ability to issue an emergency order to stop, prevent, or avoid an immediate threat to public health, safety, or welfare under KRS 13B.125(2) and 199.896(4).

Section 21[20]. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "OIG-DRCC-01, Initial Child-Care Center License Application", 8/2018;
 - (b) "OIG-DRCC-02, Licensed Provider Request for Appeal [~~Hearing and/or Informal Dispute Resolution~~]", 3/2020 [~~11/2019~~] [8/3/12]; and
 - (c) "OIG-DRCC-06, Child-Care Center License Renewal Form", 8/2018.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the [~~Inspector General's~~] Office of the Inspector General, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ERIC C. FRIEDLANDER, Acting Secretary

APPROVED BY AGENCY: March 9, 2020

FILED WITH LRC: March 11, 2020 at 11 a.m.

CONTACT PERSON: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746, fax 502-564-7091, email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Laura Begin or Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes licensure standards for a child-care center, and describes an applicant's and a child-care center's appeal rights and informal dispute resolution processes.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish a child-care center's licensure standards, appeal rights, and informal dispute resolution process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of licensure standards for a child-care center and related due process.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the requirements for a child-care center license and related due process.

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

(a) How the amendment will change this existing administrative regulation: This amendment includes a definition for contract substitute staff members; establishes a section outlining contract substitute staff member requirements; and makes the annual documentation and tracking of training hours more useful and meaningful to child care providers, licensing staff, and quality rating improvement system staff by establishing a set timeframe for the completion of ongoing training. Material incorporated by reference, the OIG-DRCC-02, is also being amended to include more appeal options and cite statutory authority relating to appeals. The administrative regulation is being further amended in response to comments received during the public comment period to specify that the licensee is responsible for assuring the health, safety, and comfort of each child rather than the director, and to amend the OIG-DRCC-02 form for compliance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation addresses the need to formally establish standards for contract substitute staff members in child care settings to ensure minimum health and safety standards are met and clarify staff requirements. This amendment also creates a yearly training cycle with an established start and end date, not tied to the staff member's hire date, to ensure all child care staff members receive the required training each year. The administrative regulation is being further amended in response to comments received to clarify responsibility and comply with KRS Chapter 13A.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the content of the authorizing statutes by aligning policy and providing that all providers have the same training and skills to work and care for young children.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by requiring all staff to have met statutory requirements and receive training.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently 1,918 licensed child-care centers in Kentucky affected by this administrative regulation. The Cabinet for Health and Family Services Office of the Inspector General, Division of Regulated Child Care, and Department for Community Based Services, Division of Child Care, are also affected.

(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 additional actions will need to be taken by any entities. Staff members are currently required to complete annual training hours. This amendment creates an

established timeframe for training hour completion. Providers will no longer need to track each individual's training hours based on their hire date (i.e. keeping up with individual training hour deadlines for each staff member). The cabinet will be able to determine compliance with training requirements in a much more efficient manner and create and run simplified reports.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will create no new or additional costs to regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants and licensed child-care centers and the children in their care will benefit from improved clarity, greater program integrity, and enhanced quality assurance in the child care community.

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

(a) Initially: The amendment to this administrative regulation will not result in any new initial costs to the administrative body.

(b) On a continuing basis: The amendment to this administrative regulation will not result in any new continuing costs for the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Child Care and Development Fund Block Grant, state match and maintenance of effort for the block grant, and limited agency funds support the direct implementation of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fees or funding required as a result of this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees, or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 98.2, 98.43, 42 U.S.C. 601-619, 9857-9858r

2. State compliance standards.
KRS 194A.050(1), 199.896(2), (6)

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 98.2, 42 U.S.C. 601-619, 9857-9858r

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter, additional or different responsibilities or requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter, additional or different responsibilities or requirements than those required by the federal mandate.

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 Cabinet for Health and Family Services is impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.896(2), (6), 45 C.F.R. 98.2, 42 U.S.C. 601-619, 9857-9858r

(3) Estimate the effect of this administrative regulation on the

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment to this administrative regulation will not generate revenue in the first year.

(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 amendment to this administrative regulation will not generate revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? There are no additional costs to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? There are no additional costs to administer this program in subsequent years.

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:

PROPOSED AMENDMENTS

BOARDS AND COMMISSIONS
Kentucky Board of Pharmacy
(Amendment)

201 KAR 2:050. Licenses and permits; fees.

RELATES TO: KRS 218A.205(3)(g), 315.035(1), (2), (4), 315.0351(1), 315.036(1), 315.050(5), 315.060, 315.110, 315.120, 315.191, 315.402

STATUTORY AUTHORITY: KRS 218A.205(3)(g), 315.035(1), (2), (4), 315.036(1), 315.050(5), 315.060, 315.110(1), 315.120(4), 315.191(1)(i), 315.402(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(i) authorizes the board to assess reasonable fees for services rendered to perform its duties and responsibilities. This administrative regulation establishes reasonable fees for the board to perform all the functions for which it is responsible.

Section 1. The following fees shall be paid in connection with pharmacist examinations and licenses, pharmacy permits, intern certificates, and the issuance and renewal of licenses and permits:

- (1) Application for a licensee for pharmacist examination - \$150;
- (2) Application and initial license for a pharmacist license by license transfer - \$250;
- (3) ~~Certifying the grades of a licensee of Kentucky to the licensing agency of another state - ten (10) dollars;~~
- (4) Annual renewal of a pharmacist license - seventy (70) dollars;
- (5) Delinquent renewal penalty for a pharmacist license - seventy (70) dollars;
- (6) Annual renewal of an inactive pharmacist license - ten (10) dollars;
- (7) Pharmacy intern certificate valid six (6) years - twenty-five (25) dollars;
- (8) Duplicate of original pharmacist license wall certificate - seventy-five (75) dollars;
- (9) Application for a permit to operate a pharmacy - ~~[\$100]125;~~
- (10) Renewal of a permit to operate a pharmacy - ~~[\$100]125;~~
- (11) Delinquent renewal penalty for a permit to operate a pharmacy - ~~[seventy-five (75)] \$100~~ dollars;
- (12) Change of location or change of ownership of a pharmacy or manufacturer permit - seventy-five (75) dollars;
- (13) Application for a permit to operate as a manufacturer - ~~[\$100]125;~~
- (14) Renewal of a permit to operate as a manufacturer - ~~[\$100]125;~~
- (15) Delinquent renewal penalty for a permit to operate as a manufacturer - ~~[\$100]125;~~
- (16) Change of location or change of ownership of a wholesale distributor license - seventy-five (75) dollars;
- (17) Application for a license to operate as a wholesale distributor - ~~[\$100]125;~~
- (18) Renewal of a license to operate as a wholesale distributor - ~~[\$100]125;~~
- (19) Delinquent renewal penalty for a license to operate as a wholesale distributor - ~~[\$100]125;~~ and
- (20) Query to the National Practitioner Data Bank of the United States Department of Health and Human Services – twenty-five (25) dollars.

LARRY A. HADLEY, R.Ph., Executive Director

APPROVED BY AGENCY: March 4, 2020

FILED WITH LRC: March 4, 2020 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 27, 2020 at 9:00 a.m. Eastern Time at Sullivan University, 2100 Gardiner Lane, Louisville, Kentucky 40205. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the

hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request is received. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Larry Hadley, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Larry.Hadley@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Larry Hadley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the examinations

(b) The necessity of this administrative regulation: KRS 315.191(1)(i) authorizes the Board of Pharmacy to assess reasonable fees for services rendered to perform its duties and responsibilities. This administrative regulation establishes reasonable fees for the board to perform all the functions for which it is responsible. This administrative regulation establishes reasonable fees for the board to perform all the functions for which it is responsible.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes reasonable fees for the board to perform all the functions for which it is reasonable.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Increase fees for permits by twenty-five (\$25) annually per authority in KRS 315.191.

(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: Increase fees for permits by twenty-five (\$25) annually per authority in KRS 315.035(4); 315.036(1); 315.110(1).

(b) The necessity of the amendment to this administrative regulation: The criteria needed to be updated.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 315.191(1)(i) authorizes the Board of Pharmacy to assess reasonable fees for services rendered to perform its duties and responsibilities. This administrative regulation establishes reasonable fees for the board to perform all the functions for which it is responsible.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will further promote, preserve, and protect public health through effective regulation of pharmacists and pharmacies by reasonable fees for the board to perform all the functions for which it is responsible.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates pharmacies and pharmacists will be affected minimally by this regulation amendment.

(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: Pharmacies and pharmacists will have to familiarize themselves with amended language. The board will help to educate pharmacists and pharmacies in these changes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are twenty-five (\$25) fee for permits to comply with the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will clarify previous statutory language.

(4) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment will further promote, preserve, and protect public health through effective regulation of pharmacists and pharmacies by reasonable fees for the board to perform all the functions for which it is responsible

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

(a) Initially: No costs will be incurred.

(b) On a continuing basis: No costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Board revenues from pre-existing fees provide the funding to enforce the regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There will be a twenty-five (\$25) increase to all pharmacy permits and renewals.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There will be a twenty-five (\$25) increase to all pharmacy permits and renewals.

(9) TIERING: Is tiering applied? Tiering is not applied because the regulation is applicable to all pharmacist and sponsors that desire approval for continuing education credit.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 315.191(1)(i); 315.035(4); 315.036(1); 315.110(1).

(2) 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.

(3) 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? It is estimated that this regulation will provide an annual \$106,800.00 increase in revenue.

(a) 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? It is estimated that this regulation will provide an annual \$106,800.00 increase in revenue.

(b) How much will it cost to administer this program for the first year? No costs are required to administer this program for the first year.

(c) How much will it cost to administer this program for subsequent years? No costs are required to administer this program for subsequent years.

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

Revenues (+/-): regulation will provide an annual \$106,800.00 increase in revenue.

Expenditures (+/-): 0

Other Explanation:

BOARDS AND COMMISSIONS Board of Pharmacy (Amendment)

201 KAR 2:175. Emergency/seventy-two (72) hour prescription refills.

RELATES TO: KRS Chapters 217, 315

STATUTORY AUTHORITY: KRS 217.215(3), 315.191

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation sets out the conditions whereby a prescription may be refilled in an emergency situation and the

prescriber is unavailable.

Section 1. If a pharmacist receives a request for a prescription refill with no refill authorized and the pharmacist is unable to readily obtain refill authorization from the prescriber, the pharmacist may dispense a one (1) time emergency refill of up to a seventy-two (72) hour supply of the medication when:

(1) The prescription refill is not for a controlled substance;

(2) The medication is essential to the maintenance of life or to the continuation of therapy in chronic conditions;

(3) In the pharmacist's professional judgment, the interruption of therapy might reasonably produce undesirable health consequences or may be detrimental to the patient's welfare and cause physical or mental discomfort;

(4) The pharmacist notes on the prescription record the date, the quantity dispensed, and his name or initials; and

(5) In all situations an emergency refill must be followed by authorization from the prescriber for continued therapy.

(6) A pharmacist may dispense greater than a seventy-two (72) hour supply of maintenance medication if:

(a) The standard unit of dispensing for the drug exceeds a seventy-two (72) hour supply;

(b) The pharmacist dispenses a supply of the drug that is equal to the standard unit of dispensing for the drug; and

(c) The drug is used for insulin therapy or the treatment of chronic respiratory diseases.

Section 2. Violation of any provision of this administrative regulation constitutes unethical or unprofessional conduct in accordance with KRS 315.121.

LARRY HADLEY, Executive Director

APPROVED BY AGENCY: March 4, 2020

FILED WITH LRC: March 4, 2020 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 27, 2020, at 9:00 a.m. Eastern Time at Sullivan University, 2100 Gardiner Lane, Louisville, Kentucky 40205. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Larry Hadley, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, or email Larry.Hadley@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Larry Hadley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets out the conditions whereby a prescription may be refilled in an emergency situation and the prescriber is unavailable.

(b) The necessity of this administrative regulation: KRS 315.191 authorizes the Board of Pharmacy to set out the conditions whereby a prescription may be refilled in an emergency situation and the prescriber is unavailable. This administrative regulation establishes conditions whereby a prescription may be refilled in an emergency situation and the prescriber is unavailable.

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

establishes conditions whereby a prescription may be refilled in an emergency situation and the prescriber is unavailable.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Set conditions whereby a prescription may be refilled in an emergency situation and the prescriber is unavailable per authority in KRS 315.191.

(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: Further clarify conditions whereby a prescription may be refilled in an emergency situation and the prescriber is unavailable.

(b) The necessity of the amendment to this administrative regulation: The criteria needed to be updated.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 315.191 authorizes the Board of Pharmacy to Pharmacy to set out the conditions whereby a prescription may be refilled in an emergency situation and the prescriber is unavailable.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will further promote, preserve, and protect public health through effective regulation of pharmacists and pharmacies.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates pharmacies and pharmacists will be affected minimally by this regulation amendment.

(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: Pharmacies and pharmacists will have to familiarize themselves with amended language.

(b) The board will help to educate pharmacists and pharmacies in these changes. In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Further clarify conditions whereby a prescription may be refilled in an emergency situation and the prescriber is unavailable.

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

(a) Initially: No costs will be incurred.

(b) On a continuing basis: No costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Board revenues from pre-existing fees provide the funding to enforce the regulation.

(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 anticipated increase in fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No anticipated increase in fees.

(9) TIERING: Is tiering applied? Tiering is not applied because the regulation is applicable to all pharmacist and sponsors that desire approval for continuing education credit.

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 Kentucky Board of Pharmacy will be the only entity impacted by this administrative regulation.

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

regulation. KRS 315.191.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No estimated increase in 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? No estimated increase in revenue.

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

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

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

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation:

BOARDS AND COMMISSIONS

Board of Nursing (Amendment)

201 KAR 20:057. Scope and standards of practice of advanced practice registered nurses.

RELATES TO: KRS 218A.172, 218A.205(3)(a), (b), 314.011(7), 314.011(8), 314.042, 314.193(2), 314.195, 314.196, National Transportation Safety Board Safety Recommendation 1-14-1.

STATUTORY AUTHORITY: KRS 218A.205(3)(a), (b), 314.131(1), 314.193(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.205(3)(a) and (b) require the Board of Nursing, in consultation with the Kentucky Office of Drug Control Policy, to establish by administrative regulation mandatory prescribing and dispensing standards for licensees authorized to prescribe or dispense controlled substances, and in accordance with the Centers for Disease Control and Prevention (CDC) guidelines, to establish a prohibition on a practitioner issuing a prescription for a Schedule II controlled substance for more than a three (3) day supply if intended to treat pain as an acute medical condition, unless an exception applies. KRS 314.131(1) authorizes the board to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS Chapter 314.193(2) authorizes the board to promulgate administrative regulations establishing standards for the performance of advanced practice registered nursing to safeguard the public health and welfare. This administrative regulation ~~establish~~establishes the scope and standards of practice for an advanced practice registered nurse.

Section 1. Definitions. (1) "Collaboration" means the relationship between the advanced practice registered nurse and a physician in the provision of prescription medication, including both autonomous and cooperative decision-making, with the advanced practice registered nurse and the physician contributing their respective expertise.

(2) "Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Controlled Substances" or "CAPA-CS" means the written document pursuant to KRS 314.042(10).

(3) "Collaborative Agreement for the Advanced Practice Registered Nurse's Prescriptive Authority for Nonscheduled Legend Drugs" or "CAPA-NS" means the written document

pursuant to KRS 314.042(8).

(4) "KASPER" means the Kentucky All Schedule Prescription Electronic Reporting System established in KRS 218A. 202.

Section 2. (1) The practice of the advanced practice registered nurse shall be in accordance with the standards and functions defined in scope and standards of practice statements adopted by the board in subsection (2) of this section.

(2) The following scope and standards of practice statements shall be adopted:

(a) AACN Scope and Standards for Acute Care Nurse Practitioner Practice;

(b) AACN Scope and Standards for Acute Care Clinical Nurse Specialist Practice;

(c) Neonatal Nursing: Scope and Standards of Practice;

(d) Nursing: Scope and Standards of Practice;

(e) Pediatric Nursing: Scope and Standards of Practice;

(f) Psychiatric- Mental Health Nursing: Scope and Standards of Practice;

(g) Scope of Practice for Nurse Practitioners;

(h) Standards of Practice for Nurse Practitioners;

(i) Scope of Nurse Anesthesia Practice;

(j) Standards for Nurse Anesthesia Practice;

(k) Standards for Office Based Anesthesia Practice;

(l) Standards for the Practice of Midwifery;

(m) ~~Oncology Nursing~~ [Statement on the] Scope and Standards of [Oncology Nursing] Practice; ~~Generalist and Advanced Practice~~;

(n) The Women's Health Nurse Practitioner: Guidelines for Practice and Education; and

(o) Definition of Midwifery and Scope of Practice of Certified Nurse-Midwives and Certified Midwives.

Section 3. In the performance of advanced practice registered nursing, the advanced practice registered nurse shall seek consultation or referral in those situations outside the advanced practice registered nurse's scope of practice.

Section 4. Advanced practice registered nursing shall include prescribing medications and ordering treatments, devices, diagnostic tests, and performing certain procedures which are consistent with the scope and standards of practice of the advanced practice registered nurse.

Section 5. Advanced practice registered nursing shall not preclude the practice by the advanced practice registered nurse of registered nursing practice as defined in KRS 314.011(6).

Section 6. (1)(a) A CAPA-NS and a CAPA-CS shall include the name, practice address, phone number, and license number of both the advanced practice registered nurse and each physician who is a party to the agreement. It shall also include the population focus and area of practice of the advanced practice registered nurse.

(b) Pursuant to KRS 314.196(2), an advanced practice registered nurse shall use the Common CAPA-NS form.

(2)(a) To notify the board of the existence of a CAPA-NS pursuant to KRS 314.042(8)(b), the APRN shall file with the board the APRN Prescriptive Authority Notification Form.

(b) To notify the board that the requirements of KRS 314.042(9) have been met and that the APRN will be prescribing nonscheduled legend drugs without a CAPA-NS, the APRN shall file the APRN Prescriptive Authority Notification Form.

(c) To notify the board of the existence of a CAPA-CS pursuant to KRS 314.042(10)(b), the APRN shall file with the board the APRN Prescriptive Authority Notification Form.

(3) For purposes of the CAPA-NS and the CAPA-CS, in determining whether the APRN and the collaborating physician are qualified in the same or a similar specialty, the board shall be guided by the facts of each particular situation and the scope of the APRN's and the physician's actual practice.

(4)(a) An APRN with a CAPA-CS, shall obtain a [report all of his or her] United States Drug Enforcement Agency (DEA)

Controlled Substance Registration Certificate and shall report all DEA numbers, including a DEA-X Controlled Substance Registration Certificate, and any change in the status of a certificate [to the board when issued to the APRN] by providing [mailing] a copy of each registration certificate to the board within thirty (30) days of issuance.

(b) ~~[Any change in the status of a DEA Controlled Substance Registration Certificate, including a DEA-X Controlled Substance Registration Certificate, shall be reported in writing to the board within thirty (30) days.] An APRN with a CAPA-CS shall register for a master account with the Kentucky All Schedule Prescription Electronic Reporting System (KASPER) prior to prescribing controlled substances. A copy of the registration certificate shall be submitted to the board within thirty (30) days of receipt of confirmation of registration by KASPER.~~

(5) An APRN shall report any changes to a CAPA-NS or a CAPA-CS [in writing] to the board within thirty (30) days.

(6) If the collaborating physician's license is suspended, the APRN shall follow the procedures set out in KRS 314.196 for a CAPA-NS. The APRN with a CAPA-CS shall cease prescribing controlled substances until the suspension is lifted or a new collaborating physician signs a new CAPA-CS.

(7) An APRN with a CAPA-NS or a CAPA-CS shall report a practice address to the board. A change to the practice address shall be reported to the board within thirty (30) days.

(8) All documents and information required to be reported to the board by this section shall be reported by uploading the document or information through the board's Web site, kbn.ky.gov, utilizing the tab APRN Update. The board shall not accept documents or information sent in any other format.

Section 7. Prescribing medications without a CAPA-NS or a CAPA-CS shall constitute a violation of KRS 314.091(1), except when a CAPA-NS has been discontinued pursuant to KRS 314.042(9) or the provisions of KRS 314.196(4)(b) apply.

Section 8. The board may make an unannounced visit to an advanced practice registered nurse to determine if the advanced practice registered nurse's practice is consistent with the requirements established by KRS Chapter 314 and 201 KAR Chapter 20, and patient and prescribing records shall be made available for immediate inspection.

Section 9. Prescribing Standards for Controlled Substances. (1)(a) This section shall apply to APRN with a CAPA-CS, if prescribing a controlled substance. It also applies to the utilization of KASPER.

(b) The APRN shall practice according to the applicable scope and standards of practice for the APRN's role and population focus. This section does not alter the prescribing limits set out in KRS 314.011(8).

(2) Prior to the initial prescribing of a controlled substance to a patient, the APRN shall:

(a) Obtain the patient's medical history, including history of substance use, and conduct an examination of the patient and document the information in the patient's medical record. An APRN certified in psychiatric/ mental health shall obtain a medical and psychiatric history, perform a mental health assessment, and document the information in the patient's medical record;

(b) Query KASPER for the twelve (12) month period immediately preceding the request for available data on the patient and maintain all KASPER report identification numbers and the date of issuance of each KASPER report in the patient's record;

(c) Develop a written treatment plan stating the objectives of the treatment and further diagnostic examinations required; and

(d) Discuss with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian, or health care surrogate:

1. The risks and benefits of the use of controlled substances, including the risk of tolerance and drug dependence;

2. That the controlled substance shall be discontinued when the condition requiring its use has resolved; and

3. Document that the discussion occurred and obtain written

consent for the treatment.

(3) The treatment plan shall include an exit strategy, if appropriate, including potential discontinuation of the use of controlled substances.

(4) For subsequent or continuing long-term prescriptions of a controlled substance for the same medical complaint, the APRN shall:

(a) Update the patient's medical history and document the information in the patient's medical record;

(b) Modify and document changes to the treatment plan as clinically appropriate; and

(c) Discuss the risks and benefits of any new controlled substances prescribed with the patient, the patient's parent if the patient is an unemancipated minor child, or the patient's legal guardian, or health care surrogate, including the risk of tolerance and drug dependence.

(5) During the course of treatment, the APRN shall query KASPER no less than once every three (3) months for the twelve (12) month period immediately preceding the request for available data on the patient~~[before issuing a new prescription or a refill for a controlled substance]~~. The APRN shall maintain in the patient's record all KASPER report identification numbers and the date of issuance of each KASPER report or a copy or saved image of the KASPER report~~[in the patient's record]~~. If neither an identification number nor an image can be saved to the patient's record as a result of technical limitations of the APRN's electronic health record system, the APRN shall make a concurrent note in the patient's record documenting the date and time that the APRN reviewed the patient's KASPER report.

(6) These requirements may be satisfied by other licensed practitioners in a single group practice if:

(a) Each licensed practitioner involved has lawful access to the patient's medical record;

(b) Each licensed practitioner performing an action to meet these requirements is acting within the scope of practice of his or her profession; and

(c) There is adequate documentation in the patient's medical record reflecting the actions of each practitioner.

(7) If prescribing a controlled substance for the treatment of chronic, non-cancer pain, the APRN. In addition to the requirements of this section, shall obtain a baseline drug screen and further random drug screens if the APRN:

(a) Finds a drug screen ~~[to be]~~ clinically appropriate; or

(b) Believes that it is appropriate to determine whether or not the controlled substance is being taken by the patient.

(8) If prescribing a controlled substance for the treatment of a mental health condition, the APRN shall meet the requirements of this section and KRS 314.011(8)(a) and (b).

(9) Prior to prescribing a controlled substance for a patient in the emergency department of a hospital that is not an emergency situation, the APRN shall:

(a) Obtain the patient's medical history, conduct an examination of the patient and document the information in the patient's medical record. An APRN certified in psychiatric/ mental health shall obtain a medical and psychiatric history, perform a mental health assessment, and document the information in the patient's medical record;

(b) Query KASPER for the twelve (12) month period immediately preceding the request for available data on the patient and document the data in the patient's record;

(c) Develop a written treatment plan stating the objectives of the treatment and further diagnostic examinations required; and

(d) Discuss the risks and benefits of the use of controlled substances with the patient, the patient's parent if the patient is an unemancipated minor child, ~~[or]~~ the patient's legal guardian, or health care surrogate, including the risks~~[risk]~~ of tolerance and drug dependence, and document that the discussion occurred and that the patient consented to ~~that~~the treatment.

(10) For each patient for whom an APRN prescribes a controlled substance, the APRN shall keep accurate, readily accessible, and complete medical records, which include:

(a) Medical history and physical or mental health examination;

(b) Diagnostic, therapeutic, and laboratory results;

(c) Evaluations and consultations;

(d) Treatment objectives;

(e) Discussion of risk, benefits, and limitations of treatments;

(f) Treatments;

(g) Medications, including date, type, dosage, and quantity prescribed;

(h) Instructions and agreements;

(i) Periodic reviews of the patient's file; and

(j) All KASPER report identification numbers and the date of issuance of each KASPER report.

(11) The requirement to query KASPER shall not apply to:

(a) An APRN prescribing or administering a controlled substance immediately prior to, during, or within the fourteen (14) days following an operative or invasive procedure or a delivery if the prescribing or administering is medically related to the operative or invasive procedure ~~of~~or the delivery and the medication usage does not extend beyond the fourteen (14) days;

(b) An APRN prescribing or administering a controlled substance necessary to treat a patient in an emergency situation; or

(c) An APRN prescribing a controlled substance:

1. For administration in a hospital or long-term-care facility with an institutional account, or an APRN in a hospital or facility without an institutional account, if the hospital, long-term-care facility, or licensee queries KASPER for all available data on the patient or resident for the twelve (12) month period immediately preceding the query within twelve (12) hours of the patient's or resident's admission and places a copy of the query in the patient's or resident's medical records during the duration of the patient's stay at the facility;

2. As part of the patient's hospice or end-of-life treatment;

3. For the treatment of pain associated with cancer or with the treatment of cancer;

4. To assist a patient when submitting to a diagnostic test or procedure;

5. Within seven (7) days of an initial prescription pursuant to subsection (1) of this section if the prescriber:

a. Substitutes a controlled substance for the initial prescribing;

b. Cancels any refills for the initial prescription; and

c. Requires the patient to dispose of any remaining unconsumed medication.

6. Within ninety (90) days of an initial prescription pursuant to subsection (1) of this section if the prescribing is done by another licensee in the same practice or in an existing coverage arrangement, if done for the same patient for the same condition;

7. To a research subject enrolled in a research protocol approved by an institutional review board that has an active federal-wide assurance number from the United States Department of Health and Human Services, Office for Human Research Protections if the research involves single, double, or triple blind drug administration or is additionally covered by a certificate of confidentiality from the National Institutes of Health;

8. During the effective period of any disaster or situation with mass casualties that have a direct impact on the APRN's practice;

9. As part of the administering or ordering of controlled substances to prisoners in a state, county, or municipal correctional facility;

10. That is a Schedule IV controlled substance for no longer than three (3) days for an ~~establish~~established patient to assist the patient in responding to the anxiety of a nonrecurring event; or

11. That is classified as a Schedule V controlled substance.

(12) Federal regulation 21 C.F.R. 1306.12(b) concerning the issuance of multiple prescriptions for Schedule II controlled substances shall not apply to APRNs in this state.

(13) No less than once every six (6) months, an APRN who holds a DEA Controlled Substance Registration Certificate ~~[has prescribed controlled substances]~~ shall review a reverse KASPER report for the preceding six (6) months to determine whether the information contained in KASPER is correct. If the information is incorrect, the APRN shall comply with 902 KAR 55:110 and take the necessary steps to seek correction of the information:

(a) By first contacting the reporting pharmacy;

(b) By contacting law enforcement if suspected fraudulent

activity; or

(c) By contacting the Drug Enforcement Professional Practices Branch, Office of [the] Inspector General, Cabinet for Health and Family Services.

(14) An APRN shall not issue a prescription for hydrocodone combination products for more than a three (3) day supply if the prescription is intended to treat pain as an acute medical condition, with the following exceptions:

(a) The APRN, in his or her professional judgment, believes that more than a three (3) day supply of hydrocodone combination products is medically necessary to treat the patient's pain as an acute medical condition and the APRN adequately documents the acute medical condition and lack of alternative treatment options which justifies deviation from the three (3) day supply limit on the patient's medical records;

(b) The prescription for hydrocodone combination products is prescribed to treat chronic pain;

(c) The prescription for hydrocodone combination products is prescribed to treat pain associated with a valid cancer diagnosis;

(d) The prescription for hydrocodone combination products is prescribed to treat pain while the patient is receiving hospice or end-of-life treatment;

(e) The prescription for hydrocodone combination products is prescribed as part of a narcotic treatment program licensed by the Cabinet for Health and Family Services;

(f) The prescription for hydrocodone combination products is prescribed to treat pain following a major surgery, which is any operative or invasive procedure or a delivery, or the treatment of significant trauma; or

(g) Hydrocodone combination products are administered directly to an ultimate user in an inpatient setting.

(15) Prescriptions written for hydrocodone combination products pursuant to subsection (14)(a) through (g) of this section shall not exceed thirty (30) days without any refill.

(16) An APRN may prescribe electronically pursuant to KRS 218A.171.

(17) For any prescription for a controlled substance, the prescribing APRN shall discuss with the patient the effect the patient's medical condition and medication may have on the patient's ability to safely operate a vehicle in any mode of transportation.

Section 10. Immediate family and self-prescribing or administering medications. (1) An APRN shall not prescribe or administer controlled substances to his or her self.

(2) An APRN shall not prescribe or administer controlled substances to his immediate family except as provided herein.

(3) Immediate family shall include a spouse, parent, child, sibling, parent-in-law, son or daughter-in-law, brother or sister-in-law, step-parent, step-child, step-sibling, or other relative residing in the same residence as the prescribing practitioner.

(4) An APRN may prescribe or administer controlled substances to an immediate family member:

(a) In an emergency situation;

(b) For a single episode of an acute illness through one prescribed course of medication; or

(c) In an isolated setting, when no other qualified practitioner is available.

(5)(a) An APRN who prescribes or administers controlled substances for an immediate family member pursuant to subsections (4)(a) or (b) of this section shall document all relevant information and notify the appropriate provider.

(b) An APRN who prescribes or administers controlled substances for an immediate family member pursuant to subsection (4)(c) of this section shall maintain a provider-practitioner relationship and appropriate patient records.

Section 11. Incorporation by Reference. (1) The following material is incorporate[incorporated] by reference:

(a) "AACN Scope and Standards for Acute Care Nurse Practitioner Practice", 2017 Edition, American Association of Critical-Care Nurses;

(b) "ACCN Scope and Standards for Acute Care Clinical Nurse

Specialist Practice", 2014 Edition, American Association of Critical-Care Nurses;

(c) "Neonatal Nursing: Scope and Standards of Practice", 2013 Edition, American Nurses Association/ National Association of Neonatal Nurses;

(d) "Nursing: Scope and Standards of Practice", 2015 Edition, American Nurses Association;

(e) "Pediatric Nursing: Scope and Standards of Practice", 2015 Edition, American Nurses Association/ Society of Pediatric Nursing/ National Association of Pediatric Nurse Practitioners;

(f) "Psychiatric-Mental Health Nursing: Scope and Standards of Practice", 2014, American Nurses Association/ American Psychiatric Nursing Association;

(g) "Scope of Practice for Nurse Practitioners", 2019 [2045] Edition, American Association of Nurse Practitioners;

(h) "Standards of Practice for Nurse Practitioners", 2019 [2043] Edition, American Association of Nurse Practitioners;

(i) "Scope of Nurse Anesthesia Practice", 2013 Edition, American Association of Nurse Anesthetists;

(j) "Standards for Nurse Anesthesia Practice", 2019 [2043] Edition, American Association of Nurse Anesthetists;

(k) "[Standards for]Office Based Anesthesia[Practice]", 2019 [2048] Edition, American Association of Nurse Anesthetists;

(l) "Standards for the Practice of Midwifery", 2011 Edition, American College of Nurse Midwives;

(m) "Oncology Nursing Scope and Standards of Practice[Statement on the Scope and Standards of Oncology Nursing Practice: Generalist and Advanced Practice]", 2019 [2043] Edition, Oncology Nursing Society;

(n) "The Women's Health Nurse Practitioner: Guidelines for Practice and Education", 2014 Edition, Association of Women's Health, Obstetric and Neonatal Nurses/Nurse Practitioners in Women's Health;

(o) "Definition of Midwifery and Scope of Practice of Certified Nurse-Midwives and Certified Midwives", 2012 [2044] Edition, American College of Nurse Midwives;

(p) "Standards for Professional Nursing Practice in the Care of Women and Newborns", 2019 Edition, Association of Women's Health, Obstetric and Neonatal Nurses;

(q) "APRN Prescriptive Authority Notification Form", 6/2018, Kentucky Board of Nursing; and

(r)[(q)] "Common CAPA-NS Form", 6/2015, Kentucky Board of Nursing.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

DINA BYERS, President

APPROVED BY AGENCY: February 20, 2020

FILED WITH LRC: February 24, 2020 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 26, 2020 at 10:00 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until end of day (11:59 p.m.) May 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 429-1248, email Ngoldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets standards for APRN practice.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.042.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by setting standards of practice.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by setting standards of practice.

(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 makes some housekeeping changes and specifically requires an APRN to register for a KASPER account.

(b) The necessity of the amendment to this administrative regulation: The administrative regulation needed some clean-up. Also, it was necessary to spell out the KASPER requirement so that APRNs would be fully informed.

(c) How the amendment conforms to the content of the authorizing statutes: By clearly stating the requirements.

(d) How the amendment will assist in the effective administration of the statutes: By clearly stating the requirements, APRNs will be informed.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: APRNs who prescribe, approximately 3000.

(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:

They will have to comply with the standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the administrative regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

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

(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 is needed.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

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 Kentucky Board of Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131, KRS 314.042.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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? No additional cost.

(d) How much will it cost to administer this program for subsequent years? No additional cost.

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:

BOARDS AND COMMISSIONS

Board of Nursing
(Amendment)

201 KAR 20:162. Disciplinary proceedings.

RELATES TO: KRS Chapter 13B, 314.011, 314.031, 314.071(4), 314.091, 314.161, 314.991

STATUTORY AUTHORITY: KRS 314.091(8), 314.131(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations to implement KRS Chapter 314. KRS 314.091(2) requires that an administrative hearing for the denial, limitation, probation, suspension, or revocation of the license of a registered or practical nurse be conducted in accordance with KRS Chapter 13B. KRS 314.091(8) authorizes the board, by administrative regulation, to provide for the recovery of costs of an administrative hearing. This administrative regulation establishes procedures for conducting an administrative hearing.

Section 1. An administrative hearing shall be conducted in accordance with KRS Chapter 13B.

Section 2. Composition of the Hearing Panel.

(1)(a) Except as provided in paragraph (b) of this subsection, a disciplinary action shall be heard by a hearing panel consisting of two (2) members of the board, one (1) of which shall be a registered nurse, and a hearing officer, who shall be:

1. An assistant attorney general; or
2. Other attorney designated by the board.

(b) A hearing officer and one (1) member of the board may conduct a hearing for consideration of:

1. Reinstatement of a revoked or suspended license; or
2. Removal of a license from probationary status.

(2) A board member shall not sit on a panel or participate in the adjudication of a matter in which the member has:

- (a) Discussed the merits of the action with agency staff;
- (b) Personal knowledge of the facts giving rise to the disciplinary action; or

(c) Participated in the investigation of a disciplinary action.

(3) The hearing shall be transcribed by a court stenographer.

Section 3. Response to Charges. The licensee or applicant shall file with the board a written answer to the specific allegations contained in the notice of charges within twenty (20) days of receipt of the charges. An allegation not properly answered shall

be deemed admitted. Failure to file an answer may result in the issuance of a default order pursuant to KRS 13B.080(6). The hearing officer shall for good cause permit the late filing of an answer.

Section 4. Rulings by a Hearing Officer. (1) The hearing officer shall rule upon each objection or motion, including an objection to evidence.

(2) A decision of the hearing officer may be overridden by a unanimous vote of the board members of the hearing panel.

Section 5. Recommendation by the Hearing Panel. (1) Upon the conclusion of the hearing, the panel shall retire into closed session for purpose of deliberations. Each board member of the panel shall have one (1) vote. In case of a tie vote, the tie shall be broken by the hearing officer.

(2) At the conclusion of the panel's deliberations, it shall propose an order based upon the evidence presented. The hearing officer shall draft a recommended order, as required by KRS 13B.110(1)[;] that shall be:

- (a) Consistent with the panel's deliberations; and
- (b) Submitted to the full board.

Section 6. Continuances; Proceedings in Absentia. The board shall not postpone a case which has been scheduled for a hearing absent good cause. A request by a licensee or applicant for a continuance shall be considered if communicated to the board reasonably in advance of the scheduled hearing date and based upon good cause. The decision whether to grant a continuance shall be made by the hearing officer. The burden shall be upon the licensee or applicant to be present at a scheduled hearing. Failure to appear at a scheduled hearing for which a continuance has not been granted in advance shall be deemed a waiver of the right to appear and the hearing shall be held as scheduled.

Section 7. Hearing Costs. (1) If the order of the board is adverse to a licensee or applicant, or if the hearing is scheduled at the request of a licensee or applicant for relief from sanctions previously imposed by the board pursuant to the provisions of KRS Chapter 314, the board may impose the following costs:

- (a) The cost of stenographic services;
 - (b) The cost of the hearing officer as determined by subsection (2) of this section; and
 - (c) Other costs listed in subsection (3) of this section as applicable.
- (2) The cost of the hearing officer shall be determined as follows:
- (a) A disciplinary hearing shall be \$400 per day;
 - (b) A reinstatement hearing shall be \$350; and
 - (c) A default shall be \$300.
- (3) Other costs may include:
- (a) Expert witness costs, including travel;
 - (b) Travel for other witnesses;
 - (c) Document reproduction costs; and
 - (d) The cost of a certified copy of laboratory testing records.
- (4) In a case of financial hardship, the board may waive all or part of the costs.

Section 8. Reconsideration of Default Orders. (1) A default order issued by the board may be reconsidered.

(2) The party in default shall submit a written motion to the hearing officer requesting reconsideration.

(3) The hearing officer shall schedule a hearing on the motion for reconsideration. The hearing officer may order that the default order be set aside if the party in default presents good cause.

(4) If a default order is set aside, the provisions of 201 KAR 20:161 shall apply.

Section 9. Prescribing or Dispensing Controlled Substance Cases. (1) An investigation pertaining to prescribing or dispensing of a controlled substance shall produce a charging decision by the board within 120 days of the receipt of the complaint unless the circumstances of a particular complaint make it impossible to

timely produce the charging decision.

(2) The board may hold an investigation pertaining to prescribing or dispensing of a controlled substance in abeyance for a reasonable period of time in order to permit a law enforcement agency to perform or complete essential investigative tasks, following a request by the requesting law enforcement agency.

(3) If an investigation pertaining to prescribing or dispensing of a controlled substance does not produce a charging decision within 120 days of the receipt of the complaint, the investigative report shall plainly state the circumstances of that particular investigation or complaint that made timely production of a charging decision impossible.

Section 10. Change in Licensure Status. (1) Pursuant to the Nurse Licensure Compact, KRS 314.475, if a nurse whose primary state of residence is Kentucky and who holds a Kentucky license with multistate privileges incurs a disqualifying event, the license shall be converted to a single state license valid only in Kentucky.

(2) The disqualifying events that may cause this change in status are:

(a) Conviction or found guilty of or entered into an agreed disposition of a felony offense;

(b) Conviction or found guilty of or entered into an agreed disposition of a misdemeanor offense related to the practice of nursing;

(c) Currently enrolled in an alternative program; or
(d) Holds an encumbered nursing license or privilege to practice due to disciplinary action.

(3)(a) The board shall inform the nurse in writing of its intent to change the status of the Kentucky license.

(b) The nurse may request an administrative hearing on this action. Any such request shall be made in writing to the board within twenty (20) days.

(c) Failure to request an administrative hearing within the specified time shall constitute a waiver of the right to a hearing.

(4) The procedure outlined in this section is not in lieu of but may be in addition to any potential disciplinary action the board may seek based on the disqualifying event.

DINA BYERS, President

APPROVED BY AGENCY: February 20, 2020

FILED WITH LRC: February 24, 2020 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 26, 2020 at 10:00 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until end of day (11:59 p.m.) May 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 429-1248, email Ngoldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets proceedings for hearings on disciplinary cases that are in addition to KRS Chapter 13B.

(b) The necessity of this administrative regulation: This

administrative regulation is necessary because of KRS 314.091.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by setting disciplinary proceedings.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by setting disciplinary proceedings.

(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 procedure for a nurse to request a hearing on the change in status of a license from multistate to single state pursuant to the Nurse Licensure Compact, KRS 314.475.

(b) The necessity of the amendment to this administrative regulation: The administrative regulation is necessary to assure due process is afforded nurses who would be affected.

(c) How the amendment conforms to the content of the authorizing statutes: By providing for a hearing.

(d) How the amendment will assist in the effective administration of the statutes: By setting forth the process that the Board will follow in these cases.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Nurses whose license status would change from multistate to single state, number unknown.

(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: They will have to request a hearing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There may be a hearing fee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the administrative regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

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

(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 is needed.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

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 Kentucky Board of Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131, KRS 314.091.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities,

counties, fire departments, or school districts) for the first year? 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? No additional cost.

(d) How much will it cost to administer this program for subsequent years? No additional cost.

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:

BOARDS AND COMMISSIONS

Board of Nursing (Amendment)

201 KAR 20:230. Renewal of licenses.

RELATES TO: KRS 314.041, 314.051, 314.071, 314.073

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the board to promulgate administrative regulations to implement the provisions of KRS Chapter 314. This administrative regulation establishes requirements and procedures for the renewal of licenses.

Section 1. Eligibility for Renewal of Licenses. To be eligible for renewal of licenses, applicants shall:

(1) Hold a valid and current license issued by the board;

(2) Submit a completed application form as required by 201 KAR 20:370, Section 1(1), to the board office [~~postmarked no later than the last day of the licensure period~~];

(3) Submit the current fee required by 201 KAR 20:240;

(4) Have met requirements of 201 KAR 20:215, if applicable;

(5) Submit certified copies of court records of any misdemeanor or felony convictions with a letter of explanation;

(6) Submit certified copies of any disciplinary actions taken in other jurisdictions with a letter of explanation or report any disciplinary action pending on nursing or other professional or business licenses in other jurisdictions; and

(7) Have paid all monies due to the board.

Section 2. The licensure period for renewal of licenses shall be as specified in 201 KAR 20:085.

Section 3. (1) If the application form is submitted on-line, it shall be received by the board prior to midnight on the last day of the licensure period.

(2) If a paper application is submitted, it shall be received no later than the last day of the licensure period. If the application is not received by the board until after the last day of the licensure period, the application shall have been postmarked at least seven (7) days prior to the last day of the licensure period. Otherwise, subsection (4) of this section shall apply.

(3) All information needed to determine that an applicant meets the requirements for renewal of licensure shall be received by the board no later than the last day of the licensure period. If the information is not received by the board until after the last day of the licensure period, in order to be considered by the board for the current renewal, the information shall have been postmarked at least seven (7) days prior to the last day of the licensure period. Otherwise, subsection (4) of this section shall apply.

(4) Failure to comply with these requirements shall result in the license lapsing. A person whose license has lapsed shall follow the requirements of 201 KAR 20:225 to reinstate the license.

DINA BYERS, President

APPROVED BY AGENCY: February 20, 2020

FILED WITH LRC: February 24, 2020 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 26, 2020 at 10:00 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until end of day (11:59 p.m.) May 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 429-1248, email Ngoldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets requirements for renewal of a nurse's license.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.071.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by setting requirements for license renewal.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by setting requirements for license renewal.

(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 clarifies the deadline for a renewal application to be filed either on-line or by mail.

(b) The necessity of the amendment to this administrative regulation: The administrative regulation is necessary to specifically set the deadlines.

(c) How the amendment conforms to the content of the authorizing statutes: By setting clear deadlines.

(d) How the amendment will assist in the effective administration of the statutes: Nurses will know the deadline they must meet to renew their licenses.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensed nurses, approximately 90,000.

(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:

They will have to submit their renewal application on time.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): They will have to pay the renewal fee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with the administrative regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

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

(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 is needed.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

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 Kentucky Board of Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131, KRS 314.071.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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? No additional cost.

(d) How much will it cost to administer this program for subsequent years? No additional cost.

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:

BOARDS AND COMMISSIONS

Board of Nursing (Amendment)

201 KAR 20:370. Applications for licensure.

RELATES TO: KRS 314.041, 314.042, 314.051, 314.071, 314.091, 314.103, 314.475

STATUTORY AUTHORITY: KRS 314.041, 314.042, 314.051, 314.071, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations as may be necessary to enable it to carry into effect the provisions of KRS Chapter 314. KRS 314.041, 314.042, 314.051, and 314.071 require the board to review an application for licensure and a licensee for conformity with KRS Chapter 314. This administrative regulation establishes requirements and procedures for licensure.

Section 1. To be eligible for licensure by examination, endorsement, renewal, reinstatement, retired licensure status, or for advanced practice registered nurse licensure, renewal, or reinstatement, an applicant shall:

(1) Submit the completed application form to the board office, as follows:

(a) For RN or LPN licensure by examination, endorsement, or reinstatement, Application for Licensure;

(b) For RN or LPN Renewal, Annual Licensure Renewal Application: RN or LPN;

(c) For licensure or reinstatement as an advanced practice registered nurse, Application for Licensure as an Advanced Practice Registered Nurse;

(d) For renewal as an RN and an APRN, Annual Licensure Renewal Application: RN and APRN;

(e) For licensure as an RN and as an APRN, Application for RN and APRN Licensure;

(f) For retired licensure status, Application for Retired Status;

(g) For APRN renewal with an RN Compact license, Annual Licensure Renewal Application: APRN with RN Compact License (not Kentucky);

(h) For APRN renewal with a Kentucky RN License, Annual Licensure Renewal Application, APRN with Kentucky RN License; or

(i) In addition to any other renewal form, for APRN renewal, APRN Practice Data;

(2) Submit the current application fee, as required by 201 KAR 20:240;

(3) Submit a certified or attested copy of the court record of each misdemeanor or felony conviction in this or any other jurisdiction and a letter of explanation that addresses each conviction, except for traffic-related misdemeanors (other than DUI) or misdemeanors older than five (5) years;

(4) Submit a certified copy of a disciplinary action taken in another jurisdiction with a letter of explanation or report a disciplinary action pending on a nurse licensure application or license in another jurisdiction;

(5) Have paid all monies due to the board;

(6) Submit a copy of an official name change document (court order, marriage certificate, divorce decree, Social Security card), if applicable;

(7) Submit additional information as required by the board in 201 KAR Chapter 20;

(8) Meet the additional requirements for:

(a) Licensure by examination established by 201 KAR 20:070;

(b) Licensure by endorsement established by 201 KAR 20:110;

(c) Licensure by reinstatement established by 201 KAR 20:225;

(d) Licensure by renewal established by 201 KAR 20:230;

(e) Retired nurse or inactive licensure status established by 201 KAR 20:095; or

(f) Advanced practice registered nurse licensure, renewal, or reinstatement established by 201 KAR 20:056;

(9) If not a citizen of the United States, maintain proof of legal permanent or temporary residency under the laws and regulations of the United States; and

(10) Notify the board upon establishment of a new mailing address.

~~Section 2. [A completed renewal application form and all information needed to determine that an applicant meets the requirements for renewal of licensure shall be postmarked or received by the board no later than the last day for renewal of licensure.]~~

~~Section 3.] An application shall lapse and the fee shall be forfeited if the application is not completed as follows:~~

~~(1) For an application for licensure by endorsement, within six (6) months from the date the application form is filed with the board office;~~

~~(2) For an application for licensure by examination, within one (1) year from the date the application form is filed with the board office or the date the applicant fails the examination, whichever comes first; or~~

~~(3) For all other applications except renewal of license applications, within one (1) year from the date the application form is filed with the board office.~~

Section 3.[4-] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Licensure", 1/2016, Kentucky Board of Nursing;

(b) "Annual Licensure Renewal Application: RN or LPN", 2/2020 [2/2018], Kentucky Board of Nursing;

(c) "Application for Licensure as an Advanced Practice Registered Nurse", 1/2016, Kentucky Board of Nursing;

(d) "Annual Licensure Renewal Application: RN and APRN", 2/2020 [2/2018], Kentucky Board of Nursing;

(e) "Application for RN and APRN Licensure", 1/2016, Kentucky Board of Nursing;

(f) "Application for Retired Status", 8/2004, Kentucky Board of Nursing;

(g) "Annual Licensure Renewal Application: APRN with RN Compact License (not Kentucky)", 2/2020 [5/2018], Kentucky Board of Nursing;

(h) "Annual Licensure Renewal Application, APRN with Kentucky RN License", 2/2020 [5/2019], Kentucky Board of Nursing; and

(i) "APRN Practice Data", 6/2012, Kentucky Board of Nursing.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

DINA BYERS, President

APPROVED BY AGENCY: February 20, 2020

FILED WITH LRC: February 24, 2020 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 26, 2020 at 10:00 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until end of day (11:59 p.m.) May 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 429-1248, email Ngoldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates the various application forms and sets some requirements.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of the licensure provisions for KRS Chapter 314.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by incorporating the various forms and setting requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by providing for the appropriate application forms.

(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: A provision regarding license renewal is being removed since it is already covered in 201 KAR 20:230.

(b) The necessity of the amendment to this administrative regulation: The administrative regulation is necessary to remove the unnecessary section.

(c) How the amendment conforms to the content of the authorizing statutes: By removing unnecessary language.

(d) How the amendment will assist in the effective administration of the statutes: By removing unnecessary language.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensed nurses, approximately 90,000.

(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 action is necessary.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost.

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

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

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

(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 is needed.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

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 Kentucky Board of Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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? No additional cost.

(d) How much will it cost to administer this program for subsequent years? No additional cost.

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:

BOARDS AND COMMISSIONS

Board of Nursing (Amendment)

201 KAR 20:410. Expungement of records.

RELATES TO: KRS 314.131

STATUTORY AUTHORITY: KRS 314.131(1), (9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) and (9) authorize the Board of Nursing to promulgate administrative regulations to establish which disciplinary records may be expunged. This administrative regulation establishes which records may be expunged and the procedure for expungement.

Section 1. Definition. "Expungement" means that all affected records shall be sealed and that the proceedings to which they refer shall be deemed never to have occurred.

Section 2. A nurse whose record has been expunged may properly reply that disciplinary records do not exist upon inquiry.

Section 3. Upon a request from a nurse against whom disciplinary action has been taken, the board shall expunge records relating to the following categories of disciplinary action:

(1) Consent decrees that are at least five (5) years old if all the terms of the consent decree have been met.

