



ADMINISTRATIVE REGISTER OF KENTUCKY

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, August 14, 2020.

MEETING NOTICES

The **Administrative Regulation Review Subcommittee** is tentatively scheduled to meet on September 8, 2020, at 1:00 p .m. in room 171 Capitol Annex.

ARRS Tentative Agenda - 499 [Online agenda updated as needed](#)

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

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**Administrative Regulation Review Subcommittee
TENTATIVE Meeting Agenda
Tuesday, September 8, 2020 at 1 p.m.
Annex Room 171**



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

FINANCE AND ADMINISTRATION CABINET

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009 KAR 001:040 & E. Executive agency lobbyist, employer of executive agency lobbyist, and real party in interest registration and expenditure statements; financial transactions and termination forms; and enforcement. ("E" expires 03-07-2021)

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201 KAR 002:106. Licensed or permitted facility closures.

201 KAR 002:240. Special limited pharmacy permit- Charitable.

201 KAR 002:320. Requirements of manufacturers and virtual manufacturers.

Board of Nursing

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201 KAR 020:320. Standards for curriculum of prelicensure registered nurse and practical nurse programs. (Comments Received; SOC due 08-14-2020)

201 KAR 020:470E. Dialysis technician credentialing requirements and training program standards. ("E" expires 12-26-2020) (Deferred from July)

Board of Chiropractic Examiners

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Board of Podiatry

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Board of Licensure of Marriage and Family Therapists

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Board of Medical Imaging and Radiation Therapy

201 KAR 046:010. Definitions for 201 KAR Chapter 046. (Deferred from August)

201 KAR 046:035. Practice standards, scopes of practice, and ethical standards. (Deferred from August)

201 KAR 046:040. Medical imaging technologist, advanced imaging professional, radiographer, nuclear medicine technologist, and radiation therapist licenses. (Deferred from August)

201 KAR 046:050. Provisional training license for medical imaging technologists, radiographers, nuclear medicine technologists, and radiation therapists. (Deferred from August)

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- 201 KAR 046:070. Violations and enforcement. (Deferred from August)
- 201 KAR 046:081. Limited X-Ray machine operator. (Deferred from August)
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CABINET FOR HEALTH AND FAMILY SERVICES

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Department for Public Health

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- 902 KAR 004:140E. Enhanced HANDS services in response to declared national or state public health emergency. ("E" expires 02-13-2021)

Department for Public Health

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- 902 KAR 045:180. Permits and fees for food manufacturing plants, food storage warehouses, salvage processors and distributors, cosmetic manufacturers, and certificate of free sale.

Department for Medicaid Services

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- 907 KAR 1:604 & E. Recipient cost-sharing. ("E" expires 01-07-2021) (Amended After Comments) (Deferred from August)

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922 KAR 006:010 & E. Standards for community action agencies. ("E" expires 02-15-2021)

Department for Community Based Services

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**3. COMMITTEE REVIEW OF EFFECTIVE REGULATIONS
CABINET FOR HEALTH AND FAMILY SERVICES**

Department for Public Health

Division of Epidemiology

902 KAR 2:210E. Covering the face in response to declared national or state public health emergency. ("E" expires 05-07-2021)

**4. REGULATIONS REMOVED FROM SEPTEMBER'S AGENDA
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201 KAR 002:050. Licenses and Permits; Fees. (Deferred from June)

201 KAR 002:311. Compounding for veterinary use. (Comments Received; SOC ext., due 09-15-2020)

JUSTICE AND PUBLIC SAFETY CABINET

Department of Corrections

Office of the Secretary

501 KAR 006:120. Blackburn Correctional Complex. (Comments Received; SOC ext., due 09-15-2020)

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820 KAR 001:050 & E. Raffles. ("E" expires 02-16-2021) (Comments Received; SOC due 09-15-2020)

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Health Care

Health Services and Facilities

902 KAR 020:160. Chemical dependency treatment services and facility specifications. (Comments Received; SOC ext., due 09-15-2020)

902 KAR 020:440. Facilities specifications, operation and services; residential crisis stabilization units. (Comments Received; SOC ext., due 09-15-2020)

Department for Medicaid Services

Division of Policy and Operations

Behavioral Health

907 KAR 015:070. Coverage provisions and requirements regarding services provided by residential crisis stabilization units. (Comments Received; SOC ext., due 09-15-2020)

907 KAR 015:080. Coverage provisions and requirements regarding chemical dependency treatment center services. (Comments Received; SOC ext., due 09-15-2020)

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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.

Public comment periods are at least two months long. For other regulations with open comment periods, please also see last month's Administrative Register of Kentucky.

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.

EMERGENCY ADMINISTRATIVE REGULATIONS

Emergency regulations filed after 7/15/2019 are automatically set to expire 270 days from the date filed. The 270 days may be extended by one month, if comments were received. Emergency regulations expire upon the conclusion of the 270 days (or 270 days plus the number of days of the requested extension) or upon replacement by an ordinary regulation, whichever occurs first.

STATEMENT OF EMERGENCY
702 KAR 1:190E

Pursuant to KRS 13A.190(1)(a) and KRS 39A.180, the promulgation of this emergency regulation is necessary to meet an imminent threat to public health, safety, or welfare. On March 6, 2020, Governor Andy Beshear signed Executive Order 2020-215 declaring a State of Emergency created by the Novel Coronavirus (COVID-19). In response to this emergency situation, all school districts closed schools to in-person classes beginning the week of March 16, 2020. On March 18, 2020, Governor Beshear entered Executive Order (EO) 2020-243 which encouraged all Kentucky citizens take feasible measures to engage in appropriate social distancing as recommended by the Centers for Disease Control and Prevention (CDC) and Kentucky Department of Public Health. Further, EO 2020-243 ordered the Kentucky Department of Education (KDE) to take steps to ensure appropriate social distancing, including permitting educational requirements to be satisfied through online courses, to the extent practicable. EO 2020-243 suspended statutes requiring physical presence of participants in meetings or interactions. Kentucky public schools remained closed to in-person classes for the remainder of the 2019-2020 school year to prevent the spread of COVID-19. Unfortunately, the COVID-19 emergency will continue to impact school districts during the 2020-2021 school year. While a variety of leave options exist for school district staff who become exposed to COVID-19 and subject to quarantine and medical treatment, these leave options may be inadequate based on the spread of COVID-19 in local communities, or expire prior to the end of the 2020-2021 school year. It is imperative that no district employee who is subject to quarantine or treatment for COVID-19 be compelled to return to work due to a lack of leave time, exposing others to the virus, until they are cleared for return by a medical professional. This emergency administrative regulation is being filed to allow school districts the ability to provide additional emergency leave for school district employees to use for COVID-19 related leave. This emergency regulation is temporary in nature and will expire as provided for in KRS 13A.190. An ordinary administrative regulation would not timely address the need for school district flexibility to grant additional emergency leave for the 2020-2021 school year. The agency may, to the extent necessary, file another emergency regulation upon expiration.

ANDY BESHEAR, Governor
JACQUELINE COLEMAN, Secretary

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(New Emergency Administrative Regulation)

702 KAR 1:190E. District employee emergency leave.

EFFECTIVE: August 12, 2020
RELATES TO: KRS 161.152, 160.290.
STATUTORY AUTHORITY: KRS 156.070, 156.160.
NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160

requires the Kentucky Board of Education to promulgate administrative regulation establishing standards which school districts shall meet in student, program, service, and operational performance, including regulations for the protection of the physical welfare and safety of public school children, as well as the pay of teachers during absence because of sickness or quarantine. KRS 156.070 provides the Kentucky Board of Education with the management and control of the common schools and all programs operated in those schools. KRS 160.291 authorizes fringe benefit payments by local boards of education which are deemed to be for services rendered for the benefit of the common schools. The governor issued Executive Order 2020-15 declaring a state-wide

emergency due to the COVID-19 pandemic. KRS 39A.180 authorizes the promulgation of administrative regulations to effectuate the governor's Executive Order 2020-243 temporarily suspending KRS 161.152(2). This administrative regulation establishes a school district's authority to grant paid emergency leave to employees in response to the COVID-19 emergency. This emergency regulation is necessary to address the imminent threat to public health, safety, and welfare; and to protect human health; while safely and efficiently operating public schools during the 2020-21 school year in light of the COVID-19 public health emergency.

Section 1. Standard Emergency Leave. (1) Each district board of education may allow each person employed as a full-time employee in the public schools not to exceed three (3) emergency days for the 2020-2021 school year for reasons designated by the district board of education, without loss of salary to the employee and without affecting his or her sick leave.

Section 2. Additional COVID-19 Emergency Leave. (1) Each district board of education may allow each person employed as a full-time or part-time employee in the public schools emergency days for the 2020-2021 school year for leave related to the COVID-19 public health emergency as determined by the local school district, without loss of salary to the employee and without affecting his or her sick leave.

(2) Leave granted pursuant to this section shall be determined based on local school board action, resolution, or procedures enacted by local school districts. Such action, resolution, or procedures shall include, but need not be limited to:

- (a) The number of emergency days authorized for use by employees;
- (b) COVID-19 related reasons for authorization of such leave during the current state of emergency; and
- (c) How leave is credited to and used by employees determined eligible for emergency leave under this section.

(3) Leave granted pursuant to this section shall not accumulate or carry over beyond the 2020-2021 school year and shall not be transferrable to any other classification of paid leave established by KRS 161.155, KRS 161.154, or local school district policy. 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).

KEVIN C. BROWN, Interim Commissioner
LU YOUNG, Chair

APPROVED BY AGENCY: August 10, 2020

FILED WITH LRC: August 12, 2020 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on October 22, 2020, at 10am in the State Board Room, 5th Floor, 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this meeting 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 be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through October 31, 2020.

CONTACT PERSON: Todd G. Allen, Interim 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.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd G. Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This emergency administrative regulation establishes the authority for local school districts to grant paid emergency leave to employees, including emergency leave related to the COVID-19 state of emergency.

(b) The necessity of this administrative regulation: While various paid leave options exist for school districts and their employees to utilize in response to the COVID-19 state of emergency, those leave options may not fully address the needs of school districts. For example, expanded leave under the Families First Coronavirus Response Act (FFCRA) expires in December 2020. Furthermore, KRS 156.160 provides the Kentucky Board of Education with authority to promulgate administrative regulations regarding leave for school employees during sickness or quarantine. Providing school districts with authority to grant paid emergency leave to employees for use as a result of the COVID-19 state of emergency is necessary to provide school districts the flexibility to grant and direct leave, as determined by the school district, to prevent the spread of COVID-19. This emergency regulation is necessary to address the imminent threat to public health, safety, and welfare; and to protect human health; while safely and efficiently operating public schools during the 2020-21 school year in light of the COVID-19 public health emergency.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance, including regulations for the protection of the physical welfare and safety of public school children, as well as the pay of teachers during absence because of sickness or quarantine. KRS 156.070 provides the Kentucky Board of Education with the management and control of the common schools and all programs operated in those schools. KRS 160.291 authorizes fringe benefit payments by local boards of education which are deemed to be for services rendered for the benefit of the common schools. The governor issued Executive Order 2020-15 declaring a state-wide emergency due to the COVID-19 pandemic. KRS 39A.180 authorizes the promulgation of administrative regulations to effectuate the governor's Executive Order 2020-243 temporarily suspending KRS 161.152(2). This administrative regulation establishes a school district's authority to grant paid emergency leave to employees in response to the COVID-19 emergency.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This emergency administrative regulation will assist in the effective administration of the statutes by allowing school districts to grant additional paid emergency leave to school employees to prevent the spread of COVID-19, consistent with KRS 156.160 which provide the Kentucky Board of Education with regulatory authority for issues of school employee pay due to illness and quarantine.

(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 is not an amendment. This is a new emergency administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is not an amendment. This is a new emergency administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is not an amendment. This is a new emergency administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is not an amendment. This is a new emergency administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This emergency administrative regulation impacts local school districts and their employees.

(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 actions are necessary to comply with this emergency administrative regulation. If a school district chooses to provide additional emergency leave to school employees, local school board action, resolution, or procedures may be needed for implementing additional emergency leave provisions.

(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 new costs to local school districts to comply with this emergency administrative regulation since districts may choose whether or not they will grant additional paid emergency leave. In the event a school district does provide additional paid emergency leave to employees, school districts will assume the cost of paying the employee for additional paid leave days.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The emergency administrative regulation provides school districts with additional flexibility to respond to the COVID-19 state of emergency. Specifically, school districts will have the ability to grant additional paid leave to employees for COVID-19 related absences.

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

(a) Initially: There are no expected additional costs to the agency to implementing the emergency regulation. In the event a school district provides additional paid emergency leave to employees, school districts will assume the cost of paying the employee for additional paid leave days.

(b) On a continuing basis: There are no expected additional costs to the agency to implementing the emergency regulation. In the event a school district provides additional paid emergency leave to employees, school districts will assume the cost of paying the employee for additional paid leave days.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No costs to the agency are anticipated. See response above. In the event incidental costs arise, KDE General Funds will be used.

(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 new fees or funding are necessary to implement the administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no direct or indirect fees.

(9) TIERING: Is tiering applied? Tiering was not applied. This administrative regulation applies uniformly to all school districts.

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? Local school districts.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance, including regulations for the protection of the physical welfare and safety of public school children, as well as the pay of teachers during absence because of sickness or quarantine. KRS 156.070 provides the Kentucky Board of Education with the management and control of the common schools and all programs operated in those schools. KRS 160.291 authorizes fringe benefit payments by local boards of education which are deemed to be for services rendered for the benefit of the common schools. The governor issued Executive Order 2020-15 declaring a state-wide emergency due to the COVID-19 pandemic. KRS 39A.180 authorizes the promulgation of administrative regulations to effectuate the governor's Executive Order 2020-243 temporarily suspending KRS 161.152(2). This administrative regulation

establishes a school district’s authority to grant paid emergency leave to employees in response to the COVID-19 emergency.

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? This administrative regulation is not expected to generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation is not expected to generate any revenue.

(c) How much will it cost to administer this program for the first year? This administrative regulation does not result in any additional costs in order to comply with the regulation. In the event a school district provides additional paid emergency leave to employees, school districts will assume the cost of paying the employee for additional paid leave days.

(d) How much will it cost to administer this program for subsequent years? This emergency administrative regulation is temporary in nature. No administration costs for subsequent years are anticipated.

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

Revenues (+/-): N/A
Expenditures (+/-): N/A
Other Explanation:

**STATEMENT OF EMERGENCY
702 KAR 7:140E**

Pursuant to KRS 13A.190(l)(a) and KRS 39A.180, the promulgation of this emergency regulation is necessary to meet an imminent threat to public health, safety, or welfare; to protect human health; and to prevent loss of state funds. On March 6, 2020, Governor Andy Beshear signed Executive Order 2020-215 declaring a State of Emergency created by the Novel Coronavirus (COVID-19). In response to this emergency situation, all school districts closed schools to in-person classes beginning the week of March 16, 2020. On March 18, 2020, Governor Beshear entered Executive Order (EO) 2020-243 which encouraged all Kentucky citizens take feasible measures to engage in appropriate social distancing as recommended by the Centers for Disease Control and Prevention (CDC) and Kentucky Department of Public Health. Further, EO 2020-243 ordered the Kentucky Department of Education (KDE) to take steps to ensure appropriate social distancing, including permitting educational requirements to be satisfied-through online courses, to the extent practicable. EO 2020-243 suspended statutes requiring physical presence of participants in meetings or interactions. Kentucky public schools remained closed to in-person classes for the remainder of the 2019-20 school year to prevent the spread of COVID-19. This emergency administrative regulation is being filed to permit an additional maximum of 30 minutes to be counted towards the required 1,062 instructional hours each year for activities conducted by local school districts related to the Novel Coronavirus (COVID-19). Local school districts, as a result of public health expectations and guidance provided by the Kentucky Department for Public Health and the Kentucky Department of Education (KDE), will be operating their schools and districts in a different manner in order to mitigate the spread of COVID-19. Districts are preparing for operations which include additional cleaning and sanitizing, instructing students on the use of masks and social distancing, hand washing, temperature taking and other activities that will require additional time to more safely move students and staff within their facilities. This emergency regulation is temporary in nature and will expire as provided for in KRS 13A.190. An ordinary administrative regulation would not timely address the need for school districts to plan for and deliver instruction for the 2020-21 school year. The agency may, to the extent necessary, file

another emergency regulation upon expiration.