(2) ~~Agreed orders and decisions that are at least ten (10) years old and which concern one (1) or more of the following categories, if there has not been subsequent disciplinary action and all of the terms of the agreed order or decision have been met:~~

~~(a) Failed to timely obtain continuing education or AIDS education hours;~~

~~(b) Paid fees that were returned unpaid by the bank; or~~

~~(c) Practiced as a nurse or advanced practice registered nurse without a current license, provisional license, or temporary work permit.~~

~~(3) Agreed orders and decisions that are at least ten (10) years old and which resulted in a reprimand, if there has not been subsequent disciplinary action and all of the terms of the agreed order or decision have been met.~~

~~(3) [(4)] Agreed orders and decisions that are at least twenty (20) years old, if there has not been subsequent disciplinary action and all of the terms of the agreed order or decision have been met.~~

Section 4. The board shall not report cases that have been expunged to another state agency, other board of nursing, or other organization.

DINA BYERS, President

APPROVED BY AGENCY: February 20, 2020

FILED WITH LRC: February 24, 2020 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 26, 2020 at 10:00 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until end of day (11:59 p.m.) May 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 429-1248, email

Ngoldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman

(1) Provide a brief summary of:

a) What this administrative regulation does: This administrative regulation sets out which board orders are subject to expungement.

b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.131(9).

c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by setting out which board orders may be expunged.

d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by providing for which board orders may be expunged.

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: By removing an unnecessary section that has been merged into another section.

b) The necessity of the amendment to this administrative regulation: The administrative regulation is necessary to remove the unnecessary section.

c) How the amendment conforms to the content of the authorizing statutes: By removing unnecessary language.

d) How the amendment will assist in the effective administration of the statutes: By removing unnecessary language.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Nurses with disciplinary action, number unknown.

(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 action is necessary.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost.

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

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

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

(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 is needed.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

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 Kentucky Board of Nursing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? 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? No additional cost.

(d) How much will it cost to administer this program for subsequent years? No additional cost.

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:

BOARDS AND COMMISSIONS

Board of Social Work
(Amendment)

201 KAR 023:070. Qualifying education and clinical practice experience under supervision [for a certified social worker and a licensed clinical social worker and qualifying experience under supervision].

RELATES TO: KRS 335.010, 335.080(1)(c), (3), 335.100(1)(a), (b), (3)

STATUTORY AUTHORITY: KRS 335.070(3), 335.080(1)(c), (3), 335.100(1)(a), (b), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.080(1)(c) and 335.100(1)(a) require an applicant for a certified social worker license or a licensed clinical social worker license to have a master's degree or a doctoral degree in social work from an educational institution approved by the board. KRS 335.080(3) allows a certified social worker to engage in the practice of clinical social work under the supervision of a licensed clinical social worker as directed by the board by promulgation of an administrative regulation. KRS 335.100(1)(b) requires an applicant for a licensed clinical social worker license to have acquired post-master's experience under approved supervision as established by the board by promulgation of an administrative regulation. KRS 335.100(3) requires a licensed clinical social worker to assume responsibility for and supervise the certified social worker's practice of clinical social work as directed by the board by promulgation of an administrative regulation. This administrative regulation establishes the educational institutions approved by the board, the definitions relating to supervision, the content of a Clinical Social Work Supervision Contract, and the requirements for qualifying experience under supervision for in state and out-of-state applicants.

Section 1. [Definitions. (1) "Educational institution approved by the board" means a graduate school of social work accredited by the Council on Social Work Education.

(2) "Electronic supervision" means the use of computers and other electronic means by which the supervisor and supervisee use interactive video technology, in real-time, with video and audio interaction for individual and group supervision.

(3) "Practice of clinical social work" means the practice of social work that focuses on the evaluation, diagnosis, and treatment of an emotional disorder or mental illness as related to the total health of the individual and that meets the requirements of Section 3 of this administrative regulation.

(4) "Supervision" means the educational process of utilizing a partnership between a supervisor and a supervisee aimed at

enhancing the professional development of the supervisee in providing clinical social work services.

(5) "Supervisor of record" means the supervisor who assumes responsibility for the practice of a certified social worker pursuant to KRS 335.080(3) and 335.100(3).

Section 2.] Education Requirements. An applicant for a certified social worker license or a licensed clinical social worker license shall have a Master of Social Work degree or Doctorate of Social Work degree from an educational institution approved by the board.

Section 2. [3.] Practice of Clinical Social Work. (1) The practice of clinical social work shall be based on knowledge of psychodynamics, human relations, crisis intervention, psychopathology, and group dynamics.

(2) A practitioner of clinical social work shall:

(a) Possess competencies including skills necessary for:

1. Individual, marital, family, and group psychotherapy; and
2. Other recognized treatment modalities; and

(b) Establish a therapeutic relationship with his or her client that:

1. Leads to correction of the dysfunction;

2. Includes:

a. Assessment of mental disorders;

b. [a.] Diagnosis of mental disorders using professionally recognized clinical nomenclature;

c. [b-] Safe and appropriate treatment planning that includes development, implementation, [and] modification of the plan, and coordination of treatment with other clinicians who may be involved in the client's care.

d. [c-] Evaluation of progress; and

e. [d-] Termination of the treatment process, [; and]

3. Is characterized by face-to-face contact with the client throughout the treatment process, and may include telehealth in accordance with KRS 335.158 and the administrative regulations of the board.

Section 3.[4.] Supervision. (1) A supervisor shall be a licensed clinical social worker who:

(a) Provides supervision to a certified social worker pursuant to KRS 335.080(3) and 335.100(3);

(b) Does not have:

1. An unresolved citation filed against him or her by the board;
2. A suspended or probated license; or

3. A previous or existing personal relationship with a supervisee; and

(c) Has:

1. Been engaged in the practice of clinical social work for three (3) years following licensure in Kentucky or another jurisdiction as an independent licensed clinical social worker; and

2. Completed a board-approved twelve (12)[three (3)] hour training course on supervisory practices and methods for licensed clinical social workers relating to the requirements in KRS Chapter 335.010 to KRS 335.160 and KRS 335.990, the administrative regulation establishing the Code of Ethical Conduct, and this administrative regulation.

(2) Supervisory experience obtained in Kentucky with a supervisor who has not completed the course required by subsection (1)(c) 2 of this section shall not be approved by the board.

(3) The board-approved supervisory training course shall be completed every licensure renewal period-to maintain supervisory status with the board.

(4) A licensed clinical social worker shall not serve as a supervisor of record for more than six (6) certified social workers with whom he or she has a board-approved supervision contract [to be held accountable to the board] at the same time.[

(5) ~~An applicant receiving supervision outside of Kentucky shall demonstrate that his or her supervisor has been in the practice of clinical social work for a period of three (3) years following licensure as a clinical social worker or its equivalent effective at the time of the supervision.]~~

(5)[(6)] To be approved as a supervisor, a licensed clinical social worker who meets the requirements of this section shall submit a [written] request to the board to become a supervisor in Kentucky along with a copy of the supervisory training certificate to demonstrate completion of a board-approved supervision course within six (6) months of the submission of the initial request.

Section 4.[5.] Clinical Social Work Supervision Contract. The Clinical Social Work Supervision Contract required by KRS 335.080(3) and 335.100(3) shall be submitted to the board for approval before the certified social worker begins supervision and shall contain:

(1) The name and license number of the supervisee;

(2) The name and license number of the supervisor of record;

(3) The name and license number of additional supervisors;

(4) The agency, institution, or organization where the experience will be received;

(5) A detailed description of the nature of the practice including the type of:

(a) Clients who will be seen;

(b) Therapies and treatment modalities that [which] will be used including the prospective length of treatment; and

(c) Mental disorders that [Problems which] will be treated;

(6) The nature, duration, and frequency of the supervision, including the:

(a) Number of hours of supervision per week;

(b) Amount of [group and] individual and group supervision; and

(c) Methodology for transmission of case information.[:]

(7) The conditions or procedures for termination of the supervision including a provision that the terminating party shall provide no fewer than thirty (30) days' written notice of termination to the certified social worker, supervisor of record, additional supervisor(s), and certified social worker's employer by the terminating party;

(8) The conditions and procedures for self-evaluation of the supervision process every six (6) months in which both the certified social worker and the supervisor of record evaluate areas of strength, areas of improvement, punctuality, and overall satisfaction with the supervision process by the supervisor and the supervisee.

(9) A statement that:

(a) The supervisor of record understands and agrees that he or she shall be held accountable to the board for the care given to the supervisee's clients;

(b) The certified social worker is an employee of an agency, institution, or organization, receives regular wages for a payroll period either at a regular hourly rate or in a predetermined fixed amount, and has Social Security and income tax deducted from his or her salary;

(c) The supervisor of record and additional supervisors meet the criteria established in Section 3 [4] (1) through (4) of this administrative regulation; and

(d) The [A] supervisor and supervisee may agree to use electronic supervision;

(10) [(9)] An individualized job description attached to the Clinical Social Work Supervision Contract that:

(a) Describes the nature of the clinical social work services the certified social worker shall provide to a client including evaluation, diagnosis, and treatment of a mental disorder;

(b) Describes in detail how the requirements of Sections 6 and 7 [7 and 8] of this administrative regulation shall [will] be met; [and]

(c)[(b)] Is on office or agency letterhead and is signed by the executive director, the agency director, or the individual who heads the office; and

(11)[(40)] A copy of each supervisor's supervisory training certificate attached to the Clinical Social Work Supervision Contract.

(12) Each supervisor of record and additional supervisor shall record and submit to the board documentation of the hours of individual or group supervision completed during the period of supervised clinical practice experience or upon termination of the contract, whichever occurs first.

Section 5.~~6.~~ Notice to Client. If an employee is practicing clinical social work under the supervision of a licensed clinical social worker, the employee shall notify in writing each client at the start of treatment during the period of the supervision. The notification shall contain:

- (1) The name, office address, telephone number, email address, and license number of the supervisor of record; and
- (2) A statement that the employee is licensed by the board.

Section 6.~~7.~~ Experience under Supervision. Experience under supervision shall consist of:

- (1) At least sixty (60) percent of the required experience in a direct client-professional relationship;
- (2) Direct responsibility for providing clinical social work services to a specific individual or group of clients; and
- (3) Broad exposure and opportunity for skill development with a variety of mental disorders [dysfunctions], diagnoses, acuity levels, and population groups.

Section 7.~~8.~~ Supervision Requirements. (1) Supervision shall relate specifically to the qualifying supervised clinical practice experience and shall focus on:

- (a) The accurate assessment and diagnosis of a client's mental disorder [~~client problem~~] leading to proficiency in applying professionally recognized clinical nomenclature;
- (b) The development and modification of the treatment plan;
- (c) The development of treatment skills suitable to each phase of the therapeutic process;
- (d) Ethical problems in the practice of clinical social work and application of the administrative regulation establishing the Code of Ethical Conduct; and
- (e) The development and use of the professional self in the therapeutic process.

(2)(a) Supervision shall total a minimum of 104 [200] hours, which shall include individual supervision of not less than two (2) hours during every two (2) weeks of supervised clinical social work practice.

(b).~~1.~~ Electronic supervision may be used for no more than two (2) hours of individual supervision per month, but only after the first ten (10) [twenty-five (25)] hours of individual supervision hours have been obtained in face-to-face, in-person meetings where the supervisor and supervisee are physically present in the same room. A certified social worker supervisee who completes the first ten (10) [twenty-five (25)] of face-to-face individual supervision hours shall not have to repeat the face-to-face individual supervision hours if a new contract or supervisor of record is approved by the board unless agreed to by certified social worker supervisee, supervisor of record, and additional supervisor. No more than fifty (50) percent of the individual supervision hours may be obtained by electronic supervision.

(c) Electronic supervision shall conform to state and federal laws governing electronic practice or telehealth to ensure confidentiality of client records and personal health information is maintained as required by KRS Chapter 335.158, the administrative regulation establishing the Code of Ethical Conduct, and by applicable state and federal laws.

(d) A supervisee shall obtain a minimum of 70 hours [~~not obtain more than 100 hours~~] of the required supervision by individual [group] supervision.

(d) No more than fifty (50) percent of the group supervision hours may be obtained by electronic supervision.

(e) Electronic supervision shall conform to all state and federal laws governing electronic practice to ensure the confidentiality of the client's medical information is maintained as required by KRS Chapter 335 and 201 KAR Chapter 23 and by all applicable state and federal law.

(e).~~(f)~~ Group supervision shall [~~not~~] be in groups of not more than six (6) supervisees, and may include supervisees from other behavioral health professions who are attaining supervised clinical practice experience.

Section 8. Applicants for licensure as a licensed clinical social

worker from other jurisdictions. (1) An applicant who holds or has held a license to practice clinical social work or an equivalent license in another jurisdiction and has been engaged in the active practice of clinical social work in that jurisdiction for at least two (2) years prior to the filing of an application with the board meets the requirements for supervision set forth in this administrative regulation unless the license, certificate, registration, or other authorization issued by the other jurisdiction:

- (a) Has been expired for more than two (2) years;
 - (b) Is not in good standing; or
 - (c) Has been suspended or revoked for disciplinary reasons.
- (2) An applicant who receives clinical practice experience under supervision in another jurisdiction shall demonstrate that:
- (a) His or her clinical practice experience under supervision met the legal requirements of that jurisdiction; and
 - (b) The board shall give credit for supervision hours obtained in accordance with the legal requirements of the other jurisdiction.
- (3) An applicant from another jurisdiction shall submit proof of issuance of a valid license, permit, certificate, registration, or other authorization issued by another jurisdiction that is:
- (a) Active or has been expired for less than two (2) years; and
 - (b) Is in good standing or was in good standing upon the date of expiration. [

(3) Documentation that establishes that an individual has been licensed in another jurisdiction at the clinical level and has been engaged in the active practice of clinical social work in that jurisdiction for at least five (5) years prior to the filing of an application with the board meets the requirement for supervision set forth in this administrative regulation.]

Section 9. Evaluation by the Board. (1) The [~~period of~~] supervised experience required by KRS 335.100(1)(b) shall be evaluated by the board according to one (1) of the methods established in this subsection.

(a) Post experience evaluation. An applicant who obtained his or her supervised experience [whose experience was obtained] while licensed in another jurisdiction [state] shall submit his or her application along with documentation of supervision and qualifications of his or her supervisor(s).

(b) Transitional evaluation. An applicant who has accumulated an amount less than the full amount of qualifying experience while licensed in another jurisdiction [state] or while working in a clinical social work setting that does not meet the requirements under Section 6(3) [7(3)] of this administrative regulation shall submit his or her application along with documentation of supervision completed prior to the date of his or her application. The applicant shall also submit with his or her application a Clinical Social Work Supervision Contract under paragraph (c) of this subsection for the remainder of the supervised experience.

(c) Preapproved evaluation. Prior to beginning supervision, an applicant shall submit a Clinical Social Work Supervision Contract for the supervised experience [~~which will be taking place over the required time period~~] and the shall have the contract approved by the board. This contract shall be evaluated by the board and shall be approved or denied[disapproved] within ninety (90) days of its submission.

(2) A certified social worker who desires to practice clinical social work that does not qualify as supervised experience pursuant to KRS 335.100(1)(b).~~1.~~ shall submit a Clinical Social Work Supervision Contract pursuant to KRS 335.080(3). This contract shall be evaluated by the board and shall be approved or denied[disapproved] within ninety (90) days of its submission.

(3) A certified social worker who desires to practice clinical social work that meets all the other supervised experience requirements, other than the requirement listed in Section 6(3) [7(3)] of this administrative regulation, shall submit a Clinical Social Work Supervision Contract pursuant to KRS 335.080(3). The supervision hours obtained in this clinical setting may be considered by the board.

Section 10. (1) Changes to Section A of the Plan of Clinical Social Work Activities of the Clinical Social Work Supervision Contract that describes the clinical setting and nature of the

practice and experience that the supervisee is to obtain, as required by Section 4 5 of this administrative regulation, shall be submitted to the board for approval.

(2) A new Contract for Clinical Social Work Supervision shall be submitted to the board for approval if the supervisee changes his or her:

a. Supervisor of record; or

b. Place of employment.~~[If the supervisee changes his or her supervisor of record, a new Contract for Clinical Social Work Supervision shall be submitted to the board for approval.]~~

(3) A supervisee shall notify the board in writing of changes of additional supervisors who are not the supervisor of record, but who are identified in the Clinical Social Work Supervision Contract pursuant to Section 4[5](3) of this administrative regulation, and attach a copy of the supervisor's supervisory training certificate.

Section 11. Supervision training course for CSW under supervision. (1) Prior to beginning supervised clinical practice, a certified social worker supervisee shall complete a one-hour board-approved training course on supervised clinical practice experience relating to the requirements in KRS Chapter 335.010 to KRS 335.160 and KRS 335.990, the administrative regulation establishing the Code of Ethical Conduct, and this administrative regulation.

Section 12. Incorporation by Reference. (1) "Clinical Social Work Supervision Contract," March 2020[04/2016], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Social Work, 125 Holmes Street, Suite 310 [44 Fountain Place], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JUSTIN "JAY" MILLER, Ph.D., CSW, Chairman

APPROVED BY AGENCY: March 12, 2020

FILED WITH LRC: March 13, 2020 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 27, 2020, at 10:00 a.m. Eastern Time, at the Kentucky Board of Social Work, 125 Holmes Street, Third Floor Board Room, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Florence S. Huffman, Executive Director, Kentucky Board of Social Work, 125 Holmes Street, Suite 310, Frankfort, Kentucky 40601; phone (502) 564-2350 or (502) 782-2856; fax (502) 696-8030; email florence.huffman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Florence S. Huffman, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the educational and supervision requirements for individuals who wish to be licensed as a licensed clinical social worker (LCSW – Masters or Doctorate in Social Work is required). In Kentucky, an LCSW may assess, diagnose, and provide therapy to an individual with a mental or emotional disorder. The magnitude of those responsibilities dictate that a person providing those services to Kentucky citizens either hold an LCSW or has been approved for post-master's clinical social work experience under the supervision of qualified LCSW

clinical supervisors. Kentucky law also permits a certified social worker (CSW – Masters or Doctorate in Social Work required)

Given the statutory charge to protect the public, this regulation states the license and training requirements for an LCSW supervisor and describes the requirements for a certified social worker (CSW – Masters or Doctorate in Social Work required) to provide clinical social work services under supervision, to evaluate an out-of-state applicant's qualifications for licensure as an LCSW and board approval to continue supervised clinical practice, and the standards for an out-of-state applicant licensed at the equivalent clinical licensure category. These standards are critical because clinical social work practice involves the evaluation and diagnosis of mental disorders, and safe and appropriate treatment planning.

(b) The necessity of this administrative regulation: In the U.S., two years of supervised clinical social work practice experience is the uniform standard to qualify for the licensure as a licensed clinical social worker and sit for the clinical exam. However, the number of hours of supervision with a licensed clinical social work supervisor vary widely across the U.S. The lack of uniformity and Kentucky's current requirements may present a significant barrier to licensure including the cost of supervision and the vast differential in the number of required supervision hours. After much debate and consideration, the Kentucky Board of Social Work has determined that a reduction in the number of supervision hours is necessary, with greater consideration given to the qualifications and training requirements for board-approved supervisors, and due respect given to the lawful licensure requirements adopted by other U.S. jurisdictions.

For example, social work boards in neighboring Tennessee and Indiana require 100 hours or less of clinical practice supervision to qualify for a clinical license, compared to the 200 hours mandated in Kentucky. If a licensed clinical social worker from Tennessee has not practiced clinical social work for five years, and does not have the requisite 200 hours of supervision, this individual cannot be issued a clinical social work license in Kentucky. Their recourse is to wait until the five years of practice have been completed or ask the board to issue a certified social worker license, and go back under supervision to accumulate the balance of the required supervision hours. This process is costly, time-consuming and frustrating to otherwise qualified clinical social workers who want to work in Kentucky.

The board also considered the cost issue as a potential barrier: Clinical supervision costs an average of \$75 per hour and can be as much as \$100 per hour depending upon area of the state in which the social worker lives. Another consideration is that the additional hours of supervision required in Kentucky makes the practice experience take longer than two years.

In addition, license mobility and portability have become increasingly important because individuals who seek licensure in Kentucky may be moving from another jurisdiction, desire to practice across the border but live in and are licensed by a nearby jurisdiction, or need to add another license to permit them to provide services to clients using telehealth. The proliferation of telehealth and the expanding use of technology has transformed the nature of social work practice and greatly expanded social workers' ability to assist people in need, particularly in rural areas. With due consideration to informed consent and confidentiality of clients' protected health information, contemporary social workers' use of technology has created new ways to interact and communicate with clients, raising fundamentally new questions about the differences in regulation of social work practice.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 335.070(3) authorizes the board to promulgate administrative regulations to carry out of the provisions of KRS 335.101 to 335.160 and KRS 335.990.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs an applicant how he or she qualifies for licensure as a licensed clinical social worker, restates the requirements for a Clinical Social Work Contract during the period of supervised clinical practice experience, reduces the number of supervision hours over the two-year supervised clinical

practice period, and describes the conditions for clinical supervision established by the board. In addition, this administrative regulation informs an applicant or licensee about the reduced supervision hours for the clinical social work license, an increase in continuing education hours required for board-approved clinical supervisors, addition of continuing education for the supervisee, and evaluation of the supervision experience.

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

(a) How the amendment will change this existing administrative regulation: This amendment increases the hours of the training course on supervisory practice and methods, adds a self-evaluation of the supervision process for both the supervisor and supervisee, adds a requirement that the supervisee employee must receive regular wages, reduces the supervision hours from 200 to 104 hours over the two-year supervised clinical practice with a minimum of 70 hours of the required supervision by individual supervision, reduces the number of hours when electronic supervision may be utilized, and adds a section for applicants for licensure as a licensed clinical social worker from another jurisdiction.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to implement the board's desire to increase the quality of the supervision experience and to bring the supervision requirements in conformity to the clinical supervision requirements of other U.S. jurisdictions and neighboring states.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 335.070 (3) permits the board to establish the requirements for licensure as a clinical social worker.

(d) How the amendment will assist in the effective administration of the statutes: This amendment removes potential time and cost barriers to clinical social work licensure, increases the hours of the supervision course, adds a one-time course to inform the supervisee, and includes an evaluation of the supervision process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 6,000 licensed social workers in Kentucky, undetermined numbers of out-of-state applicants, community mental health centers, public and private agencies and businesses that employ social workers.

(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 changes in this amendment will increase the continuing education hours for board-approved supervisors and require more time to become an approved supervisor and likely will increase the cost of the supervision course. Correspondingly, the numbers of licensed clinical social workers in this state will increase because out-of-state applicants more easily and quickly will meet the new supervision requirement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The board anticipates that any cost increase will be the expense of the supervision training course for licensed clinical social workers who wish to become board-approved supervisors.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The board estimates that the number of licensed clinical social workers in this state will increase because both in state and out-of-state applicants will meet the criteria for licensure more quickly because of the reduced supervision hours. The amendment also will increase lawful provision of clinical services by and through telehealth providers from outside the boundaries of Kentucky.

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

(a) Initially: The board estimates that it will incur no additional costs to implement this amendment.

(b) On a continuing basis: The board estimates that it will incur

no additional costs to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are wholly self-funded by fees paid by licensees, applicants, and continuing education providers and sponsors.

(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: This amendment does not directly establish or increase fees.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No, this amendment does not.

(9) TIERING: Is tiering applied? No, tiering was not applied. This administrative regulation is applied uniformly to each licensee and applicant regardless of his or her state of residence and each will be required to meet the same qualifications for clinical social work practice.

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 Board of Social Work and entities that employ social workers to provide clinical social work services will be impacted by this regulation. These entities include public school districts, community mental health centers, and other public and private businesses.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.070(3), 335.080(1)(c) and (3), 335.100(1)(a), (b), and (3).

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. Payment for the overall cost of supervision will decrease because the number of supervision hours will be reduced.

(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? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Department for Libraries and Archives

Division of Library Services

(Amendment)

725 KAR 2:060. Certification of public librarians.

RELATES TO: KRS 171.250, 171.260, 171.270

STATUTORY AUTHORITY: KRS 171.250(1[2]), 171.260, 171.270

NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.260 requires certification of public librarians and other full-time employees. KRS 171.250(1[2]) requires the board to promulgate administrative regulations in order to establish the requirements for the certification of public librarians. This administrative regulation

establishes the requirements for certification of public librarians.

Section 1. Definitions. (1) "ALA" means the American Library Association.

(2) "Asynchronous training" means training that allows students to access content or learn outside the classroom at their convenience or independent of the instructor.

(3)(2) "Board" means the Kentucky State Board for the Certification of Librarians.

(4)(3) "Full-time" means working ~~[more than]~~ 100 hours or more per month.

(5) "Job-related field of study" means an area other than library science that is directly related to the applicant's job duties. (6)(4) "Library [information] services" means duties performed by library employees that require special skills and knowledge to be performed properly.

(7)(5) "Library work experience" means employment in a library that includes administration, collection development, technical services, public services, or support for public service areas, and excludes secretarial, custodial, groundskeeping, security, food service, ~~[driver,]~~ and messenger duties.

(8) "Part-time" means working less than 100 hours per month.

Section 2. Required Certification by Public Library Position. (1) A full-time or part-time library director serving a population of more than 15,000 shall hold or obtain a Professional I or II certificate.

(2) A full-time or part-time library director serving a population of 15,000 or less shall hold or obtain at least the ~~[paraprofessional]~~ Professional III or IV certificate.

(3) A full-time or part-time ~~[An]~~ assistant director, ~~[bookmobile librarian,]~~ branch head, ~~[or]~~ department head, manager, supervisor, or bookmobile librarian, as determined by the library director or designee, shall hold or obtain at least the Paraprofessional I certificate.

(4) Any other full-time position providing library ~~[information]~~ services, as determined by the library director or designee [assigned by local library personnel] using the Approved Guidelines for Determination of Paraprofessional Level of Certification, shall hold or obtain the Paraprofessional II or Paraprofessional III ~~[library experience]~~ certificate.

Section 3. Types of Certificates. (1) A Professional I Certificate [I] shall be:

(a) Awarded if the applicant has obtained a master's degree in library science from an [a] ALA accredited school; and

(b) Valid for five (5) years.

(2) A Professional II Certificate [II] shall be:

(a) Awarded if the applicant has obtained:

1. A master's degree in library science from a library school that has not been ALA accredited; or

2. A master's degree with at least fifteen (15) graduate hours in library science; and

(b) Valid for five (5) years.

(3) A Professional III Certificate [III] shall be:

(a) Awarded if the applicant has obtained ~~[the following requirements before July 1, 2014]:~~

1. A bachelor's degree with at least twenty-one (21) graduate or undergraduate college credit hours in library science; or

2. A master's degree with at least fifteen (15) ~~[twelve (12)]~~ graduate or undergraduate college credit hours in library science; and

(b) Valid for five (5) years.

(4) A Professional IV Certificate [IV] shall be:

(a) Awarded if the applicant has obtained: ~~[passed the library certification examination before July 1, 1980; and]~~

1. A bachelor's degree with at least nine (9) graduate or undergraduate college credit hours in library science and six (6) graduate or undergraduate college credit hours in a job-related field of study; or

2. A master's degree with six (6) graduate or undergraduate college credit hours in library science and three (3) graduate or undergraduate college credit hours in a job-related field of study; and

(b) Valid for five (5) years.

(5) A Paraprofessional I Certificate shall be:

(a) Awarded if the applicant has completed or obtained:

1.a. ~~[Sixty (60) hours of college training, including at least twelve (12) hours in library science; and~~

b. ~~Two (2) years of full-time work experience;~~

2.a.] A high school diploma or GED;

b. 360 total job-related educational contact hours, including 144 educational contact hours in library science and seventy-two (72) educational contact hours in Human Resources or Management [At least fifteen (15) hours in library science]; and

c. 4,000 hours of library work experience~~[Five (5) years of full-time library work experience;~~

3. A bachelor's degree with at least twelve (12) hours in library science; or

4. A master's degree with at least six (6) hours in library science]; and

(b) Valid for five (5) years.

(6) A Paraprofessional II ~~[library experience]~~ Certificate shall be:

(a) Awarded if the applicant has completed or obtained:

1.a. A high school diploma or GED; and

2.a. Twelve (12) hours of library science;

b. 288 job-related educational contact hours~~[Nine (9) hours of library science and three (3) hours in a related field of study]; and~~

c. 4,000 hours of library work experience~~[Six (6) hours in library science and ten (10) years of full-time library work experience; or~~

d. A bachelor's degree and six (6) hours in library science]; and

(b) Valid for five (5) years.

(7) A Paraprofessional III Certificate shall be:

(a) Awarded if the applicant has completed or obtained:

1.a. A high school diploma or GED; and

b. 144 job-related educational contact hours; and

c. 2,000 hours of library work experience; and

(b.) Valid for five (5) years.

(8)(7) A Professional or,] Paraprofessional ~~[or library experience]~~ Certificate shall be renewed according to 725 KAR 2:070.

(9)(8) A Temporary Certificate shall be valid for five (5) years and shall be issued to a person who:

(a) Holds or is promoted to a job requiring certification as provided in Section 2 of this administrative regulation; or

(b) Does not meet the requirements of Section 2 of this administrative regulation; and

(c) Is promoted to a job requiring a higher level of certification as provided in Section 2 of this administrative regulation].

Section 4. Sources of Education for Initial Certification. (1) The board shall accept academic credit from college credit courses offered by an institution of higher education, which is accredited by its respective regional association.

(2) The board shall accept library and information science academic credits from college credit courses offered by:

(a) Graduate schools accredited by the Committee on Accreditation of the American Library Association and these college credit courses shall be approved for all types of certificates;

(b) Colleges whose library and information science departments are accredited by their respective regional associations and these college credit courses shall be approved for all types of certificates;

(c) Accredited colleges that offer individual library and information science courses and these college credit courses shall be approved for Professional III and IV[,] and Paraprofessional I, II, and III[,] and Library Experience] certificates; or

(d) Community and technical colleges that offer library or information science courses and these courses shall be approved for Professional III and IV[,] and Paraprofessional I, II, and III] and Library Experience] certificates; and

(e) Asynchronous training courses with a minimum of ten (10) educational contact hours in length provided by an institution or organization that meets the requirements of the Approved Guidelines for Asynchronous Training Courses.

(3) As an alternative source of education for the Professional III, IV, and Paraprofessional [or the library experience certificate] certificates, the board shall accept completion of a library institute, which [a library institute] shall be an in-depth program of library and information science developed according to the Approved Guidelines for Library Institutes.

(a) The program shall be submitted to the board for approval sixty (60) days in advance of implementation.

(b) One (1) institute shall substitute for a three (3) hour college credit[level] library and information science course and shall only be substituted once for initial certification.

Section 5. Application for public library certification shall be made to the board by submitting a completed Application for Certification of Librarianship.

Section 6. A fee of twenty (20) dollars shall be charged for each certificate issued.

Section 7. A Professional or[.] Paraprofessional [or library experience] certificate shall be issued to an applicant who meets the requirements and submits the required fee.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Approved Guidelines for Library Institutes, January 8, 2010; and

(b) Application for Certification of Librarianship, October 18, 2019[December 15, 2008:]; and

(c) Approved Guidelines for Determination of Paraprofessional Level of Certification, July 8, 2019; and

(d) Approved Guidelines for Asynchronous Training Courses, July 8, 2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601[40602-0537], Monday through Friday, 9[8] a.m. to 4[30] p.m.

TERRY MANUEL, Commissioner

APPROVED BY AGENCY: March 12, 2020

FILED WITH LRC: March 13, 2020

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 21, 2020, at 1:00 p.m. Eastern Time in the Board Room at the Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Terry Manuel, Commissioner, Kentucky Department for Libraries & Archives, P.O. Box 537, 300 Coffee Tree Road, Frankfort, Kentucky 40602, phone (502) 564-8303, email kdla.certification@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Terry Manuel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation (725 KAR 2:060) establishes the certification requirements of some part-time and all full-time public library staff. It also states the fee associated with certification.

(b) The necessity of this administrative regulation: This administrative regulation is required under KRS 171.250 and KRS 171.260

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 171.250 requires the Kentucky State Board for the Certification of Librarians to establish certification requirements. KRS 171.260 requires the certification of full-time public library staff.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: 725 KAR 2:060 provides detailed information about who needs to be certified and a structure for the educational and work hour requirements for certification of all full-time and some part-time public library staff.

(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: Definitions added or revised to provide clearer meanings. Clarifications made as to what full-time and part-time positions shall be certified. Establishes four levels of Professional certification and requires all public library directors to hold this certification. Eliminates the Library Experience certificate and creates three different levels of the Paraprofessional certification. College credit hours are no longer required. Library work hours have been added as a requirement for certification. Adds two new Materials Incorporated by Reference documents.

(b) The necessity of the amendment to this administrative regulation: These amendments to the administrative regulation add clarification to certification requirements and creates additional education options for earning certification.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 171.250 requires the Kentucky State Board for the Certification of Librarians to establish certification requirements. KRS 171.260 requires the certification of full-time public library staff.

(d) How the amendment will assist in the effective administration of the statutes: The amendments provide clarification and options that make administration and compliance less burdensome to public library staff.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Department for Libraries and Archives, the Kentucky State Board for the Certification of Librarians, and the legally established public libraries in 119 counties. The approximate number of public library staff that are currently certified is 1,430 people.

(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: They will have to take the same actions that they do now with the current KAR, but will have more options in completing the requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Initial certification costs each applicant \$20, but this is an established fee, not a new fee.

(C) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky public libraries will have trained and qualified staff to help assist their community and citizens of the Commonwealth.

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

(a) Initially: No new cost will be incurred.

(b) On a continuing basis: No new cost will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds appropriated by the Institute of Museums and Library Services

(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.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation already has an established fee of \$20. That existing fee has not been changed with this amendment.

(9) TIERING: Is tiering applied? Tiering is not applied because certification is open to all full-time public library employees of the legally established public libraries in Kentucky.

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 Kentucky Department for Libraries and Archives, the Kentucky State Board for the Certification of Librarians, and the legally established public libraries in 119 counties.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 171.250, KRS 171.260, KRS 171.270

(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. No fee changes are being proposed in this revised administrative regulation. As in the past, the revenue generated by this administrative regulation is dependent upon the number of new employees hired by a public library that are required to be certified.

(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? This administrative regulation will generate approximately \$3,500 in 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? This administrative regulation will generate approximately \$3,500 in revenue.

(c) How much will it cost to administer this program for the first year? There will be minimal impact on the cost of administering this administrative regulation. This is an ongoing certification for the State Board for the Certification of Librarians, which has been in place since 1942.

(d) How much will it cost to administer this program for subsequent years? There will be minimal impact on the cost of administering this administrative regulation. This is an ongoing certification for the State Board for the Certification of Librarians, which has been in place since 1942.

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:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET Department for Libraries and Archives Division of Library Services (Amendment)

725 KAR 2:070. Certification renewal of public librarians.

RELATES TO: KRS 171.250, 171.260, 171.270

STATUTORY AUTHORITY: KRS 171.250(2), 171.270

NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.250(2) authorizes the board to establish the requirements for certificate renewals for public librarians. This administrative regulation establishes the requirements for certificate renewals for public librarians.

Section 1. Definitions. (1) "Board" means the Kentucky State Board for the Certification of Librarians.

(2) "Contact hour" means a unit of measuring continuing

education training with one (1) hour of training equal to one (1) contact hour.

(3) "Editorial process" means one (1) or more editors at a publication reviews and approves submitted work.

(4) "Full-time" means working 100 or more hours per month.

(5) "Job-related course work or continuing education" means instruction other than in library science that is directly related to the applicant's job.

(6) "Job-related professional organization" means a professional organization other than library science that is directly related to the applicant's job.

(7) "Learning activity" means a class, institute, seminar, or workshop that is planned, coordinated, administered, and evaluated in terms of learning objectives.

(8) "Library information services" means duties performed by library employees that require special skills and knowledge to be performed properly.

(9) "Presenting" means instructional training that lasts ninety (90) minutes or less.

(10) "Professional library association, consortium, council, or board" means an organization of library staff and persons interested in libraries.

(11) "Teaching" means instructional training that lasts more than ninety (90) minutes.

Section 2. Required Certification Renewal by Public Library Position. (1) A library director serving a population of more than 15,000 shall renew the professional certificate every five (5) years. 100 contact hours of continuing education shall be accumulated within the five (5) year period.

(2) A library director serving a population of 15,000 or less shall renew at least the paraprofessional certificate every five (5) years. Seventy-five (75) contact hours of continuing education shall be accumulated within the five (5) year period.

(3) An assistant director, bookmobile or outreach staff, branch head, or department head shall renew at least the paraprofessional certificate every five (5) years. Seventy-five (75) contact hours of continuing education shall be accumulated within the five (5) year period.

(4) Any other full-time position providing library information services, as assigned by local library personnel, shall renew the library experience certificate every five (5) years. Fifty (50) contact hours of continuing education shall be accumulated within the five (5) year period.

Section 3. Types of Certificates. The following certificates may be renewed for a period of five (5) years:

- (1) Professional Certificate I;
- (2) Professional Certificate II;
- (3) Professional Certificate III;
- (4) Professional Certificate IV;
- (5) Paraprofessional Certificate; or
- (6) Library Experience certificate.

Section 4. Sources of Learning Activities that Provide Contact Hours. (1) The board shall accept job-related coursework or continuing education offerings from an institution of higher education as follows:

- (a) Classes;
- (b) Institutes;
- (c) Seminars;
- (d) Workshops;
- (e) Conferences;
- (f) Lecture series;
- (g) Internships; or
- (h) Courses taken for academic credit.

(2) The board shall accept activities in a professional library or job-related association, consortium, council, or board as follows:

- (a) Participation in:
 1. Seminars;
 2. Workshops;
 3. Conferences; or
 4. Lecture series; or

(b) The holding of an association, consortium, council, or board office, with a statement specifying the learning activity and derived educational benefit.

(3) The board shall accept participation in job-related seminars, workshops, conferences, or lecture series sponsored by the Kentucky Department for Libraries and Archives.

(4) The board shall accept participation in workshops, lecture series, or training programs that shall be documented as job-related. These activities may be sponsored by individual libraries.

(5) The board shall accept self-directed learning activities that go beyond expected job duties, such as:

(a) Writing reviews of job-related materials or books, articles, or chapters that are published in statewide, regional, or national library or other job-related professional organization's publications and selected through an editorial process;

(b) Writing or editing an article for a job-related publication with statewide, regional, or national distribution and selected through an editorial process;

(c) Writing or editing a book on a job-related topic selected for publication by a publishing company and published following an editorial process;

(d) Developing and presenting library-related instructional training for library staff, library school students, library trustees, or other job-related professional organizations;

(e) Preparing and teaching a library or job-related course, workshop, seminar, or institute; or

(f) Listening to or viewing an audio or video recording of a job-related workshop presentation or conference program and submitting a written review indicating what was learned and how it relates to their job.

(6) The board shall require that each learning activity incorporates new subject information.

Section 5. The conversion calculations for a type of activity to the number of contact hours shall be determined in accordance with the Certification Contact Hours Points Conversion Chart.

Section 6. Application for public librarian certification renewal shall be made to the board by submitting a completed Renewal Application for Certification of Librarianship.

Section 7. A fee of twenty (20) dollars shall be charged for each certificate renewal issued.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Certification Contact Hours Conversion Chart", June 1, 2017; and

(b) "Renewal Application for Certification of Librarianship", March 1, 2017.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40602-0537, Monday through Friday, 9 a.m. to 4 p.m. (18 Ky.R. 3278; Am. 19 Ky.R. 49; eff. 7-4-1992; 26 Ky.R. 899; 1159; eff. 12-16-1999; 36 Ky.R. 1337; 2061-M; eff. 4-2-2010; 43 Ky.R. 2063; 44 Ky.R. 104, 221; eff. 8-28-2017; Crt eff. 1-28-2020.)

LABOR CABINET

Department of Workplace Standards

Division of Occupational Safety and Health Compliance

Division of Occupational Safety and Health Education and Training

(Amendment)

803 KAR 2:300. General.

RELATES TO: KRS 338.015, 29 C.F.R. 1910.3-1910.7, 1910.9

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health

administrative regulations and authorizes the chairman of the board to reference ~~adopt established~~ federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. 29 C.F.R. 1910.3-1910.7 and 1910.9 establish occupational safety and health standards found to be national consensus standards or established federal standards. This administrative regulation establishes the general standards ~~to be~~ enforced by the Department of Workplace Standards in general industry.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant secretary ~~Secretary of Labor~~" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(3) "C.F.R." means Code of Federal Regulations.

(4) "Employee" is defined by KRS 338.015(2).

(5) "Employer" is defined by KRS 338.015(1).

(6) "Established federal standard" is defined by KRS 338.015(10).

(7) "National consensus standard" is defined by KRS 338.015(9).

(8) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(9) "Standard" means "occupational safety and health standard" as defined by KRS 338.015(3).

(10) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet, 500 Mero Street, 3rd Floor~~[U.S. 427 South]~~, Frankfort, Kentucky 40601.

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, general industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Administration:

(1) 29 C.F.R. 1910.3-1910.7 and 1910.9 ~~revised July 4, 2016~~; and

(2) The revisions to 29 C.F.R. 1910.6 as published in the May 14, 2019 Federal Register, Volume 84, Number 93~~[November 18, 2016 Federal Register, Volume 81, Number 223]~~;

LARRY ROBERTS, Secretary of Labor

APPROVED BY AGENCY: March 12, 2020

FILED WITH LRC: March 12, 2020 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 27, 2020 at 10:00 am (EDST) at the Labor Cabinet, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with

the requirements of 29 C.F.R. 1910.3-1910.7 and 1910.9. Section 2 also establishes the amendments to 29 C.F.R. 1910.6, as published in the May 14, 2019 Federal Register, Volume 84, Number 93. With the May 14 final rule, OSHA continues its initiative to remove or revise outdated, duplicative, unnecessary, and inconsistent requirements in the standards. The amendments to 29 C.F.R. 1910.6 included changes to requirements incorporated by reference related to the provision of spirometry assessments and radiographs. The incorporated standards have been updated to accept current practices and technology. This regulation was also amended to conform to the requirements of KRS Chapter 13A. Additionally, this regulation was reviewed in accordance with House Bill 50 from the Regular Session of the 2018 General Assembly.

(b) The necessity of this administrative regulation: This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky OSH Standards Board to promulgate OSH administrative regulations. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5.

(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: With the May 14 final rule, OSHA continues its initiative to remove or revise outdated, duplicative, unnecessary, and inconsistent requirements in the standards. The amendments to 29 C.F.R. 1910.6 included changes to requirements incorporated by reference related to the provision of spirometry assessments and radiographs. The incorporated standards have been updated to accept current practices and technology.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061. KRS 338.051(3) and 338.061 authorize the Kentucky OSH Standards Board to promulgate occupational safety and health rules and administrative regulations and standards.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides all a clear understanding of the requirements. This amendment promotes employee health and safety throughout Kentucky and keeps the state program consistent with the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects employers in the Commonwealth engaged in all general industry activities covered by KRS Chapter 338.

(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 additional compliance duties are imposed and no immediate action is required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to the OSH Program to implement this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes employee health and safety throughout Kentucky and keeps the state program consistent with the federal program.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: (a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There are no new costs associated with this regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There are no fees associated with this administrative regulation. There is no need to increase funding for this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5.

2. State compliance standards. The Kentucky OSH Program is mandated by Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5 to develop and enforce standards that are at least as effective as the federal requirement. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5 to be at least as effective as the federal requirement. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This amendment does not impose stricter requirements.

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?

This administrative regulation affects any unit, part, or division of local government covered by KRS 338 and engaged in any general industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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. None.

(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? There are no costs associated with this amendment.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with this amendment.

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: This amendment does not impose any additional requirements or expenditures to the employer.

LABOR CABINET

Department of Workplace Standards

Division of Occupational Safety and Health Compliance

Division of Occupational Safety and Health Education and Training (Amendment)

803 KAR 2:320 Toxic and hazardous substances.

RELATES TO: KRS 338.015, 338.031, 29 C.F.R. 1910.134, 1910.141, 1910.1000-1910.1450

STATUTORY AUTHORITY: KRS 338.051(3), 338.061 [–29 C.F.R. 1910.1000-1910.1450, E.O. 2018-586]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations ~~[necessary to accomplish the purposes of KRS Chapter 338] and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements.~~ [Executive Order 2018-586 transfers the authority to adopt, amend, or repeal regulations from the Occupational Safety and Health Standards Board to the Secretary of the Kentucky Labor Cabinet.] KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. 29 C.F.R. 1910.1000 to 1910.1450 establish federal requirements relating to toxic and hazardous substances. This administrative regulation establishes the toxic and hazardous substances standards [to be] enforced by the Department of Workplace Standards in the area of general industry.

Section 1. Definitions. (1) "Absolute filter" means a filter capable of retaining 99.97 percent of a mono disperse aerosol of three-tenths (0.3) μ particles.

(2) "Area director" means Director, Division of Occupational Safety and Health Compliance, Kentucky Labor Cabinet.

(3) "Authorized employee" means an employee whose duties require the employee to be in the regulated area and who has been specifically assigned to that area by the employer.

(4) "Clean change room" means a room where employees put on clean clothing or protective equipment in an environment free of 4,4'-Methylene bis (2-chloroaniline).

(5) "Closed system" means an operation involving 4, 4'-Methylene bis (2-chloroaniline) if containment prevents the release of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, nonregulated areas, or the external environment.

(6) "Decontamination" means the inactivation of 4,4'-Methylene bis (2-chloroaniline) or its safe disposal.

(7) "Director" means the Director, National Institute for Occupational Safety and Health, or any person directed by the director or the Secretary of Health, Education, and Welfare to act for the director.

(8) "Disposal" means the safe removal of 4,4'-Methylene bis (2-chloroaniline) from the work environment.

(9) "Emergency" means an unforeseen circumstance or set of circumstances resulting in the release of 4,4'-Methylene bis (2-chloroaniline) that may result in exposure to or contact with 4,4'-Methylene bis (2-chloroaniline).

(10) "Employee" is defined by KRS 338.015(2).

(11) "Employer" is defined by KRS 338.015(1).

(12) "External environment" means any environment external to regulated and nonregulated areas.

(13) "Isolated system" means a fully enclosed structure, other than the vessel of containment, of 4,4'-Methylene bis (2-chloroaniline), which is impervious to the passage of entry of 4,4'-Methylene bis (2-chloroaniline), and which would prevent the entry of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, or the external environment, if leakage or spillage from the vessel of containment occurs.

(14) "Laboratory type hood" means a device:

(a) Enclosed on three (3) sides with the top and bottom designed and maintained to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute; and

(b) Designed, constructed, and maintained so that an operation involving 4,4'-Methylene bis (2-chloroaniline) within the hood does not require the insertion of any portion of an employee's body other than hands and arms.

(15) "National consensus standard" is defined by KRS 338.015(9).

(16) "Nonregulated area" means any area under the control of the employer where entry and exit is neither restricted nor controlled.

(17) [(46)] "Open-vessel system" means an operation involving 4,4'-Methylene bis (2-chloroaniline) in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, nonregulated areas, or the external environment.

(18) [(47)] "Protective clothing" means clothing designed to protect an employee against contact with or exposure to 4,4'-Methylene bis (2-chloroaniline).

(19) [(48)] "Regulated area" means an area where entry and exit is restricted and controlled.

(20) [(49)] "Standard" means "occupational safety and health standards" as defined by KRS 338.015(3).

Section 2. 4,4'-Methylene bis (2-Chloroaniline). (1) Scope and application.

(a) This section shall apply to any area in which 4,4'-Methylene bis (2-chloroaniline), Chemical Abstracts Service Registry Number 101144, is manufactured, processed, repackaged, released, handled, or stored. This section shall not apply to trans-shipment in sealed containers, except for the labeling requirements under subsection (4)(b), (c), and (d) of this section.

(b) This section shall not apply to solid or liquid mixtures containing less than one and zero-tenths (1.0) percent by weight of 4,4'-Methylene bis (2-chloroaniline).

(2) Requirements for areas containing 4,4'-Methylene bis (2-chloroaniline). A regulated area shall be established by an employer where 4,4'-Methylene bis (2-chloroaniline) is manufactured, processed, used, repackaged, released, handled, and stored. Those areas shall be controlled in accordance with the requirements for the following category or categories describing the operations involved:

(a) Isolated systems. Employees working with 4,4'-Methylene bis (2-chloroaniline) within an isolated system such as a "glove box" shall wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated with the isolated system.

(b) Closed system operation. Within regulated areas if 4,4'-

Methylene bis (2-chloroaniline) is stored in a sealed container, or contained in a closed system including piping systems, with any sample ports or openings closed while 4,4'-Methylene bis (2-chloroaniline) is contained within:

1. Access shall be restricted to authorized employees only; and
2. Employees shall be required to wash hands, forearms, face, and neck upon each exit from the regulated areas, close to the point of exit and before engaging in other activities.

(c) Open vessel system operations. Open vessel system operations shall be prohibited.

(d) Transfer from a closed system, charging or discharging point operations, or otherwise opening a closed system. In operations involving a "laboratory type hood," or in locations where 4,4'-Methylene bis (2-chloroaniline) is contained in an otherwise "closed system," but is transferred, charged, or discharged into other normally closed containers, the provisions of this paragraph shall apply.

1. Access shall be restricted to authorized employees only.
2. Each operation shall be provided with continuous local exhaust ventilation so that air movement shall always be from ordinary work areas to the operation.

a. Exhaust air shall not be discharged to regulated areas, nonregulated areas, or the external environment unless it is decontaminated.

b. Clean make-up air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.

3. Employees shall be provided with, and required to wear, clean, full body protective clothing (smocks, coveralls, or long-sleeved shirt and pants), shoe covers, and gloves prior to entering the regulated area.

4. Employees engaged in 4,4'-Methylene bis (2-chloroaniline) handling operations shall be provided with and required to wear and use a half-face, filter-type respirator for dusts, mists, and fumes, in accordance with 29 C.F.R. 1910.134. A respirator affording a higher level of protection may be substituted.

5. Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal. The contents of the impervious containers shall be identified, as required under subsection (4)(b), (c), and (d) of this section.

6. Employees shall be required to wash hands, forearms, face, and neck on each exit from the regulated area, close to the point of exit, and before engaging in other activities.

7. Employees shall be required to shower after the last exit of the day.

8. Drinking fountains shall be prohibited in the regulated area.

(e) Maintenance and decontamination activities. In cleanup of leaks or spills, maintenance or repair operations on contaminated systems or equipment, or any operations involving work in an area where direct contact with 4,4'-Methylene bis (2-chloroaniline) could result, each authorized employee entering that area shall be:

1. Provided with and required to wear clean, impervious garments, including gloves, boots, and continuous-air supplied hood in accordance with 29 C.F.R. 1910.134;

2. Decontaminated before removing the protective garments and hood; and

3. Required to shower upon removing the protective garments and hood.

(f) Laboratory activities. The requirements of this paragraph shall apply to research and quality control activities involving the use of 4,4'-Methylene bis (2-chloroaniline).