ANDY BESHEAR, Governor
JACQUELINE COLEMAN, Secretary

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(Emergency Amendment)**

702 KAR 7:140E. School calendar.

EFFECTIVE: August 12, 2020
RELATES TO: KRS 157.320, 157.350, 158.060, 158.070
STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.320, 158.060, 158.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070, 156.160, 157.320, 158.060, and 158.070 define the school day and month and require the Kentucky Board of Education (KBE) to promulgate administrative regulations governing the make-up of school days missed. KRS 158.070 defines the school term and requires the KBE to promulgate administrative regulations governing the use of school days and the establishment of school calendars. This administrative regulation establishes the requirements for school districts to follow regarding school calendars.

Section 1. Calendar Requirements. (1) The local board of education shall adopt a school calendar on or before May 15 of each year. The calendar shall:

(a) Establish the length of each student attendance day, in accordance with KRS 158.060(3); and

(b) Set the instructional time the local board of education requires for kindergarten per KRS 157.320(7).

(2) Opening day shall be scheduled to occur prior to the first student attendance day of the student instructional year. (3) Closing day shall be scheduled to occur following the completion of the last student attendance day of the student instructional year.

(4) Local school districts shall plan, in accordance with this subsection, for the make-up of instructional time missed due to emergency. In addition to the minimum 1,062 hour student instructional year, the school calendar shall include days equal to the greatest number of days missed system-wide in the local school district over the preceding five (5) school years.

(5) Graduation ceremonies may be held before the end of the student instructional year. Diplomas shall be distributed after completion of the student instructional year.

Section 2. Calendar Approval. (1) The local board of education shall file each adopted school calendar, which complies with the requirements of Section 1 of this administrative regulation, with the department no later than June 30 of each year. The local school district shall not be paid any installment of its Support Education Excellence in Kentucky (SEEK) program allotment until the school calendar has been approved by the department.

(2) The local board of education, upon recommendation of the local school district superintendent, may amend the school calendar.

(3) An amended school calendar, which complies with the requirements of Section 1 of this administrative regulation, shall be submitted for approval to the department no later than June 30 of each year.

Section 3. Instructional Time Missed. (1) The regularly scheduled student attendance day shall not be shortened after the school calendar has been adopted by the local board of education and approved by the department except in cases of emergency declared by the local school district superintendent in accordance with policies of the local board of education.

(2) The local school district shall not be required to make up a total of five (5) hours missed each student instructional year that were missed as a result of student attendance days shortened due to emergency. These hours shall be reported to the department on the amended school calendar and shall be included in the calculation of total hours of instructional time for the student instructional year.

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(3) Except as provided in subsection (2) of this section, all instructional time missed on student attendance days shortened due to emergency shall be made up and shall be reported to the department on the amended school calendar.

Section 4. Emergency Day Waiver. (1) A school district shall not be granted an emergency day waiver unless the district has missed more than twenty (20) regular student attendance days district-wide and the district has demonstrated that an extreme hardship would result if the district is not granted an emergency day waiver. The local school district shall make up at least the first twenty (20) regular student attendance days missed in a school year by adding these equivalent hours back into the school calendar.

(2) A local board of education request for a district-wide emergency day waiver shall be submitted to the commissioner for approval. A copy of the local board order shall accompany this request. An approved emergency day waiver shall be the length of the student attendance day established in the approved calendar.

(3) A local board of education may request an emergency day waiver if one (1) school, or part of the district, is forced to miss school on a particular student attendance day due to an emergency. The request shall be submitted to the commissioner for approval. A copy of the local board order shall accompany this request. An approved emergency day waiver shall be the length of the student attendance day established in the approved calendar.

Section 5. Activities of the Student Attendance Day. (1) The following shall constitute the activities to be conducted during the student attendance day:

(a) Courses and content included in the Kentucky Core Academic Standards, pursuant to 704 KAR 3:303;

(b) Cocurricular activities which are unequivocally instructional in nature, directly related to the instructional program and scheduled to minimize absences from classroom instruction; and

(c) ~~[A maximum of]~~ five (5) minutes passing time between instructional periods, and travel time required to participate in regular instructional programs off of the school campus including vocational schools, day treatment centers, and alternative schools. Travel time to off-campus facilities shall be scheduled to minimize absence from classroom instruction. For school year 2020-2021, a maximum of thirty (30) minutes may be used for Novel Coronavirus (COVID-19) related activities including, but not limited to, cleaning, sanitizing, hand washing, taking of temperatures, and instructing students on the use of masks and social distancing. This thirty (30) minutes may be used in addition to the five (5) minutes of passing time between instructional periods to increase passing time, or may be used prior to the start of the first instructional period or after the last instructional period.

(2) The local board of education shall adopt a policy specifying cocurricular instructional activities which may be included in the student attendance day, as described in subsection (1)(b) of this section.

(3) Each school shall have available a master (bell) schedule that delineates instructional time periods and noninstructional time periods for all grade levels served and schedules pro-vided. An up-to-date master (bell) schedule shall be on file in a school. Up-to-date master (bell) schedules for each school in a district shall be on file in the district's central office. 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).

KEVIN C. BROWN, Interim Commissioner
LU YOUNG, Chair

APPROVED BY AGENCY: August 10, 2020

FILED WITH LRC:

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on October 22, 2020 at 10am in the State Board Room, 5th Floor, 300 Sower Blvd., Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five (5) working days prior to this 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 October 31,2020.

CONTACT PERSON: Todd G. Allen, Interim 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd G. Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This emergency amendment permits a maximum of thirty (30) minutes to be counted towards the required 1,062 instructional hours each year for activities conducted by local school districts related to the Novel Coronavirus (COVID-19).

(b) The necessity of this administrative regulation: The promulgation of this emergency regulation is necessary to meet an imminent threat to public health, safety or welfare; to protect human health; and to prevent loss of state funds. Local school districts, as a result of public health expectations and guidance provided by the Kentucky Department for Public Health and the Kentucky Department of Education (KDE), will be operating their schools and districts in a different manner in order to mitigate the spread of COVID-19. Additional flexibility measures are needed for local school district operations which include additional cleaning and sanitizing, instructing students on the use of masks and social distancing, hand washing, temperature taking and other activities that will require additional time to more safely move students and staff within their facilities. This emergency regulation provides this additional flexibility without extending the overall school day which would result in additional logistical concerns for administrators, teachers and parents.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 156.070, 156.160, 157.320, 158.060, and 158.070 define the school day and month and require the Kentucky Board of Education (KBE) to promulgate administrative regulations governing the make-up of school days missed. KRS 158.070 defines the school term and requires the KBE to promulgate administrative regulations governing the use of school days and the establishment of school calendars. This emergency amendment is necessary to permit a maximum of thirty (30) minutes of time to be counted towards instructional hours for activities conducted by local school districts related to the Novel Coronavirus (COVID-19). This thirty (30) minutes may be used in addition to the five (5) minutes of passing time between instructional periods to increase passing time, or may be used prior to the start of the first instructional period or after the last instructional period. This will allow districts the flexibility to utilize these minutes during the day at the times most beneficial for each district, while not extending the length of the overall day which would result in additional logistical concerns for administrators, teachers and parents.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This emergency amendment will assist in the effective administration of the statutes by allowing a maximum of thirty (30) minutes to be counted towards the required 1,062 instructional hours each year for activities conducted by local school districts related to COVID-19 to be used during the day at the times most beneficial for each district, while not extending the length of the overall day which would result in additional logistical concerns for administrators, teachers and parents.

(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 emergency amendment permits a maximum of thirty minutes to be counted towards the required 1,062 instructional hours

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each year for activities conducted by local school districts related to the Novel Coronavirus (COVID-19). This thirty (30) minutes may be used in addition to the five (5) minutes of passing time between instructional periods to increase passing time, or may be used prior to the start of the first instructional period, or after the last instructional period.

(b) The necessity of the amendment to this administrative regulation: The promulgation of this emergency regulation is necessary to meet an imminent threat to public health, safety or welfare; to protect human health; and to prevent loss of state funds. Local school districts, as a result of public health expectations and guidance provided by the Kentucky Department for Public Health and the Kentucky Department of Education (KDE), will be operating their schools and districts in a different manner in order to mitigate the spread of COVID-19. Additional flexibility measures are needed for local school district operations which include additional cleaning and sanitizing, instructing students on the use of masks and social distancing, hand washing, temperature taking and other activities that will require additional time to more safely move students and staff within their facilities. This emergency regulation provides this additional flexibility without extending the overall school day which would result in additional logistical concerns for administrators, teachers and parents.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 156.070, 156.160, 157.320, 158.060, and 158.070 define the school day and month and require the Kentucky Board of Education (KBE) to promulgate administrative regulations governing the make-up of school days missed. KRS 158.070 defines the school term and requires the KBE to promulgate administrative regulations governing the use of school days and the establishment of school calendars. This emergency amendment is necessary to permit a maximum of thirty (30) minutes of time to be counted towards instructional hours for activities conducted by local school districts related to the Novel Coronavirus (COVID-19). This thirty (30) minutes may be used in addition to the five (5) minutes of passing time between instructional periods to increase passing time, or may be used prior to the start of the first instructional period or after the last instructional period. This will allow districts the flexibility to utilize these minutes during the day at the times most beneficial for each district, while not extending the length of the overall day which would result in additional logistical concerns for administrators, teachers and parents.

(d) How the amendment will assist in the effective administration of the statutes: This emergency amendment will assist in the effective administration of the statutes by allowing a maximum of thirty (30) minutes to be counted towards the required 1,062 instructional hours each year for activities conducted by local school districts related to COVID-19 to be used during the day at the times most beneficial for each district, while not extending the length of the overall day which would result in additional logistical concerns for administrators, teachers and parents.

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

(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 actions are necessary to comply with this emergency amendment. The local school districts may use the thirty (30) minutes at times most beneficial for each district.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no expected new costs related to the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Local school districts, as a result of public health expectations and guidance provided by the Kentucky Department for Public Health and the Kentucky Department of Education (KDE), will be operating their schools and districts in a different manner in order to mitigate the spread of COVID-19.

Districts are preparing for operations which include additional cleaning and sanitizing, instructing students on the use of masks and social distancing, hand washing, temperature taking and other activities that will require additional time to more safely move students and staff within their facilities. This thirty (30) minutes may be used in addition to the five (5) minutes of passing time between instructional periods to increase passing time, or may be used prior to the start of the first instructional period, or after the last instructional period. This will allow districts the flexibility to utilize these minutes during the day at the times most beneficial for each district, while not extending the length of the overall day which would result in additional logistical concerns for administrators, teachers and parents.

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

(a) Initially: There are no expected additional costs in implementing the emergency amendment.

(b) On a continuing basis: There are no expected on-going costs related to the emergency amendment. This is a temporary emergency amendment necessary only to respond to the current pandemic for the 2020-21 school year.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: As previously stated, no costs are anticipated. In the event of incidental costs, KDE General 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 new fees or funding are necessary to implement the administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no direct or indirect fees.

(9) TIERING: Is tiering applied? Explain why tiering was or was not used. Tiering was not applied. This administrative regulation applies uniformly to all school districts.

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? Local school districts.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.070, 156.160, 157.320, 158.060, and 158.070 define the school day and month and require the Kentucky Board of Education (KBE) to promulgate administrative regulations governing the make-up of school days missed. KRS 158.070 defines the school term and requires the KBE to promulgate administrative regulations governing the use of school days and the establishment of school calendars. This emergency amendment is necessary to permit a maximum of thirty (30) minutes of time to be counted towards instructional hours for activities conducted by local school districts related to the Novel Coronavirus (COVID-19). This thirty (30) minutes may be used in addition to the five (5) minutes of passing time between instructional periods to increase passing time, or may be used prior to the start of the first instructional period or after the last instructional period. This will allow districts the flexibility to utilize these minutes during the day at the times most beneficial for each district, while not extending the length of the overall day which would result in additional logistical concerns for administrators, teachers and parents.

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? This amendment is not expected to generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment is not expected to generate any revenue.

(c) How much will it cost to administer this program for the first year? This amendment is not expected to result in any new costs.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation is temporary and not expected to result in any new costs.

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

Revenues (+/-): N/A
Expenditures (+/-): N/A
Other Explanation:

**STATEMENT OF EMERGENCY
902 KAR 2:210E**

This emergency administrative regulation is being promulgated to establish actions that the Department for Public Health may take in response to a declared national or state emergency. These actions include enhancing prevention of the spread of the infectious disease COVID-19 by wearing a face covering in public, subject to certain exceptions. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)1. and 4. to meet an imminent threat to public health, safety and welfare, and to protect human health. This emergency administrative regulation will not be replaced by an ordinary administrative regulation as these measures are in direct response to the declared state public health emergency. This emergency administrative regulation differs from the previously filed emergency administrative regulation on this same subject, 902 KAR 2:190E, in multiple ways. First, the provisions relating to an individual who is deaf or hard of hearing or who is actively communicating with an individual who is deaf or hard of hearing were clarified. The provisions relating to penalties were changed to establish a requirement for a warning for a first offense and to establish fines with the second and subsequent offenses. The effective date of this administrative regulation was established as 5:00 p.m. on August 7, 2020. Additionally, provisions were added to clarify that the Cabinet for Health and Family Services shall consult with the Governor's Office, Centers for Disease Control and Prevention, and other public health authorities to determine if this administrative regulation shall be withdrawn prior to its expiration under KRS 13A.190. Lastly, changes were made to comply with the drafting and formatting requirements of KRS Chapter 13A.

ANDY BESHEAR, Governor
ERIC C. FRIEDLANDER, Secretary

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Epidemiology
(New Emergency Administrative Regulation)**

902 KAR 2:210E. Covering the face in response to declared national or state public health emergency.

EFFECTIVE: August 10, 2020
RELATES TO: KRS 39A.180, 211.180(1), 214.010, 214.645, 333.130

STATUTORY AUTHORITY: KRS 12.270(2), 39A.180, 194A.010, 194A.025, 194A.050(1), 211.025, 211.180(1), 214.020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 214.020 requires the Cabinet for Health and Family Services to take action, promulgate, adopt, and enforce rules and regulations it deems efficient in preventing the introduction or spread of infectious or contagious disease within this state. KRS 211.025 requires the cabinet to perform actions reasonable necessary to protect and improve the health of the people. KRS 211.180(1) requires the cabinet to enforce administrative regulations to control communicable diseases. This administrative regulation establishes requirements for face covering in response to a declared national or state public health emergency.

Section 1. Definitions.

(1) "Face covering" means a material that covers the nose and mouth and that:

- (a)1. Is secured to the head with ties, straps, or loops over the ears; or
- 2. Is wrapped around the lower face;
- (b) May be made of a variety of materials, including cotton, silk, or linen;
- (c) Shall have two (2) or more layers; and
- (d) Shall be factory-made, homemade, or improvised from household items such as a scarf, bandana, or t-shirt.

Section 2. Scope of Covering the Face in Response to Declared National or State Public Health Emergency. (1) The provisions of this administrative regulation shall apply to members of the public in Kentucky. Existing sector-specific requirements mandating face coverings for employees of entities in the Commonwealth remain in effect and are available online at: <https://healthyatwork.ky.gov>.

(2) Except as provided by subsection (3) of this section, each person in Kentucky shall cover their nose and mouth with a face covering if the person:

- (a) Is inside, or waiting in line to enter, any:
 - 1. Retail establishment;
 - 2. Grocery store;
 - 3. Pharmacy;
 - 4. Hair salon or barbershop;
 - 5. Nail salon or spa;
 - 6. Tattoo parlor;
 - 7. Child care facility;
 - 8. Restaurant or bar, if not seated and consuming food or beverage;
 - 9. Health care setting; or

10. Other indoor public space in which it is difficult to maintain a physical distance of at least six (6) feet from all individuals who are not members of that person's household;

(b)1. Is waiting for or riding on public transportation or paratransit;

2. Is riding in a taxi, private car service, or ride-sharing vehicle; or

3. Is driving a vehicle described in subparagraph 1. or 2. of this paragraph while a customer is present; or

(c) Is in an outdoor public space in which the person cannot maintain a physical distance of six (6) feet from all individuals who are not members of the person's household and is not otherwise covered by previously issued guidance.

(3) A person shall be exempt from wearing a face covering if the person is:

(a) A child who is age five (5) or younger;

(b) A person with disability, or a physical or mental impairment, that prevents the person from safely wearing a face covering;

(c) Deaf or hard of hearing, or is actively communicating with a person who is deaf or hard of hearing, if the individual is able to maintain a safe distance of six (6) feet from all individuals who are not members of that person's household;

(d) Engaged in work that a state or federal regulator has concluded would make wearing a face covering a risk to the employee's health or safety;

(e) Seated and actively consuming food or drink at a restaurant, bar, or other establishment that offers food or beverage service;

(f) Obtaining a service that requires temporary removal of the face covering in order to perform or receive the service;

(g) Required to temporarily remove the face covering to confirm the person's identity or for security or screening purposes;

(h)1. Giving a speech or broadcast to an audience; and
2. Able to maintain a safe distance of six (6) feet from all individuals who are not members of the person's household;

(i) In a swimming pool, lake, or other body of water;

(j) Actively engaged in exercise in a gym or indoor facility if:
1. Six (6) or more feet of separation between individuals exists; and

2. The gym or indoor facility engages in required cleaning;

(k) Actively participating in athletic practice, scrimmage, or competition that is permitted under separate Healthy at Work requirements or guidance available online at:

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<https://healthatwork.ky.gov>; or

(l) Engaged in a lawful activity for which federal or state law prohibits wearing of a face covering.

Section 3. Non-Compliance. (1)(a) The requirements of this administrative regulation that pertain to a business or other public-facing entity shall be enforced by the Labor Cabinet, the Department for Public Health, another state regulatory agency, and each local health department.

(b) The requirements of this administrative regulation that pertain to an individual shall be enforced by state and local law enforcement authorities, as required by KRS 39A.180.

(2)(a) A person who violates this administrative regulation by failing to wear a face covering as required by Section 2(2) of this administrative regulation and who is not exempt pursuant to Section 2(3) of this administrative regulation shall be given a warning for the first offense and shall be fined:

1. Twenty-five (25) dollars for the second offense;
2. Fifty (50) dollars for the third offense;
3. Seventy-five (75) dollars for the fourth offense; and
4. \$100 for each subsequent offense.

(b) If a person attempts to enter a public-facing entity or mode of transportation listed in Section 2(2) of this administrative regulation while failing to wear a face covering and not subject to any of the listed exemptions in Section 2(3) of this administrative regulation, the person shall be denied access to that public-facing entity or mode of transportation.

(c) If a person is already on the premises and violates this administrative regulation by removing a face covering, the person shall be denied services and asked to leave the premises, and may be subject to other applicable civil and criminal penalties.

(3) Any owner, operator, or employer of a business or other public-facing entity who violates this administrative regulation by permitting an individual on the premises who is not wearing a face covering and who is not subject to any exemption shall be fined at the rates listed in subsection (2)(a) of this section. The business may also be subject to an order requiring immediate closure.

Section 4. Effective Date. (1) This administrative regulation shall become effective at 5 p.m. on August 7, 2020.

(2) In accordance with KRS 13A.190, this administrative regulation shall remain in effect until:

- (a) Expiration of the time period established by KRS 13A.190; or
- (b) Withdrawn in accordance with KRS 13A.190(12).

(3) The Cabinet for Health and Family Services shall regularly consult with the Governor’s Office, the Centers for Disease Control and Prevention, and other public health authorities to determine if this administrative regulation shall be withdrawn prior to its expiration under KRS 13A.190.

Section 5. Reference. Guidance on how to make a face covering at home is available at: <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-to-make-cloth-face-covering.html>.

DR. STEVEN J. STACK, MD, MBA, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: August 7, 2020

FILED WITH LRC: August 10, 2020 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 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 October 19, 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 October 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; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Julie Brooks or Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation requires the wearing of face coverings at specific events and locations in the Commonwealth of Kentucky to prevent the spread of COVID – 19 during the declared national or state public health emergency.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure the health and safety of the citizens of the Commonwealth during the current national or state public health emergency.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050, 194A.010, KRS 194A.025, KRS 211.025 and KRS 214.020 authorize the Cabinet for Health and Family Services to take action to protect the health and welfare of the citizens of the Commonwealth and to adopt administrative regulations and to take other action to prevent the spread of disease in the Commonwealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will prevent the spread of COVID-19 in the Commonwealth and will protect the health and welfare of the citizens of the Commonwealth during the declared national and state public health emergency.

(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 is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This 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: This is a statewide administrative regulation that could potentially affect the entire population of the Commonwealth. This administrative regulation also impacts all Kentucky businesses, organizations and governments.

(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 questions (3) will have to take to comply with this administrative regulation or amendment: Citizens of the Commonwealth will be required to wear face coverings in certain places and venues to prevent the spread of COVID-19. A business or other public-facing entity shall not permit an individual on the premises who is not wearing a face covering and who is not subject to any exemption.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): The costs of this administrative regulation is unknown at this time.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance with this administrative regulation, the health and welfare of the citizens of the Commonwealth will be protected during the current declared national and state public health emergency. Compliance with this administrative regulation will prevent the spread of COVID-19.

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

(a) Initially: There is no costs to implement this administrative regulation initially.

(b) On a continuing basis: There will be no ongoing costs for implementation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding will be necessary.

(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: An increase in fees or funding is not 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 fees.

(9) TIERING: Is tiering applied? Tiering is applied in this administrative regulation as Section 2(3) of this administrative regulation establishes a number of exemptions to the general requirements in Section 2(2) of this administrative regulation regarding mandatory face coverings.

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 will impact the Cabinet for Health and Family Services, and all state or local governments that are public-facing or that regulate businesses or public-facing entities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 12.270(2), 39A.180, 194A.010, 194A.025, 194A.050(1), 211.025, 211.180(1), 211.190(1), 214.020

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? This administrative regulation does not generate 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 does not generate revenue.

(c) How much will it cost to administer this program for the first year? This administrative regulation will have no impact on costs.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will have no impact on 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:

STATEMENT OF EMERGENCY
921 KAR 3:035E

This emergency administrative regulation is necessary in order to immediately implement new Supplemental Nutrition Assistance Program (SNAP) certification periods in order to assist with caseload management and to eliminate reference to a program disqualification that is no longer in place. This amendment is deemed to be an emergency pursuant to KRS 13A.190(1)(a)1. and 4. as this amendment reduces the risk of applicant or system errors in the SNAP program that could jeopardize the food security of Kentucky residents who participate in the program. The lack of food is an imminent threat to public health, safety, and welfare and this amendment is necessary in order to protect human health.

Assistance in purchasing food and reducing program error is especially necessary to many affected by the COVID-19 pandemic. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
ERIC C. FRIEDLANDER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(Emergency Amendment)

921 KAR 3:035E. Certification process.

EFFECTIVE: July 29, 2020

RELATES TO: 7 C.F.R. 271.2, 273.1, 273.2, 273.4, 273.5, 273.10, 273.11, 273.12, 273.14, 274, 280.1, 7 U.S.C. 2014, 2015(d), 42 U.S.C. 5122, 5179

STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. 271.4

NECESSITY, FUNCTION, AND CONFORMITY: 7 C.F.R. 271.4 requires the Cabinet for Health and Family Services to administer a Supplemental Nutrition Assistance Program (SNAP) within the state. KRS 194A.050(1) requires the secretary to promulgate 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 the proper administration of the cabinet and its programs. This administrative regulation establishes the certification process used by the cabinet in the administration of SNAP.

Section 1. Eligibility and Benefit Levels. (1) Eligibility and benefit levels shall be determined by the cabinet by considering a household's circumstance for the entire period for which each household is certified.

(2) Certification criteria shall be applicable to all households.

(3) Certain households shall require special or additional certification procedures as established in Section 5 of this administrative regulation.

Section 2. Certification Periods. (1) In accordance with 7 C.F.R. 273.10(f), the cabinet shall establish a definite period of time within which a household shall be eligible to receive benefits.

(2) Except as provided in subsection (3) of this section, a household shall be certified for:

(a) Four (4) months if the household contains an able-bodied adult without dependent (ABAWD) in accordance with 7 U.S.C. 2015(d);

(b) Twelve (12) [Six-(6)] months if the household includes a member who is not ABAWD or elderly or disabled with no earned income; or

(c) Twenty-four (24) [Twelve-(12)] months if all household members:

1. Are elderly or have a disability as defined in 921 KAR 3:010; and

2. Have no earned income.

(3)(a) A household shall be certified for one (1) or two (2) months if the household meets criteria to:

1. Expedite benefits in accordance with 7 C.F.R. 273.2(i)(1); and
2. Postpone verification.

(b) At the end of a one (1) or two (2) month certification, a household may be recertified for a four (4), twelve (12) [six-(6)], or twenty-four (24) [twelve-(12)] month certification as established in subsection (2) of this section.

(4)(a) In accordance with 7 C.F.R. 273.12, a household certified for twelve (12) or twenty-four (24) months in accordance with subsection (2)(b) or (c) of this section, which reports a change during the household's initial five (5) months of the certification period of earned income or a new member who is not elderly or disabled, shall complete an interim report using the FS-2, MID [SNAP] REVIEW NOTICE, during the sixth month or twelfth month of the household's certification period, respectively.

(b) If a household fails to return a completed FS-2 or the

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required verification, the cabinet shall take action in accordance with 7 C.F.R. 273.12(a)(5).

Section 3. Certification Notices to Households. In accordance with 7 C.F.R. 273.10(g), the cabinet shall provide an applicant with one (1) of the following written notices as soon as a determination is made, but no later than thirty (30) days after the date of the initial application:

- (1) Notice of eligibility;
- (2) Notice of denial; or
- (3) Notice of pending status.

Section 4. Application for Recertification. The cabinet shall process an application for recertification as established in 921 KAR 3:030, Section 1, as follows:

(1) If a household files the application:

(a) By the 15th day of the last month of the certification, the cabinet shall:

1. Allow the household to return verification or complete a required action through the last calendar day of the application month; and

2. Provide uninterrupted benefits, if the household is otherwise eligible; or

(b) After the 15th day, but prior to the last day of the last month of the certification, the cabinet shall allow the household thirty (30) days to return verification or complete a required action; or

(2) If the household fails to provide information required for the cabinet to process the application for recertification within a time period established in subsection (1) of this section, the cabinet shall take action in accordance with 7 C.F.R. 273.14(e)(2).

Section 5. Certification Process for Specific Households. Pursuant to 7 C.F.R. 273.11, certain households have circumstances that are substantially different from other households and therefore shall require special or additional certification procedures. (1) A household with a self-employed member shall have its case processed as established in this subsection.

(a) Income shall be annualized over a twelve (12) month period, if self-employment income:

1. Represents a household's annual income; or
2. Is received on a monthly basis that represents a household's annual support.

(b) Self-employment income, which is intended to meet the household's needs for only part of the year, shall be averaged over the period of time the income is intended to cover.

(c) Income from a household's self-employment enterprise that has been in existence for less than one (1) year shall be averaged over the period of time the business has been in operation and a monthly amount projected over the coming year.

(d) The cabinet shall calculate the self-employment income on anticipated earnings if the:

1. Averaged annualized amount does not accurately reflect the household's actual circumstances; and
2. Household has experienced a substantial increase or decrease in business.

(2) A household with a boarder shall have its case processed as established in this subsection.

(a) Income from the boarder shall:

1. Be treated as self-employment income; and
2. Include all direct payments to the household for:
 - a. Room;
 - b. Meals; and
 - c. Shelter expenses.

(b) Deductible expenses shall include:

1. Cost of doing business;
2. Twenty (20) percent of the earned income; and
3. Shelter costs.

(3) A household with a member ineligible due to an intentional program violation, or failure to comply with the work requirements or work registration requirements, shall be processed as established in this subsection.

(a) Income and resources of the ineligible member shall be counted in their entirety as income available to the remaining

household members.

(b) Remaining household members shall receive standard earned income, medical, dependent care, and excess shelter deductions.

(c) The ineligible member shall not be included if:

1. Assigning benefit levels;
2. Comparing monthly income with income eligibility standards; and
3. Comparing household resources with resource eligibility standards.

(4) A household with a member ineligible due to failure to provide a Social Security number[, delinquency in payment of court-ordered child support through the Department of Income Support, Child Support Enforcement Program in accordance with 921 KAR 3:025, Section 3(41),] or ineligible alien status[,] shall be processed as established in this subsection.

(a) All resources of an ineligible member shall be considered available to the remaining household members.

(b) A pro rata share, as established in 7 C.F.R. 273.11(c)(2)(ii), of the ineligible member's income shall be attributed to remaining household members.

(c) The twenty (20) percent earned income deduction shall be applied to the pro rata share of earnings.

(d) The ineligible member's share of dependent care and shelter expenses shall not be counted.

(e) The ineligible member shall not be included as established in subsection (3)(c) of this section.

(5) A household with a nonhousehold member shall be processed as established in this subsection.

(a) With the exception of an ineligible member, the income and resources of a nonhousehold member shall not be considered available to the household with whom they reside.

(b) If the earned income of a household member and a nonhousehold member are combined into one (1) wage, the cabinet shall:

1. Count that portion due to the household as earned income, if identifiable; or
2. Count a pro rata share of earned income, if the nonhousehold member's share cannot be identified.

(c) A nonhousehold member shall not be included in the household size, if determining the eligibility and benefits for the household.

(6) The cabinet shall process the case of a drug or alcoholic treatment program resident, as established in 7 C.F.R. 271.2, as established in this subsection.

(a) An eligible household shall include:

- 1.a. A narcotic addict; or
- b. An alcoholic; and
2. A child of the narcotic addict or alcoholic.

(b) Certification shall be accomplished through use of the treatment program's authorized representative.

(c) SNAP processing standards and notice provisions shall apply to a resident recipient.

(d) A treatment program shall notify the cabinet of a change in a resident's circumstance.

(e) Upon departure of the treatment program, the resident shall be eligible to receive remaining benefits, if otherwise eligible.

(f) The treatment program shall be responsible for knowingly misrepresenting a household circumstance.

(7) The case processing procedures established in this subsection shall apply to residents of a group living arrangement, as defined in 7 C.F.R. 271.2.

(a) Application shall be made by a resident or through use of the group living arrangement's authorized representative.

(b) Certification provisions applicable to all other households shall be applied.

(c) Responsibility for reporting changes shall depend upon who files the application:

1. If a resident applies, the household shall report a change in household circumstance to the cabinet; or
2. If the group living arrangement acts as authorized representative, the group living arrangement shall report a change in household circumstance.

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(d) Eligibility of the resident shall continue after departure from the group living arrangement, if otherwise eligible.

(e) Unless the household applied on its own behalf, the group living arrangement shall be responsible for knowingly misrepresenting a household circumstance.

(8) A case of a resident in a shelter for battered women and children shall be processed as established in this subsection.

(a) The shelter shall:

1. Have FNS authorization to redeem SNAP benefits at wholesalers; or

2. Meet the federal definition of a shelter as defined in 7 C.F.R. 271.2.

(b) A shelter resident shall be certified for benefits as established in 7 C.F.R. 273.11(g).

(c) The cabinet shall promptly remove the resident from the former household's case, upon notification.

(9) The case of an SSI recipient shall be processed as established in this subsection.

(a) An application may be filed at the:

1. Social Security Administration (SSA) Office; or

2. Local Department for Community Based Services office.

(b) The cabinet shall not require an additional interview for applications filed at the SSA.

(c) The cabinet shall obtain all necessary verification prior to approving benefits.

(d) Certification periods shall conform to Section 2 of this administrative regulation.

(e) A household change in circumstance shall conform to Section 7 of this administrative regulation.

(10) A household with a member who is on strike shall have its eligibility determined by:

(a) Comparing the striking member's income the day prior to the strike, to the striker's current income;

(b) Adding the higher of the prestrike income or current income to other current household income; and

(c) Allowing the appropriate earnings deduction.

(11) Sponsored aliens.

(a) Income of a sponsored alien, as defined in 7 C.F.R. 273.4(c)(2), shall be:

1. Deemed income from a sponsor and sponsor's spouse, which shall:

a. Include total monthly earned and unearned income; and

b. Be reduced by:

(i) The twenty (20) percent earned income disregard, if appropriate; and

(ii) The SNAP gross income eligibility limit for a household equal in size to the sponsor's household;

2. Subject to appropriate income exclusions as established in 921 KAR 3:020, Section 3; and

3. Reduced by the twenty (20) percent earned income disregard, if appropriate.

(b) If the sponsor is financially responsible for more than one (1) sponsored alien, the sponsor's income shall be pro-rated among each sponsored alien.

(c) A portion of income, as established in paragraph (a) of this subsection, of the sponsor and of the sponsor's spouse shall be deemed unearned income until the sponsored alien:

1. Becomes a naturalized citizen;

2. Is credited with forty (40) qualifying quarters of work;

3. Meets criteria to be exempt from deeming, in accordance with 7 C.F.R. 273.4(c)(3);

4. Is no longer considered lawfully admitted for permanent residence and leaves the United States; or

5. Dies, or the sponsor dies.

(d) In accordance with 7 U.S.C. 2014(i)(2)(E), deeming requirements shall not apply to sponsored alien children under eighteen (18) years of age.

Section 6. Disaster Certification. The cabinet shall distribute emergency SNAP benefits, pursuant to 42 U.S.C. 5122, to a household residing in a county determined to be a disaster area in accordance with 42 U.S.C. 5179 and 7 C.F.R. 280.1.