1. Mechanical pipetting aids shall be used for all pipetting procedures.

2. Experiments, procedures, and equipment that could produce aerosols shall be confined to laboratory-type hoods or glove boxes.

3. Surfaces on which 4,4'-Methylene bis (2-chloroaniline) is handled shall be protected from contamination.

4.a. Contaminated wastes and animal carcasses shall be collected in impervious containers that are closed and decontaminated prior to removal from the work area.

b. The wastes and carcasses shall be incinerated so that no

carcinogenic products are released.

5. All other forms of 4,4'-Methylene bis (2-chloroaniline) shall be inactivated prior to disposal.

6. Employees engaged in animal support activities shall be:

a. Provided with and required to wear, a complete protective clothing change, clean each day, including coveralls or pants and shirt, foot covers, head covers, gloves, and appropriate respiratory protective equipment or devices;

b. Required, prior to each exit from a regulated area, to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal. The contents of the impervious containers shall be identified as required under subsection (4)(b), (c), and (d) of this section;

c. Required to wash hands, forearms, face, and neck upon each exit from the regulated area close to the point of exit and before engaging in other activities; and

d. Required to shower after the last exit of the day.

7. Employees, except for those engaged in animal support activities, each day shall be:

a. Provided with and required to wear a clean change of appropriate laboratory clothing, such as a solid front gown, surgical scrub suit, or fully buttoned laboratory coat;

b. Required, prior to each exit from a regulated area, to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal. The contents of the impervious containers shall be identified as required under subsection (4)(b), (c), and (d) of this section; and

c. Required to wash hands, forearms, face, and neck upon each exit from the regulated area close to the point of exit and before engaging in other activities.

8. Air pressure in laboratory areas and animal rooms where 4,4'-Methylene bis (2-chloroaniline) is handled and bioassay studies are performed shall be negative in relation to the pressure in the surrounding area. Exhaust air shall not be discharged to regulated areas, nonregulated areas, or the external environment unless it is decontaminated.

9. There shall not be a connection between regulated areas and any other areas through the ventilation system.

10. A current inventory of 4,4'-Methylene bis (2-chloroaniline) shall be maintained.

11. Ventilated apparatus such as laboratory type hoods, shall be tested at least semi-annually or immediately after ventilation modification of maintenance operations, by personnel fully qualified to certify correct containment and operation.

(g) Premixed solutions. If 4,4'-Methylene bis (2-chloroaniline) is present only in a single solution at a temperature not exceeding 120 degrees Celsius, the establishment of a regulated area shall not be required, except:

1. Only authorized employees shall be permitted to handle the materials;

2. Each day employees shall be provided with and required to wear a clean change of protective clothing (smocks, coveralls, or long-sleeved shirts and pants), gloves, and other protective garments and equipment necessary to prevent contact with the solution in the process used;

3. Employees shall be required to remove and leave protective clothing and equipment if leaving the work area at the end of the work day or if solution is spilled on the clothing or equipment. Used clothing and equipment shall be placed in impervious containers for decontamination or disposal. The contents of the impervious containers shall be identified, as required under subsection (4)(b), (c), and (d) of this section;

4. Employees shall be required to wash hands and face after removing protective clothing and equipment and before engaging in other activities;

5. Employees assigned to work covered by this paragraph shall be deemed to be working in regulated areas for the purposes of subsection (4)(a), (b), and (c) of this section; and

6. Work areas where solution may be spilled shall be:

- a. Covered daily or after any spill with a clean covering; and
- b. Cleaned thoroughly daily and after any spill.
- (3) General regulated area requirements.
- (a) Employee identification.

1. A daily roster of employees entering regulated areas shall be established and maintained.

2. The rosters or a summary of the rosters shall be retained for a period of twenty (20) years.

3. The rosters or summaries shall be provided upon request to authorized representatives of the assistant secretary and the director.

4. If the employer ceases business without a successor, rosters shall be forwarded by registered mail to the director.

(b) Emergencies. In an emergency, immediate measures, including the requirements of this paragraph, shall be implemented.

1. The potentially affected area shall be evacuated as soon as the emergency is determined.

2. Hazardous conditions created by the emergency shall be eliminated and the potentially affected area shall be decontaminated prior to the resumption of normal operations.

3.a. Special medical surveillance by a physician shall be instituted within twenty-four (24) hours for employees present in the potentially affected area at the time of the emergency.

b. A report of the medical surveillance and any treatment shall be included in the incident report, in accordance with subsection (5)(b) of this section.

4. If an employee has a known contact with 4,4'-Methylene bis (2-chloroaniline), the employee shall be required to shower as soon as possible, unless contraindicated by physical injuries.

5. An incident report on the emergency shall be reported as provided in subsection (5)(b) of this section.

(c) Hygiene facilities and practices.

1. Storage or consumption of food, storage or use of containers of beverages, storage or consumption of beverages, storage or application of cosmetics, smoking, storage of smoking materials, tobacco products or other products for chewing, or the chewing of those products, shall be prohibited in regulated areas.

2. If employees are required by this section to wash, washing facilities shall be provided in accordance with 29 C.F.R. 1910.141.

3. If employees are required by this section to shower, facilities shall be provided in accordance with 29 C.F.R. 1910.141(d)(3).

4. If employees wear protective clothing and equipment, clean change rooms shall be provided, in accordance with 29 C.F.R. 1910.141(e), for the number of employees required to change clothes.

5. If toilets are located in regulated areas, the toilets shall be in a separate room.

(d) Contamination control.

1. Regulated areas, except for outdoor systems, shall be maintained under pressure negative with respect to nonregulated areas.

a. Local exhaust ventilation may be used to satisfy this requirement.

b. Clean make-up air in equal volume shall replace air removed.

2. Any equipment, material, or other item taken or removed from a regulated area shall be done so in a manner that does not cause contamination in nonregulated areas or the external environment.

3. Decontamination procedures shall be established and implemented to remove 4,4'-Methylene bis (2-chloroaniline) from the surface of materials, equipment, and the decontamination facility.

4. Dry sweeping and dry mopping shall be prohibited.

(4) Signs, information, and training.

(a) Signs.

1. Entrance to regulated areas shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT
Authorized Personnel Only

2. Entrances to regulated areas containing operations established in subsection (2)(e) of this section shall be posted with

signs bearing the legend:

Cancer-Suspect Agent Exposed
In this Area
Impervious Suit Including Gloves,
Boots, and Air-Supplied Hood
Required At All Times
Authorized Personnel Only

3. Appropriate signs and instructions shall be posted at the entrance to, and exit from, regulated areas, informing employees of the procedures that shall be followed in entering and leaving a regulated area.

(b) Container labeling. Containers shall be labeled in accordance with the requirements of 29 C.F.R. 1910.1200.

(c) Lettering.

1. Lettering on signs and instructions required by paragraph (a) of this subsection shall be a minimum letter height of two (2) inches.

2. Labels on containers required by paragraph (b) of this subsection shall:

a. Not be less than one-half (1/2) the size of the largest lettering on the package, up to a maximum required size of one (1) inch in height; and

b. Not use less than eight (8) point type.

(d) Prohibited statements. A statement shall not appear on or near any required sign, label, or instruction that contradicts or detracts from the effect of any required warning, information, or instruction.

(e) Training and indoctrination.

1. Each employee, prior to being authorized to enter a regulated area, shall receive a training and indoctrination program including:

a. The nature of the carcinogenic hazards of 4,4'-Methylene bis (2-chloroaniline), including local and systemic toxicity;

b. The specific nature of the operation involving 4,4'-Methylene bis (2-chloroaniline) that could result in exposure;

c. The purpose for and application of the medical surveillance program, including, as appropriate, methods of self-examination;

d. The purpose for and application of decontamination practices and procedures;

e. The purpose for and significance of emergency practices and procedures;

f. The employee's specific role in emergency procedures;

g. Specific information to aid the employee in recognition and evaluation of conditions and situations that may result in the release of 4,4'-Methylene bis (2-chloroaniline); and

h. The purpose for and application of specific first-aid procedures and practices.

2. Each employee shall receive a review of this section at the employee's first training and indoctrination program and annually thereafter.

3. Specific emergency procedures shall be prescribed and posted, and employees shall be familiarized with their terms and rehearsed in their application.

4. All materials relating to the program shall be provided if requested by authorized representatives of the assistant secretary and the director.

(5) Reports.

(a) Operations. Not later than March 1 of each year, the information required by this paragraph shall be reported in writing by the employer to the nearest Area Director. Any change in the reported information shall be reported in writing within fifteen (15) calendar days of the change. The report shall contain the following information:

1. A brief description and in-plant location of the areas regulated and the address of each regulated area;

2. The names and other identifying information as to the presence of 4,4'-Methylene bis (2-chloroaniline) in each regulated area;

3. The number of employees in each regulated area, during normal operations including maintenance activities; and

4. The manner in which 4,4'-Methylene bis (2-chloroaniline) is present in each regulated area, such as whether it is manufactured, processed, used, repackaged, released, stored, or

otherwise handled.

(b) Incidents. Incidents that result in the release of 4,4'-Methylene bis (2-chloroaniline) into any area where employees may be exposed shall be reported in accordance with this paragraph.

1. A report of the incident and the facts obtainable at that time, including a report on any medical treatment of affected employees, shall be made within twenty-four (24) hours to the nearest Area Director.

2. A written report shall be filed with the nearest Area Director within fifteen (15) calendar days of the initial report and shall include:

a. A specification of the amount of material released, the amount of time involved, and an explanation of the procedure used in determining this figure;

b. A description of the area involved, and the extent of known and possible employee and area contamination;

c. A report of any medical treatment of affected employees and any medical surveillance program implemented; and

d. An analysis of the steps to be taken, with specific completion dates, to avoid further similar release.

(6) Medical surveillance. At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to enter regulated areas, and for authorized employees.

(a) Examinations.

1. Before an employee is assigned to enter a regulated area, a preassignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family and occupational background, including genetic and environmental factors.

2. Authorized employees shall be provided with periodic physical examinations at least annually, following the preassignment examination.

3. In all physical examinations, the examining physician shall consider whether there exist conditions of increased risk, including reduced immunological competence, current treatment with steroids of cytotoxic agents, pregnancy, and cigarette smoking.

(b) Records.

1. Employers of employees examined pursuant to this subsection shall maintain complete and accurate records of all medical examinations. Records shall be maintained for the duration of the employee's employment. If the employee's employment is terminated, including by retirement or death, or if the employer ceases business without a successor; records, or notarized true copies thereof, shall be forwarded by registered mail to the director.

2. Records required by this paragraph shall be provided if requested by authorized representatives of the assistant secretary or the director. If requested by an employee or former employee, the records shall be provided to a physician designated by the employee or to a new employer.

3. Any physician who conducts a medical examination required by this subsection shall furnish to the employer a statement of the employee's suitability for employment in the specific exposure.

Section 3. Laboratory Activities. The requirements of this section shall apply to research and quality control activities involving the use of chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016.

(1) Mechanical pipetting aids shall be used for all pipetting procedures.

(2) Experiments, procedures, and equipment which could produce aerosols shall be confined to laboratory-type hoods or glove boxes.

(3) Surfaces on which chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016 are handled shall be protected from contamination.

(4) Contaminated wastes and animal carcasses shall be collected in impervious containers that are closed and decontaminated prior to removal from the work area. The wastes and carcasses shall be incinerated so that carcinogenic products shall not be released.

(5) All other forms of chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016 shall be inactivated prior to disposal.

(6) Laboratory vacuum systems shall be protected with high-efficiency scrubbers or with disposal absolute filters.

(7) Employees engaged in animal support activities shall be:

(a) Provided with and required to wear, a complete protective clothing change, clean each day, including coveralls, or pants and shirt, foot covers, head covers, gloves, and appropriate respiratory protective equipment or devices;

(b)1. Required, prior to each exit from a regulated area, to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal; and

2. The contents of the impervious containers shall be identified as required under Section 2(4)(b), (c), and (d) of this administrative regulation;

(c) Required to wash hands, forearms, face, and neck upon each exit from the regulated area close to point of exit, and before engaging in other activities; and

(d) Required to shower after the last exit of the day.

(8) Employees, except for those engaged only in animal support activities, each day shall be:

(a) Provided with and required to wear a clean change of appropriate laboratory clothing, such as a solid front gown, surgical scrub suit, or fully buttoned laboratory coat;

(b)1. Required, prior to each exit from a regulated area, to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal; and

2. The contents of the impervious containers shall be identified as required under Section 2(4)(b), (c), and (d) of this administrative regulation; and

(c) Required to wash hands, forearms, face, and neck upon each exit from the regulated area close to point of exit, and before engaging in other activities.

(9) Air pressure in laboratory areas, and animal rooms where chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016 are handled and bioassay studies are performed shall be negative in relation to the pressure in surrounding areas. Exhaust air shall not be discharged to regulated areas, nonregulated areas, or the external environment unless it is decontaminated.

(10) There shall not be a connection between regulated areas and any other areas through the ventilation system.

(11) A current inventory of chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016 shall be maintained.

(12) Ventilated apparatus such as laboratory-type hoods shall be tested at least semi-annually or immediately after ventilation modification or maintenance operations, by personnel fully qualified to certify correct containment and operation.

Section 4. Access to Exposure or Medical Records. (1) The language relating to the access to exposure or medical records in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1910.1020(e)(1)(i).

(2) If an employee or designated representative requests access to an exposure or medical record, the employer shall assure that access is provided in a reasonable time, place, and manner, but not longer than fifteen (15) days after the request for access is made unless sufficient reason is given why that time is unreasonable or impractical.

(3) The language relating to the access to exposure or medical records in subsection (4) of this section shall apply in lieu of 29 C.F.R. 1910.1020(e)(1)(iii).

(4) If an employee or designated representative requests a copy of a record, the employer shall, except as specified in 29 C.F.R. 1910.1020(e)(1)(v) of this section, within the period of time previously specified assure that either:

(a) A copy of the record is provided without cost to the employee or representative;

(b) The necessary mechanical copying facilities (e.g., photocopying) are made available without cost to the employee or

representative for copying the record; or

(c) The record is loaned to the employee or representative for a reasonable time to enable a copy to be made.

Section 5. (1) The language relating to gloves in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1910.1030(d)(3)(ix).

(2) Gloves shall be worn if it can be reasonably anticipated that the employees may have hand contact with blood, other potentially infectious materials, mucous membranes, and nonintact skin if performing vascular access procedures or if handling or touching contaminated items or surfaces.

Section 6. Except as modified by Sections 1 through 5 of this administrative regulation, general industry shall comply with the following federal requirements published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1910.1000 - 1910.1450 [~~revised July 1, 2018~~]; and

(2) The revisions to 29 C.F.R. 1910.1001, 29 C.F.R. 1910.1018, 29 C.F.R. 1910.1027, 29 C.F.R. 1910.1029, 29 C.F.R. 1910.1043, and 29 C.F.R. 1910.45 as published in the May 14, 2019 Federal Register, Volume 84, Number 93. [The revisions to 29 C.F.R. 1910.1024 as published in the August 9, 2018 Federal Register], Volume 83.]

LARRY ROBERTS, Secretary of Labor

APPROVED BY AGENCY: March 12, 2020

FILED WITH LRC: March 12, 2020 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 27, 2020 at 10:00 am (EDST) at the Labor Cabinet, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 establishes requirements for employees with occupational exposure to 4,4'-Methylene bis (2-Chloroaniline). Section 3 establishes requirements for employees engaged in laboratory activities. Section 4 establishes requirements related to access to exposure and medical records. Section 5 establishes that gloves must be worn when it is reasonably anticipated that employees may have hand contact with blood. Section 6 requires employers to comply with the requirements of 29 C.F.R. Parts 1910.1000-1910.1450 and establishes the amendments to 29 C.F.R. 1910.6, as published in the May 14, 2019 Federal Register, Volume 84, Number 93. In the May 14 final rule, OSHA continued its initiative to remove or revise outdated, duplicative, unnecessary, and inconsistent requirements in the standards. The amendments to 29 C.F.R. 1910.1018, 29 C.F.R. 1910.1029, and 29 C.F.R. 1910.1045 removes requirements to provide periodic chest x-rays to screen for lung

cancer. The amendments to 29 C.F.R. 1910.1001, 29 C.F.R. 1910.1018, 29 C.F.R. 1910.1027, 29 C.F.R. 1910.1029, and 29 C.F.R. 1910.1045 allows, but does not require, employers to use digital radiography and other reasonably-sized standard films for x-rays. The amendment to 29 C.F.R. 1001 also updates terminology and references to the International Labour Organization guidelines included in the asbestos standard, 29 C.F.R. 1910.1001. 29 C.F.R. 1910.1043 is updated to align with current practices and technology for lung-function testing requirements. This amendment updates this administrative regulation to meet KRS Chapter 13A considerations. Additionally, this regulation was reviewed and amended in accordance with House Bill 50 from the Regular Session of the 2018 General Assembly.

(b) The necessity of this administrative regulation: This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky OSH Standards Board to promulgate OSH administrative regulations. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5.

(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: In the May 14 final rule, OSHA continued its initiative to remove or revise outdated, duplicative, unnecessary, and inconsistent requirements in the standards. The amendments to 29 C.F.R. 1910.1018, 29 C.F.R. 1910.1029, and 29 C.F.R. 1910.1045 removes requirements to provide periodic chest x-rays to screen for lung cancer. The amendments to 29 C.F.R. 1910.1001, 29 C.F.R. 1910.1018, 29 C.F.R. 1910.1027, 29 C.F.R. 1910.1029, and 29 C.F.R. 1910.1045 allows, but does not require, employers to use digital radiography and other reasonably-sized standard films for x-rays. The amendment to 29 C.F.R. 1001 also updates terminology and references to the International Labour Organization guidelines included in the asbestos standard, 29 C.F.R. 1910.1001. 29 C.F.R. 1910.1043 is updated to align with current practices and technology for lung-function testing requirements.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides all a clear understanding of the requirements. This amendment promotes

employee health and safety throughout Kentucky and ensures the state is as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects employers in the Commonwealth engaged in all general industry activities covered by KRS Chapter 338.

(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 additional compliance duties are imposed and no immediate action is required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to the OSH Program to implement this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes employee health and safety throughout Kentucky and keeps the state as effective as the federal program.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: (a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There are no new costs associated with this regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There are no fees associated with this administrative regulation. There is no need to increase funding for this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5.

2. State compliance standards. The Kentucky OSH Program is mandated by Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5 to develop and enforce standards that are at least as effective as the federal requirement. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5 to be at least as effective as the federal requirement. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Section 1 of this administrative regulation defines terms not found in the federal standard. Section 2 of this administrative regulation, effective since February 12, 1996, retains requirements related to the use of 4,4'-Methylene bis (2-Chloroaniline). Section 3 of this administrative regulation, effective since February 12, 1996, retains requirements associated with research and quality control

laboratory activities involving the use of the chemicals covered by 29 C.F.R. 1910.1003-1016 that are different from OSHA. Section 4, effective since July 17, 1997, retains requirements related to access to exposure or medical records that are different from OSHA. Section 5 of this administrative regulation, effective since October 7, 1992, retains requirements related to glove use as it applies to 29 C.F.R. 1910.1030 that are different from OSHA. Section 6 requires employers in general industry to comply with the requirements of Subpart Z of 29 C.F.R. 1910 and updates the C.F.R. to July 1, 2018. Section 6 also establishes the amendments to 29 C.F.R. 1910.1024 as established in the August 9, 2018 Federal Register, Volume, 83, Number 154.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This amendment does not impose stricter requirements.

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? This administrative regulation affects any unit, part, or division of local government covered by KRS 338 and engaged in any general industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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. None.

(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? There are no costs associated with this amendment.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with this amendment.

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: This amendment does not impose any additional requirements or expenditures to the employer.

LABOR CABINET

Department of Workplace Standards

Division of Occupational Safety and Health Compliance

Division of Occupational Safety and Health Education and

Training

(Amendment)

803 KAR 2:400. Adoption of 29 C.F.R. Part 1926 Subpart A [1926.1-6].

RELATES TO: KRS Chapter 338, 29 C.F.R. 1926.1-6

STATUTORY AUTHORITY: KRS 338.051, 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to adopt[promulgate] occupational safety and health administrative regulations and authorizes the chairman of the board to reference federal standards without board approval if

necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This administrative regulation establishes [the] standards to be enforced by the Department of Workplace Standards [Division of Occupational Safety and Health Compliance] in the [area of] construction industry.

Section 1. Definitions. (1) "Assistant secretary" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

- (2) "C.F.R." means Code of Federal Regulations.
- (3) "Employee" is defined by KRS 338.015(2).
- (4) "Employer" is defined by KRS 338.015(1).
- (5) "Standard" is defined by KRS 338.015(3).

Section 2. The construction industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Administration, except as modified by the definitions established in Section 1 of this administrative regulation:

- (1) 29 C.F.R. 1926.1- 6 [~~revised July 1, 2015~~]; and

(2) The amendments to 29 C.F.R. 1926.6 as published in the May 14, 2019 Federal Register, Volume 84, Number 93~~[March 25, 2016 Federal Register, Volume 81, Number 58]~~.

LARRY ROBERTS, Secretary of Labor

APPROVED BY AGENCY: March 12, 2020

FILED WITH LRC: March 12, 2020 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 27, 2020 at 10:00 am (EDST) at the Labor Cabinet, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

- (1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. Parts 1926.1-6. Section 2 also establishes the amendments to 29 C.F.R. 1926.6, as published in the May 14, 2019 Federal Register, Volume 84, Number 93.

With the May 14 final rule, OSHA continues its initiative to remove or revise outdated, duplicative, unnecessary, and inconsistent requirements in the standards. The amendment to 29 C.F.R. 1926.6 updates standards that are incorporated by reference in construction industry regulations. These updates ensure consistency with current practices and technology. Updates include incorporation of standards regarding uniform traffic control devices, x-ray guidelines, and rollover protective structures. This regulation was also amended to conform to the requirements of KRS Chapter 13A. Additionally, this regulation was reviewed in accordance with House Bill 50 from the Regular Session of the 2018 General Assembly.

- (b) The necessity of this administrative regulation: This

regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky OSH Standards Board to promulgate OSH administrative regulations. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5.

- (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: With the May 14 final rule, OSHA continues its initiative to remove or revise outdated, duplicative, unnecessary, and inconsistent requirements in the standards. The amendment to 29 C.F.R. 1926.6 updates standards that are incorporated by reference in construction industry regulations. These updates ensure consistency with current practices and technology. Updates include incorporation of standards regarding uniform traffic control devices, x-ray guidelines, and rollover protective structures.

(b) The necessity of the amendment to this administrative regulation: This regulation was reviewed in accordance House Bill 50 from the Regular Session of the 2018 General Assembly. This amendment is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061 which authorize the Kentucky OSH Standards Board to promulgate occupational safety and health rules and administrative regulations and standards.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides all a clear understanding of the requirements. This amendment promotes employee health and safety throughout Kentucky and keeps the state program consistent with the federal program.

- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects employers in the Commonwealth engaged in all general industry activities covered by KRS Chapter 338.

(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 additional compliance duties are imposed and no immediate action is required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to the OSH Program to implement this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes

employee health and safety throughout Kentucky and keeps the state program consistent with the federal program.

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

(a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There are no new costs associated with this regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There are no fees associated with this administrative regulation. There is no need to increase funding for this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5.

2. State compliance standards. The Kentucky OSH Program is mandated by Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5 to develop and enforce standards that are at least as effective as the federal requirement. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5 to be at least as effective as the federal requirement. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This amendment does not impose stricter requirements.

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?

This administrative regulation affects any unit, part, or division of local government covered by KRS 338 and engaged in any general industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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. None.

(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? There are no costs associated with this amendment.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with this amendment.

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: This amendment does not impose any additional requirements or expenditures to the employer.

LABOR CABINET

Department of Workplace Standards

Division of Occupational Safety and Health Compliance

Division of Occupational Safety and Health Education and Training (Amendment)

803 KAR 2:403. Occupational health and environmental controls.

RELATES TO: KRS 338.051, 338.061, 29 C.F.R. 1926.50-1926.66

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to ~~adopt and~~ promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. 29 C.F.R. 1926.50 to 1926.66 establish the federal requirements relating to occupational health and environmental controls. This administrative regulation establishes the occupational health and environmental control standards ~~to be~~ enforced by the Department of Workplace Standards in the ~~area of~~ construction industry.

Section 1. Definitions. (1) "Assistant secretary" means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet.

(2) "Director" means Director, Division of Occupational Safety and Health Compliance, Kentucky Labor Cabinet.

(3) "U.S. Department of Labor" means Kentucky Labor Cabinet, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, or U.S. Department of Labor.

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, the construction industry shall comply with the following federal regulations published in the Office of the Federal Register, National Archives and Records Services:

(1) 29 C.F.R. 1926.50 through 1926.66~~[-, revised July 1, 2016];~~ and

(2) The revisions to 29 C.F.R. 1926.55 as published in the January 9, 2017 Federal Register, Volume 81, Number 5.

(3) The amendments to 29 C.F.R. 1926.50, 29 C.F.R. 1926.55, and 29 C.F.R. 1926.64 as published in the May 14, 2019 Federal Register, Volume 84, Number 93.

LARRY ROBERTS, Secretary of Labor

APPROVED BY AGENCY: March 12, 2020

FILED WITH LRC: March 12, 2020 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 27, 2020 at 10:00 am (EDST) at the Labor Cabinet, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of

intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. Parts 1926.50-66. Section 2 also establishes the amendments to 29 C.F.R. 1926.50, 29 C.F.R. 1926.55, and 29 C.F.R. 1926.64 as published in the May 14, 2019 Federal Register, Volume 84, Number 93.

With the May 14 final rule, OSHA continues its initiative to remove or revise outdated, duplicative, unnecessary, and inconsistent requirements in the standards. The amendment to 29 C.F.R. 1926.50(f) to update the 911 service-posting requirements consistent with current land-line and wireless telephone technologies. The amendment to 29 C.F.R. 1926.50(e) requires that the communication system used to contact ambulance service is effective. 29 C.F.R. 1926.55 was revised for clarification. The change was the addition of an asterisk and a non-substantive formatting change to Appendix A to 29 C.F.R. 1926.55. OSHA removed the phrase "threshold limit value" and references to the American Conference of Governmental Industrial Hygienists (ACGIH) and replaced them with "permissible exposure limits" in paragraph (a) and appendix A to avoid confusion involved with OSHA's adoption of permissible exposure limits adopted from ACGIH recommendations. The regulatory text of 29 C.F.R. 1926.64 was replaced with a cross-reference to the identical standard at 29 C.F.R. 1910.119 for process safety management of highly hazardous chemicals. This regulation was also amended to conform to the requirements of KRS Chapter 13A. Additionally, this regulation was reviewed in accordance with House Bill 50 from the Regular Session of the 2018 General Assembly.

(b) The necessity of this administrative regulation: This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky OSH Standards Board to promulgate OSH administrative regulations. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5.

(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: With the May 14 final rule, OSHA continues its initiative to remove or revise outdated, duplicative, unnecessary, and inconsistent requirements in the standards. The amendment to 29 C.F.R. 1926.50(f) to update the 911 service-posting requirements consistent with current land-line and wireless telephone technologies. The amendment to 29 C.F.R. 1926.50(e) requires that the communication system used to contact ambulance service is effective. 29 C.F.R. 1926.55 was revised for clarification. The change was the addition of an asterisk and a non-substantive formatting change to Appendix A to 29 C.F.R. 1926.55. OSHA removed the phrase "threshold limit value" and references to the American Conference of Governmental Industrial Hygienists (ACGIH) and replaced them with "permissible exposure limits" in paragraph (a) and appendix A to avoid confusion involved with OSHA's adoption of permissible exposure limits adopted from ACGIH recommendations. The regulatory text of 29 C.F.R. 1926.64 was replaced with a cross-reference to the identical standard at 29 C.F.R. 1910.119 for process safety management of highly hazardous chemicals.

(b) The necessity of the amendment to this administrative regulation: This regulation was reviewed and revised in accordance with House Bill 50 from the Regular Session of the 2018 General Assembly to update the statutory authority, necessity, function, and conformity sections. This amendment is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061. KRS 338.051(3) and 338.061 authorize the Kentucky OSH Standards Board to promulgate occupational safety and health rules and administrative regulations and standards.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides all a clear understanding of the requirements. This amendment promotes employee health and safety throughout Kentucky and keeps the state program consistent with the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects employers in the Commonwealth engaged in all general industry activities covered by KRS Chapter 338.

(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 additional compliance duties are imposed and no immediate action is required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to the OSH Program to implement this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes employee health and safety throughout Kentucky and keeps the state program consistent with the federal program.

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

(a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There are no new costs associated with this regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There are no fees associated with this administrative regulation. There is no need to increase funding for this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5.

2. State compliance standards. The Kentucky OSH Program is mandated by Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5 to develop and enforce standards that are at least as effective as the federal requirement. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5 to be at least as effective as the federal requirement. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This amendment does not impose stricter requirements.

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? This administrative regulation affects any unit, part, or division of local government covered by KRS 338 and engaged in any general industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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. None.

(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? There are no costs associated with this amendment.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with this amendment.

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: This amendment does not impose any additional requirements or expenditures to the employer.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(Amendment)

803 KAR 2:404. Personal protective and lifesaving equipment.

RELATES TO: KRS 338.051(3), 338.061, 29 C.F.R. 1926.95-1926.107

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman of the board to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. 29 C.F.R. 1926.95 to 1926.107 establish the federal requirements relating to personal protective and lifesaving equipment. This administrative regulation establishes personal protective and lifesaving equipment standards ~~[to be]~~ enforced by the Department of Workplace Standards [Division of Occupational Safety and Health Compliance] in the construction industry.

Section 1. Definitions. (1) "Assistant ~~secretary~~[Secretary]" means Secretary of Labor, Kentucky Labor Cabinet or Commissioner of the Department of Workplace Standards.

(2) "C.F.R." means Code of Federal Regulations.

(3) "Employee" is defined in KRS 338.015(2).

(4) "Employer" is defined in KRS 338.015(1).

(5) "OSHA" means the Occupational Safety and Health Administration or the Kentucky Division of Occupational Safety and Health.

Section 2. The construction industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, except as modified by the definitions in Section 1 of this administrative regulation:

(1) 29 C.F.R. 1926.95 through 29 C.F.R. 1926.107[~~revised July 1, 2015~~]; and

(2) The amendments to 29 C.F.R. 1926.102 as published in the March 25, 2016 Federal Register, Volume 81, Number 58.

(3) The amendments to 29 C.F.R. 1926.104 as published in the May 14, 2019 Federal Register, Volume 84, Number 93.

LARRY ROBERTS, Secretary of Labor

APPROVED BY AGENCY: March 12, 2020

FILED WITH LRC: March 12, 2020 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 27, 2020 at 10:00 am (EDST) at the Labor Cabinet, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative

regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. Parts 1926.95-107 and establishes the amendments to 29 C.F.R. 1926.104, as published in the May 14, 2019 Federal Register, Volume 84, Number 93.

With the May 14 final rule, OSHA continues its initiative to remove or revise outdated, duplicative, unnecessary, and inconsistent requirements in the standards. The amendment to 29 C.F.R. 1926.104 adjusts the minimum breaking-strength requirement for lifelines from 5,400 lbs. to 5,000 lbs. OSHA made this change to the safety belts, lifelines, and lanyards standard for consistency with the 5,000 lb. minimum breaking-strength for lanyards and vertical lifelines adopted in 29 C.F.R. 1926.502(d)(9). The requirement is based on the force generated by a 250 pound employee experiencing a force 10 times the force of gravity, plus a two-fold margin of safety.

This regulation was also amended to conform to the requirements of KRS Chapter 13A. Additionally, this regulation was reviewed in accordance with House Bill 50 from the Regular Session of the 2018 General Assembly, hereinafter referred to as HB 50 2018.

(b) The necessity of this administrative regulation: This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky OSH Standards Board to promulgate OSH administrative regulations. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5.

(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: With the May 14 final rule, OSHA continues its initiative to remove or revise outdated, duplicative, unnecessary, and inconsistent requirements in the standards. The amendment to 29 C.F.R. 1926.104 adjusts the minimum breaking-strength requirement for lifelines from 5,400 lbs. to 5,000 lbs. OSHA made this change to the safety belts, lifelines, and lanyards standard for consistency with the 5,000 lb. minimum breaking-strength for lanyards and vertical lifelines adopted in 29 C.F.R. 1926.502(d)(9). The requirement is based on the force generated by a 250-lb. employee experiencing a force 10 times the force of gravity, plus a two-fold margin of safety.

(b) The necessity of the amendment to this administrative regulation: This regulation was reviewed and revised in accordance with HB 50 2018. This amendment is necessary to meet the requirements established in Section 18 of the OSH Act,

29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061, as well as Executive Order 2018-586. KRS 338.051(3) and 338.061 authorize the Kentucky OSH Standards Board to promulgate occupational safety and health rules and administrative regulations and standards.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides all a clear understanding of the requirements. This amendment promotes employee health and safety throughout Kentucky and keeps the state program consistent with the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects employers in the Commonwealth engaged in all general industry activities covered by KRS Chapter 338.

(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 additional compliance duties are imposed and no immediate action is required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to the OSH Program to implement this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes employee health and safety throughout Kentucky and keeps the state program consistent with the federal program.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: (a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There are no new costs associated with this regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There are no fees associated with this administrative regulation. There is no need to increase funding for this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5.

2. State compliance standards. The Kentucky OSH Program is mandated by Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5 to develop and enforce standards that are at least as effective as the federal requirement. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29

C.F.R. 1953.1, and 29 C.F.R. 1953.5 to be at least as effective as the federal requirement. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This amendment does not impose stricter requirements.

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? This administrative regulation affects any unit, part, or division of local government covered by KRS 338 and engaged in any general industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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. None.

(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? There are no costs associated with this amendment.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with this amendment.

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: This amendment does not impose any additional requirements or expenditures to the employer.

LABOR CABINET

Department of Workplace Standards

Division of Occupational Safety and Health Compliance Division of Occupational Safety and Health Education and Training

(Amendment)

803 KAR 2:406. Signs, signals, and barricades.

RELATES TO: KRS Chapter 338, 29 C.F.R. 1926.200-1926.203

STATUTORY AUTHORITY: KRS 338.051(3), 338.061 [~~–29 C.F.R. 1926.200-1926.203~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) authorizes the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman of the board to reference federal standards without board approval if necessary to meet federal time requirements. [~~KRS-338.061(2) authorizes the board to incorporate by reference established federal standards and national consensus standards.~~] KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This administrative

regulation establishes standards [~~to be~~] enforced by the Department of Workplace Standards [~~Division of Occupational Safety and Health Compliance~~] in the construction industry.

Section 1. Definitions. (1) "Administration" means the Kentucky Occupational Safety and Health Program, Frankfort, Kentucky.

(2) "Area director" means Director, Division of Occupational Safety and Health Compliance, Kentucky Labor Cabinet.

(3) "Assistant secretary" means Secretary of Labor, Kentucky Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet.

(4) "U.S. Department of Labor" means Kentucky Labor Cabinet, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, or U.S. Department of Labor.

Section 2. Except as modified by Section 1 of this administrative regulation, the construction industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Administration:

(1) 29 C.F.R. 1926.200-1926.203[~~–revised July 1, 2013~~]; and

(2) The revisions to 29 C.F.R. 1926.200-1926.202 as published in the June 13, 2013 Federal Register, Volume 78, Number 114, and confirmed and corrected in the November 6, 2013 Federal Register, Volume 78, Number 215.

(3) The amendments to 29 C.F.R. 1926.200-203 as published in the May 14, 2019 Federal Register, Volume 84, Number 93.

LARRY ROBERTS, Secretary of Labor

APPROVED BY AGENCY: March 12, 2020

FILED WITH LRC: March 12, 2020 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 27, 2020 at 10:00 am (EDST) at the Labor Cabinet, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. Parts 1926.200-203. Section 2 also establishes the amendments to 29 C.F.R. 1926.200-203, as published in the May 14, 2019 Federal Register, Volume 84, Number 93.

With the May 14 final rule, OSHA continues its initiative to remove or revise outdated, duplicative, unnecessary, and inconsistent requirements in the standards. The amendment to 29 C.F.R. 1926.200(g)(2) updates the incorporation of Part VI of the Manual on Uniform Traffic Control Devices (MUTCD), 1988 edition to Part VI of the MUTCD 2009 edition from November 4, 2009. OSHA has concluded that the 2009 revisions to the MUTCD make the document more accessible and considers advances in technology. Additionally, 29 C.F.R. 1926.200-203 received minor technical changes to improve understandability and remove

definitions in 29 CF 1926.203 which are already included in the MUTCD 2009 edition which is being incorporated.

This regulation was also amended to conform to the requirements of KRS Chapter 13A. Additionally, this regulation was reviewed in accordance with House Bill 50 from the 2018 Regular Session of the General Assembly, hereinafter referred to as HB 50 2018.

(b) The necessity of this administrative regulation: This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky OSH Standards Board to promulgate OSH administrative regulations. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5.

(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: With the May 14 final rule, OSHA continues its initiative to remove or revise outdated, duplicative, unnecessary, and inconsistent requirements in the standards. The amendment to 29 C.F.R. 1926.200(g)(2) updates the incorporation of Part VI of the Manual on Uniform Traffic Control Devices (MUTCD), 1988 edition to Part VI of the MUTCD 2009 edition from November 4, 2009. OSHA has concluded that the 2009 revisions to the MUTCD make the document more accessible and considers advances in technology. Additionally, 29 C.F.R. 1926.200-203 received minor technical changes to improve understandability and remove definitions in 29 CF 1926.203 which are already included in the MUTCD 2009 edition which is being incorporated.

(b) The necessity of the amendment to this administrative regulation: This regulation was reviewed and revised in accordance HB 50 2018 to update the statutory authority, necessity, function, and conformity sections. This amendment is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061, as well as Executive Order 2018-586. KRS 338.051(3) and 338.061 authorize the Kentucky OSH Standards Board to promulgate occupational safety and health rules and administrative regulations and standards.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides all a clear understanding of the requirements. This amendment promotes employee health and safety throughout Kentucky and keeps the state program consistent with the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects employers in the Commonwealth engaged in all general industry activities covered by KRS Chapter 338.

(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 additional compliance duties are imposed and no immediate action is required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to the OSH Program to implement this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes employee health and safety throughout Kentucky and keeps the state program consistent with the federal program.

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

(a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There are no new costs associated with this regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There are no fees associated with this administrative regulation. There is no need to increase funding for this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5.

2. State compliance standards. The Kentucky OSH Program is mandated by Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5 to develop and enforce standards that are at least as effective as the federal requirement. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5 to be at least as effective as the federal requirement. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This amendment does not impose stricter requirements.

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? This administrative regulation affects any unit, part, or division of local government covered by KRS 338 and engaged in any general industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84

STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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. None.

(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? There are no costs associated with this amendment.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with this amendment.

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: This amendment does not impose any additional requirements or expenditures to the employer.

LABOR CABINET

Department of Workplace Standards

Division of Occupational Safety and Health Compliance

Division of Occupational Safety and Health Education and Training

(Amendment)

803 KAR 2:407. Materials Handling, Storage, Use, and Disposal [Adoption of 29 C.F.R. Part 1926.250-252].

RELATES TO: KRS Chapter 338, 29 C.F.R. 1926.250-1926.252

STATUTORY AUTHORITY: KRS 338.051, 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires [and ~~338.061~~ require] the Kentucky Occupational Safety and Health Standards Board to [adopt and] promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This administrative regulation establishes standards [to be] enforced by the Department of Workplace Standards [Division of Occupational Safety and Health Compliance] in the [area of] construction industry.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant ~~secretary~~ [Secretary of Labor]" means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet.

(3) "C.F.R." means Code of Federal Regulations.

(4) "Employee" is defined by KRS 338.015(2).

(5) "Employer" is defined by KRS 338.015(1).

(6) "Established federal standard" is defined by KRS 338.015(10).

(7) "National consensus standard" is defined by KRS 338.015(9).

(8) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(9) "Standard" means "occupational safety and health standard" as defined by KRS 338.015(3).

(10) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet, 500 Mero Street, 3rd Floor [U.S. 427 South,] Frankfort, Kentucky 40601.

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, the construction industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Administration:

(1) 29 C.F.R. 1926.250 through 29 C.F.R. 1926.252[~~, revised July 1, 2012;~~ and

(2) The amendment to 29 C.F.R. 1926.250 as published in the May 14, 2019 Federal Register, Volume 84, Number 93. [~~251 as published in the February 15, 2013 Federal Register, Volume 78, Number 32.~~]

LARRY ROBERTS, Secretary of Labor

APPROVED BY AGENCY: March 12, 2020

FILED WITH LRC: March 12, 2020 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 27, 2020 at 10:00 am (EDST) at the Labor Cabinet, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1926.250-252. Section 2 also updates the C.F.R. to July 2019 and establishes the amendments to 29 C.F.R. 1926.250, as published in the May 14, 2019 Federal Register, Volume 84, Number 93.

With the May 14 final rule, OSHA continues its initiative to remove or revise outdated, duplicative, unnecessary, and inconsistent requirements in the standards. The amendments to 29 C.F.R. 1926.250 revised the requirement related to the posting of maximum safe load limits of storage areas to exclude family residential structures. These are already covered in other building codes.

This regulation was also amended to conform to the requirements of KRS Chapter 13A.

(b) The necessity of this administrative regulation: This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements. Additionally, this regulation was reviewed in accordance with House Bill 50 from the Regular Session of 2018 General Assembly.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky OSH Standards Board to promulgate OSH administrative regulations. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the

authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement.

(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 amendments to 29 C.F.R. 1926.250 revised the requirement related to the posting of maximum safe load limits of storage areas to exclude family residential structures. These are already covered in other building codes. Additionally, this regulation was reviewed in accordance with House Bill 50 from the Regular Session of the 2018 General Assembly.

(b) The necessity of the amendment to this administrative regulation: The OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061. KRS 338.051(3) and 338.061 authorize the Kentucky OSH Standards Board to promulgate occupational safety and health rules and administrative regulations and standards.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides all a clear understanding of the requirements. This amendment promotes employee health and safety throughout Kentucky and keeps the state program consistent with the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects employers in the Commonwealth engaged in construction activities covered by KRS Chapter 338.

(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 additional compliance duties are imposed and no immediate action is required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to the OSH Program to implement this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes employee health and safety throughout Kentucky and keeps the state program consistent with the federal program.

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

(a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There are no new costs associated with this regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There are no fees associated with this administrative regulation. There is no need to increase funding for this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5.

2. State compliance standards. The Kentucky OSH Program is mandated by Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5 to develop and enforce standards that are at least as effective as the federal requirement.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5 to be at least as effective as the federal requirement. The OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This amendment does not impose stricter requirements.

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? This administrative regulation affects any unit, part, or division of local government covered by KRS 338 and engaged in construction industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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. None.

(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? There are no costs associated with this amendment.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with this amendment.

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: This amendment does not impose any additional requirements or expenditures to the employer.

LABOR CABINET

Department of Workplace Standards

Division of Occupational Safety and Health Compliance

Division of Occupational Safety and Health Education and Training (Amendment)

803 KAR 2:418. Underground construction, caissons, cofferdams, and compressed air.

RELATES TO: KRS 338.015(1), (2), (3), 338.051, 338.061, 29 C.F.R. 1926.800-1926.804, and Appendix A [1926-Subpart S-App-A]

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health

Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements~~[necessary to accomplish the purposes of KRS Chapter 338].~~ KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. 29 C.F.R. 1926.800-1926.804 and Subpart S Appendix [App.] A establish federal requirements relating to underground construction, caissons, cofferdams, and compressed air. This administrative regulation establishes the underground construction, caissons, cofferdams, and compressed air standards ~~[to be]~~ enforced by the Department of Workplace Standards ~~[Division of Occupational Safety and Health Compliance]~~ in the ~~[area of]~~ construction industry.

Section 1. Definitions. (1) "Assistant secretary~~[Secretary]~~" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(2) "C.F.R." means Code of Federal Regulations.

(3) "Employee" is defined by KRS 338.015(2).

(4) "Employer" is defined by KRS 338.015(1).

(5) "Standard" means "occupational safety and health standard" as defined by KRS 338.015(3).

Section 2. Except as modified by the definitions established in Section 1 of this administrative regulation, the construction industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1926.800 - 1926.804, and 1926 Subpart S, Appendix A~~[-revised as of July 1, 2012]; and~~

(2) The amendments to 29 C.F.R. 1926.800 as published in the May 14, 2019 Federal Register, Volume 84, Number 93. ~~[April 23, 2013 Federal Register, Volume 78, Number 78.]~~

LARRY ROBERTS, Secretary of Labor

APPROVED BY AGENCY: March 12, 2020

FILED WITH LRC: March 12, 2020 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 27, 2020 at 10:00 am (EDST) at the Labor Cabinet, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of: (a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1926.800-804. Section 2 also updates the C.F.R. to July 2019 and establishes the amendments to 29 C.F.R. 1926.800, as published in the May 14, 2019 Federal Register, Volume 84, Number 93.

With the May 14 final rule, OSHA continues its initiative to remove or revise outdated, duplicative, unnecessary, and inconsistent requirements in the standards. The amendments to 29

C.F.R. 1926.800 revised requirements related to internal combustion equipment used during underground construction which are already used by newer equipment manufacturers, but also provides the ability to grandfather older equipment. This regulation was also amended to conform to the requirements of KRS Chapter 13A. Additionally, this regulation was reviewed in accordance with House Bill 50 from the Regular Session of the 2018 General Assembly.

(b) The necessity of this administrative regulation: This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky OSH Standards Board to promulgate OSH administrative regulations. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement.

(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 amendments to 29 C.F.R. 1926.800 revised requirements related to internal combustion equipment used during underground construction which are already used by newer equipment manufacturers, but also provides the ability to grandfather older equipment. Additionally, this regulation was reviewed in accordance with House Bill 50.

(b) The necessity of the amendment to this administrative regulation: The OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061. KRS 338.051(3) and 338.061 authorize the Kentucky OSH Standards Board to promulgate occupational safety and health rules and administrative regulations and standards.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides all a clear understanding of the requirements. This amendment promotes employee health and safety throughout Kentucky and keeps the state program consistent with the federal program. Additionally, this regulation was reviewed in accordance with House Bill 50.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects employers in the Commonwealth engaged in construction activities covered by KRS Chapter 338.

(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 additional compliance duties are imposed and no immediate action is required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to the OSH Program to implement this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes

employee health and safety throughout Kentucky and keeps the state program consistent with the federal program.

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

(a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There are no new costs associated with this regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There are no fees associated with this administrative regulation. There is no need to increase funding for this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5.

2. State compliance standards. The Kentucky OSH Program is mandated by Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5 to be at least as effective as the federal requirement.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5 to be at least as effective as the federal requirement. The OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This amendment does not impose stricter requirements.

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? this administrative regulation affects any unit, part, or division of local government covered by KRS 338 and engaged in construction industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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. None.

(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? There are no costs associated with this amendment.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with this amendment.

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: This amendment does not impose any additional requirements or expenditures to the employer.

LABOR CABINET

Department of Workplace Standards

Division of Occupational Safety and Health Compliance

Division of Occupational Safety and Health Education and Training

(Amendment)

803 KAR 2:422. Rollover protective structures; overhead protection.

RELATES TO: KRS 338.051, 338.061, 29 C.F.R. 1926.1000 - 1003

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman of the board to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. [29 C.F.R. 1926.1000 to 1003 establishes the federal requirements relating to rollover protective structures and overhead protection.] This administrative regulation establishes standards [to be] enforced by the Department of Workplace Standards [Division of Occupational Safety and Health Compliance] in the construction industry relating to rollover protective structures and overhead protection.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant secretary" means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet.

(3) "C.F.R." means Code of Federal Regulations.

(4) "Director" means Director, Division of Occupational Safety and Health Compliance, Kentucky Labor Cabinet.

(5) "Employee" is defined in KRS 338.015(2).

(6) "Established federal standard" is defined by KRS 338.015(10).

(7) "National Consensus Standard" is defined by KRS 338.015(9).

(8) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(9) "Standard" means "occupational safety and health standard" as defined by KRS 338.015(3).

(10) "U.S. Department of Labor" means Kentucky Labor Cabinet, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, or U.S. Department of Labor. ["C.F.R." means Code of Federal Regulations.

(2) "Employee" is defined in KRS 338.015(2).

(3) "Employer" is defined in KRS 338.015(1).

Section 2. The construction industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, except as modified by the definitions in Section 1 of this administrative regulation:

(1) 29 C.F.R. 1926.1000 through 29 C.F.R. 1926.1003, and Appendix [revised July 1, 2007]; and

(2) The amendments to 29 C.F.R. 1926 Subpart W published in the May 14, 2019 Federal Register, Volume 83, Number 93. [2007;

and

(2) The amendment to 29 C.F.R. 1916.1002 and Appendix A to Subpart W published in the July 20, 2006, Federal Register, Volume 71, Number 139.]

LARRY ROBERTS, Secretary of Labor

APPROVED BY AGENCY: March 12, 2020

FILED WITH LRC: March 12, 2020 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 27, 2020 at 10:00 am (EDST) at the Labor Cabinet, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation defines and adds terms not found in the federal standards. Section 2 of this administrative regulation, adopts the requirements of 29 C.F.R. 1000 through 29 C.F.R. 1926.1003, and Appendix, and updates the C.F.R. to 2018, which establishes federal requirements in the construction industry relating to rollover protective structures and overhead protection.

(b) The necessity of this administrative regulation: This regulation is necessary to meet the requirements established in Section 18 of the Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky occupational safety and health (OSH) regulations to be as effective as the federal requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with authorizing statutes. Additionally, this regulation was reviewed and revised in accordance with House Bill 50 from the Regular Session of the 2018 General Assembly. This regulation was also amended to conform to the requirements of KRS Chapter 13A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5.

(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: Section 1 of this administrative regulation defines and adds terms not found in the federal standards. Section 2 of this administrative regulation, adopts the requirements of 29 C.F.R. 1000

through 29 C.F.R. 1926.1003, and Appendix, and updates the C.F.R. to 2018, which establishes federal requirements in the construction industry relating to rollover protective structures and overhead protection. Section 2 also adopts the requirement set forth in the May 14th Federal Register, which revise standards in Subpart W of Part 1926. These revisions are part of the Standards Improvement Project which removes outdated, duplicative, unnecessary, and inconsistent requirements. The parts of Subpart W being revised apply to performance of rollover protective structures and the criteria for their manufacture.

This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations. Additionally, this regulation was reviewed and revised in accordance with House Bill 50.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Amendments to this regulation were technical and intended to maintain consistency with other regulations.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061. KRS 338.051(3) and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health rules and administrative regulations and standards.

(d) How the amendment will assist in the effective administration of the statutes: The amendments maintain consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes employee health and safety throughout Kentucky and keeps the state program consistent with the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in construction industry activities covered by KRS Chapter 338.