Section 7. Reporting Changes. (1) Within ten (10) days of the end of the month in which the change occurs, a household shall report a change that causes:

(a) The household's gross monthly income to exceed 130 percent of poverty level based on household size; or

(b) A household member, who does not have an exemption from work requirements, as established in 921 KAR 3:025, Section 3(8)(b), to work less than twenty (20) hours per week.

(2) An applying household shall report a change related to its SNAP eligibility and benefits:

(a) At the certification interview; or

(b) Within ten (10) days of the date of the notice of eligibility, if the change occurs after the interview, but prior to receipt of the notice.

Section 8. Incorporation by Reference. (1) The "FS-2, MID [SNAP] REVIEW NOTICE", 8/20 [9/16], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

MARTA MIRANDA-STRAUB, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: July 16, 2020

FILED WITH LRC: July 29, 2020 at 4 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.

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 the certification process used by the cabinet in the administration of the Supplemental Nutrition Assistance Program (SNAP).

(b) The necessity of this administrative regulation: This administrative regulation establishes the certification process necessary to determine SNAP eligibility.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by establishing the certification process for SNAP eligibility determination.

(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 certification process for SNAP.

(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 extends SNAP certification periods, potentially to decrease applicant or system error. For households including elderly members or members with a disability and no earned income, the certification period is changed from twelve (12) months to twenty-four (24) months. For households including members who are not able-bodied adults without dependents or elderly or disabled with no earned income, the certification period is changed from six (6) months to twelve (12) months. The certification period for households with an able-bodied adult without dependents will remain at four (4) months. The amendment also removes reference to the disqualification of a household member who is a non-custodial parent with child support arrears as this program disqualification no longer exists. The amendment incorporates the 8/20 revision of form FS-2, MID REVIEW NOTICE, which amends the title of the form and makes minor technical amendments.

(b) The necessity of the amendment to this administrative regulation: This regulatory amendment is necessary to decrease the possibility of certification errors that could jeopardize the food

security of Kentucky residents who participate in the SNAP program and assists in department caseload management. The lack of food is an imminent threat to public health, safety, and welfare and assistance in purchasing food and reducing program error is especially necessary to many affected by the COVID-19 pandemic.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by aligning SNAP certification periods with state options found in Public Law 110-246 and 7 C.F.R. 273.2.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through its modification of certification periods to improve the overall administration of SNAP and ensure assistance in purchasing food is available to those eligible.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All households participating in SNAP will be affected by this regulatory amendment. In January 2020, there were 218,060 active SNAP households.

(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: This regulatory amendment will require affected SNAP households to submit an interim report during their extended certification time periods.

(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 SNAP households affected by the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Although an interim report is required, affected households will have a longer period of time before program recertification. This should result in less hardship associated with participating in SNAP and less chance of applicant or system error.

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

(a) Initially: The initial cost for system design changes to implement this regulatory amendment is \$94,000.00.

(b) On a continuing basis: Implementation of this regulatory amendment will require mailing costs for issuing interim report forms to SNAP households, but will decrease the administrative burden on staff.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: SNAP benefits are 100% federally funded. Administrative functions are funded at a 50% state and 50% federal match rate. The funding has been appropriated in the enacted budget.

(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 to implement this administrative regulation 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. 7 C.F.R. 271.2, 273.1, 273.2, 273.4, 273.5, 273.10, 273.11, 273.12, 273.14, 274, 280.1, 7 U.S.C. 2014, 2015, 42 U.S.C. 5122, 5179

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

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.

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. Not applicable.

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. 7 C.F.R. 271.2, 273.1, 273.2, 273.4, 273.5, 273.10, 273.11, 273.12, 273.14, 274, 280.1, 7 U.S.C. 2014, 2015, 42 U.S.C. 5122, 5179, KRS 194A.050(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.

(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 new 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? This administrative regulation will not generate new revenue for state or local government.

(c) How much will it cost to administer this program for the first year? This administrative regulation will result in new technology costs for the administering agency in its first year, but these costs are not ongoing and the amendment should decrease administrative burden for staff.

(d) How much will it cost to administer this program for subsequent years? There is no new ongoing costs to administer this program as a result of this administrative regulation 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:

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

GOVERNOR'S OFFICE
(As Amended at ARRS, August 11, 2020)

10 KAR 1:011. Defense of employees.

RELATES TO: KRS 12.211, 12.212~~[,]~~, 12.213, 12.215, 44.055
STATUTORY AUTHORITY: KRS 12.213

NECESSITY, FUNCTION, AND CONFORMITY: KRS 12.213 requires the Governor, with the advice of the Attorney General, to promulgate ~~adopt~~ administrative regulations governing the methods of defense of employees or former employees of the Commonwealth. This administrative regulation establishes the methods for defense of employees or former employees of the Commonwealth.

Section 1. Definitions. ~~[When used in this administrative regulation:]~~

- (1) "Claim" means a claim whether or not a suit has been filed.
- (2) "Civil action" means a civil suit filed in a state or federal court.
- (3) "Defendant" means an employee or former employee of the Commonwealth who has been sued in a civil action in his or her official or individual capacity~~[, or both,]~~ on account of an act or omission made in the scope and course of his or her employment as an employee of the Commonwealth and any of its agencies, but does not include an employee or former employee of the Commonwealth being sued for negligence in the operation of a state vehicle.

(4) "State agency" means any department, administrative body, division, or program cabinet acting for the Commonwealth, but does not include local units of government such as ~~a~~ school districts, counties, sewer districts, or other municipalities.

(5) "Acts and omissions liability insurance" means insurance to cover the cost of defending civil actions covered under this administrative regulation ~~[Act]~~ and paying judgments or settlements resulting therefrom.

Section 2. Notice of Claim; Investigation. An employee or former employee against whom a claim is made which may result in a civil action against him or her on account of an act or omission made in the course of his or her employment by a state agency shall ~~should~~ immediately report the ~~the~~ claim and the circumstances surrounding the claim to the Attorney General. The Attorney General~~[, if he or she thinks it warranted,]~~ may cause an investigation of the claim to be made by a regular or special investigator employed by ~~of~~ his or her office.

Section 3. Application for Defense; Response. (1) An employee or former employee of the Commonwealth ~~[Any person]~~ desiring the Attorney General to provide for his or her defense under this administrative regulation ~~[Act]~~ shall make a written request to the Attorney General and shall submit with the request a copy of the summons, complaint, and all other papers, documents, and exhibits pertaining to the action.

(2) If the application for defense is received by the Attorney General at least ten (10) days before a pleading is due, the Attorney General shall make a timely response to the court by filing an answer or motion for the defendant ~~[provided the application for defense is received by the Attorney General at least ten (10) days before a pleading is due]~~. The filing of a pleading in the case shall not commit the Attorney General to continue the defense if the Attorney General has not reached a final decision and notified the defendant that his or her defense will be provided.

(3) Upon receiving an application for defense, the Attorney General, after any ~~such~~ investigation and research as he or she deems necessary, taking into consideration the ~~those~~ factors

set out in KRS 12.212, shall decide and notify the defendant whether defense will be provided~~[,]~~ and, if so, by which ~~what~~ method set out in Section 4 of this administrative regulation. Unless written acceptance of the defense has been made by the Attorney General, he or she ~~[The Attorney General]~~ shall not be responsible for the defense of a defendant ~~[unless written acceptance of the defense has been made by the Attorney General]~~.

(4) In every case where the Attorney General has made a general delegation of his or her discretionary power to decide whether ~~when~~ to provide defense ~~[to other authority in state government]~~, the delegated ~~such~~ authority shall make the decision whether to provide defense. If the delegated authority provides legal counsel for the defense, the application for defense provided by this section shall not be filed with the Attorney General ~~[and the application for defense provided by this section need not be made to the Attorney General, provided that in such cases the authority making the decision shall provide legal counsel for the defense]~~. All settlements ~~[made in such cases]~~ shall~~[, however,]~~ be approved by the Attorney General as provided by Section 6 of this administrative regulation.

Section 4. Methods of Defense. (1) If ~~[Except where]~~ a ~~the~~ defendant is covered by insurance as provided in Section 5 of this administrative regulation, defense to a civil action may be provided in any of the following manners:

(a) The Attorney General may assign an assistant attorney general or a special assistant attorney general employed for that purpose to handle the case to conclusion by ~~either~~ settlement or final adjudication.

(b) The Governor, or any department with the approval of the Governor, may assign a regularly employed attorney pursuant to ~~under~~ KRS 12.210 or an attorney employed under a personal service contract to handle the case to conclusion by settlement or final adjudication ~~[as in paragraph (a) of this subsection]~~.

(c) Any state agency may assign its employed counsel to handle the case.

(2) Except as provided in Section 6 of this administrative regulation, and regardless of the method of defense provided, a ~~no~~ settlement of litigation being defended under this administrative regulation shall not be made without the approval of the Attorney General~~[, except as provided in Section 6 of this administrative regulation]~~.

(3) A defendant who has requested defense under this administrative regulation may elect to provide his or her defense by counsel employed by the defendant and ~~in such case~~ shall notify the counsel employed by the state of his or her election in writing.

Section 5. Insurance. (1) Any state agency, or class of state agencies, may be authorized by the Governor to purchase acts and omissions liability insurance for the protection of its employees and the benefit of the public.

(2) Any state agency that ~~which~~ believes it is economically feasible to purchase acts or omissions liability insurance may request the Governor for authority to do so. The agency's request shall be documented with data as to the history of claims, probable cost of the insurance, and any reasons it believes insurance is advisable ~~[for said agency]~~.

(3) Any policy of acts and omissions liability insurance purchased by a state agency shall provide a maximum coverage of \$50,000 for each claim. Nothing in this administrative regulation shall be deemed to waive the sovereign immunity of the Commonwealth with respect to a claim covered by this administrative regulation or to authorize the payment of a judgment or settlement against a state employee in excess of the limit provided in any acts or omissions liability insurance purchased by

a state agency.]

~~(4) KRS 44.055 authorizes state agencies to purchase policies of insurance covering vehicles owned by the state. For this reason "defendant," as defined in Section 1(3) of this administrative regulation, does not include a person being sued for negligence in the operation of a state vehicle.]~~

Section 6. Settlements. (1) Any counsel assigned by a state agency or the Attorney General may recommend to the Attorney General the settlement of a civil action against a defendant under this administrative regulation. If the Attorney General approves the recommended settlement, ~~[recommended]~~ he or she shall notify the Secretary of the Finance and Administration Cabinet by written memorandum and if the Secretary concurs in the [this] recommendation the Secretary shall issue a voucher to the State Treasurer for payment of the settlement. A [No] settlement shall not be made or paid without [the] prior approval of the Attorney General.

(2) Guidelines for settlements. A [No] settlement shall not [should] be recommended unless the assigned counsel believes:

(a) The claim is legally valid;];

(b) There is a strong probability of a judgment being rendered against the defendant; and];

(c) The settlement is a reasonable compromise in light of the nature of the claim.

(3) Defense counsel shall document, in writing, the reasons for recommending a settlement [in writing] to the Attorney General and the documentation shall be a public record open to public inspection.

(4) This section shall not apply to any settlement reached by a defendant or his or her insurer which results in no cost to the Commonwealth.

Section 7. Cost of Administration. The Attorney General shall be reimbursed for the cost to his or her office for the administration of KRS 12.211 to 12.215 upon vouchers submitted by the Attorney General and approved by the Secretary of the Finance and Administration Cabinet.

CONTACT PERSON: S. Travis Mayo, Office of the Governor, 700 Capitol Avenue, Suite 106, Frankfort, Kentucky 40601; Phone: 502-564-2611; Fax: 502-564-6858; travis.mayo@ky.gov.

**COUNCIL ON POSTSECONDARY EDUCATION
(As Amended at ARRS, August 11, 2020)**

13 KAR 1:050. Licensed out-of-state college's eligibility for Kentucky tuition grant.

RELATES TO: KRS 164.020(37), 164.785, 164.945, 164.946, 164.947, 164.992

STATUTORY AUTHORITY: KRS 164.785(7)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.785(7)(c) requires the Council on Postsecondary Education to promulgate an administrative regulation to implement the requirement that, beginning with the 2011-2012 academic year, programs or campuses of any out-of-state postsecondary education college that is licensed by the Council on Postsecondary Education to operate in Kentucky and whose institutional programs are not composed solely of sectarian instruction, but in which accreditation by the Southern Association of Colleges and Schools is not an option, be reviewed and approved by the Council on Postsecondary Education based on accreditation criteria that mirrors Southern Association of Colleges and Schools accreditation criteria in order to qualify as an eligible institution in which a student may enroll and receive a Kentucky tuition grant.

Section 1. Definitions. (1) "Accredited" means the approval of an accrediting agency.

(2) "Accrediting agency" means a national or regional agency which evaluates colleges and is recognized by the United States Department of Education, the Council on Higher Education

Accreditation, or the Council on Postsecondary Education.

(3) "Agent" means any person employed by a college to act as a solicitor, broker, or independent contractor to procure students for the college by solicitation in any form made at any place other than the main campus of the college.

(4) "College" is defined by KRS 164.945(1).

(5) "Degree" is defined by KRS 164.945(2).

(6) ~~["Diploma" is defined by KRS 164.946(3).~~

~~(7)]~~ "Out-of-state college" means a college that is chartered, organized, or has its principal location outside of Kentucky.

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

~~(8)]~~ "Regional accrediting association" is defined by KRS 164.740(18).

Section 2. General Requirements. (1) If an out-of-state college licensed by the Council on Postsecondary Education is seeking to qualify as an eligible institution in which a student may enroll and receive a Kentucky tuition grant, and if accreditation by the Southern Association of Colleges and Schools is not an option for the college, the college shall apply with the Council on Postsecondary Education.

(2)(a) Approval by the Council on Postsecondary Education shall be for the sole purpose of qualifying a Kentucky campus or campuses of a college as an eligible institution in which a Kentucky student may enroll and receive a Kentucky tuition grant, and shall not mean that the college is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools, the Council on Postsecondary Education, or any other agency.

(b) A college shall not represent its status as seeking or being accredited by the Commission on Colleges of the Southern Association of Colleges and Schools, the Council on Postsecondary Education, or any other agency.

(3)(a) A college seeking eligibility shall submit the "Application for Council on Postsecondary Education Approval for Eligibility Pursuant to 13 KAR 1:050" for each licensed Kentucky program or instructional site to the president.

(b) A college seeking eligibility shall submit a complete and accurate "Application for Council on Postsecondary Education Approval for Eligibility Pursuant to 13 KAR 1:050" by [:

1. ~~May 30, 2010 for those colleges seeking eligibility beginning with the 2011-2012 academic year; or~~

2.] May 30 of the year prior to the first academic year for which it seeks to be eligible.

(4) The college shall pay a nonrefundable fee of \$10,000 [~~\$1,000~~] to the Council on Postsecondary Education with the submission of the application. Review of the application shall not occur until the fee is paid by the college. ~~[This fee shall be in addition to any costs associated with a site visit.]~~

(5) The president shall review the application and documentation submitted by the applicant college.]

~~(6) Site visits:~~

~~(a) Within ninety (90) working days of the receipt of a full and complete "Application for Council on Postsecondary Education Approval for Eligibility Pursuant to 13 KAR 1:050" or notification of a substantive change, the president may conduct, or may have conducted, a site visit.~~

~~(b) Personnel conducting a site visit shall possess the expertise appropriate to the type of college to be visited. In selecting personnel, the president shall consider the person's professional experience in higher education, experience conducting site visits at postsecondary education institutions, familiarity with current accreditation requirements of accrediting agencies including the Southern Association of Colleges and Schools, and graduate or professional degree from an accredited institution. The president shall use council staff or contract with external consultants using the state's Request for Proposal (RFP) process.~~

~~(c) The purpose of a site visit shall be to make an assessment of a licensed Kentucky campus or campuses of a college using the standards as established in this administrative regulation.~~

~~(d) The president may conduct, or may have conducted, an announced or unannounced site visit of a licensed college during~~

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reasonable business hours to inspect the files, facilities, and equipment as well as conduct interviews to determine the college's eligibility under this administrative regulation.

(e) Failure to provide full access to the college's files, facilities, and equipment or prevention of interviews shall be grounds for ineligibility.

(f)1. All costs associated with a site visit and necessary subsequent visits, including travel, meals, lodging, and consultant honoraria shall be paid by the applicant college.

2. The estimated cost of the site visit shall be paid by the college prior to the site visit, and final settlement regarding actual expenses incurred shall be paid no later than thirty (30) days following the completion of the site visit.

3. Failure to pay these costs shall result in ineligibility.]

Section 3. Integrity of College. (1) The college shall operate with integrity in all matters.

(2) The college shall be responsible for any of its agents and any individual who reports to the president on behalf of a college, either by virtue of his or her office or as delegated by the chief executive officer of the college, in all matters regarding institutional integrity.

(3) Failure to respond appropriately to the president's decisions and requests or to make complete, accurate, and honest disclosure shall be grounds for the president to impose a sanction, including ineligibility under this administrative regulation.

Section 4. Core Requirements. A college applying for approval by the Council on Postsecondary Education shall meet the standards established in this section.

(1) The college shall have a clearly defined, comprehensive, and published mission specific to the college and appropriate for higher education. The mission shall address teaching and learning, and where, applicable, research and public service.

(2) The college shall:

(a) Have degree-granting authority from its home state authorization agency;

(b) Be licensed by the Council on Postsecondary Education in accordance with 13 KAR 1:020 prior to seeking eligibility under this administrative regulation; and

(c) Be accredited by a regional accrediting association.

(3) The college shall have a governing board of at least five (5) members that:

(a) Is the legal body with specific authority over the college;

(b) Exercises fiduciary oversight of the college;

(c) Ensures that both the presiding officer of the board and a majority of other voting members of the board are free of any contractual, employment, personal, or familial financial interest in the college;

(d) Is not controlled by a minority of board members or by organizations or colleges separate from it; and

(e) Defines and regularly evaluates its responsibilities and expectations.

(4) The college shall have a chief executive officer selected and evaluated by the college's board whose primary responsibility is to the college and has ultimate responsibility for, and exercises appropriate control over, the college's educational, administrative, and fiscal programs and services.

(5) The college shall employ and regularly evaluate administrative and academic officers with appropriate experience and qualifications to lead the college.

(6) The college shall employ an adequate number of full-time faculty members to support the mission and goals of the college.

(7) The college shall engage in ongoing, comprehensive, and integrated research-based planning and evaluation processes that:

(a) Focus on institutional quality and effectiveness; and

(b) Incorporate a systematic review of institutional goals and outcomes consistent with its mission.

(8) The college shall:

(a) Identify, evaluate, and publish goals and outcomes for student achievement appropriate to the college's mission, the nature of the students it serves, and the kinds of programs offered; and

(b) Use multiple measures to document student success.

(9) The college shall identify expected outcomes, assess the extent to which it achieves **those [these]** outcomes, and provide evidence of seeking improvement based on analysis of the results in **[the areas below]**:

(a) Student learning outcomes for each of its educational programs;

(b) Student learning outcomes for collegiate-level general education competencies of its undergraduate degree programs; and

(c) Academic and student services that support student success.

(10) The college shall have educational programs that embody a coherent course of study, are compatible with the stated mission and goals of the college, and are based on fields of study appropriate to higher education.

(11) The college shall require the successful completion of a general education component at the undergraduate level that:

(a) Is based on a coherent rationale;

(b) Is a substantial component of each undergraduate degree program; and

(c) Ensures breadth of knowledge by having at least one (1) course from each of the following areas: humanities and fine arts, social and behavioral sciences, and natural science and mathematics, and the courses do not narrowly focus on skills, techniques, and procedures specific to a particular occupation or profession.

(12) The college shall:

(a) Publish, implement, and disseminate academic policies that adhere to principles of good education practice and that accurately represent the programs and services of the college;

(b) Make available to students and the public current academic calendars, grading policies, cost of attendance, and refund policies;

(c) Ensure the availability of archived official catalogs with relevant information for course and degree requirements; and

(d) Publish and implement policies on the authority of faculty in academic and governance matters, and places primary responsibility for the content, quality, and effectiveness of the curriculum with its faculty.

(13) The college shall:

(a) Publish admissions policies consistent with its mission;

(b) Have recruitment materials and presentations that accurately represent the practices, policies, and accreditation status of the college; and

(c) Ensure that independent contractors or agents used for recruiting purposes and for admission activities are governed by the same principles and policies as institutional employees.

(14) The institution **shall publish** policies for evaluating, awarding, and accepting credit not originating from the institution **that ensure [- The institution ensures]**:

(a) The academic quality of any credit or coursework recorded on its transcript;

(b) An approval process with oversight by persons academically qualified to make the necessary judgments; and

(c) The credit awarded is comparable to a designated credit experience and is consistent with the institution's mission.

(15) The college shall:

(a) Provide adequate and appropriate library and learning and information resources, services, and support for its mission;

(b) Ensure an adequate number of professional and other staff with appropriate education or **experience [experiences]** in library or other learning or information resources to accomplish the mission of the college; and

(c) Provide **students and** faculty with access and user privileges to its library services, and access to regular and timely instruction in the use of the library and other learning or information resources.

(16) The college shall:

(a) Provide appropriate academic and student support programs, services, and activities consistent with its mission;

(b) Publish appropriate and clear procedures for addressing written student complaints, demonstrate that it follows the

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procedures when resolving student complaints [them], and maintain [maintains] a record of its student complaints; and

(c) Provide information and guidance to help student borrowers understand how to manage their debt and repay their loans.

(17) The college shall have sound financial resources and a demonstrated, stable financial base to support the mission of the college and the scope of its programs and services.

(18) The college shall provide ~~[the following financial statements]:~~

(a) An institutional audit for the most recent fiscal year prepared by an independent certified public accountant or appropriate governmental auditing agency employing the appropriate audit guide;

(b) A statement of financial position of unrestricted net assets, exclusive of plant assets and ~~[ad] plant-related debt [debit], which represents the change in unrestricted net assets attributable to operations for the most recent year; and~~

(c) An annual budget that is preceded by sound planning, is subject to sound fiscal procedures, and is approved by the governing board.

(19) The college shall:

(a) Be in compliance with its program responsibilities under Title IV of the most recent Higher Education Act as amended; and

(b) Audit financial aid programs as required by federal and state regulation.

(20) The college shall ensure adequate physical facilities and resources that appropriately serve the needs of the college's educational programs, support services, and other missions-related activities and take steps to provide a healthy, safe, and secure environment for all members of the campus community.]

Section 4. Core Requirements. A college applying for approval by the Council on Postsecondary Education shall meet the requirements established in this section.

(1) Degree-granting authority. The college shall be licensed by the Council on Postsecondary Education in accordance with 13 KAR 1:020 prior to seeking eligibility under this administrative regulation.

(2) Accreditation. The college shall be accredited by a regional accrediting agency.

(3) Governing board.

(a) The college shall have a governing board of at least five (5) members which shall be the legal body with specific authority over the college.

(b) The board shall be an active policy-making body for the college and shall ultimately be responsible for ensuring that the financial resources of the college are adequate to provide a sound educational program.

(c) Except as provided in paragraph (e) of this subsection, the board shall not be controlled by a minority of board members or by organizations or interests separate from it.

(d) Both the presiding officer of the board and a majority of other voting members of the board shall be free of any contractual, employment, or personal or familial financial interest in the college.

(e) A military college authorized and operated by the federal government to award degrees shall have a public board on which both the presiding officer and a majority of the other members are neither civilian employees of the military nor active or retired military.

1. The board shall have broad and significant influence upon the college's programs and operations, play an active role in policy-making, and ensure that the financial resources of the college are used to provide a sound educational program.

2. The board shall not be controlled by a minority of board members or by organizations or interests separate from the board except as specified by the authorizing legislation.

(4) Chief executive officer. The college shall have a chief executive officer whose primary responsibility is to the college and who is not the presiding officer of the board.

(5) Institutional mission. The college shall have a clearly defined, comprehensive, and published mission statement that is specific to the college and appropriate for higher education. The

mission shall address teaching and learning and, if applicable, research and public service.

(6) Institutional effectiveness. The college shall engage in ongoing, integrated, and institution-wide research-based planning and evaluation processes that:

(a) Incorporate a systematic review of institutional mission, goals, and outcomes;

(b) Result in continuing improvement in institutional quality; and

(c) Demonstrate the college is effectively accomplishing its mission.

(7) Continuous operation. The college shall be in operation and shall have students enrolled in degree programs.

(8) Program length.

(a) The college shall offer one or more degree programs based on:

1. At least sixty (60) semester credit hours or the equivalent at the associate level;

2. At least 120 semester credit hours or the equivalent at the baccalaureate level; or

3. At least thirty (30) semester credit hours or the equivalent at the post-baccalaureate, graduate, or professional level.

(b) If a college uses a unit other than semester credit hours, the college shall provide an explanation for the equivalency.

(c) The college shall provide a justification for all degrees that include fewer than the required number of semester credit hours or its equivalent unit.

(9) Program content. The college shall offer degree programs that embody a coherent course of study that shall be compatible with its stated mission and shall be based upon fields of study appropriate to higher education.

(10) General education.

(a) In each undergraduate degree program, the college shall require the successful completion of a general education component at the collegiate level that is a substantial component of each undergraduate degree and ensures breadth of knowledge.

(b) The component shall constitute a minimum of:

1. Fifteen (15) semester hours or the equivalent for degree completion in associate programs; or

2. Thirty (30) semester hours or the equivalent for degree completion in baccalaureate programs.

(c) These credit hours shall be drawn from and include at least one (1) course from each of the following areas:

1. Humanities and fine arts;

2. Social and behavioral sciences; and

3. Natural science and mathematics.

(d) The courses shall not narrowly focus on those skills, techniques, and procedures specific to a particular occupation or profession.

(e) The college shall provide a justification if it allows for fewer than the required number of semester credit hours or its equivalent unit of general education courses.

(11) Course work for degrees.

(a) The college shall provide instruction for all course work required for at least one (1) degree program at each level at which it awards degrees.

(b) If the college does not provide instruction for all course work and makes arrangements for some instruction to be provided by other accredited colleges or entities through contracts or consortia, or uses some other alternative approach to meeting this requirement, the arrangement or alternative approach shall be approved by the president.

(c) For either subsection (10)(a) or (b) of this section, the college shall demonstrate that it controls all aspects of its educational program.

(12) Faculty.

(a) The number of full-time faculty members shall be adequate to support the mission of the college and to ensure the quality and integrity of its academic programs.

(b) Upon application for eligibility, a college shall demonstrate that it meets the required faculty qualifications pursuant to Section 4(7) of this administrative regulation.

(13) Learning resources and services.

(a) The college, through ownership or formal agreements, shall provide and support student and faculty access and user privileges to adequate library collections and services and to other learning and information resources consistent with the degrees offered.

(b) Collections, resources, and services shall be sufficient to support all its educational, research, and public service programs.

(14) Student support services. The college shall provide student support programs, services, and activities consistent with its mission that promote student learning and enhance the development of its students.

(15) Financial resources.

(a) The college shall have a sound financial base and demonstrated financial stability to support the mission of the college and the scope of its programs and services.

(b) The college shall provide the following financial statements:

1. An institutional audit;

2. Written institutional management letter for the most recent fiscal year prepared by an independent certified public accountant;

3. A statement of financial position of unrestricted net assets, exclusive of plant assets and plant-related debt, which represents the change in unrestricted net assets attributable to operations for the most recent year; and

4. An annual budget that shall be preceded by sound planning, subject to sound fiscal procedures, and approved by the governing board.

(16) Physical resources. The college shall have physical resources to support the mission of the college and the scope of its programs and services in terms of size, fireproof quality, and conditions of all existing buildings and all buildings under construction.

Section 5. Comprehensive Standards. A college applying for approval by the Council on Postsecondary Education shall meet the standards established in this section.

(1) Institutional Mission. The college's mission statement shall:

(a) Be current and comprehensive;

(b) Accurately guide the college's operations;

(c) Be periodically reviewed and updated;

(d) Be approved by the governing board; and

(e) Be communicated to the college's constituencies.

(2) Governance and administration.

(a) The governing board of the college shall be responsible for the selection and the periodic evaluation of the chief executive officer.

(b) Governing board control. The legal authority and operating control of the college shall be clearly defined for the following areas within the college's governance structure:

1. College's mission;

2. Fiscal stability of the college;

3. Collegial policy, including policies concerning related and affiliated corporate entities and all auxiliary services; and

4. Related foundations for athletics, research, or other areas and other corporate entities whose primary purpose is to support the college and its programs.

(c) Board conflict of interest. The board shall have a policy addressing conflict of interest for its members.

(d) Board dismissal. The governing board shall have a policy whereby members can be dismissed only for appropriate reasons and by a fair process.

(e) Board and administration distinction. There shall be a clear and appropriate distinction, in writing and practice, between the policy-making functions of the governing board and the responsibility of the administration and faculty to administer and implement policy.

(f) Organizational structure. The college shall have a clearly defined and published organizational structure that delineates responsibility for the administration of policies.

(g) Qualified administrative and academic officers. The college shall have qualified administrative and academic officers with the experience, competence, and capacity to lead the college.

(h) Faculty and staff appointment. The college shall define and publish policies regarding appointment and employment of faculty and staff.

(i) Administrative staff evaluations. The college shall evaluate the effectiveness of its administrators on a periodic basis.

(j) Control of Intercollegiate athletics. The college's chief executive officer shall have ultimate responsibility for, and exercise appropriate administrative and fiscal control over, the college's intercollegiate athletics program.

(k) Fundraising activities. The college's chief executive officer shall control the college's fund-raising activities exclusive of institution-related foundations that are independent and separately incorporated.

(l) Institution-related foundations.

1. Any institution-related foundation not controlled by the college shall have a contractual or other formal agreement that accurately describes the relationship between the college and the foundation, and describes any liability associated with that relationship.

2. The college shall ensure that the relationship is consistent with its mission.

(m) Intellectual property rights.

1. The college's policies shall be clear concerning ownership of materials, compensation, copyright issues, and the use of revenue derived from the creation and production of all intellectual property.

2. These policies shall apply to students, faculty, and staff.

(3) Institutional effectiveness. The college shall identify expected outcomes, assess the extent to which it achieves these outcomes, and provide evidence of improvement based on analysis of the results in each of the following areas:

(a) Educational programs, to include student learning outcomes;

(b) Administrative support services;

(c) Educational support services;

(d) Research within its educational mission, if appropriate; and

(e) Community and public service within its educational mission, if appropriate.

(4) All educational programs. For all educational programs including on-campus, off-campus, and distance learning programs and course work, the college shall meet the standards established in this subsection.

(a) Academic program approval. The college shall demonstrate that each educational program, including all on-campus, off-campus, and distance learning programs and course work, for which academic credit is awarded, is approved by the faculty and the administration.

(b) Continuing education and service programs. The college's continuing education, outreach, and service programs shall be consistent with the college's mission.

(c) Admissions policies. The college shall publish admissions policies that are consistent with its mission.

(d) Acceptance of academic credit.

1. The college shall have a defined and published policy for evaluating, awarding, and accepting credit for transfer, experiential learning, advanced placement, and professional certificates that is consistent with its mission and ensures that course work and learning outcomes are at the collegiate level and comparable to the college's own degree programs.

2. The college shall assume responsibility for the academic quality of any course work or credit recorded on a transcript of the college.

(e) Academic policies.

1. The college shall publish academic policies that adhere to principles of good educational practice.

2. The college's academic policies shall be disseminated to students, faculty, and other interested parties through publications that accurately represent the programs and services of the college.

(f) Practices for awarding credit. The college shall employ practices for determining the amount and level of credit awarded for courses, regardless of format or mode of delivery.

(g) Consortial relationships and contractual agreements. The college shall:

1. Ensure the quality of educational programs and courses offered through consortial relationships or contractual agreements;

2. Ensure ongoing compliance with the comprehensive requirements; and

3. Evaluate the consortial relationship and agreement against the purpose of the college.

(h) Noncredit to credit. The college shall award academic credit for course work taken on a noncredit basis only if there is documentation that the noncredit course work is equivalent to a designated credit experience.

(i) Academic support services. The college shall provide academic support services for its faculty and students, including:

1. Resource centers;
2. Tutoring;
3. Academic advising;
4. Counseling;
5. Disability services;
6. Library services;
7. Laboratories;
8. Information technology; and
9. Mentoring.

(j) Responsibility for curriculum. The college shall place primary responsibility for the content, quality, and effectiveness of the curriculum with its faculty.

(k) Academic program coordination.

1. For each major in a degree program, the college shall assign responsibility for program coordination, as well as for curriculum development and review, to persons academically qualified in the field who hold degree credentials or other qualifications appropriate to the degree offered.

2. In those degree programs for which the college does not identify a major, this requirement shall apply to a curricular area or concentration.

(l) Technology use.

1. The college's use of technology shall enhance student learning and shall be appropriate for meeting the objectives of its programs.

2. Students shall have access to and training in the use of technology.

(5) Undergraduate educational programs.

(a) College-level competencies. The college shall identify college-level general education competencies and the extent to which graduates have attained them.

(b) Institutional credits for a degree.

1. At least twenty-five (25) percent of the credit hours required for the degree shall be earned through instruction offered by the college awarding the degree.

2. In the case of undergraduate degree programs offered through joint, cooperative, or consortia arrangements, the student shall earn at least twenty-five (25) percent of the credits required for the degree through instruction offered by the participating colleges.

(c) Undergraduate program requirements.