(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 additional compliance duties are imposed and no immediate action is required as the regulation only updates the requirements to standards that are already being used to manufacture new equipment. Older equipment can still follow that older standards. These standards are all incorporated by reference.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to the OSH Program to implement this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection will result from the promulgation of this amendment, due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

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

(a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to the Program to implement this administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or

indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard. The Labor Cabinet adopted this amendment to the regulation pursuant to Executive Order 2018-586, which transfers the authority to adopt OSH regulations from the OSH Standards Board to the Secretary

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This amendment does not impose stricter requirements.

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? This administrative regulation affects any unit, part, or division of local government covered by KRS 338 and engaged in construction industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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. None.

(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? There are no costs associated with this amendment.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with this amendment.

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: This amendment does not impose any additional requirements or expenditures to the employer.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(Amendment)

803 KAR 2:425. Toxic and hazardous substances.

RELATES TO: KRS Chapter 338, 29 C.F.R. 1926.1101-1926.1153

STATUTORY AUTHORITY: KRS 338.051[(3)], 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman of the board to reference federal standards without board approval if necessary to meet federal time requirements. [29—C.F.R. 1926.1101 to 1926.1153 establish the federal requirements relating to toxic and hazardous substances.] KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This administrative regulation establishes the general standards ~~[to be]~~ enforced by the Department of Workplace Standards in the construction industry.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant secretary" means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet.

(3) "C.F.R." means Code of Federal Regulations.

(4)[(2)] "Director" means Director, Division of Occupational Safety and Health Compliance, Kentucky Labor Cabinet.

(5) "Employee" is defined in KRS 338.015(2).

(6) "Established federal standard" is defined by KRS 338.015(10).

(7) "National Consensus Standard" is defined by KRS 338.015(9).

(8) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(9) "Standard" means "occupational safety and health standard" as defined by KRS 338.015(3).

(10) [(3)] "U.S. Department of Labor" means Kentucky Labor Cabinet 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, or U.S. Department of Labor.

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, or as provided under Section 3 of this administrative regulation, the construction industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1926.1101 through 1926.1153 [~~revised as of July 1, 2016~~]; and

(2) The amendments to 29 C.F.R. 1926 Subpart Z as published in the May 14, 2019 Federal Register, Volume 84, Number 93; ~~and~~

(2) ~~The amendments to 29 C.F.R. 1926 Subpart Z as published in the January 9, 2017 Federal Register, Volume 82, Number 5.~~

Section 3. (1) ~~The provisions of 29 C.F.R. 1926.1153 shall not be in effect as to the construction industry until the United States Department of Labor, Occupational Safety and Health Administration begins enforcement of the standard.~~

(2) ~~The construction industry shall comply with mineral dusts table for silica exposure in Appendix A to 29 C.F.R. 1926.55, as adopted in 803 KAR 2:403, until the United States Department of Labor, Occupational Safety and Health Administration begins enforcement of 29 C.F.R. 1926.1153.]~~

LARRY ROBERTS, Secretary of Labor

APPROVED BY AGENCY: March 12, 2020

FILED WITH LRC: March 12, 2020 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 27, 2020 at 10:00 am (EDST) at the Labor Cabinet, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation defines and adds terms not found in the federal standards. Section 2 of this administrative regulation, effective since May 11, 1994, adopts the requirements of 29 C.F.R. 1926.1101-1153, and updates the C.F.R. to 2018, which establishes federal requirement related to toxic and hazardous substances. Section 2 also adopts the amendments in 29 C.F.R. Subpart Z, set forth in the May 14, 2019 Federal Register, Volume 84, Number 93. This regulation was also amended to conform with the requirements of KRS Chapter 13A. Additionally, this regulation was reviewed in accordance with House Bill 50 from the Regular Session of the 2018 General Assembly.

(b) The necessity of this administrative regulation: This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky occupational safety and health (OSH) regulations to be as effective as the federal requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5.

(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: Section 1 of this administrative regulation defines and adds terms not found in the federal standards. Section 2 of this administrative regulation, effective since May 11, 1994, adopts the requirements of 29 C.F.R. 1926.1101-1153, and updates the C.F.R. to 2018, which establishes federal requirement related to toxic and hazardous substances. Section 2 also adopts the amendments in 29 C.F.R. Subpart Z, set forth in the May 14, 2019 Federal Register,

Volume 84, Number 93.

The amendment created by the adopted changes set for in the May 14, 2019 Federal Register, Volume 84, Number 93 are related to OSHA's initiative to remove or revise outdated, duplicative, unnecessary, and inconsistent requirements in the standards. The amendments to Subpart Z contained in this regulation revises references to outdated standards that were incorporated by reference, updates requirements to screen for lung cancer in accordance with the National Institute for Occupational Safety and Health change in the method of maintaining records of digital radiography, and updates terminology.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Amendments to this regulation were technical and intended to maintain consistency with other regulations.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061, as well as Executive Order 2018-586. KRS 338.051(3) and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health rules and administrative regulations and standards.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes employee health and safety throughout Kentucky and keeps the state program consistent with the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in construction industry activities covered by KRS Chapter 338.

(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 additional compliance duties are imposed and no immediate action is required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to the OSH Program to implement this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection will result from the promulgation of this amendment, due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

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

(a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to the Program to implement this administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5
2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard.
3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This amendment does not impose stricter requirements.

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? This administrative regulation affects any unit, part, or division of local government covered by KRS 338 and engaged in construction industry activities.
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.
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. None.
 - (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? There are no costs associated with this amendment.
 - (d) How much will it cost to administer this program for subsequent years? There are no costs associated with this amendment.

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: This amendment does not impose any additional requirements or expenditures to the employer.

LABOR CABINET

Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(Amendment)

803 KAR 2:500. Maritime employment.

RELATES TO: KRS 338.015, 29 C.F.R. 1915, 1917, 1918, 1919

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health

Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman of the board to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. 29 C.F.R. Parts 1915, 1917, 1918, and 1919 establish federal requirements relating to maritime employment. This administrative regulation establishes maritime employment standards ~~[to be]~~ enforced by the Department of Workplace Standards in the maritime industry.

Section 1. Definitions. (1) "Administration" means the Kentucky Labor Cabinet or Department of Workplace Standards.

(2) "Assistant secretary" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(3) "C.F.R." means Code of Federal Regulations.

(4) "Employee" is defined by KRS 338.015(2).

(5) "Employer" is defined by KRS 338.015(1).

(6) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601.

Section 2. Except as modified by the definitions established in Section 1 of this administrative regulation, the maritime industry shall comply with the following federal regulations published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. Part 1915~~[, revised July 1, 2016]~~, relating to occupational safety and health standards for shipyard employment;

(2) 29 C.F.R. Part 1917~~[, revised July 1, 2016]~~, relating to maritime terminals;

(3) 29 C.F.R. Part 1918~~[, revised July 1, 2016]~~, relating to safety and health regulations for longshoring;

(4) 29 C.F.R. Part 1919~~[, revised July 1, 2016]~~, relating to gear certification; and

(5) The revisions to 29 C.F.R. Part 1915 as published in the May 14, 2019 Federal Register, Volume 84, Number 93. [January 9, 2017 Federal Register, Volume 82, Number 5.]

LARRY ROBERTS, Secretary of Labor

APPROVED BY AGENCY: March 12, 2020

FILED WITH LRC: March 12, 2020 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 27, 2020 at 10:00 am (EDST) at the Labor Cabinet, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. Parts 1915, 1917, 1918, and 1919.

Section 2 also updates the C.F.R.s to July 2019 and establishes the amendments to Part 1915, as published in the May 14, 2019 Federal Register, Volume 84, Number 93.

With the May 14 final rule, OSHA continues its initiative to remove or revise outdated, duplicative, unnecessary, and inconsistent requirements in the standards. The amendments to Part 1915 were numerous and included changes to requirements to incorporate by reference guidelines related to the provision of radiographs, frequency and terminology. Additionally, the wording in this Part was changed to remove the designation of feral cats as vermin. This regulation was amended to conform to the requirements of KRS Chapter 13A. Additionally, this regulation was reviewed in accordance with House Bill 50 from the Regular Session of the 2018 General Assembly.

(b) The necessity of this administrative regulation: This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky OSH Standards Board to promulgate OSH administrative regulations. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement.

(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 amendments to Part 1915 were numerous and included changes to requirements to incorporate by reference guidelines related to the provision of radiographs, frequency and terminology. Additionally, the wording in this Part was changed to remove the designation of feral cats as vermin. All were

(b) The necessity of the amendment to this administrative regulation: This regulation was reviewed and revised in accordance HB 50 to update the statutory authority, necessity, function, and conformity sections. The OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061. KRS 338.051(3) and 338.061 authorize the Kentucky OSH Standards Board to promulgate occupational safety and health rules and administrative regulations and standards.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides all a clear understanding of the requirements. This amendment promotes employee health and safety throughout Kentucky and keeps the state program consistent with the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects employers in the Commonwealth engaged in maritime activities covered by KRS Chapter 338.

(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 additional compliance duties are imposed and no immediate action is required.

(b) In complying with this administrative regulation or

amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to the OSH Program to implement this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes employee health and safety throughout Kentucky and keeps the state program consistent with the federal program.

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

(a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There are no new costs associated with this regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There are no fees associated with this administrative regulation. There is no need to increase funding for this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5.

2. State compliance standards. The Kentucky OSH Program is mandated by Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5 to develop and enforce standards that are at least as effective as the federal requirement.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5 to be at least as effective as the federal requirement. The OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This amendment does not impose stricter requirements.

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? This administrative regulation affects any unit, part, or division of local government covered by KRS 338 and engaged in maritime industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

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. None.

(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? There are no costs associated with this amendment.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with this amendment. Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: This amendment does not impose any additional requirements or expenditures to the employer.

LABOR CABINET
Department of Workers' Claims
(Amendment)

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

RELATES TO: KRS 342.0011, 342.020, 342.033, 342.035, 342.040, 342.120, 342.1242, 342.125, 342.165, 342.185, 342.205, 342.260, 342.265, 342.267-342.275, 342.285, 342.290, 342.300-342.316, 342.320, 342.335, 342.340, 342.395, 342.610, 342.650, 342.710, 342.715, 342.730, 342.732, 342.760, 342.792

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260(1) requires the commissioner to promulgate administrative regulations necessary to implement the provisions of KRS Chapter 342. KRS 342.270(3) requires the commissioner to promulgate an administrative regulation establishing procedures for the resolution of claims. KRS 342.033 requires the commissioner to prescribe the format and content of written medical reports. KRS 342.285(1) requires the commissioner to promulgate an administrative regulation governing appeals to the Workers' Compensation Board. This administrative regulation establishes the procedure for the resolution of claims before an administrative law judge or Workers' Compensation Board.

Section 1. Definitions.

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

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

(3) "BRC" means benefit review conference as described in Section 13 of this administrative regulation.

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

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

(6) "Commissioner" is defined by KRS 342.0011(9).

(7) "Date of filing" means the date that:

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

(b) A pleading, motion, order, opinion, or other document is received by the commissioner at the Department of Workers' Claims in Frankfort, Kentucky, except:

1. Documents delivered to the offices of the Department of Workers' Claims after the office is closed at 4:30 p.m. or on the weekend, which shall be deemed filed the following business day; or

2. Documents transmitted by United States registered (not certified) or express mail, or by other recognized mail carriers shall be deemed filed on the date the transmitting agency receives the document from the sender as noted by the transmitting agency on the outside of the container used for transmitting, within the time allowed for filing.

(8) "Employer" is defined by KRS 342.630.

(9) "Employer who has not secured payment of compensation" means any employer who employs an employee as defined by KRS 342.640 but has not complied with KRS 342.340.

(10) "Guides to the Evaluation of Permanent Impairment" is defined by KRS 342.0011(37).

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

(12) "Litigation Management System" or "LMS" means the electronic filing and document management system utilized in the filing and processing of workers' compensation claims in the Commonwealth of Kentucky.

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

(14) "Signature" means actual personal handwritten signatures, and includes electronic signatures, which shall be treated as a personal signature for purposes of CR 11.

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

(16) "Technical failure":

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

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

Section 2. Parties. (1) Any interested party may file an original application for resolution of claim pursuant to KRS 342.270 or 342.316. The injured workers, or survivors, shall be designated as "plaintiff". Adverse parties shall be designated as "defendants".

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

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

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

Section 3. LMS Filings. (1) Except as provided by subsection (2)(a) and (b) of this section and Section 4 of this administrative regulation, all pleadings, notices, orders, and other documents pertaining to a claim for workers' compensation benefits shall be filed utilizing the LMS.

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

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

(b) On or after July 1, 2017, paper or written pleadings, motions, or orders shall not be accepted for filing except for parties representing themselves. ~~[Any documents filed on paper after the effective date of this administrative regulation and through June 30, 2017, may be mailed consistent with Section 1(6)(b) of this administrative regulation.]~~

(3) An electronically filed document using LMS shall bear the electronic signature of the filing party, if the party is representing himself or herself, or the filing party's attorney, as more fully described in paragraphs (a) and (b) of this subsection. The

electronic signature of the filing party, if the party is representing himself or herself, or the filing party's attorney shall be treated as a personal signature and shall serve as a signature for purposes of CR 11, and all other purposes pursuant to the Kentucky Rules of Civil Procedure, and for any purpose for which a signature is required pursuant to this administrative regulation.

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

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

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

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

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

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

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

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

(7) Challenging or disputing authenticity.

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

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

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

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

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

Section 4. Technical Difficulty: Litigation Management System Unavailability. (1) Jurisdictional Deadlines. A jurisdictional deadline shall not be extended. A technical failure, including a failure of LMS, shall not excuse a failure to comply with a jurisdictional deadline. The filing party shall insure that a document is timely filed to comply with jurisdictional deadlines and, if necessary to comply with those deadlines, the filing party shall file the document conventionally accompanied by a certification of the necessity to do so in order to meet a jurisdictional deadline.

(2) Technical Failures.

(a) If a filing party experiences a technical failure, the filing party may file the document conventionally, if the document is accompanied by a certification, signed by the filing party, that the filing party has attempted to file the document electronically at least twice, with those unsuccessful attempts occurring at least one (1) hour apart.

(b) A filing party who suffers prejudice as a result of a technical failure as defined by Section 1(16) of this administrative regulation, or a filing party who cannot file a time-sensitive document electronically due to unforeseen technical difficulties, other than a document filed under a jurisdictional deadline, may seek relief from an administrative law judge. Parties may also enter into an agreed order deeming a document, other than one (1) filed under a jurisdictional deadline, timely filed.

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

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

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

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

(3) Documents filed or served outside of LMS.

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

(b) An application for resolution of claim shall be filed with sufficient copies for service on all parties. The commissioner shall make service by first class mail.

(c) All pleadings shall be served upon the commissioner through LMS or, if a party is unrepresented, by paper and shall be served upon all other parties by mailing a copy to the other parties or, if represented, to the parties' representative, at the party's or representative's last known address or, if agreed to, by electronic means. A certificate of service indicating the method and date of service and signed by the party shall appear on the face of the pleading. Notices of deposition and physical examination shall be served upon the parties and shall not be filed with the commissioner.

(d) After the application for resolution has been assigned to an administrative law judge, subsequent pleadings shall include, within the style of the claim and immediately before the claim number, "Before Administrative Law Judge (name)". Upon

consolidation of claims, the most recent claim number shall be listed first.

(e) 1. All documents involved in an appeal to the Workers' Compensation Board shall include the language "Before Workers' Compensation Board" before the claim number within the style of the claim.

2. Parties shall insert the language "Appeals Branch" or "Workers' Compensation Board" on the outside of the envelope containing documents involved in an appeal.

Section 6. Motions. (1) The party filing a motion may file a brief memorandum supporting the motion and opposing parties may file brief memoranda in reply. Further memoranda (for example, reply to response) shall not be filed.

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

(3) Every motion, the grounds of which depend upon the existence of facts that the moving party believes are shown in the evidence or are admitted by the pleadings, shall make reference to the place in the record where that evidence or admission is found.

(4) A response to a motion, other than to reopen pursuant to KRS 342.125 or for interlocutory relief, shall be filed within ten (10) days after the date of the filing of a motion. The administrative law judge shall rule on the motion no later than ten (10) days after the date for the filing of the response has passed.

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

1. A current medical release Form 106 executed by the plaintiff;

2. An affidavit evidencing the grounds to support reopening;

3. A current medical report showing a change in disability established by objective medical findings;

4. A copy of the opinion and award, settlement, voluntary agreed order, or agreed resolution sought to be reopened;

5. An affidavit certifying that a previous motion to reopen has not been made by the moving party, or if one (1) has previously been made, the date on which the previous motion was filed; or

6. A designation of evidence from the original record specifically identifying the relevant items of proof that are to be considered as part of the record during reopening.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Be accompanied by:

1. An affidavit of counsel detailing the extent of the services rendered;

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

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

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

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

(b) Accompanied by an affidavit of counsel detailing:

1. The extent of the services rendered; and

2. The total amount to be charged.

(9) Vocational rehabilitation benefits may be requested in the initial claim filing or by subsequent motion.

(10) If a plaintiff is deceased, a motion to substitute party and continue benefits shall be filed.

Section 7. Application for Resolution of a Claim and Response.

(1) The applicant shall file an application for resolution of an injury, occupational disease, hearing loss, or interlocutory relief claim through the LMS. At the time of ~~or within fifteen (15) days after the~~ filing of the application, the following shall be filed:

(a) Form 104, Plaintiff's Employment History, to include all past jobs performed on a full or part-time basis within twenty (20) years preceding the date of injury; upon written certification, supported by claimant's counsel, that claimant does not seek a total disability award, the twenty (20) year work history need not be submitted;

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

(c) Medical release (Form 106);

(d) One (1) medical report, which may consist of legible, handwritten notes of the treating physician, and which shall include the following:

1. A description of the injury that is the basis of the claim;

2. A medical opinion establishing a causal relationship between the work-related events or the medical condition that is the subject of the claim; and

3. If a psychological condition is alleged, an additional medical report establishing the presence of a mental impairment or disorder;

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

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

(2)(a) Following the filing of an application for resolution of claim, or the sustaining of a motion to reopen, the commissioner shall issue a Notice of Filing of Application. Within forty-five (45) days of the date of the Notice of Filing of Application, each defendant shall file a notice of claim denial or acceptance. A notice of claim denial shall not be required to be filed by any party in a claim reopened pursuant to KRS 342.125.

(b) If a notice of claim denial is not filed, all allegations of the application shall be deemed admitted.

(c) The notice of claim denial shall set forth the following:

1. All pertinent matters that are admitted and those that are

denied; and

2. If a claim is denied in whole or in part, a detailed summary of the basis for denial.

(d) In the notice of claim denial, a defendant shall if appropriate file a special answer to raise any special defenses in accordance with this paragraph. If a defendant raises the special defense under KRS 342.165, failure to comply with a safety law, administrative regulation, or rule, the defendant shall also file a completed Form SVE with the special answer and identify the safety device the employee failed to use or the lawful and reasonable order or administrative regulation of the commissioner or the employer for the safety of employees or the public which was not complied with.

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

a. The forty-five (45) days for filing the Notice of Claim Denial; or forty-five (45) days of the date of the order joining the defendant as a party, if joinder occurs after the filing of the application for the resolution of the claim; or

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

2. A special defense shall be waived if not timely raised.

3. A special defense shall be pleaded if the defense arises under:

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

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

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

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

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

f. KRS 342.710(5), refusal to accept rehabilitation services;

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

h. "Horseplay".

(e) Within forty-five (45) days of the issuance of the Notice of Filing of Application, the parties shall file a notice of disclosure, which shall contain:

1. The names of all known witnesses and their addresses, if known, upon whom the party intends to rely except those already submitted into evidence;

2. For plaintiff, if requested by defendant, wage information and wage records for all wages earned by the plaintiff, if any, subsequent to the injury, including any wages earned as of the date of service of the notice of disclosure while employed for any employer other than the one (1) for whom he or she was employed at the time of the injury; Plaintiff may provide a release for the information or records in lieu of providing those records;

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

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

5. If the plaintiff alleges a safety violation by the employer, a Form SVC shall be filed;

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

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

8. For each defendant, a completed Form AWW-1, Average Weekly Wage Certification, and itemization of any medical bills or medical expenses known to be disputed by the defendant, any submitted bills being considered but unpaid, and a total for all

medical expenses paid as of the date application for resolution of the claim or motion to reopen is filed.

a. Actual copies of the bills and requests for reimbursement shall not be filed but shall be served upon opposing parties if requested.

b. If the plaintiff has earned wages for a defendant after the injury that is the subject of the litigation, the defendant shall provide post-injury wage information records on a Form AWW-POST.

c. Any party required to file an AWW shall include actual pay records to the extent available.

d. Upon request by plaintiff, defendant shall provide to plaintiff any statement, surveillance video, photographs, or recording of plaintiff. Further, upon plaintiff's request, and a showing of relevance, defendant shall provide the employee's employment file and OSHA history as it relates to the plaintiff's injury.

e. In a reopened claim, a Form AWW-1 shall not be required to be filed if an ALJ made a finding establishing the average weekly wage in a previous decision or if the pre-injury average weekly wage was previously stipulated by the parties unless a party seeks and is relieved from the original stipulation;

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

10. For each employer, a copy of any written job description setting out the physical requirements of the job.

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

Section 8. Discovery, Evidence, and Exchange of Records. (1) Proof taking and discovery for all parties shall begin from the date the commissioner issues the Notice of Filing of Application.

(2)(a) Plaintiff and defendants shall take proof for a period of sixty (60) days from the date of the Notice of Filing of Application;

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

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

(3) During the pendency of a claim, any party obtaining or possessing a medical or vocational report or records and relevant portions of hospital or educational records shall serve a copy of the report or records upon all other parties within ten (10) days following receipt of those reports or records or within ten (10) days of receipt of notice if assigned to an administrative law judge. Defendant employer may request Social Security, Armed Forces, VA records, vital statistics records, and other public records upon a showing of relevance. Failure to comply with this subsection may constitute grounds for exclusion of the reports or records as evidence.

(4) All medical reports filed with the application for resolution of a claim shall be admitted into evidence without further order subject to the limitations of KRS 342.033 if:

(a) An objection is not filed prior to or with the filing of the notice of claim denial; and

(b) The medical reports comply with Section 10 of this administrative regulation.

Section 9. Vocational Reports. (1) One (1) vocational re-port may be filed by notice and shall be admitted into evidence without further order and without the necessity of a deposition, if an objection is not filed.

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

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

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

(a) Be filed within ten (10) days of the filing of the notice or

motion for admission; and

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

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

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

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

(2) Medical reports submitted through the LMS may utilize the web form creating a Form 107 or Form 108 for electronic filing, except an administrative law judge may permit the introduction of other reports that substantially comply with this section and do not exceed twenty-five (25) pages.

(3) Medical reports shall be signed by the physician making the report, or the notice of filing shall be considered an affidavit from the physician or submitting party.

(4) Medical reports shall include, within the body of the report or as an attachment, a statement of qualifications of the person making the report. If the qualifications of the physician who prepared the written medical report have been filed with the commissioner and the physician has been assigned a medical qualifications index number, reference may be made to the physicians index number in lieu of attaching qualifications along with a listing of the physician's specialty of practice.

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

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

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

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

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

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

(e) The administrative law judge shall rule on the objection within ten (10) days of the response or the date the response is due.

(7) Medical records that are not submitted under subsection (2) of this section may be submitted by notice that identifies the records, the person or medical facility that produced the records, and the relevance of the records to the claim. Records submitted in excess of twenty (20) pages shall provide an indexed table of contents generally identifying the contents of each page. Failure to provide an indexed table of contents shall result in rejection of the records, which shall not be filed or considered as evidence.

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

Section 11. Medical Evaluations Pursuant to KRS 342.315. (1) All persons claiming benefits for hearing loss or occupational disease shall be referred by the commissioner for a medical evaluation in accordance with contracts entered into between the commissioner and the University of Kentucky and University of Louisville medical schools.

(2) In all other claims, the commissioner or an administrative law judge may direct appointment by the commissioner of a university medical evaluator.

(3) Upon referral for medical evaluation under this section, a party may tender additional relevant medical treatment records and diagnostic studies to the administrative law judge or to the commissioner for determination of relevancy and submission to the

evaluator. The administrative law judge or the commissioner shall provide notice to the parties of the material submitted to the evaluator. This additional information shall not be filed of record. The additional medical information shall be:

(a) Submitted to the administrative law judge or to the commissioner within fourteen (14) days following an order for medical evaluation pursuant to KRS 342.315 or KRS 342.316;

(b) Clearly legible;

(c) Indexed;

(d) Furnished in chronological order;

(e) Timely furnished to all other parties within ten (10) days following receipt of the medical information; and

(f) Accompanied by a summary that is filed of record and served upon all parties. The summary shall:

1. Identify the medical provider;

2. Include the date of medical services; and

3. Include the nature of medical services provided.

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

(5) The administrative law judge shall allow timely cross-examination of a medical evaluator appointed by the commissioner at the expense of the moving party.

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

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

Section 12. Interlocutory Relief. (1) A party may seek interlocutory relief at the time of the initial claim application, or by motion requesting:

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

(b) Medical benefits pursuant to KRS 342.020; or

(c) Rehabilitation services pursuant to KRS 342.710.

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

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

(b) May be held telephonically.

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

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

1. Is eligible under KRS Chapter 342;

2. Will suffer irreparable injury, loss or damage pending a final decision on the application; and

3. Is likely to succeed on the merits based upon the evidence introduced by the parties.

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

(5) If interlocutory relief is awarded in the form of income benefits, the application shall be placed in abeyance. The plaintiff shall provide a status report every sixty (60) days, or sooner if circumstances warrant or upon order by the ALJ, updating his or her current status. Upon motion and a showing of cause, or upon the ALJ's own motion, interlocutory relief shall be terminated and the claim removed from abeyance. Failure to timely file a status report may constitute cause to terminate interlocutory relief.

Interlocutory relief, once awarded, shall continue until the ALJ issues an order of termination of interlocutory relief. Failure to pay benefits under an interlocutory order or termination of benefits ordered pursuant to an interlocutory award without prior approval of the ALJ shall constitute grounds for a violation of the Unfair Claims Settlement Practices Act at KRS 342.267, and for sanctions pursuant to KRS 342.310 and Section 26 of this administrative regulation, unless good cause is shown for the failure to do so.

(6) An attorney's fee in the amounts authorized by KRS 342.320 that does not exceed twenty (20) percent of the weekly income benefits awarded pursuant to a request for interlocutory relief may be granted. The approved fee shall be deducted in equal amounts from the weekly income benefits awarded and shall be paid directly to the attorney. [(1) A party may seek interlocutory relief at the time of the initial claim application or by motion requesting:

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

(b) Medical benefits pursuant to KRS 342.020; or

(c) Rehabilitation services pursuant to KRS 342.710.

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

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

(b) The ALJ to whom the interlocutory relief request is assigned may schedule a hearing to be held within thirty-five (35) days of the order assigning the claim for resolution.

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

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

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

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

(3)(a) If a motion for interlocutory relief is filed after the claim is assigned to an ALJ, he or she shall within ten (10) days issue an order requiring a response to the request for interlocutory relief be served within twenty (20) days from the date of the order, and refer it to the commissioner for assignment to an ALJ for the sole purpose of considering the request for interlocutory relief.

(b) Upon receipt of the response, the ALJ may schedule a hearing to be held within thirty-five (35) days of receipt of the response. The hearing may be held telephonically, by video, or by other electronic means, if the parties agree or a party demonstrates good cause as to why the party cannot appear at the hearing in person.

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

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

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

1. Is eligible under KRS Chapter 342;

2. Will suffer immediate and irreparable injury, loss, or damage

pending a final decision on the application; and

3. Is likely to succeed on the merits based upon the evidence introduced by the parties.

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

(5) Benefits awarded pursuant to an interlocutory order shall not be terminated except upon entry of an order issued by an administrative law judge. Failure to pay benefits under an interlocutory order or termination of benefits ordered pursuant to an interlocutory order without prior approval of the ALJ shall constitute grounds for a violation of the Unfair Claims Settlement Practices Act at KRS 342.267, and for sanctions pursuant to KRS 342.310 and Section 26 of this administrative regulation, unless good cause is shown for failure to do so.

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

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

Section 13. Benefit Review Conferences. (1) The purpose of the BRC shall be to expedite the processing of the claim and to avoid if possible the need for a hearing.

(2) The BRC shall be an informal proceeding.

(3) The date, time, and place for the BRC shall be stated on the Notice of Filing of Application issued by the commissioner.

(4) The plaintiff and his or her representative, the defendant or its representative, and the representatives of all other parties shall attend the BRC.

(5) If the defendant is insured or a qualified self-insured, a representative of the carrier or self-insured employer with settlement authority shall be present or available by telephone during the BRC. Failure to comply with this provision may result in the imposition of sanctions.

(6) The administrative law judge may upon motion waive the plaintiff's attendance at the BRC for good cause shown.

(7) A transcript of the BRC shall not be made.

(8) Representatives of all parties shall have authority to resolve disputed issues and settle the claim at the BRC.

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

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

(10) A party seeking postponement of a BRC shall file a motion at least fifteen (15) days prior to the date of the conference and shall demonstrate good cause for the postponement.

(11) If at the conclusion of the BRC the parties have not reached agreement on all the issues, the administrative law judge shall:

(a) Prepare a final BRC memorandum and order including stipulations and identification of all issues, which shall be signed by all parties or if represented, their counsel, and the administrative law judge; and

(b) Schedule a final hearing.

(12) Only contested issues shall be the subject of further proceedings.

(13) Upon motion with good cause shown, the administrative law judge may order that additional discovery or proof be taken between the BRC and the date of the hearing and may limit the

number of witnesses to be presented at the hearing.

Section 14. Evidence - Rules Applicable. (1) The Rules of Evidence prescribed by the Kentucky Supreme Court shall apply in all proceedings before an administrative law judge except as varied by specific statute and this administrative regulation.

(2)(a) Any party may file as evidence before the administrative law judge pertinent material and relevant portions of:

1. Hospital records, which shall be limited to emergency room records, history, physical and discharge summary, operative notes, and reports of specialized testing; and

2. Educational, Office of Vital Statistics, Armed Forces, Social Security, and other public records.

(b) An opinion of a physician that is expressed in these records shall not be considered by an administrative law judge in violation of the limitation on the number of physician's opinions established in KRS 342.033.

(c) If the records or reports submitted exceed twenty (20) pages, the party attempting to file those records or reports into evidence shall include an indexed table of contents generally identifying the contents.

(d) An appropriate release shall be included to permit opposing parties the ability to obtain complete copies of the records.

Section 15. Extensions of Proof Time. (1) An extension of time for producing evidence may be granted upon showing of circumstances that prevent timely introduction.

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

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

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

(b) Facts which prevented timely production; and

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

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

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

(a) Enlarge the time to all:

1. Plaintiffs if the extension is granted to a plaintiff; and

2. Defendants if an extension is granted to a defendant;

(b) Extend the time of the adverse party automatically except if the extension is for rebuttal proof; and

(c) Be limited to the introduction of evidence cited as the basis for the requested extension of time.

Section 16. Stipulation of Facts. (1) Refusal to stipulate facts that are not genuinely in issue shall warrant imposition of sanctions as established in Section 26 of this administrative regulation. An assertion that a party has not had sufficient opportunity to ascertain relevant facts shall not be considered "good cause" in the absence of due diligence.

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

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

Section 17. Discovery and Depositions. (1) Discovery and the taking of depositions shall be in accordance with the provisions of Kentucky Rules of Civil Procedure 26 to 37, except for Rules 27, 33, and 36, which shall not apply to practice before the administrative law judges or the board.

(2) Depositions may be taken by telephone if the reporter administering the oath to the witness and reporting the deposition is physically present with the witness at the time the deposition is given. Notice of a telephonic deposition shall relate the following information:

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

(b) The address and telephone number from which the call will

be placed to the witness;

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

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

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

(4) The commissioner shall establish a medical qualifications index.

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

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

(c) Qualifications shall be revised or updated by submitting revisions to the commissioner.

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

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

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

Section 18. Informal Conference. Prior to the hearing, the ALJ may conduct an informal conference either at a hearing site, telephonically, or by other electronic means to inquire about remaining contested issues, and who will testify at the hearing.

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

(2) At the conclusion of the hearing, the administrative law judge may hold oral arguments, order briefs, or proceed to final decision.

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

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

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

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

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

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

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

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

Section 20. Petitions for Reconsideration. (1) If applicable, a party shall file a petition for reconsideration within fourteen (14) days of the filing of a decision, order, or award of an administrative law judge and clearly state the patent error that the petitioner seeks to have corrected and setting forth the authorities upon which petitioner relies. The party filing the petition for reconsideration shall tender a proposed order granting the relief requested.

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

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

Section 21. Settlements. (1) Unless the settlement agreement is completed and tendered to the ALJ for immediate approval at the BRC, informal conference, or hearing, or unless the ALJ orders otherwise, the party drafting the settlement agreement shall provide the signed original to the adverse party no later than fifteen (15) days after the date the parties agree to settle. The agreement shall be signed by all parties and tendered to the ALJ for approval no later than thirty (30) days after the date the parties agreed to settle absent a showing of good cause.

(2) Payment shall be made within twenty-one (21) calendar days after the date of the order approving settlement. Payment for settlements and past due benefits shall be mailed to the last known address of plaintiff's counsel, if represented.

(3) Failure to satisfy the time requirements in subsection (2) of this section, if the defendant or defendant's counsel is primarily at fault, may result in the addition of twelve (12) percent interest per annum on all benefits agreed upon in the settlement for any period of delay beyond the time prescribed in subsection (2) of this section.

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

(5) Parties who reach an agreement pursuant to KRS 342.265 shall file the agreement on the applicable form as listed in this subsection and, if not filed electronically, that form shall include the original signatures of the parties:

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

(b) Form 110-I, Agreement as to Compensation and Order Approving Settlement[;]

(c) Form 110-ODHLCWP, Agreement as to Compensation and Order Approving Settlement.

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

Section 22. Review of Administrative Law Judge Decisions. (1) General.

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

(b) All appeals to the Workers' Compensation Board shall be filed through LMS, with the exception of those permitted to be filed manually pursuant to Section 3(2)(a), Section 3(3) and Section 4 of 803 KAR 25:010. Any documents filed manually, including the Notice of Appeal, shall contain [Parties shall insert] the language "Appeals Branch" or "Workers' Compensation Board" on the outside of an envelope containing documents filed in an appeal to the board.

(2) Time and format of notice of appeal.

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

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

(c) The notice of appeal shall:

1. Denote the appealing party as the petitioner;
2. Denote all parties against whom the appeal is taken as respondents[;]. "Et al." and "etc." are not proper designations of parties;

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

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

5. Include the claim number; and

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

7. Failure to denote or designate all parties against whom the appeal is taken, failure to name an indispensable party to the appeal, or failure to designate the decision or order from which the appeal is taken, shall result in dismissal of the appeal.

(d) Cross-appeal.

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

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

3. Failure to denote or designate all parties against whom the cross-appeal is taken, failure to name an indispensable party to the cross-appeal, or failure to designate the decisions or order from which the cross-appeal is taken, may result in dismissal of the cross-appeal.

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

(3) Format of petitioner's brief.

(a) Petitioner's brief shall be filed within thirty (30) days of the filing of the notice of appeal.

(b) Petitioner's brief shall be filed with the commissioner of the Department of Workers' Claims.

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

(4) Petitioner's brief. The petitioner's brief shall designate the parties as petitioner (or petitioners) and respondent (or respondents) and shall be drafted in the manner established in this subsection.

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

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

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

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

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

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

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

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

(g) The organization and contents of the petitioner's brief for review shall be as established in this paragraph.

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

2. A "Statement of Points and Authorities" shall set forth, succinctly and in the order in which they are discussed in the body of the argument, the petitioner's contentions with respect to each issue of law on which he relies for a reversal, listing under each the authority cited on that point and the respective pages of the brief on which the argument appears and on which the authorities are

cited. This requirement may be eliminated for briefs of five (5) or less pages.

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

4. An "Argument" shall:

- a. Conform with the statement of points and authorities, with ample supportive references to the record and citations of authority pertinent to each issue of law; and
- b. Contain, at the beginning of the argument, a statement with reference to the record showing whether the issue was properly preserved for review and, if so, in what manner.

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

6. An "Appendix" shall contain:

- a. Copies of cases cited from federal courts and foreign jurisdictions, if any, upon which reliance is made; and
- b. Copies of prior board opinions in accordance with subsection (10) of this section.

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

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

(a) Each respondent shall file an original brief, or combined brief if cross-petition or cross-petitioner's brief, within thirty (30) days of the date on which the petitioner's brief was filed with the commissioner of the Department of Workers' Claims.

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

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

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

(6) Reply brief.

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

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

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

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

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

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

(b) Every brief filed in an appeal to the Workers' Compensation Board shall bear, on the front cover, a signed statement, in accordance with Civil Rule 5.03 by the attorney or party that service has been made in conformity to this administrative regulation. The statement shall identify by name each person served.

(c) The name of each attorney, or an unrepresented party, submitting a document to the Workers' Compensation Board along

with a current address, email address, and telephone number shall appear following its "conclusion".

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

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

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

(10) Form of citations.

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

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

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

(11) Number of Pages.

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

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

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

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

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

(12) Sanctions. Failure of a party to file a brief conforming to the requirements of this administrative regulation, failure of a party to respond to a show cause order, or failure of a party to timely file a response may be grounds for the imposition of one (1) or more of the following sanctions:

(a) Affirmation or reversal of the final order;

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

(c) Striking of an untimely response;

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

(e) Dismissal.

(13) Motions.

(a) A motion, response, or objection shall be filed with the commissioner of the Department of Workers' Claims in accordance with Section 3 of this administrative regulation, and shall bear the designation of Appeals Branch or Workers' Compensation Board.

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

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

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

(e) Every motion and response, the grounds of which depend upon the existence of facts that the moving or responding party believes are shown in the evidence or are admitted by the pleadings, shall make reference to the place in the record where that evidence or admission is found.

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

(g) The filing of a motion to dismiss an appeal shall stay the remaining time for the filing of a responsive pleading. If the

petitioner's brief has been previously filed and a motion to dismiss has been overruled, the respondent shall have fifteen (15) days from the order to file a respondent's brief.

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

(14) Oral arguments.

(a) Upon motion of a party or within its discretion, the board may order an oral argument on the merits in a case appealed from a decision, award, or order of an administrative law judge.

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

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

(15) Continuation of benefits pending appeal.

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

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

(c) Entitlement to relief pursuant to KRS 342.300 shall be granted upon motion establishing:

1. The probability of the existence in fact of:

a. Financial loss;

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

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

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

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

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

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

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

(16) Decisions.

(a) The board shall:

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

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

(b) Motions for reconsideration shall not be permitted.

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

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

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

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

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

shall remove the appeal from abeyance and establish a briefing schedule.

Section 23. Coverage - Insured Status. Upon the filing of an application for resolution of claim, the commissioner shall ascertain whether the employer or any other person against whom a claim is filed and who is not exempted by KRS 342.650 has secured payment of compensation by obtaining insurance coverage or qualifying as a self-insurer pursuant to KRS 342.340. If an employer does not have insurance coverage or qualify as a self-insurer, the commissioner shall notify the administrative law judge and all parties by service of a certification of no coverage.

Section 24. Withdrawal of Records and Disposition of Exhibits.

(1) A portion of any original record of the office shall not be withdrawn except upon an order of the commissioner, an administrative law judge, or a member of the board.

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

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

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

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

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

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

Section 25. Time for Payment of Benefits in Litigated Claims.

(1) If a disputed claim is litigated and an opinion, order, or award is entered awarding benefits to a claimant and no appeal is taken that prevents finality of the opinion, order, or award, payment shall be made in accordance with this subsection.

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

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

(c) If plaintiff is represented by counsel, payment for past due benefits shall be mailed to the last known address of plaintiff's attorney.

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

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

Section 26. Sanctions. (1) Pursuant to KRS 342.310, an administrative law judge or the board may assess costs upon a determination that the proceedings have been brought, prosecuted, or defended without reasonable grounds.

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

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

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

Section 27. Payment of Compensation from Uninsured Employers' Fund. (1) Payment from the Uninsured Employers' Fund of compensation shall be made upon the determination by an administrative law judge that the responsible employer failed to secure payment of compensation as provided by KRS 342.340; and

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

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

(c) The plaintiff or any other party in interest has filed in the circuit court of the county where the injury occurred an action pursuant to KRS 342.305 to enforce payment of the award against the uninsured employer, and there has been default in payment of the judgment by the employer.

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

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

Section 28. Forms. The Department of Workers' Claims shall not accept applications or forms in use prior to the forms required by and incorporated by reference in this administrative regulation. Outdated applications or forms submitted may be rejected and returned to the applicant or person submitting the form. If the application or form is resubmitted on the proper form within twenty (20) days of the date it was returned, the filing shall date back to the date the application or form was first received by the commissioner. Otherwise, the date of the second receipt shall be the filing date.

Section 29. Request for Participation by the Kentucky Coal Workers' Pneumoconiosis Fund. (1) Following a final award or order approving settlement of a claim that is eligible for participation by the Kentucky Coal Workers' Pneumoconiosis Fund pursuant to KRS 342.1242(1)~~[for coal workers' pneumoconiosis benefits pursuant to KRS 342.732]~~, the employer shall file a written request for participation with the Kentucky Coal Workers' Pneumoconiosis Fund within thirty (30) days and shall serve copies of the request on all other parties.

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

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

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

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

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

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

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

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

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

(4) In claims arising under KRS 342.792, if the employer fails to submit a request for participation within thirty (30) days of the

final award or order approving settlement, the plaintiff or an administrative law judge may file a written request for participation with the Kentucky Coal Workers' Pneumoconiosis Fund within sixty (60) days of the final award or order approving settlement.

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

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

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

(b) The employer failed to defend the claim;

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

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

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

(8) The administrative law judge shall:

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

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

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

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

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

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

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

Section 30. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Resolution of a Claim - Injury", February 2020 [October 2016];

(b) "Application for Resolution of a Claim - Occupational Disease", February 2020 [October 2016];

(c) "Application for Resolution of a Claim - Hearing Loss", February 2020 [October 2016];

(d) "Application for Resolution - Interlocutory Relief", October 2016;

(e) Form 104, "Plaintiff's Employment History", October 2016;

(f) Form 105, "Plaintiff's Chronological Medical History", October 2016;

(g) Form 106, "Medical Waiver and Consent", July 2003;

(h) Form 107, "Medical Report - Injury/Hearing Loss/Psychological Condition", October 2016;

(i) Form 108, "Medical Report - Occupational Disease", October 2016;

(j) Form 109, "Attorney Fee Election", March 15, 1995;

(k) Form 110-I, "Agreement as to Compensation and Order Approving Settlement", February 2020 [October 2016];

(l) Form 110-ODHLCWP, "Agreement as to Compensation and

Order Approving Settlement", February 2020:

(m)[(4)] Form 110-F, "Agreement as to Compensation and order Approving Settlement - Fatality", October 2016;

(n)[(m)] "Notice of Claim Denial or Acceptance", October 2016;

(o) Form 112, "Medical Dispute", February 2020;

(p)[(n)] Form AWW-1, "Average Weekly Wage Certification", October 2016;

(q)[(o)] Form AWW-CON, "Average Weekly Wage Certification - Concurrent", October 2016;

(r)[(p)] Form AWW-POST, "Average Weekly Wage Certification – Post Injury", October 2016;

(s)[(q)] Form F, "Fatality", October 2016;

(t)[(r)] Form SVC, "Safety Violation Alleged by Plaintiff/Employee", October 2016; and

(u)[(s)] Form SVE, "Safety Violation Alleged by Department/Employer", October 2016.[-]

(v) Form MTR, "Motion to Reopen", February 2020.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Workers' Claims, Mayo-Underwood Building, 3rd Floor, 500 Mero Street, [Prevention Park, 657 Chamberlin Avenue] Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the commissioner has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 342.260, 342.270 and 342.285.

ROBERT L. SWISHER, Commissioner

APPROVED BY AGENCY:

FILED WITH LRC: March 13, 2020 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 28, 2020, at 10:00 a.m. (EDT) at the offices of the Department of Workers' Claims, Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend no later than five (5) workdays prior to the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through May 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person

CONTACT PERSON: Scott C. Wilhoit, Special Assistant, Department of Workers' Claims, Mayo-Underwood Building, 3rd Floor, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 782-4532, fax (502) 564-0682, Scottc.wilhoit@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Scott C. Wilhoit

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the procedure to bring and prosecute a claim for benefits under KRS Chapter 342. The amendments incorporate by reference updated forms, new forms, and amends the procedure related to interlocutory relief.

(b) The necessity of this administrative regulation: KRS 342.033, 342.260, 342.270, and 342.285 require the commissioner to promulgate administrative regulations to establish the procedure for resolution of claims, appeals to the Workers' Compensation Board, prescribe the format and content of written medical reports, and any necessary to carry on the work of the Department and provisions of KRS Chapter 342.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 342.033, 342.260, 342.270, and 342.285 require the commissioner to promulgate administrative

regulations to establish the procedure for resolution of claims, appeals to the Workers' Compensation Board, prescribe the format and content of written medical reports, and any necessary to carry on the work of the Department and provisions of KRS Chapter 342. This administrative regulation establishes the procedure for the resolution of claims before an administrative law judge or Workers' Compensation Board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides guidance to injured employees, their attorney, the employee's employer, and its attorney, of the steps necessary for resolution of a claim for compensation under KRS Chapter 342.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation amends the procedure for interlocutory relief, updates existing forms incorporated by reference to comply with the Department's Litigation Management System, and incorporates new forms.

(b) The necessity of the amendment to this administrative regulation: Some documents incorporated by reference did not comply with the Department's Litigation management system; these amendments bring those forms into compliance. Further, additional forms were needed to format certain information for the Litigation Management System. The new interlocutory procedure is necessary to improve the way this relief is sought, awarded, and monitored.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments are necessary to carry on the work of the Department and carry out the provisions of the Chapter in an effective and efficient manner.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation provides guidance to injured employees, their attorney, the employee's employer, and its attorney, of the steps necessary for resolution of a claim for compensation under KRS Chapter 342.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All injured employees, attorneys, physicians and medical providers providing services to injured workers pursuant to KRS Chapter 342, insurance carriers, self-insurance groups, self-insured employers, insured employers, third party administrators, other payment obligors and those acting on their behalf.

(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 entities will have to use the new and amended forms. The entities will have to follow the new procedure for interlocutory relief.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No change in cost is expected as a result of the amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendments to the existing administrative regulation will allow claims to be processed in a more effective and efficient manner.

(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: The cost associated with this administrative regulation is the cost of maintaining additional forms on the Cabinet's website.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Workers' Claims normal budget is the source of funding.

(7) Provide an assessment of whether an increase in fees or

funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is needed to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied; the regulation applies to all parties equally.

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 Workers' Claims and all agencies or departments of government with employees.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 342.020, 342.033, 342.035, 342.260, 342.265, 342.270, 342.275 and 342.285.

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. There should be no direct effect on expenditures.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? The cost of maintaining additional forms on the Cabinet's website is nominal.

(d) How much will it cost to administer this program for subsequent years? Other than the cost to maintain new forms on the Cabinet's website, it does not appear there will be additional costs.

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: The amendments to the administrative regulation are fiscally neutral.

PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (Amendment)

810 KAR 1:001. Definitions.

RELATES TO: KRS Chapter 230

STATUTORY AUTHORITY: KRS 230.215, 230.225(5), 230.260, 230.361(1), 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the commission the authority to regulate conditions under which thoroughbred racing shall be conducted in Kentucky. KRS 230.260(8) grants the commission the authority to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall be conducted in this state. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating mutuel wagering on horse races under the pari-mutuel system of wagering. This administrative regulation defines the terms used in 810 KAR Chapter 1.

Section 1. Definitions. (1) "Added money" means cash,

exclusive of trophy or other award, added by the association to stakes fees paid by subscribers to form the total purse for a stakes race.

(2) "Age" means the number of years since a horse was foaled, reckoned as if the horse was foaled on January 1 of the year in which the horse was foaled.

(3) "Arrears" means all sums due by a licensee as reflected by his or her account with the horsemen's bookkeeper, including subscriptions, jockey fees, forfeitures, and any default incident to 810 KAR Chapter 1.

(4) "Association" is defined by KRS 230.210(1).

(5) "Authorized agent" means any person currently licensed as an agent for a licensed owner or jockey by virtue of notarized appointment of agency filed with the commission.

(6) "Betting interest" means a single horse, or more than one (1) horse joined as a mutuel entry or joined in a mutuel field, on which a single pari-mutuel wager may be placed.

(7) "Bleeder" means any horse known to have bled internally or from its nostrils during a workout or race.

(8) "Breakage" means the net pool minus payout.

(9) "Breeder" means the owner of the dam of a horse when the horse was foaled. A horse is "bred" at the place of its foaling.

(10) "Calendar days" means consecutive days counted irrespective of number of racing days.

(11) "Carryover" means nondistributed pool monies which are retained and added to a corresponding pool in accordance with 810 KAR Chapter 1.

(12) "Claiming race" means any race in which every horse running in the race may be transferred in conformity with 810 KAR Chapter 1.

(13) "Closing" means the time published by the association after which entries for a race will not be accepted by the racing secretary.

(14) "Commission" means:

(a) The Kentucky Horse Racing Commission (formerly known as the Kentucky Horse Racing Authority and defined in KRS 230.210(2)) if used in the context of the administrative agency governing horse racing and pari-mutuel wagering; and

(b) If used in the context of pari-mutuel wagering, the amount an association is authorized to withhold from a pari-mutuel wager pursuant to KRS 230.3615.

(15) "Day" means any twenty-four (24) hour period beginning at 12:01 a.m. and ending at midnight.

(16) "Dead heat" means a finish of a race in which the noses of two (2) or more horses reach the finish line at the same time.

(17) "Declaration" means the withdrawal of a horse entered in a race prior to time of closing of entries for the race in conformance with 810 KAR Chapter 1. (18) "Designated area" means any enclosed area that the commission has approved for the location of terminals used for wagering on an historical horse race.

(19) "Disciplinary action" means action taken by the stewards or the commission for a violation of KRS Chapter 230 or 810 KAR Chapter 1 and can include:

(a) Refusal to issue or renew a license;

(b) Revocation or suspension of a license;

(c) Imposition of probationary conditions on a license;

(d) Issuance of a written reprimand or admonishment;

(e) Imposition of fines or penalties;

(f) Denial of purse money;

(g) Forfeiture of purse money; or

(h) Any combination of paragraphs (a) through (g) of this subsection.

(20) "Disqualification" means a ruling of the stewards or the commission revising the order of finish of a race.

(21) "Entry" means the act of nominating a horse for a race in conformance with 810 KAR Chapter 1.

(22) "Equipment" means accoutrements other than ordinary saddle, girth, pad, saddle cloth, and bridle carried by a horse, and includes whip, blinkers, tongue strap, muzzle, hood, noseband, bit, shadow roll, martingale, breast plate, bandages, boots, and racing plates or shoes.

(23) "Exhibition race" means a race between horses of diverse ownership for which a purse is offered by the association, but on

which no pari-mutuel wagering is permitted.