1. The college shall define and publish requirements for its undergraduate programs, including its general education components.

2. These requirements shall display a clear rationale, design, and goals of each program, with courses designed as introductions to the major, required courses, electives, and capstone courses.

(d) Terminal degrees of faculty. At least twenty-five (25) percent of the discipline course hours in each major at the baccalaureate level shall be taught by faculty members holding the terminal degree, the earned doctorate, in the discipline, or the equivalent of the terminal degree.

(6) Graduate and postbaccalaureate professional educational programs.

(a) Postbaccalaureate program rigor. The college's postbaccalaureate professional degree programs, including master's and doctoral degree programs, shall be progressively more advanced in academic content than its undergraduate programs.

(b) Graduate curriculum. The college shall structure its graduate curricula to include knowledge of the literature of the discipline and to ensure ongoing student engagement in research and appropriate professional practice and training experiences.

(c) Institutional credits for a degree.

1. The majority of credits toward a graduate or a post-

baccalaureate professional degree shall be earned through instruction offered by the college awarding the degree.

2. In the case of graduate and postbaccalaureate professional degree programs offered through joint, cooperative, or consortial arrangements, the student shall earn a majority of credits through instruction offered by the participating colleges.

(d) Postbaccalaureate program requirements.

1. The college shall define and publish requirements for its graduate and postbaccalaureate professional programs.

2. These requirements shall display a clear rationale, design, and goals of each program, with courses designed as introductions to the major, required courses, electives, and capstone courses.

(7) Faculty.

(a) Faculty competence.

1. The college shall employ faculty members qualified to accomplish the mission and goals of the college.

2. When determining acceptable qualifications of its faculty, a college shall give primary consideration to the highest earned degree in the discipline.

3. The college shall consider competence, effectiveness, and capacity, including, as appropriate, undergraduate and graduate degrees, related work experiences in the field, professional licensure and certifications, honors and awards, continuous documented excellence in teaching, or other demonstrated competencies and achievements that contribute to effective teaching and student learning outcomes.

4. For all cases, the college shall be responsible for justifying and documenting the qualifications of its faculty.

(b) Faculty evaluation. The college shall regularly evaluate the effectiveness of each faculty member in accord with published criteria, regardless of contractual or tenured status.

(c) Faculty development. The college shall provide ongoing professional development of faculty as teachers, scholars, and practitioners.

(d) Academic freedom. The college shall ensure adequate procedures for safeguarding and protecting academic freedom.

(e) Faculty role in governance. The college shall publish policies on the responsibility and authority of faculty in academic and governance matters.

(8) Library and other learning resources.

(a) Learning and information resources. The college shall provide facilities and learning and information resources that are appropriate to support its teaching, research, and service mission.

(b) Instruction of library use. The college shall ensure that users have access to regular and timely instruction in the use of the library and other learning and information resources.

(c) Qualified staff. The college shall provide a sufficient number of qualified staff with appropriate education or experiences in library and other learning and information resources to accomplish the mission of the college.

(9) Student affairs and services.

(a) Student rights. The college shall publish a clear and appropriate statement of student rights and responsibilities and shall disseminate the statement to the campus community.

(b) Student records. The college shall protect the security, confidentiality, and integrity of student records and maintain special security measures to protect and back-up data.

(c) Qualified staff. The college shall employ qualified personnel to ensure the quality and effectiveness of its student affairs programs.

(10) Financial resources.

(a) Financial stability. The college's recent financial history shall demonstrate financial stability.

(b) Submission of financial statements.

1. The college shall provide financial profile information on an annual basis.

2. All information shall be presented accurately and appropriately and shall represent the total operation of the college.

(c) Financial aid audits. The college shall audit financial aid programs as required by federal and state regulations.

(d) Control of finances. The college shall exercise appropriate control over all its financial resources by maintaining accurate and up-to-date records of:

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1. Policies related to purchasing, expenditures, and investments;
2. Physical inventory;
3. Internal audit reports;
4. Risk management reports related to financial and physical resources; and
5. Evidence of qualifications and job descriptions of the institution's fiscal officer and business office staff.

~~(e) Control of sponsored research and external funds. The college shall maintain financial control over externally funded and sponsored research and programs.~~

~~(11) Physical resources.~~

~~(a) Control of physical resources. The college shall exercise control over all its physical resources.~~

~~(b) Institutional environment. The college shall take reasonable steps to provide a healthy, safe, and secure environment for all members of the campus community.~~

~~(c) Physical facilities. The college shall operate and maintain physical facilities, both on and off campus, that appropriately serve the needs of the college's educational programs, support services, and other mission-related activities.~~

~~(12) Compliance with federal requirements.~~

~~(a) Student achievement. The college shall evaluate success with respect to student achievement including, as appropriate, consideration of course completion, state licensing examinations, and job placement rates.~~

~~(b) Program curriculum. The college's curriculum shall be directly related and appropriate to the purpose and goals of the college and the diplomas, certificates, or degrees awarded.~~

~~(c) Publication of policies. The college shall make available to students and the public current academic calendars, grading policies, and refund policies.~~

~~(d) Student complaints. The college shall have adequate procedures for addressing written student complaints and shall be responsible for demonstrating that it follows those procedures when resolving student complaints.~~

~~(e) Recruitment materials. Recruitment materials and presentations shall accurately represent the college's practices and policies.~~

~~(f) Title IV program responsibilities. The college shall be in compliance with its program responsibilities under Title IV of the 1998 Higher Education Amendments, 20 U.S.C. 1070 and 34 C.F.R. Part 668.]~~

Section 5 [6]. Action on Application. Within six (6) months of the submission of an "Application for Council on Postsecondary Education Approval for Eligibility Pursuant to 13 KAR 1:050" [if a site visit is not conducted, or within ninety (90) working days of the completion of a site visit,] the president shall do one (1) of the following:

(1) Approve the applicant college for status as an eligible institution in which a student may enroll and receive a Kentucky tuition grant for ten (10) years;

(2) Deny the applicant college for status as an eligible institution; or

(3) Notify the applicant college of deficiencies which shall be corrected before approval is granted.

Section 6. Renewal. (1) **Beginning with the 2022-2023 academic year**, a college approved by the Council for eligibility ~~beginning with the 2022-2023 academic year~~ for ten (10) years shall seek renewal of eligibility by submitting the "Application for Council on Postsecondary Education Approval for Eligibility Pursuant to 13 KAR 1:050" by May 30 of the year prior to its eligibility expiration, and shall pay a nonrefundable fee of \$10,000 to the Council on Postsecondary Education with the submission of the application. Review of the application shall not occur until the fee is paid by the college.

(2) A college that was previously approved by the Council for eligibility beginning with the 2011-2012 academic year shall seek renewal of eligibility by submitting the "Application for Council on Postsecondary Education Approval for Eligibility Pursuant to 13 KAR 1:050" by May 30, 2021 in order to seek eligibility beyond the

month and day of its initial eligibility for 2022, and shall pay a nonrefundable fee of \$10,000 to the Council on Postsecondary Education with the submission of the application. Review of the application shall not occur until the fee is paid by the college.

Section 7. Substantive Change. (1) Approval pursuant to this administrative regulation shall be specific to a licensed college and based on conditions existing at the time of the most recent evaluation and shall not be transferable to other colleges or entities.

(2) An approved college shall notify the president within thirty (30) days of action by an accrediting agency that results in the college being placed on probationary status, a college losing accreditation, or a college being denied accreditation.

(3) The president shall be responsible for evaluating all substantive changes to assess the impact of the change on the college's compliance with this administrative regulation. [The president may conduct, or may have conducted, a site visit in accordance with Section 2(6) of this administrative regulation.]

(4) A college's failure to comply with this section shall be grounds for ineligibility under this administrative regulation.

(5) If a college is unclear as to whether a change is substantive in nature, the college shall contact the Council on Postsecondary Education in writing for consultation.

(6) A substantive change shall include **[the following]:**

(a) Action by an accrediting agency that results in the college being placed on probationary status, a college losing accreditation, or a college being denied accreditation; [

(b) Initiating distance learning;]

(b) [(c)] Initiating a merger or consolidation;

(c) [(d)] Altering significantly the educational mission of the college;

(d) [(e)] Relocating a licensed Kentucky instructional site or principal location of the college;

(e) [(f)] Changing the college's governance, ownership, control, or legal status;

(f) [(g)] Changing the name of the college;

(g) [(h)] Altering significantly the length of a program; [

(i) Initiating degree completion programs;]

(h) [(j)] Adding a new instructional site or program licensed in accordance with 13 KAR 1:020;

(i) [(k)] Denial, suspension, or revocation of licensure by the Council on Postsecondary Education pursuant to 13 KAR 1:020; or

(j) [(l)] Closing the college, a Kentucky licensed instructional site, or a Kentucky licensed program and initiating teach out agreements.

(7) Within six (6) months of notification by the college of a substantive change [if a site visit is not conducted, or within ninety (90) working days of the completion of a site visit,] the president shall do one (1) of the following:

(a) Approve the substantive change and continue approval under this administrative regulation without changing the approval period;

(b) Deny the substantive change and require that the college abandon and not proceed with the substantive change or else lose approval under this administrative regulation;

(c) Notify the college of deficiencies which shall be corrected before the substantive change is approved, and suspend or revoke approval under this administrative regulation; or

(d) Suspend or revoke approval under this administrative regulation.

Section 8. Site Visits. (1) The president may conduct, or may have conducted, an announced or unannounced site visit of a licensed college during reasonable business hours to inspect the files, facilities, and equipment as well as conduct interviews to determine the college's eligibility under this administrative regulation.

(2) Failure to provide full access to the college's files, facilities, and equipment or prevention of interviews shall be grounds for ineligibility.

(3) All costs associated with a site visit and necessary

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subsequent visits, including travel, meals, lodging, and consultant honoraria shall be paid by the applicant college.

(4) The estimated cost of the site visit shall be paid by the college prior to the site visit, and final settlement regarding actual expenses incurred shall be paid no later than thirty (30) days following the completion of the site visit.

(5) Failure to pay these costs shall result in ineligibility.

Section 9. [8.] Hearings and Appeals. (1) **If the president has determined that there are sufficient grounds for ineligibility under this administrative regulation, he or she [The president]** may, for cause, require the chief administrative officer, or other officers, of a college to appear for a hearing, consistent with the provisions of KRS Chapter 13B, in order to determine the facts **[if the president has determined that there are sufficient grounds for ineligibility under this administrative regulation].**

(2) The **chief administrative** officer, or other officers, of the college may be accompanied at the hearing by counsel of their own choosing and at their expense.

(3) Within thirty (30) working days after a hearing is held, the president shall reach a determination and shall issue findings, in writing, to the Council and to the chief **administrative [executive]** officer of the college.

(4) A college may appeal the actions of the president regarding a college's ineligibility under this administrative regulation according to the following procedure:

(a) A college shall notify the president of the intent to appeal an action within fourteen (14) days of the receipt of the letter notifying the college of the action taken;

(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 Chapter 13B;

(c) The appeal shall be presented in writing no later than sixty (60) days following the receipt of notification of intent to appeal;

(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) Within fourteen (14) days, the report of the appeals officer shall be forwarded to the college and to the president of the Council on Postsecondary Education; and

(f) Within thirty (30) working days of receipt of the report of the appeals officer, the president shall approve or not approve the college.

Section 10. [9.] Incorporation by Reference. (1) "Application for Council on Postsecondary Education Approval for Eligibility Pursuant to 13 KAR 1:050", May 2020 [~~November 2009~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Council on Postsecondary Education, 100 Airport Road, 2nd Floor, [4024 Capital Center Drive, Suite 320,] Frankfort, Kentucky 40601.

CONTACT PERSON: Sarah Levy, Executive Director of Postsecondary Licensing, Council on Postsecondary Education, 100 Airport Road, 2nd Floor, Frankfort, Kentucky 40601, phone 502.892.3034, email sarah.levy@ky.gov.

**GOVERNOR'S OFFICE
Kentucky Department of Veterans' Affairs
Office of Kentucky Veterans' Centers
(As Amended at ARRS, August 11, 2020)**

17 KAR 1:030. Nurse Loan Repayment Program.

RELATES TO: KRS 18A.190, 40.320, 314.011

STATUTORY AUTHORITY: KRS 40.325~~(2)~~~~(4)~~, 40.327

NECESSITY, FUNCTION, AND CONFORMITY: KRS 40.325~~(2)~~~~(4)~~ authorizes state veterans' nursing homes. KRS 40.327(1) and (5) requires the Department of Veterans' Affairs (KDVA) and the Kentucky Higher Education Assistance Authority

(KHEAA) to create a Veterans' Affairs Nurse Loan Repayment Program (VANLRPP) for registered nurses and licensed practical nurses within the Department's employ. KRS 40.327(6) requires administrative regulations necessary to operate this program. This administrative regulation establishes the eligibility requirements, the application process, the selection criteria, and the award process for the Nurse Loan Repayment Program.

Section 1: Definitions. (1) "Full time" means working at least a forty (40) hour work week every week of the year, except for authorized and approved leave and holidays as established in KRS 18A.190.

(2) "Licensed practical nurse" is defined by KRS 314.011(9).

(3) "Registered nurse" is defined by:

(a) KRS 314.011(5); and

(b) Does not include nurse practitioners.

(4) "Satisfactory employment" means employment in which the applicant does not have disciplinary or corrective actions during the year being certified and in which the applicant is not currently on a performance improvement plan at the time the application is submitted.

Section 2. Eligibility Requirements. To be eligible to apply for the program, an applicant shall:

(1) Have a current Kentucky license as a registered nurse (RN) or as a licensed practical nurse (LPN);

(2) Be currently employed as an RN or LPN on a full-time basis at a Kentucky Department of Veterans Affairs' state veteran nursing home;

(3) Be a classified employee with status under KRS **Chapter 18A**; and

(4) Have completed at least one (1) year of full-time, satisfactory employment performance as an RN or LPN at a KDVA's state veteran nursing home in the year preceding the application; and

(5) If applying for loan repayment more than once, each application shall be consecutive to the prior application up to a maximum of four (4) consecutive applications and up to a maximum loan repayment for four (4) successful, consecutive applications of no more than **\$40,000 [forty thousand (\$40,000) dollars]**.

(6) An applicant shall not have other unsatisfied contractual service obligations upon completing the Contract Between Nurse Loan Repayment Applicant and the Kentucky Department of Veterans Affairs.

(7) An applicant shall not have an active military obligation.

Section 3. Application Process. Each eligible applicant shall complete a Veterans Affairs Nurse Loan Repayment Program (VANLRP) Application and submit:

(1) The Veterans Affairs Nurse Loan Repayment (VANLRP) Application between January 1 and March 31; ~~and]~~

(2) **Documentation required to be attached to the Veterans Affairs Nurse Loan Repayment (VANLRP) application, including:**

(a) A professional experience narrative;

(b) Educational loan debt information; and

(c) A copy of a current, valid Kentucky Nursing License;

(3) One (1) copy of the KRS Chapter 18A annual performance evaluation, if any, which the applicant received for the immediate prior calendar year.

Section 4. Selection Process. (1) The selection panel shall consist of the executive director of the Office of Kentucky Veterans Centers (OKVC), the deputy executive director of OKVC, and the administrator of the state veterans nursing home where the applicant is employed.

(2) Criteria for selection shall include:

(a) Availability of funding;

(b) The work performance of the applicant compared to other applicants; and

(c) The needs for additional nurses at the applicant's state veteran nursing home compared to the needs of the other state

veterans nursing homes.

Section 5. Award Process. (1) Upon the selection panel awarding an applicant a loan repayment, the Commissioner of the Kentucky Department of Veterans Affairs shall issue an Award Letter to the applicant. ~~f.;~~

(2) The Award Letter shall state the amount of loan repayment of up to twenty-five (25) percent of the applicant's loan balance up to a maximum of ~~\$10,000~~ ~~ten thousand (10,000) dollars~~ per application year.

(3) KDVA and the applicant shall enter into a binding contract stating the terms of the loan repayment on the Contract Between Nurse Loan Repayment Applicant and the Kentucky Department of Veterans Affairs document.

(4) OKVC shall notify the Kentucky Higher Education Assistance Authority to implement the repayment and the Personnel Cabinet to process the taxable amount through employee payroll.

Section ~~6~~**5**. Appeals. Denial by the selection panel shall not be considered a sanction ~~and~~ shall not be appealable.

Section ~~7~~**6**. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Contract Between Nurse Loan Repayment Applicant and the Kentucky Department of Veterans Affairs", 2020;

(b) "Veterans Affairs Nurse Loan Repayment Program (VANLRP) Application", 2020; and

(c) "Award Letter", 2020.