(24) "Exotic wager" means any pari-mutuel wager placed on a live or historical horse race other than a win, place, or show wager placed on a live horse race.

(25) "Field" or "mutuel field" means a single betting interest involving more than one (1) horse which is not a mutuel entry.

(26) "Forfeit" means money due by a licensee because of an error, fault, neglect of duty, breach of contract, or alternative ruling of the stewards or the commission.

(27) "Free handicap" means a handicap for which no nominating fee is required to be weighted, but an entrance or starting fee may be required for starting in the race.

(28) "Handicap race" means a race in which the weights to be carried by the horses are assigned by the association handicapper with the intent of equalizing the chances of winning for all horses entered in the race.

(29) "Handle" means the aggregate of all pari-mutuel pools, excluding refundable wagers.

(30) "Historical horse race" means any horse race that:

(a) Was previously run at a licensed pari-mutuel facility located in the United States;

(b) Concluded with official results; and

(c) Concluded without scratches, disqualifications, or dead-heat finishes.

(31) "Horse" means a thoroughbred registered with The Jockey Club irrespective of age or sex designation.

(32) "Ineligible" means a horse or person not qualified under 810 KAR Chapter 1 or conditions of a race to participate in a specified racing activity.

(33) "Initial seed pool" means a nonrefundable pool of money funded by an association in an amount sufficient to ensure that a patron will be paid the minimum amount required on a winning wager on an historical horse race.

(34) "Jockey" means a rider currently licensed to ride in races as a jockey, apprentice jockey, amateur jockey, or a provisional jockey permitted by the stewards to ride in three (3) races prior to applying for a license.

(35) "Lessee" means a licensed owner whose interest in a horse is a leasehold.

(36) "Licensed premises" means:

(a) The location and physical plant described in response to question P of the "Commonwealth of Kentucky Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, and Pari-Mutuel Wagering" filed for racing to be conducted in 2010;

~~(b) [- Licensed premises may also include] Real property of an association, if the association receives approval from the commission for a new location at which live racing will be conducted; or~~

(c) One (1) facility or real property that is owned, leased, or purchased by a licensed association within a sixty (60) mile radius of another licensed track premise where live racing is conducted and not within a forty (40) mile radius of a simulcast facility, unless any affected track of simulcast facility agrees in writing to permit a noncontiguous facility within the protected geographic area.

(37) "Licensee" means an individual, firm, association, partnership, corporation, trustee, or legal representative that has been duly issued a currently valid license to participate in racing in the Commonwealth.

(38) "Maiden" means a horse which has never won a race on the flat at a recognized meeting in any country. A maiden which was disqualified after finishing first remains a maiden. Race conditions referring to maidens shall be interpreted as meaning maidens at the time of starting.

(39) "Match race" means a race between two (2) horses for which no other horses are eligible.

(40) "Meeting" means the entire period of consecutive days, exclusive of dark days, granted by the commission to a licensed association for the conduct of live horse racing. A meeting shall begin at 10 a.m. of the first racing day and extend through a period ending one (1) hour after the last scheduled race of the last day.

(41) "Minus pool" means a pari-mutuel pool in which the amount of money to be distributed on winning wagers exceeds the

amount of money contained in the net pool.

(42) "Month" means calendar month.

(43) "Mutuel entry" means a single betting interest involving two (2) or more horses entered in the same race and joined for pari-mutuel purposes because of common ties as to ownership or training so that a wager on one (1) horse joined in a mutuel entry is a wager on all horses joined in the same mutuel entry.

(44) "Net pool" means the total amount wagered less refundable wagers and takeout.

(45) "Nomination" means a subscription or entry of a horse in a stakes or early closing race.

(46) "Nominator" means the person in whose name a horse is entered for a race.

(47) "Owner" means any person who holds, in whole or in part, any right, title, or interest in a horse, or any lessee of a horse, who has been duly issued a currently valid owner's license as a person responsible for the horse.

(48) "Pari-mutuel wagering," "mutuel wagering", or "pari-mutuel system of wagering" each means a system or method of wagering approved by the commission in which patrons are wagering among themselves and not against the association and amounts wagered are placed in one or more designated wagering pools and the net pool is returned to the winning patrons.

(49) "Patron" means an individual present at a track or a simulcast facility who observes or wagers on a live or historical horse race.

(50) "Payout" means the amount of the net pool payable to an individual patron on his or her winning wager.

(51) "Place," if used in the context of a single position in the order of finish in a race, means second; if used in the context of pari-mutuel wagering, a "place" wager means one involving a payoff on a betting interest which finished first or second in a race; if used in the context of multiple positions in the order of finish in a race, "place or placing" means finishing first or second.

(52) "Post" means the starting point of a race.

(53) "Post position" means the relative place assigned to each horse, numbered from the inner rail across the track at the starting line, from which each horse is to start a race.

(54) "Post time" means the advertised moment scheduled for the arrival of all horses at the starting point for a race.

(55) "Prize" means the combined total of any cash, premium, trophy, and object of value awarded to the owners of horses according to order of finish in a race.

(56) "Purse" means the gross cash portion of the prize for which a race is run.

(57) "Purse race" means any race for which entries close at a time designated by the racing secretary, and for which owners of horses entered are not required by its conditions to contribute money toward its purse.

(58) "Race" means a running contest between thoroughbreds, ridden by jockeys, over a prescribed course free of obstacles or jumps, at a recognized meeting, during regular racing hours, for a prize.

(59) "Race day" means any period of twenty-four (24) hours beginning at 12:01 a.m. and ending at midnight in which live racing is conducted by an association.

(60) "Racing official" means a racing commission member, commission staff as duties require, and all association racing department employees, as duties require.

(61) "Recognized meeting" means any meeting with regularly scheduled live horse races for thoroughbreds on the flat, licensed by and conducted under administrative regulations promulgated by a governmental regulatory body, to include foreign countries which are regulated by a racing authority which has reciprocal relations with The Jockey Club and whose race records can be provided to an association by The Jockey Club.

(62) "Registration certificate" means:

(a) The document issued by The Jockey Club certifying the name, age, color, sex, pedigree, and breeder of a horse as registered by number with The Jockey Club; or

(b) The document known as a "racing permit" issued by The Jockey Club in lieu of a registration certificate if a horse is recognized as a thoroughbred for racing purposes in the United

States, but is not recognized as a thoroughbred for breeding purposes insofar as registering its progeny with the Jockey Club.

(63) "Result" means the part of the official order of finish in a race used to determine the pari-mutuel payoff of pools.

(64) "Rulings" means all determinations, decisions, or orders of the stewards or of the commission duly issued in writing and posted.

(65) "Scratch" means the withdrawal of a horse entered for a race after the time of closing of entries for the race in conformance with 810 KAR Chapter 1.

(66) "Scratch time" means the time set by the racing secretary as a deadline for horsemen to indicate their desire to scratch out of a race.

(67) "Secretary" means the duly appointed and currently serving secretary of the commission.

(68) "Seed pool" means a pool of money funded by patrons wagering on an historical horse race that is used to ensure that all patrons are paid the minimum payout on winning wagers.

(69) "Specimen" means a sample of blood, urine, or other biologic sample taken or drawn from a horse for chemical testing.

(70) "Stakes" means all fees paid by subscribers to an added-money or stakes race for nominating, eligibility, entrance, or starting, as may be required by the conditions of the race. These fees shall be included in the purse.

(71) "Stakes race" means a race which closes more than seventy-two (72) hours in advance of its running and for which subscribers contribute money towards its purse, or a race for which horses are invited by an association to run for a guaranteed purse of \$50,000 or more without payment of stakes. With the exception of stakes races in North America, "stakes race" shall exclude races not listed by The Jockey Club Information System International Cataloguing Standards, Part One (1).

(72) "Steward" means a duly appointed racing official with powers and duties specified in 810 KAR 1:004 serving at a current meeting in the Commonwealth.

(73) "Starter" means a horse in a race when the starting-gate doors open in front of it at the moment the starter dispatches the horses for a race.

(74) "Subscription" means nomination or entry of a horse in a stakes race.

(75) "Takeout" means the total amount of money, excluding breakage and any amounts allocated to a seed pool, withheld from each pari-mutuel pool, as authorized by KRS 230.3615 and 810 KAR Chapter 1.

(76) "Terminal" means any self-service totalizator machine or other mechanical equipment used by a patron to place a pari-mutuel wager on a live or historical horse race.

(77) "Thoroughbred racing" is defined by KRS 230.210(3).

(78) "Totalizator" means the system, including hardware, software, communications equipment, and electronic devices that accepts and processes the cashing of wagers, calculates the odds and prices of the wagers, and records, displays, and stores pari-mutuel wagering information.

(79) "Unplaced" means a horse that finishes a race outside the pari-mutuel payoff.

(80) "Walkover" means a race in which the only starter or all starters represent single ownership.

(81) "Weigh in" means the presentation of a jockey to the clerk of scales for weighing after a race.

(82) "Weigh out" means the presentation of a jockey to the clerk of scales for weighing prior to a race.

(83) "Weight for age" means the standard assignment of pounds to be carried by horses in races at specified distances during specified months of the year, scaled according to the age of the horse as set out in 810 KAR 1:014(12).

(84) "Workout" means the training exercise of a horse on the training track or main track of an association during which the horse is timed for speed over a specified distance.

(85) "Year" means twelve (12) consecutive months beginning with January and ending with December.

Section 2. Severability. In the event that any provision or administrative regulation of this chapter is found to be invalid, the

remaining provisions of this chapter shall not be affected nor diminished thereby.

FRANKLIN S. KLING, JR., Chairman

KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: March 12, 2020

FILED WITH LRC: March 12, 2020

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on May 22, 2020 at 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on May 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jennifer Wolsing, General Counsel, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone +1 (859) 246-2040, fax +1 (859) 246-2039, email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation amends the definition of 'licensed premises' to allow a licensed Thoroughbred racing association to operate an alternate facility with Commission approval.

(b) The necessity of this administrative regulation: This regulation is necessary to expand the Commission's authority so that it can enable a Thoroughbred racing association to operate an alternate facility, which would increase taxable revenue from that racing association.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. KRS 230.370 allows the Commission to promulgate regulations to enforce the provisions of KRS Chapter 230. KRS 230.361 requires the racing commission to promulgate administrative regulations governing and regulating pari-mutuel wagering on horse races.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation expands the Commission's authority to permit a Thoroughbred racing association to operate an alternate facility, in accordance with KRS 230.361.

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

(a) How the amendment will change this existing administrative regulation: This amendment will allow an existing Thoroughbred racing facility to operate one (1) alternate facility with Commission approval.

(b) The necessity of the amendment to this administrative regulation: This amendment will expand the Commission's authority to allow an existing Thoroughbred racing facility to construct one (1) alternate location.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment is consistent with the authority provided in KRS 230.215, 230.260, 230.225, 230.261, 230.361, and 230.370.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of KRS 230.361 by expanding

the Commission's authority to allow Thoroughbred racing associations to operate at alternate locations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Five (5) Thoroughbred racing associations (Turfway Park, Keeneland, Churchill Downs, Ellis Park, and Kentucky Downs) will be affected. Six (6) state and local governments will be affected, as follows: the Commonwealth of Kentucky, Florence (Turfway), Lexington (Keeneland), Louisville (Churchill Downs), Henderson (Ellis Park), and Franklin (Kentucky Downs).

(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 additional action is required. However, if a Thoroughbred racing association wishes to construct an alternate facility, the association may petition the Commission for approval to do so.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This regulation, as amended, is not anticipated to generate any new or additional costs.

(c) As a result of compliance, what benefits will accrue to the entities: Five (5) Thoroughbred racing associations (Turfway Park, Keeneland, Churchill Downs, Ellis Park, and Kentucky Downs) will be allowed to construct alternate facilities at which they can conduct wagering, with Commission approval. State and local governments will benefit from additional tax revenue generated by those alternate facilities.

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs.

(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: This regulation, as amended, is not anticipated to generate any new or additional costs.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional costs.

(9) TIERING: Is tiering applied? Explain why or why not. No. This regulation, as amended, treats all impacted entities the same.

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? Six (6) state and local governments will be affected, as follows: the Commonwealth of Kentucky, Florence (Turfway), Lexington (Keeneland), Louisville (Churchill Downs), Henderson (Ellis Park), and Franklin (Kentucky Downs).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215, 230.260, 230.225, 230.261, and 230.370.

(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? This administrative regulation will generate significant tax revenue for state and local governments, in the event an existing Thoroughbred racing association receives approval to operate an alternate facility.

(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? This administrative regulation will generate significant tax revenue for state and local governments, in the event an existing Thoroughbred racing association receives approval to operate an alternate facility.

(c) How much will it cost to administer this program for the first year? This regulation, as amended, is not anticipated to generate any new or additional costs.

(d) How much will it cost to administer this program for subsequent years? This regulation, as amended, is not anticipated to generate any new or additional costs.

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

Revenues (+/-): This administrative regulation will generate significant tax revenue for state and local governments, in the event an existing Thoroughbred racing association receives approval to operate an alternate facility.

Expenditures (+/-): This regulation, as amended, is not anticipated to generate any new or additional costs.

Other Explanation: NA

PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (Amendment)

810 KAR 2:001. Definitions.

RELATES TO: 810 KAR Chapter 2

STATUTORY AUTHORITY: KRS 230.215, 230.260(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the commission to regulate conditions under which thoroughbred racing shall be conducted in Kentucky. KRS 230.260(8) authorizes the commission to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall be conducted in this state. This administrative regulation defines the terms used in 810 KAR Chapter 2.

Section 1. Definitions.

(1) "Age" means the number of years since a horse was foaled, reckoned as if the horse was foaled on January 1 of the year in which the horse was foaled.

(2) "Arrears" means sums due by a licensee as reflected by his or her account with the horsemen's bookkeeper, including subscriptions, jockey fees, driver fees, forfeitures, and any default incident to KAR Title 810.

(3) "Association" is defined by KRS 230.210(5).

(4) "Authorized agent" means in flat racing a person currently licensed as an agent for a licensed owner, jockey, or jockey apprentice by virtue of notarized appointment of agency filed with the commission.

(5) "Claiming race" means a race in which ownership of a horse participating in the race may be transferred in conformity with [811-KAR 4:050] 810 KAR 4:050 and 810 KAR 5:030.

(6) "Closing" means the time published by the association after which entries for a race will not be accepted by the racing secretary.

(7) "Commission" means:

(a) The Kentucky Horse Racing Commission (formerly known as the Kentucky Horse Racing Authority and defined in KRS 138.511(4)) if used in the context of the administrative agency governing horse racing and pari-mutuel wagering; or

(b) The amount an association is authorized to withhold from a pari-mutuel wager pursuant to KRS 230.3615, if used in the context of pari-mutuel wagering.

(8) "Conditions" means qualifications that determine a horse's eligibility to be entered in a race.

(9) "Dash" means in standardbred racing a race in a single trial or in a series of two (2) or three (3) races governed by one (1) entry fee for the series, in which a horse starts in all dashes with positions drawn for each dash and the number of purse distributions or payouts awarded exceeds the number of starters in the dash.

(10) "Day" means a twenty-four (24) hour period beginning at 12:01 a.m. and ending at midnight.

(11) "Declaration" means:

(a) In flat racing, the withdrawal of a horse entered in a race prior to time of closing of entries for the race in conformance with KAR Title 810; or.

(b) In standardbred racing, the naming of a particular horse as a starter in a particular race.

(12) "Disciplinary action" means action taken by the stewards or the commission for a violation of KRS Chapter 230 or KAR Title 810 and can include:

(a) Refusal to issue or renew a license;

(b) Revocation or suspension of a license;

(c) Imposition of probationary conditions on a license;

(d) Issuance of a written reprimand or admonishment; (e) Imposition of fines or penalties;

(f) Denial of purse money; or

(g) Forfeiture of purse money

(13) "Disqualification" means a ruling of the stewards, judges, or the commission revising the order of finish of a race.

(14) "Draw" means the process of determining post positions by lot.

(15) "Driver" means in standardbred racing a person who is licensed to drive a horse in a race.

(16) "Electronic eligibility" means a computer-generated eligibility certificate that records a horse's racing statistics.

(17) "Entry" means the act of nominating a horse for a race in conformance with KAR Title 810.

(18) "Equipment" means in flat racing accoutrements other than ordinary saddle, girth, pad, saddle cloth, and bridle carried by a horse, and includes riding crop, blinkers, tongue strap, muzzle, hood, noseband, bit, shadow roll, martingale, breast plate, bandages, boots, and racing plates or shoes.

(19) "Extended pari-mutuel meeting" means in standardbred racing a meeting or series of meetings, at which no agriculture fair is in progress, with an annual total of more than six (6) days duration and during which pari-mutuel wagering is permitted.

(20) "Field" or "mutuel field" means a single betting interest involving more than one (1) horse which is not a mutuel entry.

(21) "Foul" means an action by a jockey or driver that tends to hinder another jockey or a horse in the proper running of the race.

(22) "Handicap" means in standardbred racing a race in which allowances are made according to a horse's:

(a) Age;

(b) Sex;

(c) Claiming price; or

(d) Performance.

(23) "Handicap race" means in flat racing a race in which the weights to be carried by the horses are assigned by the association handicapper with the intent of equalizing the chances of winning for all horses entered in the race.

(24) "Handle" means the aggregate of all pari-mutuel pools, excluding refundable wagers.

(25) "Horse" means an equine irrespective of age or sex designation and registered for racing with the applicable breed registry.

(26) "Ineligible" means a horse or person not qualified under KAR Title 810 or conditions of a race to participate in a specified racing activity.

(27) "Inquiry" means an investigation by the stewards or judges of a contest prior to declaring the result of the contest official.

(28) "Jockey" means a rider currently licensed to ride in races

as a jockey, apprentice jockey, amateur jockey, or a provisional jockey permitted by the stewards to ride in three (3) races prior to applying for a license.

(29) "Judge" means a duly appointed racing official with powers and duties specified in 810 KAR 2:050 serving at a current meeting in the Commonwealth.

(30) "Licensed premises" means:

(a) The location and physical plant described in response to question R of the "Commonwealth of Kentucky Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, and Pari-Mutuel Wagering" filed for racing to be conducted in the following year;

~~(b) Licensed premises may also include~~ Real property of an association, if the association receives approval from the commission for a new location at which live racing will be conducted; or

(c) One (1) facility or real property that is owned, leased, or purchased by a licensed association within a sixty (60) mile radius of such association's track but not contiguous to track premises, upon commission approval; and provided that for purposes of subsections (b) and (c), such property is not within a sixty (60) mile radius of another licensed track premise where live racing is conducted and not within a forty (40) mile radius of a simulcast facility, unless any affected track or simulcast facility agrees in writing to permit a noncontiguous facility within the protected geographic area.

(31) "Licensee" means an individual, firm, association, partnership, corporation, trustee, or legal representative that has been duly issued a currently valid license to participate in racing in the Commonwealth.

(32) "Meeting" means the entire period of consecutive days, exclusive of dark days, granted by the commission to a licensed association for the conduct of live horse racing. A meeting shall begin at 10 a.m. of the first racing day and extend through a period ending one (1) hour after the last scheduled race of the last day.

(33) "Month" means calendar month.

(34) "Nomination" means a subscription or entry of a horse in a stakes or early closing race.

(35) "Nominator" means the person in whose name a horse is entered for a stakes race.

(36) "Objection" means a verbal claim of foul in a race lodged by the horse's jockey, driver, trainer, or owner before the race is declared official.

(37) "Official order of finish" means the order of finish of the horses in a contest as declared official by the stewards or judges.

(38) "Official time" means the elapsed time from the moment the first horse crosses the timing beam until the first horse crosses the finish line.

(39) "Owner" means a person who holds, in whole or in part, any right, title, or interest in a horse, or any lessee of a horse, who has been duly issued a currently valid owner's license as a person responsible for the horse.

(40) "Pari-mutuel wagering", "mutuel wagering", or "pari-mutuel system of wagering" means a system or method of wagering approved by the commission in which patrons are wagering among themselves and not against the association and amounts wagered are placed in one or more designated wagering pools and the net pool is returned to the winning patrons.

(41) "Patron" means an individual present at a track or a simulcast facility who observes or wagers on a live or historical horse race.

(42) "Post" means the starting point of a race.

(43) "Post position" means the relative place assigned to each horse, numbered from the inner rail across the track at the starting line, from which each horse is to start a race.

(44) "Post time" means the advertised moment scheduled for the arrival of all horses at the starting point for a race.

(45) "Protest" means a written objection charging that a horse is ineligible to race, alleging improper entry procedures, or citing any act of an owner, trainer, driver, or official prohibited by rules, which, if true, would exclude that horse or driver from racing.

(46) "Prize" means the combined total of any cash, premium, trophy, and object of value awarded to the owners of horses

according to order of finish in a race.

(47) "Purse" means the gross cash portion of the prize for which a race is run.

(48) "Race" means a running contest between horses, ridden by jockeys or driven by drivers at a recognized meeting, during regular racing hours, for a prize.

(49) "Race day" means a period of twenty-four (24) hours beginning at 12:01 a.m. and ending at midnight in which live racing is conducted by an association.

(50) "Racing official" means a racing commission member, commission staff as duties require, and all association racing department employees, as duties require.

(51) "Registration certificate" means the document, racing permit, or virtual certificate issued by the appropriate breed registry identifying the horse for racing.

(52) "Result" means the part of the official order of finish in a race used to determine the pari-mutuel payoff of pools.

(53) "Rulings" means determinations, decisions, or orders of the stewards, judges, or of the commission duly issued in writing and posted. (54) "Scratch" means the withdrawal of a horse entered for a race after the time of closing of entries for the race in conformance with KAR Title 810.

(55) "Scratch time" means the time set by the racing secretary as a deadline for horsemen to indicate their desire to scratch out of a race.

(56) "Simulcasting" is defined by KRS 230.210(19).

(57) "Starter" means:

(a) An official who dispatches the horses from the starting gate; or

(b) A horse in a race when the starting gate doors open in front of it at the moment the starter dispatches the horses for the race.

(58) "Steward" means a duly appointed racing official with powers and duties specified in 810 KAR 2:040 serving at a current meeting in the Commonwealth.

(59) "Subscription" means nomination or entry of a horse in a stakes race.

(60) "Suspended" means withdrawal by the steward, judge, or commission of racing privileges.

(61) "Thoroughbred racing" is defined by KRS 230.210(21).

(62) "Totalizator" means the system, including hardware, software, communications equipment, and electronic devices that accepts and processes the cashing of wagers, calculates the odds and prices of the wagers, and records, displays, and stores pari-mutuel wagering information.

(63) "Year" means twelve (12) consecutive months beginning with January and ending with December.

FRANKLIN S. KLING, JR., Chairman

KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: March 12, 2020

FILED WITH LRC: March 12, 2020

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on May 22, 2020 at 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on May 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jennifer Wolsing, General Counsel, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone +1 (859) 246-2040, fax +1 (859) 246-2039, email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation amends the definition of 'licensed premises' to allow a licensed Thoroughbred or Standardbred racing association to operate an alternate facility with Commission approval. This regulation also fixes one (1) typographical error in the definition of "claiming race." The claiming race definition incorrectly referenced a non-existent regulation, and our amendment references the correct regulation.

(b) The necessity of this administrative regulation: This regulation is necessary to expand the Commission's authority so that it can enable a Thoroughbred or Standardbred racing association to operate an alternate facility, which would increase taxable revenue from that racing association. It is also important to fix the typographical error in the definition of "claiming race" to avoid confusion and misinterpretation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. KRS 230.370 allows the Commission to promulgate regulations to enforce the provisions of KRS Chapter 230. KRS 230.361 requires the racing commission to promulgate administrative regulations governing and regulating pari-mutuel wagering on horse races.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation expands the Commission's authority to permit wagering at a racing association's alternate facility, in accordance with KRS 230.361.

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

(a) How the amendment will change this existing administrative regulation: This amendment will allow an existing Thoroughbred or Standardbred racing facility to operate one (1) alternate facility with Commission approval. This regulation also fixes one (1) typographical error in the definition of "claiming race." The claiming race definition incorrectly referenced a non-existent regulation, and our amendment references the correct regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment will expand the Commission's authority to allow an existing Thoroughbred or Standardbred racing facility to construct one (1) alternate location. It is also important to fix the typographical error in the definition of "claiming race" to avoid confusion and misinterpretation.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment is consistent with the authority provided in KRS 230.215, 230.260, 230.225, 230.261, 230.361, and 230.370.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of KRS 230.361 by expanding the Commission's authority to allow Thoroughbred or Standardbred racing associations to operate at alternate locations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Five (5) Thoroughbred racing associations (Turfway Park, Keeneland, Churchill Downs, Ellis Park, and Kentucky Downs) will be affected. This regulation will also impact two (2) Standardbred racing associations (Oak Grove Race Track and Red Mile). Seven (7) state and local governments will be affected, as follows: the Commonwealth of Kentucky, Florence (Turfway), Lexington (Keeneland and Red Mile), Louisville (Churchill Downs), Henderson (Ellis Park), Oak Grove (Oak Grove Race Track), and Franklin (Kentucky Downs).

(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 additional action

is required. However, if a Thoroughbred or Standardbred racing association wishes to construct an alternate facility, the association may petition the Commission for approval to do so.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This regulation, as amended, is not anticipated to generate any new or additional costs.

(c) As a result of compliance, what benefits will accrue to the entities: Five (5) racing associations (Turfway Park, Keeneland, Churchill Downs, Ellis Park, and Kentucky Downs) will be allowed to construct alternate facilities at which they can conduct wagering, with Commission approval. Two (2) Standardbred racing associations (Oak Grove Race Track and Red Mile) will also be allowed to construct alternate facilities, with Commission approval. State and local governments will benefit from additional tax revenue generated by those alternate facilities.

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs.

(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: This regulation, as amended, is not anticipated to generate any new or additional costs.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional costs.

(9) TIERING: Is tiering applied? Explain why or why not. No. This regulation, as amended, treats all impacted entities the same.

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? Seven (7) state and local governments will be affected, as follows: the Commonwealth of Kentucky, Florence (Turfway), Lexington (Keeneland and Red Mile), Louisville (Churchill Downs), Henderson (Ellis Park), Oak Grove (Oak Grove Race Track) and Franklin (Kentucky Downs).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215, 230.260, 230.225, 230.261, 230.361, and 230.370.

(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? This administrative regulation will generate significant tax revenue for state and local governments, in the event that an existing Thoroughbred or Standardbred racing association obtains approval to operate an alternate facility.

(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? This administrative regulation will generate significant tax revenue for state and local governments, in the event an existing Thoroughbred or Standardbred racing association receives approval to operate an alternate facility.

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

year? This regulation, as amended, is not anticipated to generate any new or additional costs.

(d) How much will it cost to administer this program for subsequent years? This regulation, as amended, is not anticipated to generate any new or additional costs.

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

Revenues (+/-): This administrative regulation will generate significant tax revenue for state and local governments, in the event an existing Thoroughbred or Standardbred racing association receives approval to operate an alternate facility.

Expenditures (+/-): This regulation, as amended, is not anticipated to generate any new or additional costs.

Other Explanation: NA

PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (Amendment)

810 KAR 5:001. Definitions.

RELATES TO: KRS 230.210, 230.215, 230.260, 230.3615

STATUTORY AUTHORITY: KRS 230.215, 230.260(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) grants the commission the authority to regulate conditions under which thoroughbred racing shall be conducted in Kentucky. KRS 230.260(8) grants the commission the authority to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall be conducted in this state. This administrative regulation defines the terms used in 810 KAR Chapter 5.

Section 1. Definitions.

(1) "Added money" means the amount of money, exclusive of trophy, added into a stakes race by an association, a sponsor, a state-bred program, or other fund, and which is in addition to stakes fees paid by subscribers.

(2) "Age" means the number of years since a horse was foaled, reckoned as if the horse was foaled on January 1 of the year in which the horse was foaled.

(3) "Also eligible" means in standardbred racing:

(a) An eligible horse, properly entered, which is not drawn for inclusion in a race, but which becomes eligible according to preference or lot if another horse is scratched prior to the scratch time deadline; or

(b) The next preferred nonqualifier for the finals, or consolation from a set of elimination trials, which becomes eligible if a finalist is scratched by the judges for a rule violation, or is otherwise eligible if written race conditions permit.

(4) "Appeal" means a request for the commission to investigate, consider, and review any decision or ruling of a steward, judge, or official of a meeting.

(5) "ARCI" means the Association of Racing Commissioners International.

(6) "Association" is defined by KRS 230.210(5).

(7) "Claiming race" means a race in which ownership of a horse participating in the race may be transferred in conformity with 810 KAR 5:030.

(8) "Closing" means the time published by the association after which entries for a race will not be accepted by the racing secretary.

(9) "Coggins test" means a blood test used to determine if a horse is positive for Equine Infectious Anemia.

(10) "Commission" means:

(a) The Kentucky Horse Racing Commission if used in the context of the administrative agency governing horse racing and pari-mutuel wagering; or

(b) The amount an association is authorized to withhold from a pari-mutuel wager pursuant to KRS 230.3615, if used in the context of pari-mutuel wagering.

(11) "Condition race" means an overnight race in which

eligibility is determined according to specified conditions, which may include the following:

- (a) Age;
- (b) Sex;
- (c) Earnings;
- (d) Number of starts; or
- (e) Positions of finishes.

(12) "Conditions" means qualifications that determine a horse's eligibility to be entered in a race.

(13) "Coupled entry" means two (2) or more horses in a race that are treated as a single betting interest for pari-mutuel wagering purposes.

(14) "Dash" means in standardbred racing a race in a single trial or in a series of two (2) or three (3) races governed by one (1) entry fee for the series, in which:

(a) A horse starts in all races with positions drawn for each race; and

(b) The number of purse distributions or payouts awarded does exceed the number of starters in the race.

(15) "Day" means any twenty-four (24) hour period beginning at 12:01 a.m. and ending at midnight.

(16) "Declaration" means in standardbred racing the naming of a particular horse as a starter in a particular race.

(17) "Disqualification" means a ruling of the stewards, judges, or the commission revising the order of finish of a race.

(18) "Draw" means the process of determining post positions by lot.

(19) "Driver" means in standardbred racing a person who is licensed to drive a horse in a race.

(20) "Early closing race" means in standardbred racing a race for a definite amount of money in which entries close at least six (6) weeks prior to the race.

(21) "Electronic eligibility" means a computer-generated eligibility certificate that records a horse's racing statistics.

(22) "Elimination heat" means in standardbred racing an individual heat of a race in which the contestants qualify for a final heat.

(23) "Entry" means the act of nominating a horse for a race in conformance with KAR Title 810.

(24) "Extended pari-mutuel meeting" means in standardbred racing a meeting or series of meetings:

- (a) At which no agriculture fair is in progress;
- (b) With an annual total of more than six (6) days duration; and
- (c) During which pari-mutuel wagering is permitted.

(25) "Field" or "mutuel field" means a single betting interest involving more than one (1) horse which is not a mutuel entry.

(26) "Forfeit" means money due by a licensee because of an error, fault, neglect of duty, breach of contract, or alternative ruling of the stewards, judges, or the commission.

(27) "Foul" means any action by any jockey or driver that tends to hinder another jockey or any horse in the proper running of the race.

(28) "Futurity" means in standardbred racing a stake in which the dam of the competing animal is nominated either when in foal or during the year of foaling.

(29) "Handicap" means in standardbred racing a race in which allowances are made according to a horse's:

- (a) Age;
- (b) Sex;
- (c) Claiming price; or
- (d) Performance.

(30) "Horse" means any equine registered for racing with the applicable breed registry, irrespective of age or sex designation.

(31) "Ineligible" means a horse or person not qualified under Title 810 KAR or conditions of a race to participate in a specified racing activity.

(32) "In harness" means, in standardbred racing, that the performance will be to a sulky.

(33) "Judge" means a duly appointed racing official with powers and duties specified in 810 KAR 2:050 serving at a current meeting in the Commonwealth.

(34) "Late closing race" means in standardbred racing a race for a fixed amount of money in which entries close less than six (6)

weeks but more than three (3) days before the race is to be contested.

(35) "Lessee" means a licensed owner whose interest in a horse is a leasehold.

(36) "Licensed premises" means:

(a) The location and physical plant described in response to question S of the "Commonwealth of Kentucky Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, and Pari-Mutuel Wagering" filed for racing to be conducted in the following year; [or]

(b) Real property of an association, if the association receives approval from the commission for a new location at which live racing will be conducted; or

(c) One (1) facility or real property that is owned, leased, or purchased by a licensed association within a sixty (60) mile radius of such association's track but not contiguous to track premises, upon commission approval; and provided that for the purposes of subsections (b) and (c), such property is not within a sixty (60) mile radius of another licensed track premise where live racing is conducted and not within a forty (40) mile radius of a simulcast facility, unless any affected track or simulcast facility agrees in writing to permit a noncontiguous facility within the protected geographic area.

(37) "Licensee" means an individual, firm, association, partnership, corporation, trustee, or legal representative that has been duly issued a currently valid license to participate in racing in the Commonwealth.

(38) "Meeting" means the entire period of consecutive days, exclusive of dark days, granted by the commission to a licensed association for the conduct of live horse racing beginning at 10 a.m. of the first racing day and extending through a period ending one (1) hour after the last scheduled race of the last day.

(39) "Month" means calendar month.

(40) "Mutuel entry" means a single betting interest involving two (2) or more horses entered in the same race and joined for pari-mutuel purposes because of common ties as to ownership or training so that a wager on one (1) horse joined in a mutuel entry is a wager on all horses joined in the same mutuel entry.

(41) "Nomination" means a subscription or entry of a horse in a stakes or early closing race.

(42) "Nominator" means the person in whose name a horse is entered for a stakes race.

(43) "Objection" means a verbal claim of foul in a race lodged by the horse's jockey, driver, trainer, or owner before the race is declared official.

(44) "Official time" means the elapsed time from the moment the first horse crosses the timing beam until the first horse crosses the finish line.

(45) "Overnight race" means a contest for which entries close at a time set by the racing secretary.

(46) "Owner" means any person who holds, in whole or in part, any right, title, or interest in a horse, or any lessee of a horse, who has been duly issued a currently valid owner's license as a person responsible for the horse.

(47) "Pari-mutuel wagering," "mutuel wagering," or "pari-mutuel system of wagering" each means a system or method of wagering approved by the commission in which patrons are wagering among themselves and not against the association and amounts wagered are placed in one (1) or more designated wagering pools and the net pool is returned to the winning patrons.

(48) "Patron" means an individual present at a track or a simulcast facility who observes or wagers on a live or historical horse race.

(49) "Post" means the starting point of a race.

(50) "Post position" means the relative place assigned to each horse, numbered from the inner rail across the track at the starting line, from which each horse is to start a race.

(51) "Post time" means the advertised moment scheduled for the arrival of all horses at the starting point for a race.

(52) "Protest" means a written objection charging that a horse is ineligible to race, alleging improper entry procedures, or citing any act of an owner, trainer, driver, or official prohibited by rules which, if true, would exclude that horse or driver from racing.

(53) "Purse" means the gross cash portion of the prize for which a race is run.

(54) "Purse race" means any race for which entries close at a time designated by the racing secretary, and for which owners of horses entered are not required by its conditions to contribute money toward its purse.

(55) "Race" means a running contest between horses, ridden by jockeys or driven by drivers at a recognized meeting, during regular racing hours, for a prize.

(56) "Race day" means any period of twenty-four (24) hours beginning at 12:01 a.m. and ending at midnight in which live racing is conducted by an association.

(57) "Racing official" means a racing commission member, commission staff, as duties require, and all association racing department employees, as duties require.

(58) "Registration certificate" means the document, racing permit, or virtual certificate issued by the appropriate breed registry identifying the horse for racing.

(59) "Result" means the part of the official order of finish in a race used to determine the pari-mutuel payoff of pools.

(60) "Rulings" means all determinations, decisions, or orders of the stewards or of the commission issued in writing and posted.

(61) "Scratch" means the withdrawal of a horse entered for a race after the time of closing of entries for the race in conformance with Title 810 KAR.

(62) "Scratch time" means the time set by the racing secretary as a deadline for horsemen to indicate their desire to scratch out of a race.

(63) "Simulcasting" is defined by KRS 230.210(19).

(64) "Stable name" means in standardbred racing a name used other than the actual legal name of an owner or lessee and which has been registered with the United States Trotting Association.

(65) "Stake" means in standardbred racing a race which will be contested in a year subsequent to its closing:

(a) In which the money given by the association conducting the race is added to the money contributed by the nominators, all of which, except deductions for breeders or nominator's awards, belongs to the winner or winners; and

(b) In which, except as provided in 810 KAR 5:050, Section 6, all of the money contributed by the nominators belongs to the winner or winners.

(66) "Stakes" mean all fees paid by subscribers to an added-money or stakes race for nominating, eligibility, entrance, or starting, as required by the conditions of the race, with the fees to be included in the purse.

(67) "Starter" means either:

(a) An official who dispatches the horses from the starting gate; or

(b) A horse in a race when the starting gate doors open in front of it at the moment the starter dispatches the horses for the race.

(68) "Subscription" means nomination or entry of a horse in a stakes race.

(69) "Sulky" means a dual-wheel racing vehicle with dual shafts not exceeding the height of the horse's withers.

(70) "Suspended" means withdrawal of racing privileges by the judges or commission.

(71) "USTA" means the United States Trotting Association.

(72) "Year" means twelve (12) consecutive months beginning with January and ending with December.

FRANKLIN S. KLING, JR., Chairman

KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: March 12, 2020

FILED WITH LRC: March 12, 2020

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on May 22, 2020 at 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the

proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on May 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jennifer Wolsing, General Counsel, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone +1 (859) 246-2040, fax +1 (859) 246-2039, email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation amends the definition of 'licensed premises' to allow a licensed Standardbred racing association to operate an alternate facility with Commission approval.

(b) The necessity of this administrative regulation: This regulation is necessary to expand the Commission's authority so that it can enable a Standardbred racing association to operate an alternate facility, which would increase taxable revenue from that racing association.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. KRS 230.370 allows the Commission to promulgate regulations to enforce the provisions of KRS Chapter 230. KRS 230.361 requires the racing commission to promulgate administrative regulations governing and regulating pari-mutuel wagering on horse races.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation expands the Commission's authority to permit wagering at a racing association's alternate facility, in accordance with KRS 230.361.

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

(a) How the amendment will change this existing administrative regulation: This amendment will allow an existing Standardbred racing facility to operate one (1) alternate facility with Commission approval.

(b) The necessity of the amendment to this administrative regulation: This amendment will expand the Commission's authority to allow an existing Standardbred racing facility to construct one (1) alternate location.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment is consistent with the authority provided in KRS 230.215, 230.260, 230.225, 230.261, 230.361, and 230.370.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of KRS 230.361 by expanding the Commission's authority to allow Standardbred racing associations to operate at alternate locations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will impact two (2) Standardbred racing associations (Oak Grove Race Track and Red Mile). Three (3) state and local governments will be affected, as follows: the Commonwealth of Kentucky, Lexington (Red Mile), and Oak Grove (Oak Grove Race Track).

(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 additional action is required. However, if a Standardbred racing association wishes

to construct an alternate facility, the association may petition the Commission for approval to do so.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This regulation, as amended, is not anticipated to generate any new or additional costs.

(c) As a result of compliance, what benefits will accrue to the entities: Two (2) Standardbred racing associations (Oak Grove Race Track and Red Mile) will be allowed to construct alternate facilities with Commission approval. State and local governments will benefit from additional tax revenue generated by those alternate facilities.

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

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs.

(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: This regulation, as amended, is not anticipated to generate any new or additional costs.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional costs.

(9) TIERING: Is tiering applied? Explain why or why not. No. This regulation, as amended, treats all impacted entities the same.

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 Commonwealth of Kentucky, Lexington (Red Mile), and Oak Grove (Oak Grove Race Track) will be affected.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215, 230.260, 230.225, 230.261, 230.361, and 230.370.

(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? This administrative regulation will generate significant tax revenue for state and local governments, in the event that an existing Standardbred racing association obtains approval to operate an alternate facility.

(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? This administrative regulation will generate significant tax revenue for state and local governments, in the event an existing Standardbred racing association receives approval to operate an alternate facility.

(c) How much will it cost to administer this program for the first year? This regulation, as amended, is not anticipated to generate any new or additional costs.

(d) How much will it cost to administer this program for subsequent years? This regulation, as amended, is not anticipated to generate any new or additional costs.

Note: If specific dollar estimates cannot be determined, provide

a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): This administrative regulation will generate significant tax revenue for state and local governments, in the event an existing Standardbred racing association receives approval to operate an alternate facility.

Expenditures (+/-): This regulation, as amended, is not anticipated to generate any new or additional costs.

Other Explanation: NA

PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (Amendment)

810 KAR 8:030. Disciplinary measures and penalties.

RELATES TO: KRS 230.215, 230.260, 230.265, 230.290, 230.300, 230.310, 230.320, 230.361

STATUTORY AUTHORITY: KRS 230.215(2), 230.240(2), 230.260(8), 230.265, 230.320

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the commission to promulgate administrative regulations under which racing shall be conducted in Kentucky. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes the penalty structure for rule violations and also establishes disciplinary powers and duties of the stewards, judges, and the commission.

Section 1. Definitions.

(1) "Associated person" means the spouse of an inactive person, or a companion, family member, employer, employee, agent, partnership, partner, corporation, or other entity whose relationship, whether financial or otherwise, with an inactive person would give the appearance that the other person or entity would care for or train a horse or perform veterinarian services on a horse for the benefit, credit, reputation, or satisfaction of the inactive person.

(2) "Class A drug" means a drug, medication, or substance classified as a Class A drug, medication, or substance in the schedule.

(3) "Class B drug" means a drug, medication, or substance classified as a Class B drug, medication, or substance in the schedule.

(4) "Class C drug" means a drug, medication, or substance classified as a Class C drug, medication, or substance in the schedule.

(5) "Class D drug" means a drug, medication, or substance classified as a Class D drug, medication, or substance in the schedule.

(6) "Companion" means a person who cohabits with or shares living accommodations with an inactive person.

(7) "Inactive person" means a trainer or veterinarian who has his or her license denied or suspended or revoked for thirty (30) or more days pursuant to KAR Title 810 or KRS Chapter 230.

(8) "NSAID" means a nonsteroidal antiinflammatory drug.

(9) "Primary threshold" means the thresholds for phenylbutazone, flunixin, and ketoprofen provided in 810 KAR 8:010, Section 8(1)(a), (b), and (c), respectively.

(10) "Schedule" means the Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance Classification Schedule as provided in 810 KAR 8:020.

(11) "[Secondary threshold] means the thresholds for phenylbutazone, flunixin, and keto-profen provided in 810 KAR 8:040, Section 8(3)(b), (c) and (d), respectively."

(12) "[Withdrawal guidelines]" means the Kentucky Horse Racing Commission Withdrawal Guidelines established in 810 KAR 8:020.

Section 2. General Provisions.

(1) An alleged violation of the provisions of KRS Chapter 230 or KAR Title 810 shall be adjudicated in accordance with this administrative regulation, 810 KAR 9:010, and KRS Chapters 230 and 13B.

(2) If a drug, medication, or substance that is not classified in the schedule is found to be present in a pre-race or post-race sample or possessed or used by a licensee at a location under the jurisdiction of the commission, the commission may establish a classification after consultation with either or both of the Association of Racing Commissioners International and the Racing and Medication Testing Consortium or their respective successors.

(3) The stewards, judges, and the commission shall consider any mitigating or aggravating circumstances properly presented when assessing penalties pursuant to this administrative regulation. Evidence of full compliance with the withdrawal guidelines shall be considered by the stewards, judges, and the commission as a mitigating factor to be used in determining violations and penalties.

(4) A licensee whose license has been suspended or revoked in any racing jurisdiction or a horse that has been deemed ineligible to race in any racing jurisdiction shall be denied access to locations under the jurisdiction of the commission during the term of the suspension or revocation.

(5) A suspension or revocation shall be calculated in calendar days, unless otherwise specified by the stewards, judges, or the commission in a ruling or order.

(6) Notice of the assessment of a penalty, including a written warning, shall be made to the person penalized. The notice and terms of the penalty shall be posted immediately on the official Web site of the commission and sent to the United States Trotting Association, the Association of Racing Commissioners International, or their successors, as applicable, to be posted on their respective official Web sites. If an appeal is pending, that fact shall be so noted.

(7) A horse administered a substance in violation of 810 KAR 8:010 may be required to pass a commission-approved examination as determined by the stewards or judges pursuant to 810 KAR 4:010, Section 10 or 810 KAR 5:010, Section 4, or be placed on the veterinarian's list pursuant to 810 KAR 8:010, Section 18.

(8) To protect the racing public and ensure the integrity of racing in Kentucky, a trainer whose penalty for a Class A violation or for a Class B third offense violation has not been finally adjudicated may, if stall space is available, be required to house a horse that the trainer has entered in a race in a designated stall for the twenty-four (24) hour period prior to post time of the race in which the horse is entered. If the stewards or judges require the trainer's horse to be kept in a designated stall, there shall be twenty-four (24) hour surveillance of the horse by the association, and the cost shall be borne by the trainer.

(9) In addition to the penalties contained in Section 4 of this administrative regulation for the trainer and owner, any other person who administers, is a party to, facilitates, or is found to be responsible for any violation of 810 KAR 8:010 shall be subject to the relevant penalty as provided for the trainer or other penalty as may be appropriate based upon the violation.

(10) A veterinarian who administers, is a party to, facilitates, or is found to be responsible for any violation of KRS Chapter 230 or KAR Title 810 shall be reported to the Kentucky Board of Veterinary Examiners and the state licensing Board of Veterinary Medicine by the stewards or judges.

(11) In accordance with KRS 230.320(6), an administrative action or the imposition of penalties pursuant to this administrative regulation shall not constitute a bar or be considered jeopardy to prosecution of an act that violates the criminal statutes of Kentucky.

(12) If a person is charged with committing multiple or successive overages involving a Class C or Class D drug, medication, or substance, the stewards, judges, or the commission may charge the person with only one (1) offense if the person demonstrates that he or she was not aware that overages were being administered because the positive test results showing the overages were unavailable to the person charged. In this case, the

person alleging that he or she was not aware of the overages shall bear the burden of proving that fact to the stewards, judges, or the commission.

(13) If a penalty for a medication violation requires a horse to be placed on the stewards' list or the judges' list for a period of time, the stewards or judges may waive this requirement if ownership of the horse was legitimately transferred prior to the trainer's notification by the commission of the positive result.

(14) In standardbred racing only, if the penalty is for a driving violation and does not exceed in time a period of five (5) days, the driver may complete the engagement of all horses declared in before the penalty becomes effective. The driver may drive in stake, futurity, early closing and feature races, during a suspension of five (5) days or less, but the suspension shall be extended one (1) day for each date the driver drives in a race.

(15) A horse shall not be permitted to race while owned or controlled wholly or in part by a person whose license has been suspended or revoked.

(16) An association under the jurisdiction of the commission shall not willfully allow:

(a) A person whose license has been suspended or revoked in any jurisdiction to participate in racing;

(b) A horse suspended in any jurisdiction to start in a race or a performance against time; or

(c) The use of its track or grounds by a licensee whose license has been suspended or revoked and has been denied access to the grounds by the stewards or judges in any jurisdiction.

(17) If a person is ejected or excluded from a location under the jurisdiction of the commission, the stewards, judges, and commission director of security shall be notified in writing.

(18) A licensee that has been suspended shall serve any suspension imposed:

(a) During the current race meet, if there are enough remaining days to serve out the suspension;

(b) During the next regularly scheduled race meet at the operating race track where the infraction took place if there are not enough remaining days to serve out the suspension; or

(c) At the discretion of the stewards or judges, during a race meet at another operating track in any jurisdiction where the licensee seeks to engage in the activity for which he or she is licensed if the track where the infraction took place closes before another race meet is held at that track.

(19) A penalty imposed by the governing body of any racing jurisdiction or the USTA States Trotting Association shall be recognized and reciprocally enforced by the commission unless application is made for a hearing before the stewards or judges, during which the applicant shall show cause as to why the penalty should not be enforced against him in Kentucky. The hearing shall be limited to the following issues:

(a) Whether the applicant is the same person who is subject to the penalty imposed;

(b) Whether the USTA or other racing jurisdiction in fact suspended the applicant; and

(c) Determination of the time period of the suspension as imposed by the USTA or other racing jurisdiction.

Section 3. Prior Offenses. A prior offense occurring in Kentucky or any other racing jurisdiction shall be considered by the stewards, judges, and the commission in assessing penalties. The stewards or judges shall attach to a penalty judgment a copy of the offender's prior record listing violations that were committed both inside and outside of Kentucky.

Section 4. Penalties for Class A, B, C, and D Drug Violations and NSAID and Furosemide Violations.

(1) Class A drugs. The penalties established in paragraphs (a) and (b) of this subsection shall apply to a Class A drug violation.

(a) Trainer		
First offense	Second lifetime offense in any racing jurisdiction	Third lifetime offense in any racing jurisdiction
One (1) to three	Three (3) to five (5)	Five (5) year

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(3) year suspension, absent mitigating circumstances; AND \$10,000 to \$25,000 fine, absent mitigating circumstances.	year suspension, absent mitigating circumstances; AND \$25,000 to \$50,000 fine, absent mitigating circumstances.	suspension to a lifetime ban, absent mitigating circumstances; AND \$50,000 to \$100,000 fine, absent mitigating circumstances.
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(b) Owner

First offense	Second lifetime offense in any racing jurisdiction in a horse owned by the same owner	Third lifetime offense in any racing jurisdiction in a horse owned by the same owner
Disqualification and loss of purse; AND Horse shall be placed on the stewards' list or judges' list for sixty (60) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges.	Disqualification and loss of purse; AND Horse shall be placed on the stewards' list or judges' list for 120 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges.	Disqualification and loss of purse; AND Ninety (90) day suspension, absent mitigating circumstances; AND \$50,000 fine, absent mitigating circumstances; AND Horse shall be placed on the stewards' list or judges' list for 180 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges.

(2)(a) The penalties established in paragraphs (b) and (c) of this subsection shall apply to the following:

1. Class B drugs;
2. Gamma amino butyric acid in a concentration greater than 110 nanograms per milliliter; and
3. Cobalt in a concentration greater than fifty (50) parts per billion.

(b) Trainer

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction
Thirty (30) to sixty (60) day suspension, absent mitigating circumstances; AND \$500 to \$1,000 fine, absent mitigating	Sixty (60) to 180 day suspension, absent mitigating circumstances; AND \$1,000 to \$2,500 fine, absent mitigating circumstances.	180 to 365 day suspension, absent mitigating circumstances; AND \$2,500 to \$5,000 fine, absent mitigating circumstances.

circumstances.		
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(c) Owner

First offense	Second offense within a 365-day period in any racing jurisdiction in a horse owned by the same owner	Third offense within a 365-day period in any racing jurisdiction in a horse owned by the same owner
Disqualification and loss of purse; Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges; AND For a cobalt violation, the horse shall be placed on the stewards' list or judges' list until the horse tests below twenty-five (25) parts per billion. The owner shall be responsible for the cost of testing.	Disqualification and loss of purse; AND Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges.	Disqualification and loss of purse; AND Horse shall be placed on the stewards' list or judges' list for forty-five (45) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges.

(3)(a) The penalties established in paragraphs (b) and (c) of this subsection shall apply to a Class C drug violation and an overage of permitted NSAIDs as follows:

1. Phenylbutazone in a concentration greater than three-tenths (0.3)~~five (5.0)~~ micrograms per milliliter;
2. Flunixin in a concentration greater than five (5)~~[400]~~ nanograms per milliliter; and
3. Ketoprofen in a concentration greater than two (2)~~[fifty (50)]~~ nanograms per milliliter.

(b) Trainer

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction
Zero to ten (10) day suspension absent mitigating circumstances; AND \$500 to \$1,500 fine absent mitigating circumstances.	Ten (10) to thirty (30) day suspension absent mitigating circumstances; AND \$1,500 to \$2,500 fine absent mitigating circumstances.	Thirty (30) to sixty (60) day suspension absent mitigating circumstances; AND \$2,500 to \$5,000 fine absent mitigating circumstances.

(c) Owner

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction
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Disqualification and loss of purse; AND Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges.	Disqualification and loss of purse; AND If same horse as first offense, horse shall be placed on the stewards' list or judges' list for forty-five (45) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges.	Disqualification and loss of purse; \$5,000 fine, absent mitigating circumstances; AND If same horse as first and second offenses, horse shall be placed on the stewards' list or judges' list for sixty (60) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges.
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(4)(a) The penalties established in paragraphs (b) and (c) of this subsection shall apply to the following:

1. Overage of furosemide [permitted NSAIDs as follows:

a. ~~Phenylbutazone~~ in a concentration greater than one (1) nanogram [two (2.0) micrograms] per milliliter for horses that are not permitted by 810 KAR 8:010 to receive furosemide within twenty-four (24) hours of the post time of a race in which the horse is entered [through five (5.0) micrograms per milliliter];

b. ~~Flunixin in a concentration greater than twenty (20) nanograms per milliliter through 100 nanograms per milliliter; and~~

c. ~~Ketoprofen in a concentration greater than two (2.0) nanograms per milliliter through fifty (50) nanograms per milliliter];~~

2. Overage of furosemide in a concentration greater than 100 nanograms per milliliter for horses other than those set forth in the preceding paragraph;

3. Furosemide not identified when notice made that the horse would run on furosemide; and

4. Cobalt in a concentration greater than twenty-five (25) parts per billion through fifty (50) parts per billion.

(b) Trainer

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction
Written warning to a \$500 fine, absent mitigating circumstances.	Written warning to a \$750 fine, absent mitigating circumstances.	\$500 to \$1,000 fine, absent mitigating circumstances.

(c) Owner

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction
Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges; AND	Horse may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges.	If same horse as first and second offenses, disqualification and loss of purse; AND Horse may be required to pass a commission-approved examination before being eligible to enter

For a cobalt violation, the horse shall be placed on the stewards' list or judges' list until the horse tests below twenty-five (25) parts per billion. The owner shall be responsible for the cost of testing.		as determined by the stewards or judges.
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(d) If a furosemide violation occurs due solely to the actions or inactions of the commission veterinarian, then the trainer and owner shall not be penalized.

(5) Multiple NSAIDs. The penalties established in paragraphs (a) and (b) of this subsection shall apply to an overage of two (2) permitted NSAIDs: phenylbutazone, flunixin, and keto-profen.

(a) Trainer

	Concentration s of both permitted NSAIDs above the <u>NSAID</u> [primary] threshold.	[Concentration s of one (1) permitted NSAID above the primary threshold and one (1) above the secondary threshold.]	[Concentration s of both permitted NSAIDs below primary threshold and above secondary threshold.]
First offense	Zero to sixty (60) day suspension, absent mitigating circumstances ; AND \$500 to \$1,000 fine, absent mitigating circumstances .	[Zero to fifteen (15) day suspension, absent mitigating circumstances ; AND \$250 to \$750 fine, absent mitigating circumstances.]	[Zero to five (5) day suspension, absent mitigating circumstances ; AND \$250 to \$500 fine, absent mitigating circumstances.]
Second offense within a 365-day period in any racing jurisdiction	Sixty (60) to 180 day suspension, absent mitigating circumstances ; AND \$1,000 to \$2,500 fine, absent mitigating circumstances .	[Fifteen (15) to thirty (30) day suspension, absent mitigating circumstances ; AND \$750 to \$1,500 fine, absent mitigating circumstances.]	[Five (5) to ten (10) day suspension, absent mitigating circumstances ; AND \$500 to \$1,000 fine, absent mitigating circumstances.]
Third offense within a 365-day period in any racing jurisdiction	180 to 365 day suspension, absent mitigating circumstances ; AND	[Thirty (30) to sixty (60) day suspension, absent mitigating circumstances ; AND	[Ten (10) to fifteen (15) day suspension, absent mitigating circumstances ; AND

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	\$2,500 to \$5,000 fine, absent mitigating circumstances.	\$1,500 to \$3,000 fine, absent mitigating circumstances.	\$1,000 to \$2,500 fine, absent mitigating circumstances.
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(b) Owner

	Concentrations of both permitted NSAIDs above the NSAID [primary] threshold.	[Concentrations of one (1) permitted NSAID above the primary threshold and one (1) above the secondary threshold.]	[Concentrations of both permitted NSAIDs below primary threshold and above secondary threshold.]
First offense	Disqualification and loss of purse.	[Disqualification and loss of purse.]	[No Penalty.]
Second offense within a 365-day period in any racing jurisdiction	Disqualification and loss of purse.	[Disqualification and loss of purse.]	[No Penalty.]
Third offense within a 365-day period in any racing jurisdiction	Disqualification and loss of purse.	[Disqualification and loss of purse.]	[No Penalty.]

(6) Class D drugs.

(a) The penalties established in paragraph (b) of this subsection shall apply to a Class D drug violation.

(b) Trainer

One (1) to four (4) offenses within a 365-day period in any racing jurisdiction	Five (5) or more offenses within a 365-day period in any racing jurisdiction
Zero to five (5) day suspension, absent mitigating circumstances;	Five (5) to ten (10) day suspension, absent mitigating circumstances;
AND	AND
\$250 to \$500 fine, absent mitigating circumstances.	\$500 to \$1,000 fine, absent mitigating circumstances.

Section 5. TCO2 Penalties. The penalties established in subsections (1) and (2) of this section shall apply to a violation of 810 KAR 8:010, Section 20(6), (7), or (8).

(1) Trainer

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction	Subsequent offenses within a 365-day period in any racing jurisdiction
Zero to ninety (90) day suspension, absent mitigating circumstances;	Ninety (90) to 180 day suspension, absent mitigating circumstances;	180 to 365 day suspension, absent mitigating circumstances;	One (1) year suspension to lifetime ban, absent mitigating circumstances.

AND	AND	AND	
\$1,000 to \$1,500 fine, absent mitigating circumstance s.	\$1,500 to \$3,000 fine, absent mitigating circumstance s.	\$3,000 to \$5,000 fine, absent mitigating circumstance s.	

(2) Owner

First offense	Second offense within a 365-day period in any racing jurisdiction	Third offense within a 365-day period in any racing jurisdiction	Subsequent offenses within a 365-day period in any racing jurisdiction
Disqualification and loss of purse.	Disqualification and loss of purse; AND If same horse as first offense, horse shall be placed on the stewards' list from fifteen (15) to sixty (60) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.	Disqualification and loss of purse; AND If same horse as first and second offenses, horse shall be placed on the stewards' list from sixty (60) to 180 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.	Disqualification and loss of purse; AND If same horse as first, second, and third offenses, horse shall be placed on the stewards' list from 180 to 365 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards.

Section 6. Shock Wave Machine and Blood Gas Machine Penalties. The penalties established in subsections (1) and (2) of this section shall apply to a violation of 810 KAR 8:010, Section 20(5), (9), or (10).

(1) Trainer

First offense	Second offense in any racing jurisdiction	Third offense in any racing jurisdiction
Thirty (30) to sixty (60) day suspension absent mitigating circumstances;	Sixty (60) to 180 day suspension absent mitigating circumstances;	180 to 365 day suspension absent mitigating circumstances;
AND	AND	AND
\$1,000 to \$5,000 fine absent mitigating circumstances.	\$5,000 to \$10,000 fine absent mitigating circumstances.	\$10,000 to \$20,000 fine absent mitigating circumstances.

(2) Owner

First offense	Second offense in any racing jurisdiction	Third offense in any racing jurisdiction
Disqualification and	Disqualification and	Disqualification and

loss of purse.	loss of purse; AND If same horse as first offense, horse shall be placed on the stewards' list or judges' list from fifteen (15) to sixty (60) days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges.	loss of purse; AND If same horse as first and second offenses, horse shall be placed on the stewards' list or judges' list from sixty (60) to 180 days and may be required to pass a commission-approved examination before being eligible to enter as determined by the stewards or judges.
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Section 7. Persons with a Suspended or Revoked License.

(1) A person shall not train a horse or practice veterinary medicine for the benefit, credit, reputation, or satisfaction of an inactive person. The partners in a veterinary practice may provide services to horses if the inactive person does not receive a pecuniary benefit from those services.

(2) An associated person of an inactive person shall not:

(a) Assume the inactive person's responsibilities at a location under the jurisdiction of the commission;

(b) Complete an entry form for a race to be held in Kentucky on behalf of or for the inactive person or an owner or customer for whom the inactive person has worked; or

(c) Pay or advance an entry fee for a race to be held in Kentucky on behalf of or for the inactive person or an owner or customer for whom the inactive person has worked.

(3) An associated person who assumes the responsibility for the care, custody, or control of an unsuspended horse owned (fully or partially), leased, or trained by an inactive person shall not:

(a) Be paid a salary directly or indirectly by or on behalf of the inactive person;

(b) Receive a bonus or any other form of compensation in cash, property, or other remuneration or consideration;

(c) Make a payment or give remuneration or other compensation or consideration to the inactive person or associated person; or

(d) Train or perform veterinary work for the inactive person or an owner or customer of the inactive person at a location under the jurisdiction of the commission. (4) A person who is responsible for the care, training, or veterinary services provided to a horse formerly under the care, training, or veterinary services of an inactive person shall:

(a) Bill customers directly on his or her bill form for any services rendered at or in connection with any race meeting in Kentucky;

(b) Maintain a personal checking account totally separate from and independent of that of the inactive person to be used to pay expenses of and deposit income from an owner or client of the inactive person;

(c) Not use the services, directly or indirectly, of current employees of the inactive person; and

(d) Pay bills related to the care, training, and racing of the horse from a separate and independent checking account. Copies of the invoices for the expenses shall be retained for not less than six (6) months after the date of the reinstatement of the license of the inactive person or the expiration of the suspension of the inactive person's license.

Section 8. Other Disciplinary Measures.

(1) A person who violates 810 KAR 8:010, Section 20(2), shall be treated the same as a person who has committed a drug violation of the same class, as determined by the commission after consultation with the Equine Drug Research Council.

(2) A person who violates 810 KAR 8:010, Section 20(3), shall be treated the same as a person who has committed a Class A drug violation.

Section 9. Disciplinary Measures by Stewards or Judges. Upon finding a violation or an attempted violation of the provisions of KRS Chapter 230 or KAR Title 810, if not otherwise provided for in this administrative regulation, the stewards or judges may impose one (1) or more of the following penalties:

(1) If the violation or attempted violation may affect the health or safety of a horse or race participant, or may affect the outcome of a race, declare a horse or a licensee ineligible to race or disqualify a horse or a licensee in a race;

(2) Suspend or revoke a person's licensing privileges for a period of time of not more than five (5) years in proportion to the seriousness of the violation and the facts of the case;

(3) Cause a person, licensed or unlicensed, found to have interfered with, or contributed toward the interference of the orderly conduct of a race or race meeting, or person whose presence is found by the stewards or judges to be inconsistent with maintaining the honesty and integrity of the sport of horse racing to be denied access to association grounds or a portion of association grounds; and

(4) Payment of a fine in an amount not to exceed \$50,000 as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case.

Section 10. Disciplinary Measures by the Commission.

(1) Upon finding a violation or an attempted violation of the provisions of KRS Chapter 230 or KAR Title 810, if not otherwise provided for in this administrative regulation, the commission may impose one (1) or more of the following penalties:

(a) If the violation or attempted violation may affect the health or safety of a horse or race participant or may affect the outcome of a race, declare a horse or a licensed person ineligible to race or disqualify a horse or licensed person in a race;

(b) Suspend or revoke a person's licensing privileges for a period of time of not more than five (5) years in proportion to the seriousness of the violation;

(c) Cause a person found to have interfered with or contributed toward the interference of the orderly conduct of a race or race meeting, or person whose presence is found by the commission to be inconsistent with maintaining the honesty and integrity of horse racing, to be denied access to association grounds or a portion of association grounds for a length of time the commission deems necessary;

(d) Payment of a fine of up to \$50,000 as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case.

(2) Upon appeal of a matter determined by the stewards' or judges the commission may:

(a) Order a hearing de novo of a matter determined by the stewards' or judges; and

(b) Reverse or revise the stewards' or judges' ruling in whole or in part, except as to findings of fact by the stewards' or judges' ruling regarding matters that occurred during or incident to the running of a race and as to the extent of disqualification fixed by the stewards or judges for a foul in a race.

FRANKLIN S. KLING, JR., Chairman

KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: March 12, 2020

FILED WITH LRC: March 12, 2020

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on May 22, 2020 at 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public

hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on May 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jennifer Wolsing, General Counsel, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone +1 (859) 246-2040, fax +1 (859) 246-2039, email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the penalties for violations of the requirements and prohibitions concerning the use of medication at race meetings at licensed racing associations in the Commonwealth.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clearly establish requirements and prohibitions concerning the use of medications during race meetings.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. KRS 230.240(2) authorizes the commission to promulgate administrative regulations restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to horses participating in a race. This administrative regulation establishes the requirements, prohibitions, and procedures pertaining to the use of medications on racing days during horse race meetings in Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures that medications are used appropriately on racing days and in a manner that is consistent with the integrity of racing.

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

(a) How the amendment will change this existing administrative regulation: This amendment sets penalties for positive findings of non-steroidal anti-inflammatory drugs (NSAIDs) and more than one NSAID that correspond to amendments being proposed to 810 KAR 8:010 that would expand the limitation on the use of NSAIDs from twenty-four (24) to forty-eight (48) hours before a race in which a horse is entered to race.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to conform to an emerging industry consensus about proper medication usage in horse racing, to improve safety and welfare, and to align the penalty structure with amendments proposed for 810 KAR 8:010.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. KRS 230.240(2) authorizes the commission to promulgate administrative regulations restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to horses participating in a race. The amendment to this administrative regulation establishes additional requirements, prohibitions, and procedures pertaining to the use of medications on and leading up to racing days during horse race meetings in Kentucky.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of KRS 230.215(2), 230.260(8), KRS 230.240(2) by establishing appropriate requirements and prohibitions pertaining to the use of medications in horse racing in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Horse Racing Commission is affected by this administrative regulation. In addition, Kentucky's licensed thoroughbred and standardbred race tracks, and all individual participants in horse racing, are potentially affected by this administrative regulation's establishment of fundamental rules pertaining to the use of medication in horse racing. In the year 2017, the commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to year.

(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: Participants in horse racing, and especially owners, trainers and veterinarians, will be required to adhere to the requirements and rules set forth in this administrative regulation pertaining to the use of medication in horse racing. Trainers, owners, and veterinarians will have to alter their medication administration practices to comply with the amendments to this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: No new costs are anticipated to comply with this administrative regulation, as Kentucky's licensees have operated in accordance with similar requirements for many years.

(c) As a result of compliance, what benefits will accrue to the entities: Participants in racing will benefit from clearly defined rules that enhance the integrity of racing.

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

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Kentucky's racing associations are required by KRS 230.240(2) to pay for the cost of testing for prohibited medications. The Kentucky Horse Racing Commission covers other costs of implementing and enforcing this administrative regulation.

(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 additional fees or funding are necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any new fees or increase any current fees to participate.

(9) TIERING: Is tiering applied? Explain why or why not. Tiering was not applied because this administrative regulation will apply to all similarly situated entities in an equal manner.

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 Kentucky Horse Racing Commission will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215, 230.225, 230.240, 230.260, KRS 230.290, KRS 230.300.

(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? This administrative regulation will not generate revenue for state or local government for the first year.

(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? This administrative regulation will not generate revenue for state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? No funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for subsequent years.

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

Revenues (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: None

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(Amendment)**

907 KAR 1:604. Recipient cost-sharing.

RELATES TO: KRS 205.560, 205.6312, 205.6485, 205.8451, 319A.010, 327.010, 334A.020, 42 C.F.R. 430.10, 431.51, 447.15, 447.20, 447.21, 447.50, 447.52, 447.54, 447.55, 447.56, 447.57, 457.224, 457.310, 457.505, 457.510, 457.515, 457.520, 457.530, 457.535, 457.570, 42 U.S.C. 1396a, 1396b, 1396c, 1396d, 1396e, 1396f-6, 1396r-8, 1396u-1, 1397aa -1397jj

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6312(5), 205.6485(1), 42 C.F.R. 431.51, 447.15, 447.50-447.90, 457.535, 457.560, 42 U.S.C. 1396r-6(b)(5)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. KRS 205.6312(5) requires the cabinet to promulgate administrative regulations that implement copayments for Medicaid recipients. This administrative regulation establishes the provisions relating to Medicaid Program copayments.

Section 1. Definitions. (1) "Community spouse" means the individual who is married to an institutionalized spouse and who:

- (a) Remains at home in the community; and
- (b) Is not:

- 1. Living in a medical institution;
- 2. Living in a nursing facility; or
- 3. Participating in a 1915(c) home and community based services waiver program.

(2) "Copayment" means a dollar amount representing the portion of the cost of a Medicaid benefit that a recipient is required to pay.

(3) "Department" means the Department for Medicaid Services or its designee.

(4) "Dependent child" means a child, including a child gained through adoption, who:

- (a) Lives with the community spouse; and

(b) Is claimed as a dependent by either spouse under the Internal Revenue Service Code.

(5) "DMEPOS" means durable medical equipment, prosthetics, orthotics, and supplies.

(6) "Drug" means a covered drug provided in accordance with

907 KAR 23:010 for which the Department for Medicaid Services provides reimbursement.

(7) "Enrollee" means a Medicaid recipient who is enrolled with a managed care organization.

(8) "Federal Poverty Level" or "FPL" means guidelines that are updated annually in the Federal Register by the United States Department of Health and Human Services under authority of 42 U.S.C. 9902(2).

(9) "KCHIP" means the Kentucky Children's Health Insurance Program.

(10) "Managed care organization" or "MCO" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined by 42 C.F.R. 438.2.

(11) "Medicaid Works individual" means an individual who:

(a) But for earning in excess of the income limit established under 42 U.S.C. 1396d(q)(2)(B) would be considered to be receiving supplemental security income;

(b) Is at least sixteen (16), but less than sixty-five (65), years of age;

(c) Is engaged in active employment verifiable with:

- 1. Paycheck stubs;
- 2. Tax returns;
- 3. 1099 forms; or
- 4. Proof of quarterly estimated tax;

(d) Meets the income standards established in 907 KAR 20:020; and

(e) Meets the resource standards established in 907 KAR 20:025.

(12) "Nonemergency" means a condition that does not require an emergency service pursuant to 42 C.F.R. 447.54.

(13) "Office visit for behavioral health care" means a visit to a clinician or prescriber in which a:

(a) Diagnosis of a behavioral health condition is made;

(b) Treatment decision related to the diagnosis of a behavioral health condition is continued; or

(c) Prescription for a behavioral health condition is:

- 1. Initially issued; or
- 2. Renewed.

(14) "Recipient" is defined by [in] KRS 205.8451(9).

(15) "Visit" means:

(a) 1. An encounter; or

2. A series of encounters that are performed on the same date of service at the same physical location;

(b) Between a recipient or enrollee and a health care provider during which time a covered service is delivered; and

(c) A service that occurs:

- 1. In person; or
- 2. Via telehealth if authorized by 907 KAR 3:170.

Section 2. Copayments. (1) The following table shall establish the:

(a) Copayment amounts that a recipient shall pay, unless the recipient is exempt from cost sharing pursuant to Section 3(1) and (2) of this administrative regulation; and

(b) Corresponding provider reimbursement deductions.

Benefit	Copayment Amount
Acute inpatient hospital admission	\$50
Outpatient hospital or ambulatory surgical center visit	\$4
Emergency room for a nonemergency visit	\$8
DMEPOS	\$4
Podiatry office visit	\$3
Chiropractic office visit	\$3
Dental office visit	\$3
Optometry office visit	\$3
General ophthalmological office visit	\$3
Physician office visit	\$3
Office visit for care by a physician assistant, an advanced practice registered nurse, a certified pediatric and family nurse practitioner, or a nurse	\$3

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midwife	
Office visit for behavioral health care	\$3
Office visit to a rural health clinic	\$3
Office visit to a federally qualified health center or a federally qualified health center look-alike	\$3
Office visit to a primary care center	\$3
Physical therapy office visit	\$3
Occupational therapy office visit	\$3
Speech-language pathology services office visit	\$3
Laboratory, diagnostic, or radiological service	\$3
A Medicaid or KCHIP beneficiary who is younger than nineteen (19) years of age	\$0
Brand name drug	\$4
Generic drug	\$1
Brand name drug preferred over generic drug	\$1
Pharmacy product class: certain antipsychotic drugs	\$1
Pharmacy product class: contraceptives for family planning	\$0
Pharmacy product class: tobacco cessation	\$0
Pharmacy product class: diabetes supplies, blood glucose meters	\$0
Pharmacy product class: Diabetes supplies, all other covered diabetic supplies	\$4 for first fill, \$0 for second fill and beyond, per day
Pharmacy patient attribute: pregnant	\$0
Pharmacy patient attribute: long-term care resident	\$0
Pharmacy patient attribute: under eighteen (18) years of age	\$0
KI-HIPP participant	\$0
[Kentucky HEALTH: Medically Frail	\$0
Kentucky HEALTH: Former Foster Care Youth up to 26 years of age	\$0
Kentucky HEALTH: enrollee current on premiums	\$0]

(2) The full amount of the copayment established in the table in subsection (1) of this section shall be deducted from the provider reimbursement.

(3) The maximum amount of cost-sharing shall not exceed five (5) percent of a family's income for a quarter.

Section 3. Copayment General Provisions and Exemptions.

(1)(a) A Medicaid or KCHIP beneficiary who is younger than nineteen (19) years of age shall be exempt from the copayment or cost-sharing requirements established pursuant to this administrative regulation.

(b) A beneficiary receiving services via a 1915(c) home and community based waiver shall not be subject to cost-sharing established pursuant to this administrative regulation.

(c) A beneficiary receiving services in a long term care facility shall not be subject to cost-sharing established pursuant to this administrative regulation.

(d) In response to a declared emergency relating to or rationally related to healthcare or public health, the department may waive or direct the waiving of all required cost-sharing for all Medicaid beneficiaries or any subpopulation of Medicaid beneficiaries not already exempted from this administrative regulation, including a geographic or age-related subpopulation.

(e) In response to a contracted actuarial analysis demonstrating cost-effectiveness or cost-neutrality, the department may waive or direct the waiving of all cost-sharing for all Medicaid beneficiaries or any subpopulation of Medicaid beneficiaries not already exempted from this administrative regulation, including a geographic or age-related subpopulation. As necessary, the department shall seek federal financial participation and approval to implement this paragraph.

(2)(a) A copayment shall not be imposed for a service,

prescription, item, supply, equipment, or any type of Medicaid benefit provided to a foster care child or a pregnant woman.

(b) The department shall impose no cost sharing for an individual or recipient who is exempt pursuant to 42 C.F.R. 447.56.

(c) A provider shall not deny services to a recipient who:

1. Makes less than or equal to 100 percent of the federal poverty level even if the recipient cannot pay any required cost-sharing; or

2. Makes more than 100 percent of the federal poverty level if:

a. The recipient cannot pay any required cost sharing; and

b. The provider does not have a policy that applies to all patients that allows for denial of services upon nonpayment of a cost sharing obligation.

(3) A pharmacy provider or supplier, including a pharmaceutical manufacturer as defined by [in] 42 U.S.C. 1396-8(k)(5), or a representative, employee, independent contractor, or agent of a pharmaceutical manufacturer, shall not make a copayment for a recipient.

(4) A parent or guardian shall be responsible for a copayment imposed on a dependent child under the age of twenty-one (21).

(5)(a) Any amount of uncollected copayment by a provider from a recipient with income above 100 percent of the Federal Poverty Level at the time of service provision shall be considered a debt to the provider if that is the current business practice for all patients.

(b) Any amount of uncollected copayment by a provider from a recipient with income at or below 100 percent of the Federal Poverty Level at the time of service provision shall not be considered a debt to the provider.

(6) A provider shall:

(a) Collect from a recipient the copayment as imposed by the department for a recipient in accordance with this administrative regulation or have a written process for attempting to collect the copayment;

(b) Not waive a copayment obligation as imposed by the department for a recipient; [and]

(c) Document each attempt to collect the copayment or collect a copayment at the time a benefit is provided or at a later date not to exceed six (6) months from the date of provision of the service; and

(d) Not collect a copayment from an enrollee for a service or item if a copayment is not imposed for that service or item.

(7) Cumulative cost sharing for copayments for a family with children who receive benefits under Title XXI, 42 U.S.C. 1397aa to 1397jj, shall be limited to five (5) percent of the annual family income.

(8) In accordance with 42 C.F.R. 447.15 and 447.20, the department shall not increase its reimbursement to a provider to offset an uncollected copayment from a recipient.

Section 4. Premiums for Medicaid Works Individuals. (1)(a) A Medicaid Works individual shall pay a monthly premium that is:

1. Based on income used to determine eligibility for the program; and

2. Established in paragraph (b) of this subsection.

(b) The monthly premium shall be:

1. Thirty-five (35) dollars for an individual whose income is greater than 100 percent but no more than 150 percent of the FPL;

2. Forty-five (45) dollars for an individual whose income is greater than 150 percent but no more than 200 percent of the FPL; and

3. Fifty-five (55) dollars for an individual whose income is greater than 200 percent but no more than 250 percent of the FPL.

(2) An individual whose family income is equal to or below 100 percent of the FPL shall not be required to pay a monthly premium.

(3) A Medicaid Works individual shall begin paying a premium with the first full month of benefits after the month of application.

(4) Benefits shall be effective with the date of application if the premium specified in subsection (1) of this section has been paid.

(5) Retroactive eligibility pursuant to 907 KAR 20:010, Section 1(3), shall not apply to a Medicaid Works individual.

(6) If a recipient fails to make two (2) consecutive premium payments, benefits shall be discontinued at the end of the first

benefit month for which the premium has not been paid.

(7) A Medicaid Works individual shall be eligible for reenrollment upon payment of the missed premium providing all other technical eligibility, income, and resource standards continue to be met.

(8) If twelve (12) months have elapsed since a missed premium, a Medicaid Works individual shall not be required to pay the missed premium before reenrolling.

Section 5. Provisions for Enrollees. A managed care organization;

(1) Shall not impose a copayment on an enrollee that exceeds a copayment established in this administrative regulation; and

(2) May impose on an enrollee:

(a) A lower copayment than established in this administrative regulation; or

(b) No copayment.

Section 6. Freedom of Choice. (1) In accordance with 42 C.F.R. 431.51, a recipient who is not an enrollee may obtain services from any qualified provider who is willing to provide services to that particular recipient.

(2) A managed care organization may restrict an enrollee's choice of providers to the providers in the provider network of the managed care organization in which the enrollee is enrolled except as established in:

(a) 42 C.F.R. 438.52; or

(b) 42 C.F.R. 438.114(c).

Section 7. Appeal Rights. An appeal of a department decision regarding the Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

~~Section 8. [Applicability of KAR Title 895. If eligible for Kentucky HEALTH, an individual subject to this administrative regulation shall also comply with any applicable requirements established pursuant to KAR Title 895.~~

~~Section 9.] Federal Approval and Federal Financial Participation. The department's copayment provisions and any coverage of services established in this administrative regulation shall be contingent upon:~~

~~(1) Receipt of federal financial participation; and~~

~~(2) Centers for Medicare and Medicaid Services' approval.~~

Section 9[40]. This administrative regulation was found deficient by the Administrative Regulation Review Subcommittee on May 13, 2014.

LISA LEE, Commissioner

ERIC FRIEDLANDER, Acting Secretary

APPROVED BY AGENCY: March 12, 2020

FILED WITH LRC: March 13, 2020 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on May 26, 2020, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by May 18, 2020, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until May 31, 2020. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Donna Little, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott and Donna Little

(1) Provide a brief summary of:

(2)(a) What this administrative regulation does: This administrative regulation establishes the cost sharing requirements and provisions for the Kentucky Medicaid program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the cost sharing requirements and provisions for the Kentucky Medicaid program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the cost sharing requirements and provisions for the Kentucky Medicaid program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the cost sharing requirements and provisions for the Kentucky Medicaid program.

(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 to this administrative regulation exempts 1915(c) Medicaid members and Medicaid members who receive services within a long-term care facility from Medicaid co-pays, waives co-payments under circumstances relating to an emergency declaration, and clarifies additional circumstances where the department may waive copayments in response to an actuarial analysis if any needed federal approval is received. The amendment also more clearly exempts pregnant women from co-pays to reflect current department practice and interpretation of federal regulation. The amendment also will allow for a managed care organization to reduce or eliminate an enrollee's requirement to pay a copay, and prohibit a provider from collecting a copayment for a service or item if a copayment is not imposed. The amendment also removes references to the Kentucky HEALTH program in the table of copayments.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are necessary to clarify Medicaid policy relating to copayments and to clarify Medicaid policy relating to Medicaid cost-sharing and declared emergencies.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by clarifying departmental copayment policy relating to copayments administered by managed care organizations.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by instituting a clear policy on the use of copayments.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All Medicaid recipients who may be subject to cost sharing may be affected by the amendment as well as Medicaid providers for whose services cost sharing is applied. The department estimates that up to 800,000 Medicaid members may be impacted by this administrative regulation.

(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. Enrollees, recipients, and providers will be able to benefit from reduced or eliminated cost sharing if approved by an MCO.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Enrollees and recipients will have to pay copayments as listed in this administrative regulation, unless waived or reduced by an MCO.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Enrollees and recipients will be able to fully access Medicaid benefits, and providers will be able to charge for services provided.

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

(a) Initially: The Department for Medicaid Services (DMS) anticipates costs of no more than \$170,000 as a result of the amendments to this administrative regulation.

(b) On a continuing basis: The Department for Medicaid Services (DMS) anticipates costs of no more than \$170,000 as a result of the amendments to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching funds from general fund appropriations.

(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: Neither an increase in fees nor funding will be necessary to implement the amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendments to this administrative regulation neither establish nor increase any fees.

(9) Tiering: Is tiering applied? Tiering is applied in that some Medicaid recipients are exempt (by federal regulation or law) from most cost sharing obligations.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(14), 42 U.S.C. 1396o, 42 C.F.R. 447.50 through 447.90, 42 C.F.R. 447.15 and 447.20, and 42 C.F.R. 438.108

2. State compliance standards. KRS 205.520(3) and KRS 194A.050(1).

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(14) authorizes a state's Medicaid program to impose cost sharing only as allowed by 42 U.S.C. 1396o. 42 U.S.C. 1396o establishes categories of individuals for whom a state's Medicaid program may not impose cost sharing as well as cost sharing and premium limits.

42 C.F.R. 447.50 through 447.60 also establishes limits on cost sharing (based on income of the given Medicaid eligibility group); Medicaid populations exempt from cost sharing (children, pregnant women, institutionalized individuals for example); services exempt from cost sharing (emergency services, family planning services to child-bearing age individuals); prohibition against multiple cost sharing for one (1) service; a requirement that state Medicaid programs do not increase a provider's reimbursement by the amount of cost sharing; and a requirement that managed care organizations' cost sharing must comply with the aforementioned federal regulations.

42 C.F.R. 438.108 establishes that a managed care organization's cost sharing must comply with the federal cost sharing requirements for Medicaid established in 42 C.F.R. 447.50 through 42 C.F.R. 447.90.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter requirements are not imposed.

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 for Medicaid Services (DMS) will be affected by the amendment to this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. Federal regulations 42 C.F.R. 447.50 through 42 C.F.R. 447.90, 42 C.F.R. 447.15 and 447.20, authorize the action taken by this administrative regulation.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.

(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? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates costs of no more than \$170,000 as a result of the amendments to this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? The Department for Medicaid Services (DMS) anticipates costs of no more than \$170,000 as a result of the amendments to this administrative regulation.

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:

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

NONE

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of March 9, 2020

Call to Order and Roll Call

The March meeting of the Administrative Regulation Review Subcommittee was held on Monday, March 9, at 1:00 p.m. In Room 149 of the Capitol Annex. Representative Hale, Co-Chair, called the meeting to order, the roll call was taken. The minutes of the February 2020 were approved.

Present were:

Members: Senators Julie Raque Adams and Stephen West. Representatives Deanna Frazier, David Hale, and Marylou Marzian.

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

Guests: Sarah Levy, Travis Powell, Council on Postsecondary Education; Rob Akers, Cassie Trueblood, Education Professional Standards Board; Jeremy Branham, Gary Morris, James Orr, Department of Revenue; Joe Bilby, Michelle Shane, Board of Veterinary Examiners; Scott Majors, Board of Physical Therapy; Steven Fields, John Harris, Kate Slankard, Rich Storm, Department of Fish and Wildlife Resources; Robert Stout, Clint Quarles, Department of Agriculture; Carole Catalfo, Melissa Duff, Anthony Hatton, Michael Mullins, Department for Natural Resources; Amy Barker, Corrections Commission; Todd Allen, Department of Education; Michael Kurtsinger, Bryce Roberts, John Wood, Fire Commission; Stephanie Brammer-Barnes, Jill Lee, Adam Mather, Office Inspector General; Jonathan Scott, Department for Medicaid Services.

The Administrative Regulation Review Subcommittee met on Monday, March 9, 2020, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

COUNCIL ON POSTSECONDARY EDUCATION: Interstate Reciprocity Agreements

13 KAR 4:010. State Authorization Reciprocity Agreement. Sarah Levy, executive director, and Travis Powell, vice president and general counsel, represented the council.

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

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Education Professional Standards Board: Alternative Routes to Certification

16 KAR 9:060. The direct training program for preparation of candidates for initial teacher certification. Rob Akers, associate commissioner; Todd Allen, interim general counsel; and Cassie Trueblood, counsel and policy advisor, represented the board.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 7 and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A and make technical changes. Without objection, and with agreement of the agency, the amendments were approved.

16 KAR 9:071. Repeal of 016 KAR 009:050 and 009:070.

FINANCE AND ADMINISTRATION CABINET: Department of Revenue: Inheritance Tax

103 KAR 2:005. Life Mortality Table. Jeremy Branham, tax policy research consultant, Division of Sales and Use Tax; Gary Morris, executive director; and James Orr, III, branch manager, represented the department.

In response to questions by Co-Chair Hale, Mr. Morris stated that changes to these administrative regulations were primarily to remove language that no longer applied and to clarify requirements. The changes were not substantive.

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

Sales and Use Tax; General Exemptions

103 KAR 30:170. Containers, wrapping, and packing materials.

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 requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Selective Excise Tax; Alcoholic Beverages

103 KAR 40:050. Transporter's reports.

BOARDS AND COMMISSIONS: Board of Veterinary Examiners

201 KAR 16:012. Repeal of 201 KAR 016:010, 201 KAR 016:015, 201 KAR 016:020, 201 KAR 016:030, 201 KAR 016:040, 201 KAR 016:050, 201 KAR 016:060, 201 KAR 016:080, 201 KAR 016:090, 201 KAR 016:100, and 201 KAR 016:110. Joe Bilby, counsel; Michelle Shane, executive director; and Dr. Robert Stout, state veterinarian, represented the board.

In response to questions by Co-Chair West, Ms. Shane stated that fee-related administrative regulations in this package included fees that were approved by the board and were the same or less than the current fees. Three (3) new fees were established, with two (2) for new licensure categories and one (1) for printed credentials.

201 KAR 16:500. Code of ethical conduct for veterinarians.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 12, 19, 21, 23, 27, 30, 31, 34, 40, and 43 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to include material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 16:510. Fees for veterinarians.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 16:512. Fees for veterinary technicians.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 16:514. Fees for animal control agencies and animal

euthanasia specialists.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and 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.

201 KAR 16:516. Fees – other fees.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 6 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to include and revise material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 16:520. Approved veterinary colleges; approved programs for veterinary technicians.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 16:530. Examination requirements for veterinarians and veterinary technicians.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 2 to comply with the drafting requirements of KRS Chapter 13A; and (2) to include and revise material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 16:540. Application requirements for veterinarians and veterinary technicians.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 8 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to include and revise material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

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

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 3, 4, and 6 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to include and revise material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 16:560. Certification as an animal euthanasia specialist.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 10 to comply with the drafting requirements of KRS Chapter 13A; (2) to amend Section 1 to establish that the disqualification of applicants based on criminal history shall be subject to the limitations of KRS Chapter 335B; and (3) to include and revise material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 16:570. License renewal for veterinarians and veterinary technicians.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to include and revise material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 16:572. License renewal for registered animal control agencies and animal euthanasia specialists; renewal notice.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to include and revise material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 16:580. Board issued licenses and certificates, inactive and retired statuses.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to include and revise material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 16:590. Continuing education requirements, veterinarians and veterinary technicians.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to include material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 16:600. Prescription and dispensation of drugs for animal use.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 2, 4, and 7 through 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.

201 KAR 16:610. Procedures for grievances, investigations, and administrative charges.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 6 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to include material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

Board of Physical Therapy

201 KAR 22:170. Physical Therapy Compact Commission. Scott Majors, executive director, represented the board.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Game

301 KAR 2:195. Falconry, raptor take, and raptor propagation. Steven Fields, staff attorney; John Harris, bear program coordinator; Kate Slankard, wildlife biologist; and Rich Storm, commissioner, represented the department.

A motion was made and seconded to approve the following amendments: to amend Section 4 to make technical corrections. Without objection, and with agreement of the agency, the amendments were approved.

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301 KAR 2:300. Black bear seasons and requirements.

A motion was made and seconded to approve the following amendments: to amend Sections 3, 6, 8, and 9 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Department of Agriculture: Office of the Commissioner: Livestock Sanitation

302 KAR 20:012. Repeal of 302 KAR 020:030, 302 KAR 020:050, 302 KAR 020:052, 302 KAR 020:66, 302 KAR 020:090, 302 KAR 020:100, and 302 KAR 020:150. Dr. Robert Stout, state veterinarian, and Clint Quarles, attorney, represented the department.

Office of the State Veterinarian: Livestock, Poultry, and Fish

302 KAR 22:010. Authority to inspect, test, identify, remove and dispose of livestock, poultry, and fish.

In response to a question by Co-Chair West, Mr. Quarles stated that the Office of the State Veterinarian has had the authority via statute and administrative regulation to access farms. This change was not granting any new authority regarding farm access.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 22:020. Restriction of transportation of livestock, poultry, and fish.

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

302 KAR 22:040. Carcass transport and composting.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Livestock, Poultry, and Fish

302 KAR 22:070. Restrictions on biological materials in Kentucky.

In response to questions by Co-Chair Hale, Dr. Stout stated that, in many cases, the department would be unaware of the transport of animals with communicable diseases; however, this administrative regulation established authority if the department were made aware of such a situation. Another state, for example, might contact the department to alert of such a transport. Mr. Quarles stated that the General Assembly expanded the department's authority over livestock, poultry, and fish as part of a greater review of functions of the Office of State Veterinarian. This administrative regulation gave Dr. Stout the authority to quarantine and surveil in situations regarding communicable diseases in livestock, poultry, and fish. The department's intent was to create an administrative regulation for each type of animal, eventually including one (1) for fish. Action regarding testing and surveillance of fish would be in conjunction with the Department of Fish and Wildlife Resources because that department had the most regulatory authority in matters regarding fish. The Department of Agriculture did not currently have a framework for the phenotyping of small fish.

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 requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Livestock, Poultry, and Fish

302 KAR 22:080. Feed restrictions.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and STATUTORY AUTHORITY 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.

ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Water: Water Quality

401 KAR 5:091. Repeal of 401 KAR 005:090. Carole Catalfo, policy specialist; Anthony Hatton, commissioner; and Michael Mullins, regulation coordinator, represented the division.

Division for Air Quality: General Standards of Performance

401 KAR 63:010. Fugitive emissions. Melissa Duff, director, and Anthony Hatton, commissioner, represented the division.

In response to questions by Co-Chair West, Ms. Duff stated that this administrative regulation established an observation period and the use of U.S. EPA reference method 22 for measurement purposes. The current version of this administrative regulation was more subjective, and these changes provided clearer standards and consistency across Kentucky. Construction activities and some agricultural activities were exempt.

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

JUSTICE AND PUBLIC SAFETY CABINET: Kentucky State Corrections Commission: Kentucky Community Corrections Grant Program

500 KAR 10:001. Definitions for 501 KAR Chapter 10. Amy Barker, assistant general counsel, represented the commission.

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

500 KAR 10:020. Administration and application procedure for community corrections grant program.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

500 KAR 10:030. Community Corrections Board and Grant Recipient Requirements.

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

500 KAR 10:040. Review for compliance.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; and Section 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

500 KAR 10:050. Prison Industry Enhancement Certification Program.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET:

Kentucky Board of Education: Department of Education: School Terms, Attendance, and Operation

702 KAR 7:125. Pupil attendance. Todd Allen, interim general counsel, represented the department.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3, and 17 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Office of Instruction

704 KAR 3:370. Kentucky framework for personnel evaluation. Rob Akers, associate commissioner; Todd Allen, interim general counsel; and Cassie Trueblood, counsel and policy advisor, represented the office.

In response to questions by Co-Chair West, Mr. Akers stated that the professional standards for educational leaders was based on the national program in order to standardize provisions. The category, education leaders, was expanded to include superintendents, supervisors of instruction, principals, vice-principals, and others. This should create consistency across Kentucky.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 8, 9, and 13 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

COMMUNITY AND TECHNICAL COLLEGE SYSTEM: Kentucky Fire Commission

739 KAR 2:140. Fire department reporting requirements. Michael Kurtsinger, director, and John Wood, attorney, represented the commission.

In response to questions by Co-Chair West, Mr. Kurtsinger stated that this administrative regulation had been approved by the firefighting board and other stakeholder organizations. Smaller fire departments would be able to report to the Kentucky Fire Commission, rather than to the Department for Local Government.

Co-Chair Hale stated that volunteer fire departments were integral to community safety. Without volunteer fire departments, some counties would have difficulty ensuring safety. It was getting difficult to find and retain volunteer firefighters. In response to a question by Co-Chair Hale, Mr. Kurtsinger stated that the commission was beginning firefighter youth programs in efforts to foster interest in youth regarding volunteer firefighting.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 2 through 6 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to add material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Board of Education: Department for Technical Education: Management of the Kentucky TECH System

780 KAR 2:060. Discipline of students. Todd Allen, interim general counsel, represented the department.

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

CABINET FOR HEALTH AND FAMILY SERVICES: Division of Audits and Investigations: Controlled Substances

902 KAR 55:130. Electronic prescribing of controlled substances. Jonathan Scott, regulatory and legislative advisor, represented the division.

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

Department for Medicaid Services: Division of Provider Integrity
907 KAR 5:005. Health Insurance Premium Payment (HIPP) Program.

In response to a question by Senator Raque Adams, Mr. Scott stated that the HIPP program had been approved by CMS for approximately twenty (20) years.

In response to a question by Representative Frazier, Mr. Scott stated that there was no tax benefit for employers at the state level.

A motion was made and seconded to approve the following amendments: to amend Section 6 to specify that a provider cannot refuse to accept a KI-HIPP patient unless the patient's care needs are outside of the regular scope of practice, level of care, or the provider's ability to safely meet the care needs of the individual.

The following administrative regulations were deferred or removed from the March 9, 2020, subcommittee agenda:

STATE BOARD OF ELECTIONS: Forms and Procedures

31 KAR 4:120. Additional and emergency precinct officers.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 2:095. Pharmacist interns.

Board of Dentistry

201 KAR 8:550. Anesthesia and sedation.

Board of Nursing

201 KAR 20:600. Standards for training programs for licensed certified professional midwives.

201 KAR 20:610. Approval process for training programs for licensed certified professional midwives.

201 KAR 20:620. Licensing requirements for licensed certified professional midwives.

201 KAR 20:630. Disciplinary actions for licensed certified professional midwives.

201 KAR 20:640. Requirements for informed consent for licensed certified professional midwives.

201 KAR 20:650. Licensed certified professional midwives permitted medical tests and formulary.

201 KAR 20:660. Licensed certified professional midwives duty to report.

201 KAR 20:670. Licensed certified professional midwives consultation, collaboration, and referral provisions.

201 KAR 20:680. Licensed certified professional midwives client records.

201 KAR 20:690. Licensed certified professional midwives transfer guidelines.

Real Estate Appraisers

201 KAR 30:130. Education provider, instructor, and course.

TOURISM, ARTS AND HERITAGE CABINET: Department of Fish and Wildlife Resources: Game

301 KAR 2:185. Hunter education.

Wildlife

301 KAR 4:090. Taxidermy, cervid meat processors, and the buying and selling of inedible wildlife parts.

GENERAL GOVERNMENT CABINET: Department of Agriculture: Office of the State Veterinarian: Livestock, Poultry, and Fish

302 KAR 22:150. Cervids.

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ENERGY AND ENVIRONMENT CABINET: Department for Natural Resources: Division of Conservation: Administration
416 KAR 1:010. Administration of Kentucky Soil Erosion and Water Quality Cost-Share Fund.

JUSTICE AND PUBLIC SAFETY CABINET: Parole Board
501 KAR 1:040 & E. Parole revocation hearing procedures.

Motorcycle Safety Education Commission
500 KAR 15:010 & E. Motorcycle safety education program.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Division of Driver Licensing: Administration
601 KAR 2:030E. Ignition interlock.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Kentucky Board of Education: Department of Education: Pupil Transportation
702 KAR 5:080. Bus drivers' qualifications, responsibilities, and training.

Office of Learning Support Services
704 KAR 7:090. Homeless children and youth education program and ensuring educational stability of children in foster care.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: Division of Healthcare: Health Services and Facilities
902 KAR 20:036. Operation and services; personal care homes.

Office of Human Resource Management: Division of Employee Management: Administration
920 KAR 1:070. Deaf and hard of hearing services.

Department for Community Based Services: Division of Child Care: Day Care
922 KAR 2:090. Child-care center licensure.

Department for Community Based Services: Division of Child Care: Day Care
922 KAR 2:100. Certification of family child-care homes.

The subcommittee adjourned at 1:40 p.m. The next meeting of the subcommittee is tentatively scheduled for April 13, 2020, at 1 p.m.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(10), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

HOUSE STANDING COMMITTEE ON HEALTH AND FAMILY SERVICES
Meeting of February 27, 2020

The following administrative regulations were available for consideration and placed on the agenda of the House Standing Committee on Health and Family Services for its meeting of February 27, 2020, having been referred to the Committee on January 2, 2020, pursuant to KRS 13A.290(6):

202 KAR 007:020

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the February 27, 2020 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

HOUSE STANDING COMMITTEE ON HEALTH AND FAMILY SERVICES
Meeting of February 27, 2020

The following administrative regulations were available for consideration and placed on the agenda of the House Standing Committee on Health and Family Services for its meeting of February 27, 2020, having been referred to the Committee on February 2, 2020, pursuant to KRS 13A.290(6):

900 KAR 002:050
902 KAR 008:040
902 KAR 008:060
902 KAR 008:080
902 KAR 008:100
902 KAR 008:110
902 KAR 020:450
922 KAR 001:330

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the February 27, 2020 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

SENATE STANDING COMMITTEE ON HEALTH AND WELFARE
Meeting of March 18, 2020

The following administrative regulation were available for consideration and placed on the agenda of the Senate Standing Committee on Health and Welfare for its meeting of March 11, 2020 having been referred to the Committee on March 4, 2020, pursuant to KRS 13A.290(6):

201 KAR 002:020
902 KAR 008:070
902 KAR 008:090
902 KAR 008:096
902 KAR 008:120
902 KAR 008:140
921 KAR 003:050

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the March

11, 2020 meeting, which hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

HOUSE STANDING COMMITTEE ON HEALTH AND WELFARE
Meeting of March 19, 2020

The following administrative regulation were available for consideration and placed on the agenda of the House Standing Committee on Health and Family Services for its meeting of March 19, 2020 having been referred to the Committee on March 4, 2020, pursuant to KRS 13A.290(6):

201 KAR 002:020
902 KAR 008:070
902 KAR 008:090
902 KAR 008:096
902 KAR 008:120
902 KAR 008:140
921 KAR 003:050

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the March 19, 2020 meeting, which hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

CUMULATIVE SUPPLEMENT

Unless otherwise noted, information contained in these indexes relates only to administrative regulations printed in this, the 46th year of the *Administrative Register of Kentucky*, from July 2019 through June 2020.

Locator Index - Effective Dates

J - 2

The Locator Index lists all administrative regulations published during this *Register* year. It also lists the page number on which each regulation is published, the effective date of the regulation after it has completed the review process, and other actions that may affect the regulation. NOTE: Regulations listed under REGISTER YEAR 45 are regulations that were originally published in last year's issues of the *Administrative Register of Kentucky* but had not yet gone into effect when the *Register* year ended.

KRS Index

J - 16

A cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each regulation submitted for publication during this *Register* year.

Certifications Index

J- 27

A list of administrative regulations for which certification letters have been filed pursuant to KRS 13A.3104 during this *Register* year. Additionally, this index includes information regarding regulations that had letters that stated a regulation shall be amended within 18 months.

Technical Amendment Index

J- 27

A list of administrative regulations that have had technical, non-substantive amendments made during this *Register* year. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.2255(2), 13A.312(2), or 13A.320(1)(d). Because these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published in the *Administrative Register of Kentucky*; however, they are usually available for a short time on the Legislative Research Commission's Web site.