(2) This material may be inspected, copied, or obtained at the Kentucky Department of Veterans Affairs, 1111B Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Mark Bowman, Executive Director, Office of Kentucky Veterans' Centers, Kentucky Department of Veterans' Affairs, 1111B Louisville Road, Frankfort, Kentucky 40601, phone (502) 564-5725, fax (502) 564-4036, email Mark.Bowman@ky.gov.

BOARDS AND COMMISSIONS

Board of Cosmetology

(As Amended at Interim Joint Committee on Licensing, Occupations, and Administrative Regulations, July 30, 2020)

201 KAR 12:030. Licensing, permits, and examinations.

RELATES TO: KRS 12.245, 317A.020, 317A.050, 317A.060, ~~317A.145~~, ~~317.145~~

STATUTORY AUTHORITY: KRS 317A.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.060 requires the board to promulgate administrative regulations governing licenses in cosmetology, esthetic practices, and nail technology, including the operation of schools and salons of cosmetology, esthetic practices, and nail technology. This administrative regulation establishes procedures for examinations and licensing.

Section 1. Fees. License and permit fees are set forth in 201 KAR 12:260.

Section 2. Prior Felony Convictions. An applicant for any license, permit, or examination issued or conducted by the board convicted of a prior felony shall include with his or her application:

(1) A signed letter of explanation from the applicant;

(2) A certified copy of the judgment and sentence from the issuing court; and

(3) A letter of good standing from the applicant's probation or parole officer, if currently on probation or parole.

Section 3. Reciprocal Licensing. (1) A license issued by another state shall be considered comparable if the laws of

that state require at a minimum:

(a) 1,500 hours of curriculum for cosmetology;

(b) 450 hours of curriculum for nail technology;

(c) 750 hours of curriculum for esthetics; or

(d) 750 hours of curriculum for instructors.

~~(2) [A license issued by another state shall be considered comparable if the laws of that state require at a minimum:~~

~~(a) 1,500 hours of curriculum for cosmetology;~~

~~(b) 450 hours of curriculum for nail technology;~~

~~(c) 750 hours of curriculum for esthetics; or~~

~~(d) 750 hours of curriculum for instructors.~~

~~(2) An applicant licensed in another state may be licensed by reciprocity by submitting the Out of State Transfer Application and the following:~~

~~(a) Digital certification showing proof of a passing score on a board-approved nationally recognized theory and practical exam;~~

~~(b) Current digital certification of the out of state license from the issuing state board showing a license in active and good standing;~~

~~(c) Diploma or certified testing documents proving 12th grade equivalency education;~~

~~(d) Payment of the applicable license and endorsement fees required by 201 KAR 12:260 unless a member of the United States Military, Reserves, or National Guard, or his or her spouse, or a veteran or the spouse of a veteran submitting the license fee a established in subsection (4)(d) of this section;~~

~~(e) A copy of the applicant's government-issued photo identification; and~~

~~(f) A two (2) by two (2) inch passport photo of the applicant taken within the past six (6) months.~~

~~(3) An applicant from a state whose licensing requirements fail to meet subsection (1) of this section shall apply for a reciprocal license by submitting:~~

~~(a) Documentation required by subsection (2)(a) through (f) of this section; and~~

~~(b) Payment of the applicable examination fees established in 201 KAR 12:260.~~

~~(4) Pursuant to KRS 12.245, a member of the United States Military, Reserves, or National Guard, or his or her spouse, or a veteran or the spouse of a veteran~~[Active-duty military and family members]~~ shall apply for a reciprocal license by submitting:~~

~~(a) All documents required by subsection 2(a) through (f) of this section;~~

~~(b) The Military Transfer Application;~~

~~(c) A document showing proof of service~~[copy of the] sponsor's service~~[active-duty] or discharge~~ orders listing the applicant ~~[as sponsor]~~ or an accompanying family member as a member of the United States Armed Services; and~~~~

~~(d) Payment of a twenty-five (25) dollar license fee.~~

~~(5) All requests for certification of hours or a license shall use the Certification Request Form accompanied by a copy of the applicant's government-issued photo identification and payment of the fee as set forth in 201 KAR 12:260. Certifications shall only be transmitted digitally to the reciprocal state agency.~~

Section 4. Permits. (1) Any person who engages in the practice of threading, makeup artistry, or eyelash artistry shall first obtain a permit from the board by submitting a completed Permit Application and paying the fee established in 201 KAR 12:260.

(2) The applicant shall include with the Permit Application:

(a) A copy of the applicant's government-issued photo identification;

(b) A two (2) by two (2) inch passport photo of the applicant taken within the past six (6) months;

(c) Proof of completion of a board-approved sanitation course within the (1) year period preceding the application; and

(d) Proof of completion of a board-approved program, if applying for an eyelash artistry permit.

Section 5. Examination Registration. (1) Applicants shall register as follows:

(a) A student of a licensed cosmetology school shall register with the board at least eight (8) months prior to graduation ~~[for the~~

~~requested cosmetologist examination date];~~

(b) A nail technician student shall register with the board at least forty-five (45) days prior to graduation ~~[for the requested nail technician examination date];~~ and

(c) An esthetician student shall register with the board at least four (4) months prior to graduation ~~[for the requested esthetician examination date].~~

(2) A completed Application for Examination or Out of State Application for Examination shall be received in the Board office no later than ten (10) business days prior to the examination date to be scheduled for either the theory test or the practical demonstration component of the exam. Each exam component shall be scheduled using a separate application and payment of the fee set forth in 201 KAR 12:260.

(3) All examination applicants shall submit a two (2) by two (2) inch passport photo of the applicant taken within the past six (6) months.

(4) Theory examination dates shall be valid for ninety (90) days from student notification.

(5) A passing score for the theory examination, proper application, and payment of fees shall be required prior to being scheduled for the practical examination.

(6) An applicant with curriculum hours obtained in another state shall include with the Out of State Application for Examination the following:

(a) Certification of curriculum hours from the state licensing board or agency where the hours were obtained, if the state requires the reporting of curriculum hours; or

(b) Certification of the valid licensing status of the school attended from the state board or licensing authority and an official transcript certified by the school.

(7) Examination applicants shall wear a full set of solid color medical scrubs and bring all instruments and supplies as listed on the board Web site for the practical examination. White colored scrubs or other clothing is prohibited.

Section 6. Examination Components. (1) The examination shall consist of a theory test and a practical demonstration taken from the curriculum requirements specified in 201 KAR 12:082.

(2) The practical demonstration shall be performed on a:

(a) Mannequin head and hand for the cosmetology practical examination;

(b) Mannequin head for the esthetician or blow drying services practical examination; or

(c) Mannequin hand for the nail technician practical examination.

(3) The applicant shall provide a mannequin head or hand as needed for an examination.

Section 7. Grading. (1) A minimum passing grade of seventy (70) percent on the theory test and the practical demonstration shall be required for the cosmetologist, esthetician, and nail technician examinations

(2) A minimum passing grade of eighty (80) percent on the theory test and eighty-five (85) percent on the practical demonstration shall be required for all instructor examinations.

(3) All passing exam scores shall be valid for six (6) months from completion.

Section 8. Practice before Examination Prohibited. A student engaging in the practice of cosmetology, esthetic practices, or nail technology prior to the board examination shall be ineligible to take the examination for a period of one (1) year from the date of the unauthorized practice.

Section 9. License Application. (1) An applicant who passes the examination shall have ninety (90) days following the examination to apply for a license by submitting the License Application form and the following documentation:

(a) Diploma or certified testing documents proving 12th grade equivalency education;

(b) Payment of the applicable license fee required by 201 KAR 12:260;

(c) A copy of the applicant's government-issued photo identification; and

(d) A two (2) by two (2) inch passport photo of the applicant taken within the past six (6) months.

(2) Failure to apply for a license as required by subsection (1) of this section shall require payment of the appropriate restoration and licensing fees set forth in 201 KAR 12:260 before a license may be issued.

(3) An applicant may apply for an apprentice instructor license to be used for training in an approved program after one (1) year of professional licensing. Applicants shall submit the Apprentice Instructor License Application and provide the following documentation:

(a) Diploma or certified testing documents proving 12th grade equivalency education;

(b) Payment of the applicable license fee required by 201 KAR 12:260;

(c) A copy of the applicant's government-issued photo identification; and

(d) A two (2) by two (2) inch passport photo of the applicant taken within the past six (6) months.

Section 10. Retaking Examinations. (1) Any applicant who fails either the theory test or the practical demonstration may retake that portion of the examination upon submitting a new Application for Examination with a two (2) by two (2) inch passport photo of the applicant taken within the preceding six (6) months, and paying the examination fee required by 201 KAR 12:260.

(a) After three (3) failed attempts, the examinee shall be required to wait six (6) months before retaking either portion of the examination. If the examinee does not receive a passing score after the third attempt, then the individual shall take an eighty (80) hour supplemental course in theory studies at a school licensed by the board prior to being eligible to retake the examination.

(b) Following the supplemental course, the examinee may attempt the examination two (2) additional times. If the examinee fails both attempts the examinee shall be prohibited from taking the examination within three (3) years from the date of the final failed attempt.

(2) An applicant caught cheating or impersonating another shall not be allowed to retake the examination for a minimum of one (1) year from the date of the original examination.

(3) Any applicant who fails to report for the examination on the date specified by the board shall submit a new examination application and examination fee prior to being rescheduled for examination. The board may waive the examination fee for good cause shown. "Good cause" includes:

(a) An illness or medical condition of the applicant that prohibits the applicant from reporting for the examination; or

(b) A death, illness, or medical condition in the applicant's immediate family that prohibits the applicant from reporting for the examination.

(4) Documents and certificates submitted with an Application for Examination are valid for one (1) year following the date of submission after which time applicants shall submit updated documents and a new examination application.

Section 11. Duplicate Licenses, Renewal, and Restoration. (1) If a license is lost, destroyed, or stolen after issuance, a duplicate license may be issued. The licensee shall submit a statement verifying the loss of the license using the Duplicate License Application that includes a copy of a government-issued photo identification, and pay the duplicate license fee listed in 201 KAR 12:260. Each duplicate license shall be marked "duplicate".

(2) The annual license renewal period is July 1 through July 31. All licenses and permits shall:

(a) Be renewed using the Renewal Application or by using the board's online portal;

(b) Include the required copy of a government-issued photo identification;

(c) Include payment of the fee set forth 201 KAR 12:260; and

(d) Include payment of any outstanding fines associated with a prior disciplinary action as described in KRS 317A.145.

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(3) To restore an expired license or permit, a Restoration Application shall be submitted to the board with payment of the restoration fee as set forth in 201 KAR 12:260 for each year the license has been expired, the total of which shall not exceed \$300 per license restored, along with the following:

- (a) For an expired individual license or permit, a copy of a government-issued photo identification;
- (b) For an expired salon license or limited facility permit, a new Salon Application or Limited Facility Permit Application; or
- (c) For an expired school license, a new School Application

Section 12. Salon and Facility Applications. (1) Each person, firm, or corporation applying for a license to operate a new or relocating beauty salon, nail salon, esthetic salon, or limited facility shall submit the Salon Application or Limited Facility Permit Application with required copies of state identification and driver's licenses, pay the applicable fee set forth in 201 KAR 12:260, and ~~[be inspected]~~ request an inspection by the board inspector in writing a minimum of five (5) business days prior to opening for business.

(2) A new or relocating salon or facility shall comply with all applicable city, county, state zoning, building, and plumbing laws, administrative regulations, and codes.

(3) A salon or facility may be located on the premises of a nursing home or assisted living facility if the salon or facility meets all requirements of this section.

(4) Any salon or facility located in a residence shall have a separate outside entrance for business purposes only. This subsection shall not apply to a nursing home or assisted living facility if the home or facility has obtained a salon license from the board.

(5) A salon or facility shall not open for business prior to issuance of its license or permit.

(6) Each salon shall maintain a board licensed manager properly licensed in the services the salon provides at all times.

(7) Salon and limited beauty salon licenses and facility permits shall be mailed to the Kentucky mailing address on the application.

Section 13. Change in Salon Ownership or Transfer of Interest.

(1) The owners, firm, or corporation operating a licensed salon shall submit to the board a new Salon Application, Limited Facility Permit Application, or Manager Change Form and payment of the license or change fee as set forth in 201 KAR 12:260 no later than thirty (30) business days prior to selling, transferring, or changing ownership ~~[or changing managers]~~.

(2) All manager changes shall be made with the board within ten (10) business days.

~~(3)~~(2) No transfer of ownership interest in a salon shall take effect while the salon license to be transferred is the subject of ongoing disciplinary action pursuant to KRS 317A.145.

Section 14. School Licenses. (1) Each person, firm, or corporation applying for a license to operate a school shall submit a School Application and the applicable fee set forth in 201 KAR 12:260.

(2) The School Application shall be accompanied by:

- (a) A proposed student contract listing all financial charges to enrolling students; and
- (b) A proposed floor plan drawn to scale by a draftsman or architect.

(3) Each school shall comply with city, county, and state zoning, building, and plumbing laws, administrative regulations and codes.

(4) Prior to license issuance and following the receipt of a completed application with all accompanying materials, the board inspector and board administrator, or their designee shall conduct an inspection.

(5)(a) The inspection shall be completed within twelve (12) months of the date that the School Application and all accompanying materials are received unless the board extends the time period for good cause. "Good cause" includes:

1. An illness or medical condition of the applicant that prohibits the applicant from completing the final preparations; or

2. A death, illness, or medical condition in the applicant's immediate family that prohibits the applicant from completing the final preparations.

(b) Requests for an extension of time shall be submitted in writing to the board and include the following:

- 1. The reason for the extension and the term of the request; and
- 2. Supportive documentation of the extension request.

(6) A license to operate a school shall be valid only for the location and person, firm, or corporate owner named on the application. A school license shall not be transferable from one (1) location to another or from one (1) owner to another.

(7) The school license shall contain:

- (a) The name of the proposed school; and
- (b) A statement that the proposed school may operate educational programs beyond secondary education.

(8) Each licensed school shall maintain a board licensed instructor as school manager at all times.

Section 15. Change in School Ownership or Management. (1) The owners, firm, or corporation operating a licensed school shall submit to the board a new School Application or a Manager Change Form and payment of the applicable fee set forth in 201 KAR 12:260 no later than thirty (30) business days prior to selling, transferring, or changing ownership. ~~[or changing school managers.]~~

(2) All manager changes shall be made with the board within ten (10) business days.

~~(3)~~(2) A prospective owner(s) or manager shall meet all qualifications of KRS Chapter 317A and 201 KAR Chapter 12, and obtain approval of the board prior to assuming operation of the school.

Section 16. Classification as School. Any person, establishment, firm, or corporation that accepts, directly or indirectly, compensation for teaching any subject of cosmetology as defined in KRS 317A.010 shall comply with KRS Chapter 317A and 201 KAR Chapter 12.

Section 17. Owner and Manager Student Prohibited. An owner, partner, stockholder, corporate officer, or a manager of a licensed school shall not be enrolled as a student in the school.

Section 18. Board Member Disclosure. A board member shall disclose to the board a financial interest in a salon or school when submitting an application for a salon or school license.

Section 19. Demonstration Permits. Professional services performed outside a licensed facility shall have approval of the board and display the proper permit. Permits may be obtained by completing the Demonstration Permit Application and paying the applicable fee set forth in 201 KAR 12:260.

Section 20. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Out of State Transfer Application", April 2020~~[December]~~~~[June]~~~~[2019]~~;
- (b) "Military Transfer Application", May 2020~~[October 2018]~~;
- (c) "Certification Request Form" October 2018;
- (d) "Permit Application", December ~~[January]~~ 2019;
- (e) "Application for Examination", June 2019;
- (f) "Out of State Application for Examination", October 2018;
- (g) "License Application", June 2019;
- (h) "Apprentice Instructor License Application", June 2019;
- (i) "Duplicate License Application", January 2019;
- (j) "Renewal Application", January 2019;
- (k) "Restoration Application", June 2019;
- (l) "Salon Application", June 2019;
- (m) "Limited Facility Permit Application", April 2020~~[December]~~~~[June]~~ ~~[2019]~~;
- (n) "Manager Change Form", October 2018;
- (o) "School Application", October 2018; and
- (p) "Demonstration Permit Application", October 2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Cosmetology, 111 St. James Court, Suite A, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Julie Campbell, Board Administrator, 111 St. James Court, STE A, Frankfort, Kentucky 40601, phone 1-502-564-4262, email julie.campbell@ky.gov.

BOARDS AND COMMISSIONS
Board of Nursing
(As Amended at ARRS, August 11, 2020)

201 KAR 20:065. Professional standards for prescribing Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone by APRNs for medication assisted treatment for opioid use disorder.