Subject Index

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A general index of administrative regulations published during this *Register* year, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	45 Ky.R. Page No.	Effective Date	Regulation Number	45 Ky.R. Page No.	Effective Date
REGISTER YEAR 45					
The administrative regulations listed under Register Year 45 are those administrative regulations that were originally published in Register Year 45 (last year's) of the <i>Administrative Register of Kentucky</i> but had not yet gone into effect when Register Year 46 began.					
SYMBOL KEY:			Amended	2152	
* Statement of Consideration not filed by deadline			101 KAR 002:034		
** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))			Amended	2955	
*** Withdrawn before being printed in Register			As Amended	3390	7-5-2019
IJC Interim Joint Committee			101 KAR 002:180		
(r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.			Amended	3443	
			101 KAR 002:190	3592	
			101 KAR 003:045		
			Amended	2960	
			As Amended	3394	7-5-2019
			102 KAR 001:060		
			Amended	2404	
			As Amended	3398	7-5-2019
			103 KAR 015:050		
			Amended	3445	
			103 KAR 015:060		
			Repealed	3594	9-6-2019
			103 KAR 015:061(r)	3594	9-6-2019
			103 KAR 017:120		
			Repealed	3595	9-6-2019
			103 KAR 017:121(r)	3595	9-6-2019
			200 KAR 003:020	2528	
			Am Comments	3190	
			200 KAR 014:200	3596	11-1-2019
			201 KAR 014:201(r)	3596	11-1-2019
			201 KAR 001:290	2802	
			As Amended	3399	7-5-2019
			201 KAR 001:300		
			Amended	2964	
			As Amended	3401	7-5-2019
			201 KAR 001:310	2804	
			As Amended	3403	7-5-2019
			201 KAR 002:010		
			Amended	3447	
			201 KAR 002:090		
			Amended	3449	
			201 KAR 002:095		
			Amended	3450	
			201 KAR 002:100		
			Amended	3451	
			201 KAR 002:116		
			Amended	3453	
			201 KAR 002:165		
			Amended	3454	11-1-2019
			201 KAR 002:225		
			Amended	3456	
			201 KAR 002:240		
			Amended	3458	
			201 KAR 002:270		
			Amended	3460	
			201 KAR 002:310		
			Amended	3461	
			201 KAR 002:340		
			Amended	3462	
			201 KAR 006:030		
			Amended	3464	
			201 KAR 006:040		
			Amended	3466	
			201 KAR 008:581		
			Amended	3244	9-11-2019
			201 KAR 013:040		
			Amended	3246	
			201 KAR 013:050		
			Amended	3249	8-19-2019
			201 KAR 013:055		
			Amended	3251	
<hr/>					
ORDINARY ADMINISTRATIVE REGULATIONS:					
009 KAR 001:010					
Amended	3439				
009 KAR 001:040					
Amended	3440				
011 KAR 005:145					
Amended	3239	8-2-2019			
016 KAR 003:010					
Repealed	2801	7-5-2019			
016 KAR 003:011(r)	2801				
As Amended	3387	7-5-2019			
016 KAR 003:020					
Repealed	2801	7-5-2019			
016 KAR 003:030					
Repealed	2801	7-5-2019			
016 KAR 003:040					
Repealed	2801	7-5-2019			
016 KAR 003:050					
Repealed	2801	7-5-2019			
016 KAR 003:090	2250				
As Amended	3387	7-5-2019			
016 KAR 8:030					
Amended	3240				
031 KAR 004:120					

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	45 Ky.R. Page No.	Effective Date	Regulation Number	45 Ky.R. Page No.	Effective Date
201 KAR 013:060			302 KAR 016:101		
Amended	3253		Amended	3509	8-22-2019
201 KAR 020:370			302 KAR 016:111		
Amended	3469		Amended	3510	
201 KAR 020:506			302 KAR 016:121		
Amended	3471	8-19-2019	Amended	3511	
201 KAR 022:135			302 KAR 016:131		
Amended	3258	7-19-2019	Amended	3513	
201 KAR 023:150	1459		302 KAR 078:020		
Withdrawn		7-30-2019	Repealed	3598	9-6-2019
201 KAR 025:062(r)	3597		302 KAR 078:021(r)	3598	9-6-2019
Withdrawn		7-2-2019	302 KAR 101:010	3599	
201 KAR 025:090			401 KAR 5:010		
Amended	3472		Amended	3514	
201 KAR 041:020			401 KAR 008:030		
Amended	3475	9-6-2019	Amended	3516	11-1-2019
201 KAR 041:030			401 KAR 008:050		
Amended	3477		Amended	3519	11-1-2019
201 KAR 041:040			401 KAR 011:001		
Amended	3478		Amended	3522	
201 KAR 041:060			401 KAR 011:030		
Amended	3480	9-6-2019	Amended	3524	
201 KAR 041:065			401 KAR 011:040		
Amended	3482		Amended	3527	
201 KAR 041:070			401 KAR 011:050		
Amended	3483		Amended	3531	
201 KAR 041:080			401 KAR 011:060		
Amended	3486		Amended	3535	
201 KAR 046:010			405 KAR 010:001		
Amended	2967		Amended	2979	
As Amended	3403	7-5-2019	405 KAR 010:015		
201 KAR 046:020			Amended	2982	
Amended	2970	7-5-2019	500 KAR 009:011(r)	3354	
201 KAR 046:030			Withdrawn		3-4-2020
Amended	2971	7-5-2019	500 KAR 0015:010	3355	
201 KAR 046:040			601 KAR 002:030		
Amended	2972	7-5-2019	Withdrawn		8-7-2019
201 KAR 046:045			704 KAR 003:303		
Amended	2975	7-5-2019	Amended	2987	
201 KAR 046:081			As Amended	3410	7-5-2019
Amended	2976	7-5-2019	704 KAR 008:060	2810	
202 KAR 003:010			Am Comments	3193	
Amended	3259	9-6-2019	As Amended	3410	7-5-2019
202 KAR 007:520			803 KAR 002:180		
Amended	2760		Amended	2989	6-7-2019
As Amended	3405	7-5-2019	Amended	2522	
202 KAR 007:560			803 KAR 025:270	2534	
Amended	3489		Am Comments	2928	
202 KAR 007:575	2805		804 KAR 007:020		
As Amended	3409	7-5-2019	Amended	3262	
301 KAR 002:030			804 KAR 007:030		
Amended	3260		Repealed	3360	8-2-2019
301 KAR 002:221			804 KAR 007:031(r)	3360	8-2-2019
Amended	3491	8-20-2019	805 KAR 003:100		
301 KAR 002:222			Amended	2991	
Amended	3493	8-20-2019	As Amended	3410	7-5-2019
301 KAR 002:300			805 KAR 003:110		
Amended	3498	8-20-2019	Amended	3538	
301 KAR 003:090			806 KAR 009:001		
Repealed	2996	7-5-2019	Amended	3264	
301 KAR 003:091(r)	2996	7-5-2019	Withdrawn		9-3-2019
302 KAR 016:010			806 KAR 009:020		
Amended	3502		Amended	3265	
302 KAR 016:020			806 KAR 009:030		
Amended	3503		Amended	3539	
302 KAR 016:040			806 KAR 009:060		
Amended	3504		Repealed	3361	1-3-2020
302 KAR 016:070			806 KAR 009:061(r)	3361	1-3-2020
Amended	3506	8-22-2019	806 KAR 009:070		
302 KAR 016:091			Amended	3267	
Amended	3507	8-22-2019	Withdrawn		9-3-2019

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806 KAR 009:110			902 KAR 045:110		
Amended	3541	1-3-2020	Amended	3568	
806 KAR 009:190			Withdrawn		6-28-2019
Amended	3542	1-3-2020	902 KAR 045:120		
806 KAR 009:200			Amended	3571	8-19-2019
Amended	3543	1-3-2020	902 KAR 050:100		
806 KAR 009:310			Repealed	3364	7-19-2019
Amended	3269	1-3-2020	902 KAR 050:101(r)	3364	7-19-2019
806 KAR 009:320			902 KAR 050:110		
Repealed	3362	1-3-2020	Amended	3316	7-19-2019
806 KAR 009:321(r)	3362	1-3-2020	907 KAR 001:022		
806 KAR 009:340			Amended	2784	
Repealed	3362	1-3-2020	Am Comments	3419	8-2-2019
806 KAR 009:341(r)	3600	1-3-2020	907 KAR 001:330		
806 KAR 009:350			Amended	2790	8-2-2019
Amended	3545	1-3-2020	907 KAR 001:340		
806 KAR 010:030			Amended	2793	8-2-2019
Amended	1824		907 KAR 001:441 (r)	2813	8-2-2019
Am Comments	2716		907 KAR 001:436		
As Amended	3411	7-5-2019	Repealed	2813	8-2-2019
806 KAR 010:050			907 KAR 001:604		
Repealed	3363	8-2-2019	Amended	3318	10-4-2019
806 KAR 010:051(r)	3363	8-2-2019	907 KAR 001:755		
806 KAR 015:080			Amended	2796	8-2-2019
Repealed	3601	10-4-2019	907 KAR 005:005		
806 KAR 015:081(r)	3601	10-4-2019	Amended	2496	
806 KAR 047:010			As Amended	3412	7-5-2019
Amended	2993		908 KAR 001:340		
806 KAR 047:020	2997		Repealed	2538	8-19-2019
Repealed	2997	9-6-2019	908 KAR 001:341(r)	2538	8-19-2019
806 KAR 047:021(r)	2997	9-6-2019	908 KAR 001:370		
806 KAR 047:030	2997		Amended	2500	
Repealed	2997	9-6-2019	Am Comments	3195	
807 KAR 005:056			908 KAR 001:372	2539	
Amended	3272		Am Comments	3215	
808 KAR 001:180	2266		908 KAR 001:374	2546	
815 KAR 007:120			Am Comments	3222	
Amended	3274	8-2-2019	910 KAR 002:020		
815 KAR 007:125			Amended	3322	
Amended	3277	8-2-2019	910 KAR 002:040		
831 KAR 001:010			Amended	3573	
Amended	3546		911 KAR 001:010	2814	
831 KAR 001:020			Am Comments	3425	
Amended	3549	9-6-2019	911 KAR 001:020	2819	
831 KAR 001:030			Am Comments	3430	7-19-2019
Amended	3551		911 KAR 001:060	2823	
902 KAR 002:070			Am Comments	3434	7-19-2019
Amended	3279		911 KAR 001:070		
902 KAR 004:030			Repealed	2828	7-19-2019
Amended	3553	8-19-2019	911 KAR 001:071(r)	2828	7-19-2019
902 KAR 004:035			911 KAR 001:080		
Amended	3557	8-19-2019	Repealed	2828	7-19-2019
902 KAR 007:010			921 KAR 001:380		
Amended	3560		Amended	3583	
902 KAR 009:010			921 KAR 002:015		
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902 KAR 015:010			Am Comments	3232	7-5-2019
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902 KAR 020:111			Amended	3340	
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902 KAR 045:065			922 KAR 001:495		
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902 KAR 045:070			922 KAR 001:510		
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902 KAR 045:075					
Amended	3314	9-9-2019			

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-----			IJC	Interim Joint Committee	
SYMBOL KEY:			(r)	Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.	
*	Statement of Consideration not filed by deadline				
**	Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))				
***	Withdrawn before being printed in Register				

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REGISTER YEAR 46					
EMERGENCY ADMINISTRATIVE REGULATIONS			013 KAR 001:020		
(Notes: Emergency regulations filed on or before 7/15/2019 expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)			Amended	550	
Emergency regulations filed after 7/15/2019 expire 270 days from the date filed; or 270 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)			Am Comments	1430	
			As Amended	1791	1-3-2020
030 KAR 008:005E	2206	1-3-2020	013 KAR 004:010		
101 KAR 002:120E	1771	10-22-2019	Amended	1913	
101 KAR 002:210E	1068	09-13-2019	Am Comments	2458	
105 KAR 001:149E	1775	11-15-2019	As Amended	2597	
105 KAR 001:390E	6	6-12-2019	016 KAR 005:020		
Replaced	883	10-4-2019	Amended	2487	
300 KAR 001:010E	1070	8-23-2019	016 KAR 006:031(r)	1376	
301 KAR 001:152E	9	5-24-2019	016 KAR 008:030		
Replaced	150	9-10-2019	As Amended	26	8-2-2019
401 KAR 006:001E	311	7-11-2019	016 KAR 009:060		
Replaced	1465	1-3-2020	Amended	2100	
401 KAR 006:310E	313	7-11-2019	As Amended	2598	
Replaced	1468	1-3-2020	016 KAR 009:071(r)	2160	
401 KAR 006:320E	323	7-11-2019	030 KAR 008:005	2349	
Replaced	1477	1-3-2020	032 KAR 001:060		
401 KAR 006:350E	327	7-11-2019	Repealed	281	10-4-2019
Replaced	1481	1-3-2020	032 KAR 001:061(r)	281	10-4-2019
501 KAR 001:040E	1780	10-21-2019	045 KAR 001:050		
501 KAR 001:071E	1786	10-21-2019	Amended	998	
601 KAR 002:030E	849	8-7-2019	As Amended	1799	3-3-2020
803 KAR 025:271E	333	6-21-2019	101 KAR 001:325	2290	
895 KAR 001:002E	2211	12-27-2019	101 KAR 002:102		
900 KAR 006:075E	2213	1-2-2020	Amended	558	
902 KAR 020:430E	336	6-28-2019	As Amended	1080	11-1-2019
Replaced	1389	12-9-2019	101 KAR 002:120		
902 KAR 045:090E	12	6-14-2019	Amended	1915	
Replaced	264	9-9-2019	As Amended	2686	
907 KAR 001:604E	2593	3-13-2020	101 KAR 002:180		
907 KAR 003:170E	18	6-14-2019	As Amended	407	9-6-2019
Replaced	1423	12-6-2019	101 KAR 002:190		
907 KAR 010:830E	347	6-19-2019	As Amended	409	9-6-2019
Replaced	1154	11-1-2019	101 KAR 002:210		
907 KAR 010:840E	1787	10-30-2019	Amended	1276	
907 KAR 015:005E	356	6-28-2019	101 KAR 002:230		
Replaced	1875	12-9-2019	Amended	44	10-4-2019
907 KAR 015:010E	359	6-28-2019	101 KAR 003:015		
Replaced	1878	12-9-2019	Amended	564	11-1-2019
907 KAR 015:015E	371	6-28-2019	102 KAR 001:032	778	12-6-2019
Replaced	1888	12-9-2019	As Amended	1410	
907 KAR 015:020E	374	6-28-2019	102 KAR 001:035		
Replaced	1889	12-9-2019	Amended	1580	
907 KAR 015:022E	385	6-28-2019	As Amended	2222	
Replaced	1890	12-9-2019	102 KAR 001:036		
907 KAR 015:025E	396	6-28-2019	Amended	1581	
Replaced	1909	12-9-2019	As Amended	1583	
921 KAR 002:015E	2216	12-27-2019	As Amended	2222	
922 KAR 001:320E	400	6-28-2019	102 KAR 001:100		
Replaced	1573	12-9-2019	Amended	1584	
922 KAR 001:330E	855	8-14-2019	As Amended	2223	
Replaced	2093	2-27-2020	102 KAR 001:125		
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			As Amended	2223	
			103 KAR 001:010		
			Amended	46	
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			Amended	48	
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			103 KAR 001:120		

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Amended	50		103 KAR 026:120		
Withdrawn		7-24-2019	Amended	1920	
Amended	2104		As Amended	2389	
As Amended	2601		103 KAR 027:020		
103 KAR 002:030			Amended	1922	
Amended	51	10-4-2019	As Amended	2390	
103 KAR 005:150			103 KAR 027:080		
Repealed	282	10-4-2019	Amended	1284	
103 KAR 005:151(r)	282	10-4-2019	103 KAR 027:100		
103 KAR 005:160			Amended	1285	
Amended	53	10-4-2019	103 KAR 027:120		
103 KAR 007:030			Amended	1923	
Repealed	283	10-4-2019	As Amended	2391	
103 KAR 008:030		10-4-2019	103 KAR 027:140		
Repealed	284	10-4-2019	Amended	69	10-4-2019
103 KAR 008:011(r)	284	10-4-2019	103 KAR 027:180		
103 KAR 008:110			Amended	577	
Amended	54	10-4-2019	As Amended	1088	11-1-2019
103 KAR 008:130			103 KAR 027:220		
Amended	55		Amended	1287	
As Amended	864	10-4-2019	As Amended	2025	
103 KAR 008:140			103 KAR 028:010		
Repealed	285	10-4-2019	Amended	578	
103 KAR 008:141(r)	285	10-4-2019	As Amended	1089	11-1-2019
103 KAR 008:150			103 KAR 030:170		
Repealed	285	10-4-2019	Amended	581	
103 KAR 008:160			As Amended	1091	11-1-2019
Amended	1591		As Amended	2602	
*Withdrawn		1-15-2020	103 KAR 028:090		
103 KAR 008:170	1718		Amended	1288	
As Amended	2225		103 KAR 030:260		
103 KAR 015:050	3445		Repealed	289	10-4-2019
As Amended	865	10-4-2019	103 KAR 030:261(r)	289	10-4-2019
103 KAR 016:200			103 KAR 030:170		
Amended	57		Amended	2105	
As Amended	866	10-4-2019	103 KAR 030:270		
103 KAR 016:250			Amended	1289	
Amended	60		As Amended	2025	
As Amended	868	10-4-2019	103 KAR 031:020		
103 KAR 016:400	286		Amended	1595	
As Amended	875	10-4-2019	103 KAR 031:030		
103 KAR 018:150			Amended	70	
Amended	1593		As Amended	877	10-4-2019
103 KAR 025:050			103 KAR 031:080		
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Amended	1278		Amended	1598	
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103 KAR 025:131			Amended	72	
Amended	570		As Amended	878	10-4-2019
As Amended	1084	11-1-2019	103 KAR 031:200		
103 KAR 026:010			Amended	1599	
Amended	67	10-4-2019	As Amended	2226	
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Amended	1281		Amended	2107	
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103 KAR 026:070			103 KAR 041:031(r)	1378	
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103 KAR 026:080			Amended	1602	
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103 KAR 043:010			Am Comments	1180	
Amended	1606		As Amended	1806	12-16-2019
103 KAR 043:051(r)	1719		201 KAR 011:030		
103 KAR 043:101(r)	1996		Repealed	1805	12-16-2019
105 KAR 001:149	1997		201 KAR 011:045		
As Amended	2391		Repealed	1805	12-16-2019
105 KAR 001:200			201 KAR 011:062		
Amended	74		Repealed	1805	12-16-2019
As Amended	879	10-4-2019	201 KAR 011:090		
105 KAR 001:250			Repealed	1805	12-16-2019
Amended	1925		201 KAR 011:095		
As Amended	2395		Repealed	1805	12-16-2019
105 KAR 001:390			201 KAR 011:100		
Amended	76		Repealed	1805	12-16-2019
As Amended	883	10-4-2019	201 KAR 011:105		
105 KAR 001:445	2001		Amended	86	
As Amended	2396		Am Comments	1183	
200 KAR 003:020			As Amended	1808	12-16-2019
As Amended	28	8-2-2019	201 KAR 011:110		
200 KAR 006:015			Repealed	1805	12-16-2019
As Amended	1800	3-3-2020	201 KAR 011:115		
201 KAR 001:100			Repealed	1805	12-16-2019
Amended	1001		201 KAR 011:121		
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201 KAR 001:190			Am Comments	1438	
Amended	1004		As Amended	1810	
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201 KAR 002:050	2682		201 KAR 011:135		
201 KAR 002:010			Repealed	1805	12-16-2019
As Amended	410	8-19-2019	201 KAR 011:145		
201 KAR 002:020			Repealed	1805	12-16-2019
Amended	1926	3-19-2020	201 KAR 011:147		
201 KAR 002:090			Repealed	1805	12-16-2019
As Amended	410	8-19-2019	201 KAR 011:170		
201 KAR 002:100			Amended	588	
As Amended	411	8-19-2019	Am Comments	1444	
201 KAR 002:116			As Amended	1814	12-16-2019
As Amended	412	8-19-2019	201 KAR 011:175		
201 KAR 002:175	2683		Repealed	1805	12-16-2019
201 KAR 002:225			201 KAR 011:180		
As Amended	412	8-19-2019	Repealed	1805	12-16-2019
201 KAR 002:230	2292		201 KAR 011:190		
201 KAR 002:240			Amended	596	
As Amended	413	8-19-2019	Am Comments	1453	
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201 KAR 002:340			Repealed	1805	12-16-2019
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Amended	80		Repealed	1805	12-16-2019
Am Comments	1177		201 KAR 011:220		
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201 KAR 008:550			Am Comments	1463	
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201 KAR 010:050			Repealed	1805	12-16-2019
Amended	1607		201 KAR 011:232		
201 KAR 010:080			Repealed	1805	12-16-2019
Amended	1608		201 KAR 011:235		
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201 KAR 011:250			Withdrawn	*	9-13-2019
Repealed	1805	12-16-2019	201 KAR 016:214	790	
201 KAR 011:300			Withdrawn	*	9-13-2019
Repealed	1805	12-16-2019	201 KAR 016:216	791	
201 KAR 011:350			Withdrawn	*	9-13-2019
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Repealed	1805	12-16-2019	201 KAR 016:230	794	
201 KAR 011:410			Withdrawn	*	9-13-2019
Repealed	1805	12-16-2019	201 KAR 016:240	795	
201 KAR 011:420			Withdrawn	*	9-13-2019
Repealed	290	12-16-2019	201 KAR 016:250	797	
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Repealed	1805	12-16-2019	201 KAR 016:270	801	
201 KAR 011:450			Withdrawn	*	9-13-2019
Repealed	1805	12-16-2019	201 KAR 016:272	802	
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Repealed	1805	12-16-2019	201 KAR 016:280	804	
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Amended	608		Withdrawn	*	9-13-2019
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201 KAR 012:100			201 KAR 016:400	811	
Amended	2489		Withdrawn	*	9-13-2019
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----- SYMBOL KEY:

- * Statement of Consideration not filed by deadline
- ** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
- *** Withdrawn before being printed in Register
- IJC Interim Joint Committee
- (r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

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189A.440	601 KAR 002:030E		907 KAR 015:010
189A.500	601 KAR 002:030E		907 KAR 015:015
189.540	702 KAR 005:080		907 KAR 015:020
194A	921 KAR 002:015		907 KAR 015:022
194A.005	920 KAR 001:070		907 KAR 015:025
	922 KAR 001:320	205.559	907 KAR 003:170
	922 KAR 001:330	205.560	806 KAR 017:480
	922 KAR 001:565		907 KAR 001:604
194A.025	907 KAR 015:005		907 KAR 003:170
194A.030	920 KAR 001:070	205.565	907 KAR 010:830
	922 KAR 001:320		907 KAR 010:840
194A.050	902 KAR 008:110	205.637	907 KAR 010:830
	902 KAR 045:065		907 KAR 010:840
	902 KAR 045:070	205.638	907 KAR 010:830
	922 KAR 001:330		907 KAR 010:840
	922 KAR 001:565	205.639	907 KAR 010:830
	922 KAR 002:100		907 KAR 010:840
194A.060	907 KAR 003:170	205.6312	907 KAR 001:604
	920 KAR 001:070	205.640	907 KAR 010:830
	922 KAR 001:560		907 KAR 010:840
194A.125	907 KAR 003:170	205.641	907 KAR 010:830
196	501 KAR 006:020	205.6405	907 KAR 010:840
	501 KAR 006:060	205.6406	907 KAR 010:840
	501 KAR 006:110	205.6407	907 KAR 010:840
	501 KAR 006:140	205.6408	907 KAR 010:840
196.035	501 KAR 006:280	205.6485	907 KAR 001:604
196.700 – 196.705	500 KAR 010:050	205.712	601 KAR 002:030E
196.700 – 196.736	500 KAR 010:001	205.8451	907 KAR 001:604
	500 KAR 010:020		907 KAR 015:005
	500 KAR 010:030	209.020	921 KAR 002:015
	500 KAR 010:040		922 KAR 001:320
197	501 KAR 006:020	209.550	902 KAR 002:065
	501 KAR 006:060	209.552	902 KAR 002:065
	501 KAR 006:110	209A.020	922 KAR 001:320
	501 KAR 006:140	210.005	902 KAR 020:430
197.020	501 KAR 006:280	211.005	902 KAR 045:065
197.105	500 KAR 010:050		902 KAR 045:070
198B.050	815 KAR 020:195	211.015	902 KAR 008:040
198B.260	902 KAR 020:280		902 KAR 045:065
	902 KAR 020:430		902 KAR 045:070
199.011	922 KAR 001:320	211.025	902 KAR 045:065
	922 KAR 001:560		902 KAR 045:070
	922 KAR 001:565	211.090	902 KAR 002:065
	922 KAR 002:090		902 KAR 008:096
	922 KAR 002:100		902 KAR 008:100
199.462	922 KAR 001:565	211.170	902 KAR 008:040
199.470 - 199.590	922 KAR 001:565		902 KAR 008:060
199.480	922 KAR 001:560		902 KAR 008:070
199.505	922 KAR 001:560		902 KAR 008:080
199.555	101 KAR 002:120		902 KAR 008:090
	922 KAR 001:320		902 KAR 008:096
199.557	922 KAR 001:320		902 KAR 008:100
199.892	922 KAR 002:090		902 KAR 008:110
199.894	922 KAR 002:090		902 KAR 008:120
	922 KAR 002:100		902 KAR 008:140
199.895	922 KAR 002:090	211.180	902 KAR 002:065
	922 KAR 002:100	211.684	922 KAR 001:330
199.8951	922 KAR 002:100	211.760	902 KAR 045:065
199.896 - 199.898	922 KAR 002:090	211.892	805 KAR 001:060
	922 KAR 002:100	211.893	805 KAR 001:060
199.8982	922 KAR 002:100	211.1751	902 KAR 008:040
199.990	922 KAR 001:560		902 KAR 008:060

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	902 KAR 008:090	217B	302 KAR 031:040
	902 KAR 008:096		302 KAR 050:020
	902 KAR 008:100		302 KAR 050:055
211.1752	902 KAR 008:060		302 KAR 050:060
211.1755	902 KAR 008:060	217B.555	902 KAR 045:090
	902 KAR 008:090	217B.990	902 KAR 045:090
	902 KAR 008:110	217C.010	902 KAR 050:005
212.040	902 KAR 008:080	217C.070	902 KAR 050:003
212.170	902 KAR 008:040	218A.172	201 KAR 020:057
	902 KAR 008:060	218A.182	902 KAR 055:130
	902 KAR 008:070	218A.205	201 KAR 002:020
	902 KAR 008:090		201 KAR 020:050
	902 KAR 008:096		201 KAR 020:057
	902 KAR 008:100		201 KAR 008:540
	902 KAR 008:110	223.170	401 KAR 006:211
	902 KAR 008:120	223.180	401 KAR 006:211
	902 KAR 008:140	223.190	401 KAR 006:211
231.230	902 KAR 008:140	223.210	401 KAR 006:211
212.850	902 KAR 008:080	223.400	401 KAR 006:001
212.870	902 KAR 008:040	223.400-223.460	401 KAR 006:001
	902 KAR 008:060		401 KAR 006:310
	902 KAR 008:070		401 KAR 006:320
	902 KAR 008:080		401 KAR 006:350
	902 KAR 008:090	223.991	401 KAR 006:001
	902 KAR 008:096		401 KAR 006:310
	902 KAR 008:100		401 KAR 006:320
	902 KAR 008:110		401 KAR 006:350
	902 KAR 008:120	224	401 KAR 005:091
	902 KAR 008:140	224.071	405 KAR 007:050
214.010	902 KAR 002:065	224.01-300	103 KAR 030:261
	922 KAR 002:090	224.1-310	103 KAR 030:261
	922 KAR 002:100	224.1-010	401 KAR 010:001
214.036	922 KAR 001:330		401 KAR 010:026
	922 KAR 002:090		401 KAR 010:029
	922 KAR 002:100		401 KAR 010:030
214.540	902 KAR 021:020		401 KAR 010:031
214.542	902 KAR 021:020	224.1-300	103 KAR 008:170
214.543	902 KAR 021:020	224.1-310	103 KAR 008:170
216.380	907 KAR 010:830	224.1-400	401 KAR 010:001
	907 KAR 010:840		401 KAR 010:026
216.510	900 KAR 002:050		401 KAR 010:029
	902 KAR 002:065		401 KAR 010:030
216.515	902 KAR 002:065		401 KAR 010:031
216.525	900 KAR 002:050	224.1-405	401 KAR 006:350
216.530	902 KAR 002:065	224.10-010	401 KAR 006:320
	921 KAR 002:015	224.10-100	401 KAR 006:320
216.555	900 KAR 002:050		401 KAR 058:005
216.557	900 KAR 002:050		401 KAR 052:100
	921 KAR 002:015	224.10-110	401 KAR 006:211
216.560	900 KAR 002:050	224.10-410	400 KAR 001:110
216.750	921 KAR 002:015	224.10-410 – 224.10-470	401 KAR 006:320
216.765	921 KAR 002:015	224.16-050	401 KAR 010:001
216.875	902 KAR 020:280		401 KAR 010:026
216.880	902 KAR 020:280		401 KAR 010:029
216.885	902 KAR 020:280		401 KAR 010:030
216B	921 KAR 002:015		401 KAR 010:031
216B.010	900 KAR 006:075	224.16-070	401 KAR 010:001
216B.015	900 KAR 002:050		401 KAR 010:026
	900 KAR 006:075		401 KAR 010:029
216B.020	902 KAR 020:370		401 KAR 010:030
216B.040	900 KAR 006:075		401 KAR 010:031
216B.042	902 KAR 020:450	224.20	401 KAR 063:010
216B.050	902 KAR 020:430	224.10-100	401 KAR 063:010
216B.062	900 KAR 006:075	224.20-100	401 KAR 051:010
216B.090	900 KAR 006:075		401 KAR 052:100
216B.095	900 KAR 006:075		401 KAR 058:005
216B.105	902 KAR 020:430	224.20-110	401 KAR 051:010
216B.115	900 KAR 006:075		401 KAR 052:100
216B.155	806 KAR 017:480		401 KAR 058:005
216B.455	900 KAR 006:075	224.20-120	401 KAR 051:010
216B.990	900 KAR 006:075		401 KAR 052:100
217.005 – 217.215	902 KAR 045:090		401 KAR 058:005
217.290	902 KAR 045:090	224.20-300	401 KAR 058:005

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224.20-320	401 KAR 058:005	241.021	804 KAR 010:040
224.43-010 – 224.43-815	401 KAR 006:350	243.020	103 KAR 040:050
224.46-012 – 224.46-870	401 KAR 006:350	243.200	103 KAR 040:050
224.60-100 – 224.60-160	401 KAR 006:350	243.720	103 KAR 040:091
224.70-100 – 224.70-140	401 KAR 010:001	243.850	103 KAR 040:050
	401 KAR 010:026	244.150	103 KAR 040:010
	401 KAR 010:029	246.030	302 KAR 045:010
	401 KAR 010:030	246.250	302 KAR 015:020
	401 KAR 010:031		302 KAR 015:030
224.71-100 – 224.71-145	401 KAR 010:001	246.650	302 KAR 045:010
	401 KAR 010:026	246.660	302 KAR 045:010
	401 KAR 010:029	246.990	302 KAR 045:010
	401 KAR 010:030	247	302 KAR 034:011
	401 KAR 010:031		302 KAR 035:011
224.73-100 – 224.30-120	401 KAR 010:001		302 KAR 036:011
	401 KAR 010:026	247.220	302 KAR 015:010
	401 KAR 010:029	257	302 KAR 020:011
	401 KAR 010:030		302 KAR 020:012
	401 KAR 010:031		302 KAR 020:013
224.73-100 – 224.30-120	416 KAR 001:010		302 KAR 022:050
224.99-010	401 KAR 058:005	257.020	302 KAR 021:011
227.550	103 KAR 027:100		302 KAR 022:010
230	810 KAR 001:001		302 KAR 022:020
	810 KAR 002:001		302 KAR 022:030
230.210	810 KAR 005:001		302 KAR 022:070
230.210 – 230.375	811 KAR 001:250		302 KAR 022:080
230.215	810 KAR 004:030		302 KAR 022:130
	810 KAR 005:001		302 KAR 022:150
	810 KAR 005:060	257.030	302 KAR 021:011
	810 KAR 005:070		302 KAR 022:010
	810 KAR 007:040		302 KAR 022:030
	810 KAR 008:010		302 KAR 022:040
	810 KAR 008:030		302 KAR 022:130
	810 KAR 008:070		302 KAR 022:150
230.225	810 KAR 008:010	257.080	302 KAR 021:011
	810 KAR 008:070		302 KAR 022:030
230.240	810 KAR 004:030		302 KAR 022:130
	810 KAR 005:070		302 KAR 022:150
	810 KAR 007:040	257.160	302 KAR 022:040
	810 KAR 008:010	260	302 KAR 010:011
	810 KAR 008:070		302 KAR 050:012
230.260	810 KAR 005:001	260.010	302 KAR 037:010
	810 KAR 005:060	260.020	302 KAR 045:010
	810 KAR 008:030	260.030	302 KAR 045:010
230.265	810 KAR 008:010	260.580	302 KAR 010:025
	810 KAR 008:030	260.620	302 KAR 010:015
	810 KAR 008:070		302 KAR 010:100
230.280	810 KAR 005:070	260.850 – 260.869	302 KAR 050:020
230.290	810 KAR 004:030		302 KAR 050:030
	810 KAR 005:070		302 KAR 050:050
	810 KAR 008:010		302 KAR 050:055
	810 KAR 008:030		302 KAR 050:060
	810 KAR 008:070	261	302 KAR 020:014
230.300	810 KAR 005:070		302 KAR 022:050
	810 KAR 008:030	262.010 – 262.660	416 KAR 001:010
230.310	810 KAR 004:030	273.161 – 273.405	300 KAR 001:010
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	810 KAR 008:030	278.548	920 KAR 001:070
230.320	810 KAR 004:030	286.4	808 KAR 001:170
	810 KAR 005:070	286.8-010	808 KAR 001:170
	810 KAR 008:010	286.8-020	808 KAR 001:170
	810 KAR 008:030	286.8-030	808 KAR 001:170
	810 KAR 008:070	286.8-032	808 KAR 001:170
230.361	810 KAR 008:030	286.8-034	808 KAR 001:170
230.3651	810 KAR 005:001	286.8-036	808 KAR 001:170
230.370	810 KAR 008:070	286.8-060	808 KAR 001:170
230.770	810 KAR 007:040	286.8-070	808 KAR 001:170
230.802	810 KAR 007:040	286.8-080	808 KAR 001:170
230.990	810 KAR 007:040	286.8-090	808 KAR 001:170
	811 KAR 001:250	286.8-255	808 KAR 001:170
237.109	902 KAR 008:100	286.8-260	808 KAR 001:170
237.115	902 KAR 008:100	286.8-290	808 KAR 001:170
241.067	804 KAR 010:040	286.9-010	808 KAR 001:170

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	808 KAR 001:170	304.99-020	806 KAR 003:230
286.9-030	808 KAR 009:050	309.080	907 KAR 015:005
	808 KAR 001:170	309.130	902 KAR 020:430
	808 KAR 009:050		907 KAR 015:005
286.9-040	808 KAR 001:170	309.300 - 309.319	920 KAR 001:070
	808 KAR 009:050	311.530-311.620	201 KAR 009:270
286.9-050	808 KAR 001:170	311.571	902 KAR 020:280
	808 KAR 009:050	311.646	922 KAR 002:100
286.9-060	808 KAR 001:170	311.840	907 KAR 015:005
	808 KAR 009:050	311.860	902 KAR 020:430
286.9-070	808 KAR 009:050	311.990	201 KAR 009:270
286.9-071	808 KAR 001:170	311A.015	202 KAR 007:020
	808 KAR 009:050	311A.020	202 KAR 007:020
286.9-073	808 KAR 001:170	311A.030	202 KAR 007:555
	808 KAR 009:050	311A.145	202 KAR 007:020
286.9-080	808 KAR 001:170	311A.190	202 KAR 007:555
	808 KAR 009:050	313.021	201 KAR 008:590
286.9-104	808 KAR 009:050	313.035	201 KAR 008:550
304.1-040	806 KAR 010:061	313.060	201 KAR 008:540
304.17A-005	806 KAR 017:480	313.085	201 KAR 008:540
304.17A-500	806 KAR 017:480	314.011	907 KAR 015:005
304.17A-545	806 KAR 017:480		922 KAR 002:090
304.17A-575	806 KAR 017:480		922 KAR 002:100
304.17A-576	806 KAR 017:480		201 KAR 020:057
304.2-110	806 KAR 010:061		201 KAR 020:162
304.2-140	806 KAR 047:010	314.031	201 KAR 020:162
304.4-010	806 KAR 009:025	314.041	201 KAR 020:230
	806 KAR 009:221		902 KAR 020:280
	806 KAR 009:265		902 KAR 020:370
304.5-070	806 KAR 005:060	314.042	201 KAR 020:057
304.5-140	806 KAR 005:025		902 KAR 020:370
304.7-010 - 304.7-350	806 KAR 007:021		902 KAR 020:430
304.7-361	806 KAR 007:031	314.051	201 KAR 020:230
304.9-030	806 KAR 009:221		902 KAR 020:370
304.9-105	806 KAR 009:025	314.071	201 KAR 020:162
	806 KAR 009:221		201 KAR 020:230
304.9-130	806 KAR 009:025		902 KAR 020:370
304.9-150	806 KAR 009:025	314.073	201 KAR 020:230
304.9-160	806 KAR 009:025	314.091	201 KAR 020:162
	806 KAR 009:221		902 KAR 020:370
304.9-190	806 KAR 009:221	314.103	902 KAR 020:370
304.9-230	806 KAR 009:025	314.131	902 KAR 020:410
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304.9-270	806 KAR 009:025	314.193	201 KAR 020:057
304.9-295	806 KAR 009:025	314.195	201 KAR 020:057
	806 KAR 009:221	314.196	201 KAR 020:057
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304.9-505	806 KAR 009:221		201 KAR 020:630
	806 KAR 009:265		201 KAR 020:640
304.10-030	806 KAR 010:061		201 KAR 020:650
304.10-040	806 KAR 010:061		201 KAR 020:660
304.10-140	806 KAR 010:061		201 KAR 020:670
304.12-090 - 304.12-110	806 KAR 013:101		201 KAR 020:680
304.13-051 - 304.13-065	806 KAR 013:101		201 KAR 020:690
304.13-057	806 KAR 013:120	314.475	902 KAR 020:370
304.13-121	806 KAR 013:040	314.991	201 KAR 020:162
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304.13-167	806 KAR 013:120	314A.112	201 KAR 029:015
304.13-400 – 304.13-420	806 KAR 013:120	314A.215	201 KAR 029:015
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304.14-120	806 KAR 014:061	315.010	201 KAR 002:230
	806 KAR 015:090	315.020	201 KAR 002:230
304.14-642	806 KAR 009:221	315.035	201 KAR 002:230
304.15-075	806 KAR 015:090		201 KAR 020:050
304.15-700	806 KAR 009:221	315.0351	201 KAR 020:050
304.20-400 - 304.20-450	806 KAR 013:101	315.036	201 KAR 020:050
304.17A-257	902 KAR 021:020	315.050	201 KAR 002:020
304.47-010	806 KAR 047:010		201 KAR 020:050
304.47-020	806 KAR 047:010	315.060	201 KAR 002:050
304.47-040	806 KAR 047:010	315.110	201 KAR 002:050
304.47-050	806 KAR 047:010	315.120	201 KAR 002:050

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	201 KAR 002:230	318.160	815 KAR 020:050
315.402	201 KAR 002:050		815 KAR 020:150
316	201 KAR 015:010		815 KAR 020:191
316.010	201 KAR 015:110	318.165	815 KAR 020:120
316.030	201 KAR 015:040	318.170	815 KAR 020:150
	201 KAR 015:050	318.200	815 KAR 020:020
	201 KAR 015:110		815 KAR 020:055
316.125	201 KAR 015:030		815 KAR 020:070
	201 KAR 015:110		815 KAR 020:130
316.127	201 KAR 015:110	319	907 KAR 015:010
316.130	201 KAR 015:030	319.050	902 KAR 020:430
	201 KAR 015:110	319.053	907 KAR 015:005
316.132	201 KAR 015:030	319.056	902 KAR 020:430
316.140	201 KAR 015:030		907 KAR 015:005
	201 KAR 015:120	319.064	902 KAR 020:430
316.150	201 KAR 015:080		907 KAR 015:005
316.165	201 KAR 015:125	319A.010	902 KAR 020:280
316.170	201 KAR 015:015		907 KAR 001:604
316.210	201 KAR 015:015	319C.010	902 KAR 020:430
316.260	201 KAR 015:110		907 KAR 015:005
317A.020	201 KAR 012:030	321	201 KAR 016:012
	201 KAR 012:082	321.181	201 KAR 016:600
317A.050	201 KAR 012:030	321.193	201 KAR 016:510
	201 KAR 012:082		201 KAR 016:520
	201 KAR 012:260		201 KAR 016:530
317A.060	201 KAR 012:030		201 KAR 016:540
	201 KAR 012:060		201 KAR 016:570
	201 KAR 012:140	321.201	201 KAR 016:516
317A.062	201 KAR 012:260	321.207	201 KAR 016:514
317A.090	201 KAR 012:082		201 KAR 016:550
	201 KAR 012:140		201 KAR 016:560
317A.130	201 KAR 012:100		201 KAR 016:572
317B.020	201 KAR 012:060		201 KAR 016:580
318	815 KAR 020:010	321.211	201 KAR 016:510
	815 KAR 020:080		201 KAR 016:570
	815 KAR 020:111		201 KAR 016:580
318.010	815 KAR 020:020		201 KAR 016:590
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	815 KAR 020:070		201 KAR 016:590
	815 KAR 020:130	321.235	201 KAR 016:590
	815 KAR 020:180		201 KAR 016:610
	815 KAR 020:195	321.240	201 KAR 016:510
318.015	815 KAR 020:020		201 KAR 016:512
	815 KAR 020:070		201 KAR 016:516
	815 KAR 020:090	321.351	201 KAR 016:500
	815 KAR 020:130		201 KAR 016:610
318.020	815 KAR 020:030	321.353	201 KAR 016:610
318.030	815 KAR 020:030	321.360	201 KAR 016:610
	815 KAR 020:050	321.441	201 KAR 016:512
318.040	815 KAR 020:030		201 KAR 016:520
318.050	815 KAR 020:030		201 KAR 016:530
318.054	815 KAR 020:030		201 KAR 016:540
318.060	815 KAR 020:030		201 KAR 016:570
318.080	815 KAR 020:030		201 KAR 016:580
318.090	815 KAR 020:150		201 KAR 016:590
318.130	815 KAR 020:020	322	401 KAR 006:320
	815 KAR 020:060	322.010	405 KAR 008:010
	815 KAR 020:090	322.340	405 KAR 008:010
	815 KAR 020:120	322A	401 KAR 006:320
	815 KAR 020:130	323A.040	201 KAR 010:050
	815 KAR 020:150	323A.050	201 KAR 010:050
	815 KAR 020:170	323A.060	201 KAR 010:050
	815 KAR 020:180	323A.070	201 KAR 010:050
318.134	815 KAR 020:050	323A.100	201 KAR 010:050
	815 KAR 020:150		201 KAR 010:080
	815 KAR 020:195	323A.210	201 KAR 010:080
318.140	815 KAR 020:150	324.010	201 KAR 011:011
318.150	815 KAR 020:020		201 KAR 011:121
	815 KAR 020:060		201 KAR 011:170
	815 KAR 020:070		201 KAR 011:210
	815 KAR 020:090		201 KAR 011:220
	815 KAR 020:120	324.020	201 KAR 011:210
	815 KAR 020:130		201 KAR 011:220

KRS SECTION	REGULATION	KRS SECTION	REGULATION
324.040	201 KAR 011:210	325.330	201 KAR 001:100
324.045	201 KAR 011:190	327.010	902 KAR 020:280
	201 KAR 011:210		907 KAR 001:604
324.046	201 KAR 011:011	327.300	201 KAR 022:170
	201 KAR 011:170	334A.020	902 KAR 020:280
	201 KAR 011:190		907 KAR 001:604
	201 KAR 011:210	335.010	201 KAR 023:070
324.085	201 KAR 011:170	335.080	201 KAR 023:070
	201 KAR 011:210		902 KAR 020:430
324.090	201 KAR 011:170		907 KAR 015:005
	201 KAR 011:210	335.090	902 KAR 020:280
324.111	201 KAR 011:011	335.100	201 KAR 023:070
	201 KAR 011:121		902 KAR 020:430
324.121	201 KAR 011:121		907 KAR 015:005
324.117	201 KAR 011:011	335.300	902 KAR 020:430
	201 KAR 011:105		907 KAR 015:005
324.141	201 KAR 011:210	335.500	201 KAR 036:060
324.150	201 KAR 011:190		902 KAR 020:430
324.151	201 KAR 011:190		907 KAR 015:005
324.160	201 KAR 011:011	335.505	201 KAR 036:060
	201 KAR 011:105	335.525	201 KAR 036:060
	201 KAR 011:121	337	902 KAR 008:040
	201 KAR 011:170		902 KAR 008:120
	201 KAR 011:190	338	803 KAR 002:400
	201 KAR 011:210		803 KAR 002:406
324.170	201 KAR 011:190		803 KAR 002:407
324.200	201 KAR 011:190		803 KAR 002:425
324.281	201 KAR 011:121	338.015	803 KAR 002:180
	201 KAR 011:170		803 KAR 002:300
	201 KAR 011:190		803 KAR 002:320
	201 KAR 011:210		803 KAR 002:418
324.282	201 KAR 011:002		803 KAR 002:500
	201 KAR 011:105	338.031	803 KAR 002:320
324.287	201 KAR 011:210	338.051	803 KAR 002:403
324.310	201 KAR 011:121		803 KAR 002:404
	201 KAR 011:210		803 KAR 002:418
324.330	201 KAR 011:210		803 KAR 002:422
324.360	201 KAR 011:121	338.061	803 KAR 002:403
324.395	201 KAR 011:220		803 KAR 002:404
324.410	201 KAR 011:011		803 KAR 002:418
324.420	201 KAR 011:011		803 KAR 002:422
324.990	201 KAR 011:210	338.121	803 KAR 002:180
324A	201 KAR 030:010	338.161	803 KAR 002:180
324A.020	201 KAR 030:190	342.020	803 KAR 025:260
324A.015	201 KAR 030:021		803 KAR 025:271E
	201 KAR 030:040	342.035	803 KAR 025:260
324A.020	201 KAR 030:070		803 KAR 025:271E
	201 KAR 030:110	342.640	702 KAR 003:130
324A.030	201 KAR 030:190	342.0011	803 KAR 025:010
	201 KAR 030:330		803 KAR 025:260
324A.035	201 KAR 030:040		803 KAR 025:271E
	201 KAR 030:110		803 KAR 025:010
	201 KAR 030:130	342.020	803 KAR 025:010
	201 KAR 030:190	342.033	803 KAR 025:010
	201 KAR 030:330	342.033	803 KAR 025:010
324A.040	201 KAR 030:110	342.035	803 KAR 025:010
	201 KAR 030:190	342.040	803 KAR 025:010
324A.045	201 KAR 030:110	342.120	803 KAR 025:010
	201 KAR 030:190	342.1242	803 KAR 025:010
324A.047	201 KAR 030:110	342.125	803 KAR 025:010
324A.050	201 KAR 030:040	342.165	803 KAR 025:010
	201 KAR 030:070	342.185	803 KAR 025:010
324A.052	201 KAR 030:070	342.205	803 KAR 025:010
	201 KAR 030:190	342.260	803 KAR 025:010
324A.065	201 KAR 030:110	342.265	803 KAR 025:010
	201 KAR 030:190	242.267-342.275	803 KAR 025:010
324A.075	201 KAR 030:190	342.285	803 KAR 025:010
324A.152	201 KAR 030:330	342.290	803 KAR 025:010
324A.154	201 KAR 030:330	342.300-342.316	803 KAR 025:010
324A.155	201 KAR 030:330	342.320	803 KAR 025:010
324A.163	201 KAR 030:330	342.335	803 KAR 025:010
325.240	201 KAR 001:100	342.340	803 KAR 025:010
325.261	201 KAR 001:190	342.395	803 KAR 025:010
325.270	201 KAR 001:190	342.610	803 KAR 025:010

KRS SECTION	REGULATION	KRS SECTION	REGULATION
342.650	803 KAR 025:010		405 KAR 026:011
342.710	803 KAR 025:010	350.095	405 KAR 010:050
342.715	803 KAR 025:010		405 KAR 016:210
342.730	803 KAR 025:010		405 KAR 018:220
342.732	803 KAR 025:010		405 KAR 026:011
342.760	803 KAR 025:010	350.100	405 KAR 016:100
342.792	803 KAR 025:010		405 KAR 016:210
343	787 KAR 003:010		405 KAR 018:100
344.030	101 KAR 002:102		405 KAR 018:220
	101 KAR 003:015		405 KAR 020:040
344.500	920 KAR 001:070		405 KAR 026:011
349.015	805 KAR 001:030	350.110	405 KAR 026:011
	805 KAR 001:140	350.113	405 KAR 026:011
	805 KAR 001:170	350.130	400 KAR 001:110
	805 KAR 009:011		405 KAR 005:032
349.035	805 KAR 001:140		405 KAR 008:010
	805 KAR 009:011		405 KAR 010:050
349.040	805 KAR 001:140	350.131	405 KAR 010:050
	805 KAR 009:011	350.135	405 KAR 008:010
349.075	805 KAR 001:140		405 KAR 026:011
	805 KAR 009:011	350.151	405 KAR 010:050
349.335	805 KAR 001:080		405 KAR 018:100
349.045	805 KAR 001:020		405 KAR 018:220
349.105	805 KAR 001:170		405 KAR 026:011
349.110	805 KAR 001:020	350.240	405 KAR 005:002
	805 KAR 009:011		405 KAR 005:032
349.115	805 KAR 001:030	350.255	400 KAR 001:110
349.120	805 KAR 001:050	350.300	405 KAR 005:002
	805 KAR 001:140		405 KAR 005:032
	805 KAR 001:170	350.405	405 KAR 016:210
	805 KAR 001:200		405 KAR 020:040
	805 KAR 009:011	350.410	405 KAR 007:040
349.155	805 KAR 001:140		405 KAR 016:210
	805 KAR 001:170		405 KAR 018:220
	805 KAR 009:011	350.415	405 KAR 020:040
350	405 KAR 010:001	350.420	405 KAR 007:050
	405 KAR 026:011		405 KAR 016:100
350.010	400 KAR 001:110		405 KAR 018:100
	405 KAR 005:002	350.445	405 KAR 026:011
	405 KAR 005:032	350.450	405 KAR 007:040
	405 KAR 026:011		405 KAR 008:010
350.020	405 KAR 007:050		405 KAR 016:210
	405 KAR 008:010		405 KAR 018:220
	405 KAR 010:050		405 KAR 020:040
	405 KAR 026:011		405 KAR 026:011
350.028	400 KAR 001:110	350.455	405 KAR 016:100
	405 KAR 026:011		405 KAR 018:100
350.050	405 KAR 007:040	350.465	400 KAR 001:110
	405 KAR 026:011		405 KAR 008:010
350.055	405 KAR 008:010		405 KAR 008:030
	405 KAR 026:011		405 KAR 010:050
350.057	405 KAR 007:040		405 KAR 016:100
	405 KAR 026:011		405 KAR 016:210
350.060	405 KAR 007:040		405 KAR 018:100
	405 KAR 008:010		405 KAR 018:220
	405 KAR 008:030		405 KAR 020:040
	405 KAR 010:050		405 KAR 026:011
	405 KAR 026:011	350.500 - 350.521	405 KAR 008:010
350.062	405 KAR 026:011	350.990	400 KAR 001:110
350.064	405 KAR 010:050		405 KAR 026:011
	405 KAR 026:011	350.0301	400 KAR 001:110
350.070	400 KAR 001:110	351.315	400 KAR 001:110
	405 KAR 008:010	351.330	805 KAR 004:050
	405 KAR 026:011	331.335	805 KAR 004:050
350.085	405 KAR 008:010	331.360	805 KAR 004:050
	405 KAR 026:011	351.345	400 KAR 001:110
350.090	400 KAR 001:110	351.350	400 KAR 001:110
	405 KAR 007:050	352.340	805 KAR 007:101
	405 KAR 008:010	353.050	805 KAR 001:140
	405 KAR 026:011	353.060	805 KAR 001:140
350.093	400 KAR 001:110	353.120	805 KAR 001:060
	405 KAR 010:050	353.160	805 KAR 001:190
	405 KAR 016:210	353.170	805 KAR 001:060
	405 KAR 018:220	353.180	805 KAR 001:060

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	805 KAR 001:110	365.680	103 KAR 025:060
	805 KAR 001:140	369.101 - 369.120	907 KAR 015:010
	805 KAR 001:170	369.102	601 KAR 009:130
353.500	805 KAR 001:080	369.107	601 KAR 009:130
	805 KAR 001:160	383.085	902 KAR 045:065
	805 KAR 001:190		902 KAR 045:070
353.500 - 353.730	805 KAR 001:001	387	922 KAR 001:565
353.510	805 KAR 001:110	387.010	902 KAR 045:065
	805 KAR 001:140		902 KAR 045:070
	805 KAR 001:170	401	105 KAR 001:149
353.520	805 KAR 001:020	402	105 KAR 001:149
	805 KAR 001:080	403	105 KAR 001:149
	805 KAR 001:110	403.270 - 403.355	922 KAR 001:565
	805 KAR 001:120	405.024	922 KAR 001:565
	805 KAR 001:140	416.120	921 KAR 002:015
	805 KAR 001:170	416.212	921 KAR 002:015
353.540	805 KAR 001:080	416.2030	921 KAR 002:015
353.550	805 KAR 001:030	416.2095	921 KAR 002:015
	805 KAR 001:060	416.2096	921 KAR 002:015
	805 KAR 001:080	416.2099	921 KAR 002:015
	805 KAR 001:110	422.317	201 KAR 008:540
	805 KAR 001:180		907 KAR 003:170
	805 KAR 001:200	423	030 KAR 008:005
353.560	805 KAR 001:080	424	805 KAR 001:140
353.561 - 353.564	805 KAR 001:140	424.110 - 424.120	405 KAR 008:010
	805 KAR 001:170	424.260	702 KAR 003:130
353.570	805 KAR 001:110	430.10	907 KAR 001:604
353.590	805 KAR 001:030	431.51	907 KAR 001:604
	805 KAR 001:050	431.600	922 KAR 001:330
	805 KAR 001:110	434.840 - 434.860	907 KAR 003:170
	805 KAR 001:140	439	501 KAR 006:020
	805 KAR 001:170		501 KAR 006:060
	805 KAR 001:190		501 KAR 006:110
353.5901	805 KAR 001:140		501 KAR 006:140
	805 KAR 001:170		501 KAR 006:160
	805 KAR 001:190	436.265	501 KAR 006:280
353.592	805 KAR 001:140	439.315	501 KAR 001:040
	805 KAR 001:170	439.330	501 KAR 001:040
353.595	805 KAR 001:170		501 KAR 001:071
353.597	805 KAR 001:170	439.331	501 KAR 006:280
353.610	805 KAR 001:140	439.340	501 KAR 001:071
353.651	805 KAR 001:140	439.341	501 KAR 001:040
	805 KAR 001:170		501 KAR 001:071
353.652	805 KAR 001:140	439.346	501 KAR 001:040
	805 KAR 001:170		501 KAR 001:071
353.656	805 KAR 001:160	439.348	501 KAR 006:280
353.6601 - 353.6606	805 KAR 001:140	439.390	501 KAR 001:040
	805 KAR 001:170	439.430	501 KAR 001:040
353.730	805 KAR 001:140		501 KAR 001:071
	805 KAR 001:170	439.440	501 KAR 001:040
353.735 - 353.747	805 KAR 001:200	439.480	501 KAR 006:280
353.737	805 KAR 001:030	439.3101	501 KAR 006:280
	805 KAR 001:140	439.3104	501 KAR 006:280
	805 KAR 001:170	439.3105	501 KAR 006:280
353.745	805 KAR 001:190	439.3401	902 KAR 020:430
353.990	805 KAR 001:060		902 KAR 020:450
353.991	805 KAR 001:140	439.3406	501 KAR 001:040
	805 KAR 001:170	446.010	501 KAR 006:280
	805 KAR 001:190	447.15	907 KAR 001:604
353.992	805 KAR 001:110	447.20	907 KAR 001:604
363.410	302 KAR 081:010	447.21	907 KAR 001:604
363.510	302 KAR 075:130	447.50	907 KAR 001:604
	302 KAR 076:100	447.52	907 KAR 001:604
	302 KAR 080:010	447.54	907 KAR 001:604
	302 KAR 081:010	447.55	907 KAR 001:604
363.610	302 KAR 081:010	447.56	907 KAR 001:604
363.710	302 KAR 076:100	447.57	907 KAR 001:604
363.720	302 KAR 075:130	457.224	907 KAR 001:604
363.730	302 KAR 075:130	457.310	907 KAR 001:604
363.770	302 KAR 076:100	457.505	907 KAR 001:604
363.780	302 KAR 076:100	457.510	907 KAR 001:604
363.800	302 KAR 076:100	457.515	907 KAR 001:604
365.650	103 KAR 025:060	457.520	907 KAR 001:604
365.665	103 KAR 025:060	457.530	907 KAR 001:604

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457.535	907 KAR 001:604		902 KAR 045:065
457.570	907 KAR 001:604		902 KAR 045:070
503.110	922 KAR 001:330		920 KAR 001:070
514	921 KAR 002:015	29 C.F.R.	101 KAR 002:102
527.070	922 KAR 002:100		101 KAR 003:015
527.100	922 KAR 001:565		202 KAR 007:555
527.110	922 KAR 001:565		803 KAR 002:180
529.010	922 KAR 001:330		803 KAR 002:300
532.043	501 KAR 001:040		803 KAR 002:320
	501 KAR 001:071		803 KAR 002:400
532.045	922 KAR 001:330		803 KAR 002:403
532.060	501 KAR 001:071		803 KAR 002:404
532.400	501 KAR 001:040		803 KAR 002:406
600.010	922 KAR 001:330		803 KAR 002:407
600.020	922 KAR 001:320		803 KAR 002:418
	922 KAR 001:330		803 KAR 002:422
	922 KAR 001:565		803 KAR 002:425
	922 KAR 002:090		803 KAR 002:500
	922 KAR 002:100		902 KAR 008:040
600 - 645	505 KAR 001:160		902 KAR 008:120
605.090	922 KAR 001:320		902 KAR 045:065
	922 KAR 001:330		902 KAR 045:070
605.120	922 KAR 001:565	30 C.F.R.	400 KAR 001:110
605.130	922 KAR 001:330		405 KAR 008:010
	922 KAR 001:565		405 KAR 008:030
605.150	922 KAR 001:330		405 KAR 010:001
	922 KAR 001:565		405 KAR 010:050
610.010	922 KAR 001:330		405 KAR 016:100
610.110	922 KAR 001:320		405 KAR 016:210
	922 KAR 001:565		405 KAR 018:100
620.010 - 620.050	922 KAR 001:330		405 KAR 018:220
620.020	922 KAR 001:320	40 C.F.R.	302 KAR 031:040
	922 KAR 001:560		401 KAR 010:001
	922 KAR 001:565		401 KAR 010:029
	922 KAR 002:090		401 KAR 051:010
	922 KAR 002:100		401 KAR 052:100
620.030	902 KAR 020:280		401 KAR 058:005
	922 KAR 002:090		405 KAR 008:030
	922 KAR 002:100		405 KAR 010:001
620.070	922 KAR 001:330		805 KAR 001:110
620.072	922 KAR 001:330		805 KAR 001:190
620.090	922 KAR 001:565	42 C.F.R.	900 KAR 002:050
620.140	922 KAR 001:320		902 KAR 002:065
	922 KAR 001:565		902 KAR 020:450
620.142	922 KAR 001:320		907 KAR 001:604
	922 KAR 001:565		907 KAR 003:170
620.157	922 KAR 001:320		907 KAR 005:005
620.170	922 KAR 001:565		907 KAR 010:830
620.180	922 KAR 001:320		907 KAR 010:840
	922 KAR 001:330		907 KAR 015:005
620.230	922 KAR 001:320		907 KAR 015:010
620.350	922 KAR 001:330		907 KAR 015:020
620.363	922 KAR 001:320	44 C.F.R.	201 KAR 011:121
620.990	922 KAR 001:330	45 C.F.R.	902 KAR 020:370
625.065	922 KAR 001:560		902 KAR 020:430
2019 RS HB220	806 KAR 003:240		902 KAR 020:450
7 C.F.R.	405 KAR 008:030		907 KAR 015:010
	405 KAR 010:001		907 KAR 015:020
	921 KAR 003:050		920 KAR 001:070
	922 KAR 002:100		922 KAR 001:320
12 C.F.R.	201 KAR 030:040		922 KAR 002:090
	201 KAR 030:190		922 KAR 002:100
	201 KAR 030:330	49 C.F.R.	302 KAR 031:040
16 C.F.R.	201 KAR 015:110		702 KAR 005:080
	922 KAR 002:100		805 KAR 001:190
20 C.F.R.	921 KAR 002:015		922 KAR 002:100
21 C.F.R.	902 KAR 045:090	7 U.S.C.	302 KAR 050:050
	902 KAR 055:120	8 U.S.C.	921 KAR 002:015
24 C.F.R.	201 KAR 011:121	9 U.S.C.	202 KAR 006:010
26 C.F.R.	102 KAR 001:032		202 KAR 006:050
	105 KAR 001:390		202 KAR 006:080
	921 KAR 003:050		202 KAR 006:090
27 C.F.R.	405 KAR 008:010	12 U.S.C.	201 KAR 030:010
28 C.F.R.	201 KAR 011:210		201 KAR 030:040

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	201 KAR 030:110		922 KAR 002:090
	201 KAR 030:130		922 KAR 002:100
15 U.S.C.	201 KAR 030:190	47 U.S.C.	202 KAR 006:010
	201 KAR 030:330		202 KAR 006:020
16 U.S.C.	806 KAR 003:230		202 KAR 006:030
	405 KAR 008:010		202 KAR 006:050
	405 KAR 008:030		202 KAR 006:060
18 U.S.C.	501 KAR 006:160		202 KAR 006:070
	601 KAR 002:030E		202 KAR 006:080
20 U.S.C.	013 KAR 001:020		202 KAR 006:090
	702 KAR 007:065		202 KAR 006:100
	703 KAR 005:270	50 C.F.R.	302 KAR 045:010
	703 KAR 005:280	Pub.L. 104-191	920 KAR 001:070
	704 KAR 007:090	Pub.L. 110-325	920 KAR 001:070
	902 KAR 020:430		
	907 KAR 015:010		
	907 KAR 015:020		
	922 KAR 002:100		
21 U.S.C.	902 KAR 045:090		
26 U.S.C.	102 KAR 001:032		
	105 KAR 001:149		
	105 KAR 001:390		
	301 KAR 003:100		
	907 KAR 005:005		
29 U.S.C.	101 KAR 002:102		
	101 KAR 003:015		
	201 KAR 015:110		
	902 KAR 008:040		
	902 KAR 008:120		
	902 KAR 020:430		
	907 KAR 005:005		
	907 KAR 015:005		
	907 KAR 015:010		
	907 KAR 015:020		
	920 KAR 001:070		
30 U.S.C.	400 KAR 001:110		
	401 KAR 010:030		
	405 KAR 008:010		
	405 KAR 008:030		
	405 KAR 010:050		
	405 KAR 016:100		
	405 KAR 016:210		
	405 KAR 018:100		
	405 KAR 018:220		
31 U.S.C.	045 KAR 001:050		
33 U.S.C.	401 KAR 010:029		
38 U.S.C.	902 KAR 008:096		
42 U.S.C.	201 KAR 008:540		
	202 KAR 006:050		
	401 KAR 051:010		
	401 KAR 052:100		
	401 KAR 063:010		
	704 KAR 007:090		
	805 KAR 001:110		
	815 KAR 020:060		
	900 KAR 002:050		
	902 KAR 020:370		
	902 KAR 020:430		
	902 KAR 020:450		
	902 KAR 021:020		
	907 KAR 001:604		
	907 KAR 005:005		
	907 KAR 010:830		
	907 KAR 010:840		
	907 KAR 015:010		
	907 KAR 015:015		
	907 KAR 015:020		
	907 KAR 015:022		
	907 KAR 015:025		
	920 KAR 001:070		
	921 KAR 002:015		
	922 KAR 001:320		
	922 KAR 001:330		
	922 KAR 001:565		

CERTIFICATION LETTER SUMMARIES

The certification process is established in KRS 13A.3104. If the certification letter states the regulation shall be amended, the administrative body shall file an amendment to the regulation within 18 months of the date the certification letter was filed. If the certification letter states that the regulation shall remain in effect without amendment, the last effective date of the regulation is changed to the date the regulations compiler received the letter.

* KRS 13A.010(6) - "Effective" means that an administrative regulation has completed the legislative review process established by KRS 13A.290, 13A.330, and 13A.331.

Regulation Number	Letter Filed Date	Action
001 KAR 002:010	02-19-2020	Remain in Effect As Is
001 KAR 004:005	02-19-2020	Remain in Effect As Is
001 KAR 004:010	02-19-2020	Remain in Effect As Is
001 KAR 005:010	02-19-2020	Remain in Effect As Is
001 KAR 006:020	02-19-2020	Remain in Effect As Is
004 KAR 001:020	01-27-2020	Remain in Effect As Is
004 KAR 001:030	01-27-2020	Remain in Effect As Is
009 KAR 001:050	01-28-2020	Remain in Effect As Is
010 KAR 002:020	02-24-2020	To be amended, filing deadline 8-24-2021
012 KAR 001:120	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 001:125	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 001:130	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 001:160	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 001:170	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 001:175	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:080	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:090	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:100	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:110	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:120	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:130	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:140	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:160	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 004:170	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 005:010	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 005:020	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 005:030	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 005:040	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 005:050	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 005:060	06-06-2019	To be amended, filing deadline 12-10-20
012 KAR 005:070	06-06-2019	To be amended, filing deadline 12-10-20
013 KAR 001:030	02-06-2020	To be amended, filing deadline 8-6-21
013 KAR 001:050	02-06-2020	To be amended, filing deadline 8-6-21
013 KAR 002:025	02-06-2020	Remain in Effect As Is
013 KAR 002:070	02-06-2020	Remain in Effect As Is
013 KAR 002:080	02-06-2020	Remain in Effect As Is

Regulation Number	Letter Filed Date	Action
013 KAR 002:100	02-06-2020	To be amended, filing deadline 8-6-21
013 KAR 003:010	02-04-2020	To be amended, filing deadline 8-4-21
013 KAR 003:020	02-04-2020	To be amended, filing deadline 8-4-21
013 KAR 003:030	02-04-2020	To be amended, filing deadline 8-4-21
013 KAR 003:040	02-04-2020	To be amended, filing deadline 8-4-21
013 KAR 003:050	02-04-2020	To be amended, filing deadline 8-4-21
013 KAR 003:060	02-04-2020	To be amended, filing deadline 8-4-21
016 KAR 001:020	02-27-2020	Remain in Effect As Is
016 KAR 001:040	02-27-2020	To be amended, filing deadline 8-27-21
016 KAR 001:050	02-27-2020	To be amended, filing deadline 8-27-21
016 KAR 002:030	02-27-2020	Remain in Effect As Is
016 KAR 002:040	02-27-2020	To be amended, filing deadline 8-27-21
016 KAR 002:050	02-27-2020	To be amended, filing deadline 8-27-21
016 KAR 002:070	02-27-2020	Remain in Effect As Is
016 KAR 002:080	02-27-2020	Remain in Effect As Is
016 KAR 002:090	02-27-2020	Remain in Effect As Is
016 KAR 002:130	02-27-2020	Remain in Effect As Is
016 KAR 002:180	02-27-2020	To be amended, filing deadline 8-27-21
016 KAR 003:060	02-27-2020	To be amended, filing deadline 8-27-21
016 KAR 003:070	02-27-2020	To be amended, filing deadline 8-27-21
016 KAR 004:010	02-27-2020	Remain in Effect As Is
016 KAR 004:020	02-27-2020	To be amended, filing deadline 8-27-21
016 KAR 004:050	02-27-2020	To be amended, filing deadline 8-27-21
016 KAR 004:070	02-27-2020	Remain in Effect As Is
016 KAR 005:010	02-27-2020	To be amended, filing deadline 8-27-21
016 KAR 007:020	02-27-2020	Remain in Effect As Is
016 KAR 008:010	02-27-2020	Remain in Effect As Is
016 KAR 008:020	02-27-2020	Remain in Effect As Is
016 KAR 009:010	02-27-2020	To be amended, filing deadline 8-27-21
016 KAR 009:020	02-27-2020	To be amended, filing deadline 8-27-21
016 KAR 009:050	02-27-2020	To be amended, filing deadline 8-27-21
016 KAR 009:060	02-27-2020	Remain in Effect As Is
016 KAR 009:070	02-27-2020	To be amended, filing deadline 8-27-21
016 KAR 009:090	02-27-2020	To be amended, filing deadline 8-27-21
020 KAR 001:010	06-07-2019	Remain in Effect As Is
020 KAR 001:020	06-07-2019	Remain in Effect As Is
020 KAR 001:030	06-07-2019	Remain in Effect As Is
020 KAR 001:040	06-07-2019	Remain in Effect As Is
020 KAR 001:050	06-07-2019	Remain in Effect As Is

CERTIFICATION LETTER SUMMARIES

Regulation Number	Letter Filed Date	Action
102 KAR 001:350	07-03-2019	Remain in Effect As Is
102 KAR 002:010	07-03-2019	Remain in Effect As Is
102 KAR 002:025	07-03-2019	Remain in Effect As Is
103 KAR 001:070	06-07-2019	Remain in Effect As Is
103 KAR 001:092	06-07-2019	Remain in Effect As Is
103 KAR 001:150	06-07-2019	Remain in Effect As Is
103 KAR 002:020	06-07-2019	Remain in Effect As Is
103 KAR 005:180	06-07-2019	Remain in Effect As Is
103 KAR 005:190	06-07-2019	Remain in Effect As Is
103 KAR 005:220	06-07-2019	Remain in Effect As Is
103 KAR 005:230	06-07-2019	Remain in Effect As Is
103 KAR 008:090	01-28-2020	To be amended, filing deadline 7-28-21
103 KAR 016:320	02-19-2020	To be amended, filing deadline 8-19-21
103 KAR 016:352	02-19-2020	To be amended, filing deadline 8-19-21
103 KAR 016:370	02-28-2020	Remain in Effect As Is
103 KAR 018:020	02-19-2020	To be amended, filing deadline 8-19-21
103 KAR 018:090	02-19-2020	To be amended, filing deadline 8-19-21
103 KAR 025:050	01-28-2020	Remain in Effect As Is
103 KAR 025:060	01-28-2020	Remain in Effect As Is
103 KAR 026:030	01-28-2020	Remain in Effect As Is
103 KAR 026:050	01-28-2020	Remain in Effect As Is
103 KAR 026:060	01-28-2020	To be amended, filing deadline 7-28-21
103 KAR 026:080	01-28-2020	Remain in Effect As Is
103 KAR 026:100	01-28-2020	To be amended, filing deadline 7-28-21
103 KAR 026:110	01-28-2020	Remain in Effect As Is
103 KAR 026:120	01-28-2020	Remain in Effect As Is
103 KAR 027:020	01-28-2020	Remain in Effect As Is
103 KAR 027:030	06-07-2019	Remain in Effect As Is
103 KAR 027:040	06-07-2019	Remain in Effect As Is
103 KAR 027:050	01-28-2020	To be amended, filing deadline 7-28-21
103 KAR 027:080	01-28-2020	Remain in Effect As Is
103 KAR 027:100	01-28-2020	Remain in Effect As Is
103 KAR 027:120	01-28-2020	Remain in Effect As Is
103 KAR 027:130	09-04-2019	Remain in Effect As Is
103 KAR 027:150	01-28-2020	To be amended, filing deadline 7-28-21
103 KAR 027:170	01-28-2020	To be amended, filing deadline 7-28-21
103 KAR 027:220	01-28-2020	Remain in Effect As Is
103 KAR 027:230	01-28-2020	To be amended, filing deadline 7-28-21
103 KAR 027:240	06-07-2019	Remain in Effect As Is
103 KAR 028:020	06-07-2019	Remain in Effect As Is
103 KAR 028:030	11-06-2019	Remain in Effect As Is
103 KAR 028:051	06-07-2019	Remain in Effect As Is
103 KAR 028:060	01-28-2020	To be amended, filing deadline 7-28-21
103 KAR 028:090	01-28-2020	Remain in Effect As Is
103 KAR 028:130	06-07-2019	Remain in Effect As Is
103 KAR 028:150	01-28-2020	Remain in Effect As Is
103 KAR 028:170	01-28-2020	To be amended, filing deadline 7-28-21
103 KAR 030:091	01-28-2020	To be amended, filing deadline 7-28-21
103 KAR 030:120	01-28-2020	To be amended, filing deadline 7-28-21
103 KAR 030:140	01-28-2020	To be amended, filing deadline 7-28-21
103 KAR 030:160	06-07-2019	Remain in Effect As Is

Regulation Number	Letter Filed Date	Action
103 KAR 030:180	01-28-2020	To be amended, filing deadline 7-28-21
103 KAR 030:190	01-28-2020	To be amended, filing deadline 7-28-21
103 KAR 030:235	06-07-2019	Remain in Effect As Is
103 KAR 030:250	01-28-2020	To be amended, filing deadline 7-28-21
103 KAR 030:270	01-28-2020	Remain in Effect As Is
103 KAR 030:280	06-07-2019	Remain in Effect As Is
103 KAR 030:290	01-28-2020	Remain in Effect As Is
103 KAR 031:011	06-07-2019	Remain in Effect As Is
103 KAR 031:020	01-28-2020	Remain in Effect As Is
103 KAR 031:050	06-07-2019	Remain in Effect As Is
103 KAR 031:080	01-28-2020	Remain in Effect As Is
103 KAR 031:090	01-28-2020	Remain in Effect As Is
103 KAR 031:102	06-07-2019	Remain in Effect As Is
103 KAR 031:170	06-07-2019	Remain in Effect As Is
103 KAR 031:180	01-28-2020	Remain in Effect As Is
103 KAR 031:190	06-07-2019	Remain in Effect As Is
103 KAR 031:200	01-28-2020	Remain in Effect As Is
103 KAR 040:010	01-28-2020	Remain in Effect As Is
103 KAR 040:035	08-05-2019	Remain in Effect As Is
103 KAR 040:050	01-28-2020	Remain in Effect As Is
103 KAR 040:100	08-09-2019	Remain in Effect As Is
103 KAR 041:040	01-28-2020	Remain in Effect As Is
103 KAR 041:090	08-05-2019	Remain in Effect As Is
103 KAR 041:100	01-28-2020	Remain in Effect As Is
103 KAR 041:110	01-28-2020	Remain in Effect As Is
103 KAR 041:120	12-03-2019	Remain in Effect As Is
103 KAR 041:120	01-28-2020	Remain in Effect As Is
103 KAR 041:130	08-06-2019	Remain in Effect As Is
103 KAR 041:140	08-05-2019	Remain in Effect As Is
103 KAR 041:150	09-04-2019	Remain in Effect As Is
103 KAR 041:160	08-05-2019	Remain in Effect As Is
103 KAR 043:010	01-28-2020	Remain in Effect As Is
103 KAR 043:140	01-28-2020	To be amended, filing deadline 7-28-21
103 KAR 043:320	08-07-2019	Remain in Effect As Is
103 KAR 043:330	08-07-2019	Remain in Effect As Is
103 KAR 044:070	08-07-2019	Remain in Effect As Is
103 KAR 044:090	08-07-2019	Remain in Effect As Is
103 KAR 044:100	08-07-2019	Remain in Effect As Is
103 KAR 044:120	08-07-2019	Remain in Effect As Is
103 KAR 045:015	08-07-2019	Remain in Effect As Is
105 KAR 001:130	06-28-2019	Remain in Effect As Is
105 KAR 001:150	06-28-2019	Remain in Effect As Is
105 KAR 001:160	06-28-2019	Remain in Effect As Is
105 KAR 001:170	06-28-2019	Remain in Effect As Is
105 KAR 001:190	06-11-2019	Remain in Effect As Is
105 KAR 001:220	06-11-2019	Remain in Effect As Is
105 KAR 001:250	11-01-2019	Remain in Effect As Is
105 KAR 001:260	06-11-2019	Remain in Effect As Is
105 KAR 001:270	02-24-2020	Remain in Effect As Is
105 KAR 001:400	06-11-2019	Remain in Effect As Is
105 KAR 001:420	01-27-2020	Remain in Effect As Is
105 KAR 001:430	06-28-2019	Remain in Effect As Is
105 KAR 001:440	06-11-2019	Remain in Effect As Is
109 KAR 002:020	02-27-2020	Remain in Effect As Is
109 KAR 004:020	02-27-2020	Remain in Effect As Is
109 KAR 005:010	02-27-2020	Remain in Effect As Is
109 KAR 007:010	02-27-2020	Remain in Effect As Is
109 KAR 007:020	02-27-2020	Remain in Effect As Is
109 KAR 009:010	02-27-2020	Remain in Effect As Is
109 KAR 010:010	02-27-2020	Remain in Effect As Is
109 KAR 011:010	02-27-2020	Remain in Effect As Is
109 KAR 011:030	02-27-2020	Remain in Effect As Is
109 KAR 013:010	02-27-2020	Remain in Effect As Is
109 KAR 015:020	02-27-2020	Remain in Effect As Is

CERTIFICATION LETTER SUMMARIES

Regulation Number	Letter Filed Date	Action
302 KAR 020:250	02-18-2020	Remain in Effect As Is
302 KAR 020:261	02-18-2020	Remain in Effect As Is
302 KAR 021:005	02-18-2020	Remain in Effect As Is
302 KAR 029:070	06-27-2019	Remain in Effect As Is
302 KAR 031:040	02-18-2020	Remain in Effect As Is
302 KAR 037:010	02-18-2020	Remain in Effect As Is
302 KAR 045:010	02-18-2020	Remain in Effect As Is
302 KAR 079:010	02-18-2020	Remain in Effect As Is
303 KAR 001:005	02-12-2020	To be amended, filing deadline 8-12-21
303 KAR 001:010	02-12-2020	To be amended, filing deadline 8-12-21
303 KAR 001:015	02-12-2020	To be amended, filing deadline 8-12-21
303 KAR 001:075	02-12-2020	To be amended, filing deadline 8-12-21
303 KAR 001:080	02-12-2020	To be amended, filing deadline 8-12-21
303 KAR 001:090	02-12-2020	To be amended, filing deadline 8-12-21
303 KAR 001:100	02-12-2020	To be amended, filing deadline 8-12-21
304 KAR 001:010	02-12-2020	Remain in Effect As Is
304 KAR 001:020	02-12-2020	Remain in Effect As Is
304 KAR 001:030	02-12-2020	Remain in Effect As Is
304 KAR 001:040	02-12-2020	Remain in Effect As Is
304 KAR 001:050	02-12-2020	Remain in Effect As Is
304 KAR 001:080	02-12-2020	Remain in Effect As Is
401 KAR 058:005	07-30-2018	To be amended. Amendment filed 06-14-19, effective 6-14-2019.
420 KAR 001:010	02-05-2020	Remain in Effect As Is
420 KAR 001:020	02-05-2020	Remain in Effect As Is
420 KAR 001:030	02-05-2020	Remain in Effect As Is
420 KAR 001:040	02-05-2020	Remain in Effect As Is
420 KAR 001:050	02-05-2020	Remain in Effect As Is
500 KAR 001:010	02-25-2020	Remain in Effect As Is
500 KAR 001:020	02-25-2020	To be amended, filing deadline 8-25-21
500 KAR 001:030	02-25-2020	Remain in Effect As Is
500 KAR 003:010	02-25-2020	Remain in Effect As Is
500 KAR 010:001	12-03-2010	To be amended. Amendment filed 12-3-2019.
500 KAR 010:020	12-03-2010	To be amended. Amendment filed 12-3-2019.
500 KAR 010:030	12-03-2010	To be amended. Amendment filed 12-3-2019.
500 KAR 010:040	12-03-2010	To be amended. Amendment filed 12-3-2019.
500 KAR 012:010	02-20-2020	To be amended, filing deadline 8-20-21
500 KAR 014:010	02-25-2020	Remain in Effect As Is
500 KAR 014:020	02-25-2020	Remain in Effect As Is
500 KAR 020:010	02-20-2020	Remain in Effect As Is
500 KAR 020:020	02-20-2020	Remain in Effect As Is
501 KAR 001:040	10-21-2019	To be amended. Amendment filed 10-21-2019.
501 KAR 001:050	02-20-2020	To be amended, filing deadline 8-20-21
501 KAR 002:030	02-20-2020	Remain in Effect As Is
501 KAR 002:040	02-20-2020	Remain in Effect As Is
501 KAR 002:050	02-25-2020	To be amended, filing deadline 8-25-21

Regulation Number	Letter Filed Date	Action
501 KAR 002:070	02-20-2020	To be amended, filing deadline 8-20-21
501 KAR 003:110	02-20-2020	To be amended, filing deadline 8-20-21
501 KAR 003:120	02-21-2020	To be amended, filing deadline by 8-21-21
501 KAR 003:130	02-21-2020	To be amended, filing deadline by 8-21-21
501 KAR 003:150	02-21-2020	To be amended, filing deadline by 8-21-21
501 KAR 003:170	02-21-2020	To be amended, filing deadline by 8-21-21
501 KAR 006:080	02-21-2020	To be amended, filing deadline by 8-21-21
501 KAR 006:120	02-21-2020	To be amended, filing deadline by 8-21-21
501 KAR 006:190	02-21-2020	To be amended, filing deadline by 8-21-21
501 KAR 006:200	02-21-2020	To be amended, filing deadline by 8-21-21
501 KAR 006:220	02-21-2020	To be amended, filing deadline by 8-21-21
501 KAR 006:250	02-21-2020	To be amended, filing deadline by 8-21-21
501 KAR 006:260	02-20-2020	Remain in Effect As Is
501 KAR 007:040	02-21-2020	To be amended, filing deadline by 8-21-21
501 KAR 007:060	02-21-2020	To be amended, filing deadline by 8-21-21
501 KAR 007:090	02-21-2020	To be amended, filing deadline by 8-21-21
501 KAR 007:100	02-21-2020	To be amended, filing deadline by 8-21-21
501 KAR 007:110	02-21-2020	To be amended, filing deadline by 8-21-21
501 KAR 007:120	02-21-2020	To be amended, filing deadline by 8-21-21
501 KAR 007:130	02-21-2020	To be amended, filing deadline by 8-21-21
501 KAR 007:140	02-21-2020	To be amended, filing deadline by 8-21-21
501 KAR 007:150	02-21-2020	To be amended, filing deadline by 8-21-21
501 KAR 014:010	02-21-2020	To be amended, filing deadline by 8-21-21
501 KAR 015:010	02-20-2020	Remain in Effect As Is
501 KAR 015:020	02-20-2020	Remain in Effect As Is
501 KAR 016:001	02-20-2020	Remain in Effect As Is
501 KAR 016:320	02-20-2020	Remain in Effect As Is
502 KAR 005:020	02-25-2020	Remain in Effect As Is
502 KAR 010:010	02-26-2020	To be amended, filing deadline 8-26-21
502 KAR 010:020	02-26-2020	To be amended, filing deadline 8-26-21
502 KAR 010:030	02-26-2020	To be amended, filing deadline 8-26-21
502 KAR 010:035	02-26-2020	To be amended, filing deadline 8-26-21
502 KAR 010:040	02-26-2020	To be amended, filing deadline 8-26-21
502 KAR 010:050	02-26-2020	To be amended, filing deadline 8-26-21
502 KAR 010:060	02-26-2020	To be amended, filing deadline 8-26-21
502 KAR 010:070	02-26-2020	To be amended, filing deadline 8-26-21
502 KAR 010:080	02-26-2020	To be amended, filing deadline 8-26-21

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Regulation Number	Letter Filed Date	Action
803 KAR 002:010	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 002:015	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 002:016	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 002:018	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 002:019	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 002:021	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 002:040	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 002:050	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 002:060	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 002:062	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 002:070	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 002:080	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 002:090	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 002:095	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 002:100	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 002:110	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 002:115	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 002:120	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 002:122	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 002:125	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 002:127	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 002:130	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 002:140	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 002:170	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 002:220	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 002:230	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 002:240	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 002:301	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 002:304	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 002:310	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 002:311	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 002:312	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 002:315	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 002:316	02-25-2020	To be amended, filing deadline 8-25-21

Regulation Number	Letter Filed Date	Action
803 KAR 002:319	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 002:401	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 002:405	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 002:408	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 002:409	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 002:410	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 002:413	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 002:414	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 002:415	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 002:416	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 002:417	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 002:420	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 002:422	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 002:424	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 002:430	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 002:600	02-25-2020	To be amended, filing deadline 8-25-21
803 KAR 003:010	02-26-2020	Remain in Effect As Is
803 KAR 003:020	02-26-2020	Remain in Effect As Is
803 KAR 003:030	02-26-2020	Remain in Effect As Is
803 KAR 003:040	02-26-2020	Remain in Effect As Is
803 KAR 003:060	02-26-2020	Remain in Effect As Is
803 KAR 025:015	08-20-2019	To be amended, filing deadline 2-20-21
803 KAR 025:021	08-20-2019	To be amended, filing deadline 2-20-21
803 KAR 025:220	08-20-2019	To be amended, filing deadline 2-20-21
804 KAR 007:020	03-26-2019	To be amended. Amendment filed 4-15-19, effective 8-2-2019.
806 KAR 002:070	02-26-2020	Remain in Effect As Is
806 KAR 002:088	02-26-2020	Remain in Effect As Is
806 KAR 002:095	02-26-2020	Remain in Effect As Is
806 KAR 003:110	02-26-2020	Remain in Effect As Is
806 KAR 003:150	02-26-2020	Remain in Effect As Is
806 KAR 003:160	02-26-2020	Remain in Effect As Is
806 KAR 003:170	02-26-2020	Remain in Effect As Is
806 KAR 003:190	02-26-2020	Remain in Effect As Is
806 KAR 003:230	02-28-2020	Remain in Effect As Is
806 KAR 004:010	02-26-2020	Remain in Effect As Is
806 KAR 005:025	02-28-2020	Remain in Effect As Is
806 KAR 005:060	02-28-2020	Remain in Effect As Is
806 KAR 006:010	02-26-2020	Remain in Effect As Is
806 KAR 006:020	02-26-2020	Remain in Effect As Is
806 KAR 006:060	02-26-2020	Remain in Effect As Is
806 KAR 006:075	02-26-2020	Remain in Effect As Is
806 KAR 006:080	02-26-2020	Remain in Effect As Is
806 KAR 006:090	02-26-2020	Remain in Effect As Is
806 KAR 006:100	02-26-2020	Remain in Effect As Is
806 KAR 006:110	02-26-2020	Remain in Effect As Is
806 KAR 006:120	02-26-2020	Remain in Effect As Is
806 KAR 006:130	02-26-2020	Remain in Effect As Is
806 KAR 007:090	02-26-2020	Remain in Effect As Is

CERTIFICATION LETTER SUMMARIES

[illegible][illegible]

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Regulation Number	Letter Filed Date	Action
808 KAR 010:350	02-27-2020	Remain in Effect As Is
808 KAR 010:360	02-27-2020	Remain in Effect As Is
808 KAR 010:370	02-27-2020	Remain in Effect As Is
808 KAR 010:380	02-27-2020	Remain in Effect As Is
808 KAR 010:390	02-27-2020	Remain in Effect As Is
808 KAR 010:400	02-27-2020	Remain in Effect As Is
808 KAR 010:430	02-27-2020	Remain in Effect As Is
808 KAR 010:440	02-27-2020	Remain in Effect As Is
808 KAR 010:450	02-27-2020	Remain in Effect As Is
808 KAR 010:460	02-27-2020	Remain in Effect As Is
808 KAR 010:480	02-27-2020	Remain in Effect As Is
808 KAR 010:490	02-27-2020	Remain in Effect As Is
811 KAR 001:250	03-18-2019	To be amended. Amendment filed 2-14-20.
815 KAR 004:010	02-21-2020	To be amended, filing deadline 8-21-21
815 KAR 004:025	02-21-2020	To be amended, filing deadline 8-21-21
815 KAR 004:027	02-21-2020	To be amended, filing deadline 8-21-21
815 KAR 007:080	02-21-2020	To be amended, filing deadline 8-21-21
815 KAR 010:060	02-21-2020	To be amended, filing deadline 8-21-21
815 KAR 010:070	02-21-2020	To be amended, filing deadline 8-21-21
815 KAR 020:071	10-14-2019	Remain in Effect As Is
815 KAR 020:072	10-14-2019	Remain in Effect As Is
815 KAR 020:073	10-14-2019	Remain in Effect As Is
815 KAR 020:074	10-14-2019	Remain in Effect As Is
815 KAR 020:078	10-14-2019	Remain in Effect As Is
815 KAR 020:110	10-14-2019	Remain in Effect As Is
815 KAR 020:150	10-14-2019	To be amended. Amendment filed 10-14-19.
815 KAR 030:010	02-21-2020	To be amended, filing deadline 8-21-21
815 KAR 030:060	02-21-2020	To be amended, filing deadline 8-21-21
902 KAR 001:400	10-15-2019	Remain in Effect As Is
902 KAR 002:030	10-18-2019	Remain in Effect As Is
902 KAR 002:040	10-18-2019	Remain in Effect As Is
902 KAR 002:050	10-18-2019	Remain in Effect As Is
902 KAR 002:065	10-18-2019	To be amended, filing deadline 4-18-21
902 KAR 002:080	10-15-2019	Remain in Effect As Is
902 KAR 002:090	10-15-2019	Remain in Effect As Is
902 KAR 002:140	11-26-2019	Remain in Effect As Is
902 KAR 004:090	10-15-2019	Remain in Effect As Is
902 KAR 004:110	11-26-2019	To be amended, filing deadline 5-26-21
902 KAR 008:130	06-11-2019	Remain in Effect As Is
902 KAR 008:150	06-11-2019	Remain in Effect As Is
902 KAR 008:160	06-11-2019	Remain in Effect As Is
902 KAR 010:010	11-18-2019	Remain in Effect As Is
902 KAR 010:030	10-02-2019	Remain in Effect As Is
902 KAR 010:035	10-02-2019	Remain in Effect As Is
902 KAR 010:060	11-18-2019	Remain in Effect As Is
902 KAR 010:110	11-18-2019	Remain in Effect As Is
902 KAR 010:120	10-02-2019	Remain in Effect As Is
902 KAR 010:121	10-02-2019	Remain in Effect As Is
902 KAR 010:130	11-18-2019	Remain in Effect As Is
902 KAR 010:140	11-18-2019	Remain in Effect As Is
902 KAR 010:150	11-18-2019	Remain in Effect As Is
902 KAR 010:160	11-18-2019	Remain in Effect As Is
902 KAR 010:170	11-18-2019	Remain in Effect As Is
902 KAR 015:020	10-18-2019	Remain in Effect As Is

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907 KAR 001:672	12-06-2019	Remain in Effect As Is
907 KAR 001:673	12-06-2019	Remain in Effect As Is
907 KAR 001:675	12-06-2019	Remain in Effect As Is
907 KAR 001:677	12-06-2019	Remain in Effect As Is
907 KAR 001:715	12-06-2019	Remain in Effect As Is
907 KAR 001:790	12-06-2019	Remain in Effect As Is
907 KAR 003:015	12-06-2019	Remain in Effect As Is
907 KAR 003:020	12-06-2019	Remain in Effect As Is
907 KAR 003:035	12-06-2019	Remain in Effect As Is
907 KAR 003:130	12-06-2019	Remain in Effect As Is
907 KAR 003:140	12-06-2019	Remain in Effect As Is
907 KAR 003:160	12-06-2019	Remain in Effect As Is
907 KAR 003:215	12-06-2019	Remain in Effect As Is
907 KAR 004:020	05-05-2017	Remain in Effect As Is
907 KAR 004:030	05-05-2017	Remain in Effect As Is
907 KAR 007:005	12-06-2019	Remain in Effect As Is
907 KAR 008:010	12-06-2019	Remain in Effect As Is
907 KAR 008:015	12-06-2019	Remain in Effect As Is
907 KAR 008:020	12-06-2019	Remain in Effect As Is
907 KAR 008:025	12-06-2019	Remain in Effect As Is
907 KAR 008:030	12-06-2019	Remain in Effect As Is
907 KAR 008:035	12-06-2019	Remain in Effect As Is
907 KAR 010:012	12-06-2019	Remain in Effect As Is
907 KAR 010:015	12-06-2019	Remain in Effect As Is
907 KAR 010:183	12-06-2019	Remain in Effect As Is
907 KAR 011:034	12-06-2019	Remain in Effect As Is
907 KAR 011:035	12-06-2019	Remain in Effect As Is
907 KAR 013:005	12-06-2019	Remain in Effect As Is
907 KAR 013:010	12-06-2019	Remain in Effect As Is
907 KAR 013:015	12-06-2019	Remain in Effect As Is
907 KAR 018:005	12-06-2019	Remain in Effect As Is
907 KAR 020:001	12-06-2019	Remain in Effect As Is
907 KAR 020:005	12-06-2019	Remain in Effect As Is
907 KAR 020:010	12-06-2019	Remain in Effect As Is
907 KAR 020:015	12-06-2019	Remain in Effect As Is
907 KAR 020:020	12-06-2019	Remain in Effect As Is
907 KAR 020:025	12-06-2019	Remain in Effect As Is
907 KAR 020:030	12-06-2019	Remain in Effect As Is
907 KAR 020:035	12-06-2019	Remain in Effect As Is
907 KAR 020:040	12-06-2019	Remain in Effect As Is
907 KAR 020:045	12-06-2019	Remain in Effect As Is
907 KAR 020:050	12-06-2019	Remain in Effect As Is
907 KAR 020:055	12-06-2019	Remain in Effect As Is
907 KAR 020:060	12-06-2019	Remain in Effect As Is
907 KAR 020:075	12-06-2019	Remain in Effect As Is
907 KAR 020:100	12-06-2019	Remain in Effect As Is
908 KAR 001:300	01-07-2020	Remain in Effect As Is
908 KAR 001:310	12-18-2019	Remain in Effect As Is
908 KAR 001:315	12-18-2019	Remain in Effect As Is
908 KAR 001:320	12-18-2019	Remain in Effect As Is
908 KAR 001:380	12-18-2019	Remain in Effect As Is
908 KAR 001:400	12-18-2019	Remain in Effect As Is
908 KAR 002:010	12-18-2019	Remain in Effect As Is
908 KAR 002:020	12-18-2019	Remain in Effect As Is
908 KAR 002:030	12-18-2019	Remain in Effect As Is
908 KAR 002:050	12-18-2019	Remain in Effect As Is
908 KAR 002:060	12-18-2019	Remain in Effect As Is
908 KAR 002:090	12-18-2019	Remain in Effect As Is
908 KAR 003:010	12-18-2019	Remain in Effect As Is
908 KAR 003:020	12-18-2019	Remain in Effect As Is
908 KAR 003:025	12-18-2019	Remain in Effect As Is
908 KAR 003:030	12-18-2019	Remain in Effect As Is
908 KAR 003:040	12-18-2019	Remain in Effect As Is
908 KAR 003:190	12-18-2019	Remain in Effect As Is
908 KAR 005:010	12-18-2019	Remain in Effect As Is
910 KAR 001:150	01-07-2020	Remain in Effect As Is
910 KAR 001:160	01-07-2020	Remain in Effect As Is

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920 KAR 001:030	11-12-2019	To be amended, filing deadline 4-18-21
921 KAR 001:020	12-06-2019	To be amended, filing deadline 6-6-21
921 KAR 001:390	12-06-2019	To be amended, filing deadline 6-6-22
921 KAR 003:010	11-26-2019	To be amended, filing deadline 5-26-21
921 KAR 003:020	11-26-2019	To be amended, filing deadline 5-26-21
921 KAR 004:116	11-26-2019	To be amended, filing deadline 5-26-21
922 KAR 001:300	11-26-2019	To be amended, filing deadline 5-26-21
922 KAR 001:370	11-26-2019	Remain in Effect As Is
922 KAR 001:380	11-26-2019	To be amended, filing deadline 5-26-21
922 KAR 001:390	11-26-2019	To be amended, filing deadline 5-26-21
922 KAR 001:520	11-26-2019	To be amended, filing deadline 5-26-21
922 KAR 001:540	11-26-2019	To be amended, filing deadline 5-26-21
922 KAR 002:230	11-26-2019	To be amended, filing deadline 5-26-21
922 KAR 002:240	11-26-2019	To be amended, filing deadline 5-26-21
922 KAR 002:250	11-26-2019	To be amended, filing deadline 5-26-21
922 KAR 005:020	11-26-2019	To be amended, filing deadline 5-26-21
922 KAR 006:040	12-06-2019	Remain in Effect As Is
922 KAR 006:045	12-06-2019	Remain in Effect As Is
922 KAR 008:010	11-26-2019	Remain in Effect As Is

TECHNICAL AMENDMENT INDEX

The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments entered during *Register* year 46. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.225(2), 13A.312(2), or 13A.320(1)(d). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published to show the technical corrections in the *Administrative Register of Kentucky*. NOTE: Copies of the technical amendments are usually posted on the Legislative Research Commission Web site for a short time before they are finalized. Regulations are available for viewing on the Legislative Research Commission Web site at <https://legislature.ky.gov/law/kar/pages/default.aspx>.

- ‡ - A technical change was made to this administrative regulation during the promulgation process, pursuant to KRS 13A.320(1)(e).
† - A nonsubstantive change was made by the Compiler pursuant to KRS 13A.040(9).

Regulation Number	Date Corrected	Regulation Number	Date Corrected
102 KAR 001:036‡	01-13-2020	401 KAR 059:021†	09-04-2019
103 KAR 016:370	02-19-2020	401 KAR 059:023†	09-04-2019
103 KAR 028:150	10-31-2019	401 KAR 061:010†	09-04-2019
103 KAR 030:290	10-10-2019	401 KAR 061:011†	09-04-2019
103 KAR 031:180	10-10-2019	401 KAR 100:030	05-07-2019
105 KAR 001:130	06-28-2019	401 KAR 101:010	05-07-2019
105 KAR 001:147	09-12-2019	401 KAR 101:020	05-07-2019
105 KAR 001:150	06-28-2019	401 KAR 101:0.30	05-07-2019
105 KAR 001:160	06-28-2019	401 KAR 101:040	05-07-2019
105 KAR 001:170	06-28-2019	401 KAR 102:010	05-07-2019
105 KAR 001:180	01-29-2020	739 KAR 002:020	02-27-2020
105 KAR 001:190	06-11-2019	739 KAR 002:030	02-27-2020
105 KAR 001:220	06-11-2019	739 KAR 002:070	02-27-2020
105 KAR 001:240	01-29-2020	802 KAR 003:010	11-22-2019
105 KAR 001:260	06-11-2019	804 KAR 004:400	12-03-2019
105 KAR 001:400	06-11-2019	804 KAR 004:410	12-03-2019
105 KAR 001:430	06-28-2019	804 KAR 006:020	12-03-2019
105 KAR 001:440	06-11-2019	804 KAR 010:031	12-03-2019
106 KAR 001:050†	09-04-2019	805 KAR 008:060	09-09-2019
201 KAR 027:008	11-22-2019	806 KAR 002:070	03-10-2020
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201 KAR 027:020	11-22-2019	806 KAR 006:060	03-10-2020
201 KAR 027:021	11-22-2019	806 KAR 006:075	03-10-2020
302 KAR 035:060†	09-04-2019	806 KAR 006:090	03-10-2020
401 KAR 039:060	05-07-2019	806 KAR 006:120	03-10-2020
401 KAR 039:080	05-07-2019	806 KAR 006:130	03-10-2020
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401 KAR 042:250	05-07-2019	806 KAR 015:010	03-10-2020
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401 KAR 042:330	05-07-2019	806 KAR 015:030	03-10-2020
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401 KAR 045:040	05-07-2019	806 KAR 017:050	03-10-2020
401 KAR 045:070	05-07-2019	806 KAR 017:081	03-10-2020
401 KAR 045:080	05-07-2019	806 KAR 017:083	03-10-2020
401 KAR 045:090	05-07-2019	806 KAR 017:160	03-10-2020
401 KAR 045:100	05-07-2019	806 KAR 017:190	03-10-2020
401 KAR 045:135	05-07-2019	806 KAR 017:250	03-10-2020
401 KAR 045:135	05-07-2019	806 KAR 017:490	03-10-2020
401 KAR 046:120	05-07-2019	806 KAR 019:010	03-10-2020
401 KAR 047:090	05-07-2019	806 KAR 019:020	03-10-2020
401 KAR 047:095	05-07-2019	806 KAR 019:030	03-10-2020
401 KAR 047:110	05-07-2019	806 KAR 024:010	03-10-2020
401 KAR 047:205	05-07-2019	806 KAR 026:010	03-10-2020
401 KAR 048:090	10-03-2019	806 KAR 026:020	03-10-2020
401 KAR 048:205	05-07-2019	806 KAR 030:030	03-10-2020
401 KAR 048:206	05-07-2019	806 KAR 030:040	03-10-2020
401 KAR 048:207	05-07-2019	806 KAR 030:050	03-10-2020
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401 KAR 049:080	05-07-2019	806 KAR 038:010	03-10-2020
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401 KAR 050:020†	09-04-2019	806 KAR 038:050	03-10-2020
401 KAR 055:010†	09-04-2019	806 KAR 038:070	03-10-2020
401 KAR 059:010†	09-04-2019	806 KAR 038:080	03-10-2020
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808 KAR 009:050	12-03-2019	902 KAR 045:150	03-18-2020
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808 KAR 010:410	12-03-2019	902 KAR 048:040	03-18-2020
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820 KAR 001:032	11-22-2019	907 KAR 001:054	03-20-2020
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900 KAR 006:125	10-02-2019	907 KAR 006:005	03-20-2020
902 KAR 004:120	03-18-2020	907 KAR 007:010	03-20-2020
902 KAR 008:170	03-18-2020	907 KAR 007:015	03-20-2020
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902 KAR 020:036†	03-18-2020	908 KAR 001:374	03-17-2020
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