RELATES TO: KRS 314.011, 314.042, 21 U.S.C. 823

STATUTORY AUTHORITY: KRS 314.131

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131 authorizes the board to promulgate administrative regulations to regulate the conduct of its licensees. This administrative regulation establishes the professional standards for APRNs practicing in Kentucky who prescribe Buprenorphine-Mono-Product or Buprenorphine-Combined-with-Naloxone.

Section 1. Definitions. (1) "Advanced Practice Registered Nurse" or "APRN" is defined by KRS 314.011(7).

(2) "Buprenorphine" means the controlled substances Buprenorphine-Mono-Product and Buprenorphine-Combined-with-Naloxone.

Section 2. Minimum Qualifications for Prescribing Buprenorphine. An advanced practice registered nurse (APRN) shall not prescribe buprenorphine for opioid use disorder unless that APRN possesses the minimum qualifications established in this section. (1) The APRN shall obtain and maintain in good standing a DATA 2000 waiver and registration as issued by the United States Drug Enforcement Administration (DEA) to prescribe buprenorphine for the treatment of opioid use disorder.

(2) The APRN shall:

(a) Be a DEA-registered prescriber of buprenorphine; and

(b) Have obtained medication assisted treatment education through completion of a Substance Abuse and Mental Health Services Administration (SAMHSA) sponsored course.

(3) The APRN shall provide to the board a copy of the DEA Controlled Substance Registration Certificate as required by 201 KAR 20:057, Section 6(4).

(4) The APRN shall comply with all federal statutes and regulations pertaining to the prescribing of buprenorphine. This shall include the maximum number of patients, which may be seen by the APRN each year, and the inclusion of the special DEA identification number in addition to the regular DEA registration number on all prescriptions for opioid dependency treatment.

(5) It is not within the scope of practice for an APRN who does not hold a DATA 2000 waiver to conduct a focused examination required to prescribe buprenorphine for the treatment of substance use disorders[disorder].

(6) The APRN shall comply with all federal statutes and regulations pertaining to the prescribing of controlled substances via telehealth for medication assisted treatment for opioid use disorder.

(7) DEA-registered APRNs acting within the United States, which include DATA 2000-waivered practitioners, are exempt from the in-person medical evaluation requirement as a prerequisite to prescribing or otherwise dispensing controlled substances via the Internet if the practitioner is engaged in the practice of telemedicine as defined under 21 U.S.C. § 802(54).

(8) The APRN who is at a remote location from the patient and is communicating with the patient, or health care professional who is treating the patient, using a telecommunications system referred

to in section 1395m(m) of Title 42, shall comply will applicable federal and state laws.

Section 3. Professional Standards for Prescribing Buprenorphine for Supervised Withdrawal or the Treatment of Opioid Use Disorder. (1) Buprenorphine may be prescribed for supervised withdrawal or as a maintenance treatment for a patient diagnosed with opioid use disorder in accordance with the standards established by this administrative regulation.

(2) Buprenorphine-Mono-Product shall not be prescribed for supervised withdrawal or as a maintenance treatment for a patient diagnosed with opioid use disorder, except:

(a) To a pregnant patient, as established in subsection (4)(b) of this section;

(b) To a patient with demonstrated hypersensitivity to naloxone; ~~or~~

(c) As ~~[an implant-delivered, injectable treatment]~~ administered under supervision~~[-or observed induction]~~ in an APRN's office or other healthcare facility, including hospitals, urgent care settings, surgical care centers, residential treatment facilities, and correctional facilities; or

(d) To a patient transitioning from methadone to buprenorphine, limited to a period of no longer than one (1) week.

(3)(a) Except as provided in paragraph (b) of this subsection, buprenorphine shall not be prescribed to a patient who is also being prescribed benzodiazepines, other sedative hypnotics, stimulants, or other opioids, without consultation of:

1. A physician certified in addiction medicine or psychiatry as required by 201 KAR 9:270;

2. An APRN who is certified in addiction therapy by the:

a. Addictions Nursing Certification Board;

b. American Academy of Health Care Providers in the Addictive Disorders; or

c. National Certification Commission for Addiction Professionals; or

3. A psychiatric-mental health nurse practitioner.

(b) An APRN may prescribe buprenorphine to a patient who is also being prescribed benzodiazepines, other sedative hypnotics, stimulants, or other opioids, without consultation in order to address a documented ~~[aa]~~ extraordinary and acute medical need not to exceed a combined period of thirty (30) days.

(4) Each APRN who prescribes buprenorphine for supervised withdrawal or for the treatment of opioid use disorder shall fully comply with the professional standards established in this subsection.

(a) Prior to initiating treatment, the APRN shall:

1. Obtain, review, and record a complete and appropriate evaluation of the patient, which shall [at a minimum] include:

a. The patient's history of present illness;

b. The patient's history of drug use;

c. The patient's social and family history;

d. The patient's medical and psychiatric histories;

e. A focused physical examination of the patient;

f. Appropriate laboratory tests, which may include a complete blood count (CBC), a comprehensive quantitative drug screen, liver function tests, a complete metabolic panel (CMP), HIV screening, and hepatitis serology; and

g. An evaluation by a mental health provider with expertise in addiction and compliance with the recommendations of the evaluator.

2. Obtain the patient's consent and authorizations in order to obtain and discuss the patient's prior medical records, which shall require[:]

a. Upon receipt of the medical records, the APRN [shall] review and incorporate the information from the records into the evaluation and treatment of the patient; or[:]

b. If the APRN is unable, despite best efforts, to obtain the patient's prior medical records, the APRN [shall] document those efforts in the patient's chart.

3. Obtain and review a KASPER or other prescription drug monitoring program (PDMP) report for that patient for the twelve (12) month period immediately preceding the initial patient encounter and appropriately utilize that information in the

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evaluation and treatment of the patient;

4. Explain treatment alternatives, the risks, and the benefits of treatment with buprenorphine to the patient; ~~[-]~~

5. Obtain written informed consent from the patient for treatment; ~~[-]~~

6. Discuss and document the patient's treatment with the patient's other providers;

7. If the patient is a female of childbearing potential and age, meet the requirements of paragraph (b) of this subsection; and

8. Develop a treatment plan that incorporates objective behavior modification including counseling or a twelve (12) step program for the duration of the treatment.

(b) 1. Prior to initiating treatment, the APRN shall require that the patient ~~[-]~~ first submit to a pregnancy test and, if pregnant, the APRN shall provide counseling as to the risk of neonatal abstinence syndrome which shall be consistent with current SAMHSA guidance [patient education material on neonatal abstinence syndrome from the American Congress of Obstetricians and Gynecologists, American Academy of Pediatrics, American Society of Addiction Medicine (ASAM) and the Kentucky Department for Public Health, and offer means to prevent pregnancy].

2. Prior to prescribing [An APRN who prescribes] [shall not prescribe] buprenorphine to a patient who is pregnant or breastfeeding, an APRN shall first obtain and document [unless the APRN first obtains and documents] consultation with an obstetrician or a maternal-fetal medicine specialist who holds a DATA 2000 waiver that determines [for an opinion as to whether] the potential benefit of Buprenorphine use outweighs the potential risk of use.

3. ~~The consultation shall be obtained from a physician or an APRN as established in subsection (3)(a) of this section.~~

(c) Except as provided by paragraph (d) of this subsection, while initiating treatment with buprenorphine, the APRN shall comply with the following requirements:

1. The APRN shall recommend to the patient an in-office observed induction protocol.

a. Except as provided in clause b. of this subparagraph, the APRN shall conduct or supervise the in-office observed induction protocol.

b. If an in-office observed induction does not occur, the APRN shall appropriately document the circumstances in the patient record and shall implement a SAMHSA-recognized or ASAM recognized home-based induction protocol.

2. The APRN shall document the presence of any opioid withdrawal symptoms before the first dose is given by using a standardized instrument, such as the clinic opioid withdrawal scale (COWS) or other similarly recognized instrument.

3. The APRN shall initiate treatment with a dose not to exceed the dose equivalency of four (4) milligrams buprenorphine generic tablet, which:

a. May be followed by subsequent doses if withdrawal persists ~~[and is not improving];~~ and

b. Shall not exceed the dose equivalency of sixteen (16) milligrams buprenorphine generic tablet on the first day of treatment.

(d) If the patient is transferred from another treatment provider and has previously experienced withdrawal without a relapse and has not had a lapse in treatment, the APRN shall:

1. Document the previous history of withdrawal;

2. Educate the patient about the potential for precipitated withdrawal; ~~[and]~~

3. Continue maintenance treatment of the patient on the same or less dosage as established by the previous treatment provider and then as provided in paragraph (e) of this subsection; and

4. Schedule visits at the same frequency as the previous treatment provider would have been required to or more frequently if deemed necessary by the APRN.

(e) After initial induction of buprenorphine, the APRN shall prescribe to the patient an amount of buprenorphine that:

1. Is necessary to minimize craving and opiate withdrawal;

2. Does not produce opiate sedation;

3. Is able only to supply the patient until the next visit, which

shall be scheduled as required by this section; and

4. Does not exceed the FDA-approved dosage limit ~~[of twenty-four (24) milligrams per day].~~

(f) The patient's visits shall be scheduled as follows:

1. The APRN shall ensure that [see] the patient is seen no later than ten (10) days after induction and then at intervals of no more than ten (10) days for the first month after induction and at intervals of no more than fourteen (14) days for the second month after induction [at least weekly for the first two (2) months].

2. If the patient demonstrates objective signs of positive treatment progress after the first two (2) months, the ~~[APRN shall see the] patient shall be seen~~ at least once monthly thereafter for up to two (2) years.

3. If after two (2) years after initiation of treatment, the patient has demonstrated objective signs of positive treatment progress, including documented evidence that the patient has been compliant with the treatment plan and all treatment directives, then the APRN may require that the patient be seen ~~[only by the APRN]~~ at least once every three (3) months. The APRN shall:

a. Evaluate the patient to determine whether the patient's dosage should be continued or modified; and

b. Appropriately document that evaluation and clinical judgment in the patient's chart.

4. The APRN shall see the patient in shorter intervals if the patient demonstrates any noncompliance with the treatment plan.

5. If extenuating circumstances arise that require a patient to unexpectedly reschedule a visit, the APRN shall make best efforts to see the patient as soon as possible and document the circumstances in the patient chart.

(g) The APRN shall review compliance with the recommendations of the treatment plan, including review of KASPER or other PDMP reports and drug screens to help guide the treatment plan at each visit.

1. The APRN shall:

a. Incorporate those findings into the treatment plan to support the continuation or modification of treatment; and

b. Accurately document the same in the patient record.

2. Appropriate evaluation may include adjustment of dose strength or frequency of visits, increased screening, a consultation with or referral to a specialist, or an alternative treatment, including consideration of weaning.

3. The APRN shall obtain a minimum of eight (8) drug screens from the patient within each twelve (12) month period of treatment in order to help guide the treatment plan.

a. At least two (2) of the drug screens shall be random and coupled with a pill count. At least one (1) of those two (2) drug screens shall be confirmed by gas chromatography/mass spectrometry (GC/MS) or liquid chromatography/mass spectrometry (LC/MS).

b. Each drug screen shall ~~[at a minimum,]~~ screen for buprenorphine, methadone, ~~[oxycodone, other]~~ opioids, THC, benzodiazepines, amphetamines, alcohol, gabapentin, and cocaine.

c. If a drug screen indicates the presence of any of the drugs screened, the APRN shall:

(i) Incorporate those findings into appropriate clinical evaluation to support the continuation or modification of treatment; and

(ii) Document in the patient record. ~~[~~

~~d. Appropriate evaluation may include adjustment of dose strength or frequency of visits, increased screening, a consultation with or referral to a specialist, or an alternative treatment.]~~

(h) Every twelve (12) months following initiation of treatment, if a patient's prescribed daily therapeutic dosage exceeds the dose equivalency of sixteen (16) milligrams buprenorphine generic tablet per day, then the APRN who is not certified in addiction therapy shall:

1. Refer the patient for an evaluation by a physician or an APRN as established in subsection (3)(a) of this section for an opinion as to whether continued treatment and dosage is appropriate; and

2. Document the results of that evaluation in the patient chart.

(i) For patients who have demonstrated objective signs of positive treatment progress for at least two (2) years from the date of initiation of treatment, including documented evidence that the

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patient has been compliant with the treatment plan and all treatment directives, the APRN shall evaluate for and document every twelve (12) months the medical necessity for continued treatment at the established dose.

(j) The APRN shall document a plan for dealing with any lost or stolen medication, which[:

1-] shall not provide for the automatic replacement of medication prior to the specified interval date[; and

2. If the APRN determines that it is necessary to minimize improper or illegal diversion of medications under the circumstances, the APRN shall require the patient to first report the lost or stolen medications to police or other law enforcement agencies and require the patient to provide evidence to the APRN of having so reported].

(k) After initial induction, the APRN shall implement a treatment plan that requires objective behavioral modification by the patient. The behavioral modification shall include the patient's participation in a behavioral modification program that shall include counseling or a twelve (12) step facilitation.

Section 4. Continuing Education. An APRN who has obtained a waiver and registration as issued by the DEA [Drug Enforcement Administration (DEA)] to prescribe buprenorphine for the treatment of opioid use disorder shall complete the one and one-half (1.5) contact hours of continuing education required annually by 201 KAR 20:215, Section 5(1)(b) in addiction disorders.

Section 5. Use of Transmucosal Buprenorphine for Treatment of Opioid Use Disorder in an Emergency Situation or Inpatient Setting.

(1) In an emergency, including in a hospital emergency department or similar outpatient urgent care setting, or in an inpatient setting, an APRN may offer and initiate buprenorphine treatment to patients who present with opioid use disorder, without meeting the requirements established in Sections 2 and 3 of this administrative regulation and to the extent permitted by federal law, if:

(a) The APRN has determined that the use of buprenorphine will not result in a harmful interaction with other medications or substances in the patient's system, including benzodiazepines, sedative hypnotics, carisoprodol, or tramadol;

(b) The APRN obtains and documents written informed consent from the patient specific to risks and benefits of buprenorphine treatment; and

(c) The APRN provides the patient with written instructions and contact information for appropriate follow up care, including bridge-provider services, residential treatment providers, and outpatient treatment providers.

(2) The APRN shall initiate buprenorphine treatment under an observed induction protocol with an initial dose not to exceed the dose equivalency of four (4) milligrams buprenorphine generic tablet, which may be followed by subsequent doses, up to a maximum of twenty-four (24) milligrams buprenorphine generic tablet, if withdrawal persists and is not improving.

Section 6. Telehealth. Nothing in this administrative regulation shall be construed to prohibit prescribing buprenorphine via telehealth. The prescribing APRN shall follow the standards set by 201 KAR 20:520.

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BOARDS AND COMMISSIONS

Board of Nursing

(As Amended at ARRS, August 11, 2020)

201 KAR 20:411. Sexual Assault Nurse Examiner Program standards and credential requirements.

RELATES TO: KRS 216B.400(2), (4), 314.011(14), 314.103, 314.142, 314.475, 403.707, 421.500-421.575, 431.600-431.660

STATUTORY AUTHORITY: KRS 314.131(1), 314.142(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 314.142(1) requires the board to promulgate administrative regulations to create a Sexual Assault Nurse Examiner Program. This administrative regulation establishes the requirements relating to a sexual assault nurse examiner course and the credentials of a sexual assault nurse examiner.

Section 1. Definitions. (1) "Adolescent" means a child who has reached the onset of physiologically normal puberty.];

(2) "Pediatric" means a child who has not reached the age of eighteen (18).];

(3) "SANE-A/A course" means a formal, organized course of instruction that is designed to prepare a registered nurse to perform forensic evaluation of an adult or adolescent sexual assault victim and to promote and preserve the victim's biological, psychological, and social health.

(4) "SANE course" means the SANE-A/A course and the SANE-P/A course.

(5) "SANE-P/A course" means a formal, organized course of instruction that is designed to prepare a registered nurse to perform forensic evaluation of a pediatric or adolescent sexual assault victim and to promote and preserve the victim's biological, psychological, and social health.

Section 2. SANE Course Approval Application.

(1) On the form Application for Initial or Continued SANE Course Approval, the applicant for approval of a SANE-A/A course or a SANE-P/A course shall submit evidence to the board of completion of the requirements for course approval that consists of the following documentation:

(a) Position description and qualifications of the nurse administrator of the SANE course;

(b) Qualifications and description of the faculty;

(c) Course syllabus;

(d) Course completion requirements;

(e) Tentative course presentation dates;

(f) Records maintenance policy; and

(g) Copy of certificate of course completion form.

(2) Nurse administrator of SANE course. A registered nurse, with current, active Kentucky licensure or a multistate licensure privilege pursuant to KRS 314.475, a baccalaureate or higher degree in nursing, and experience in adult and nursing education shall be administratively responsible for assessment, planning, development, implementation, and evaluation of the SANE course.

(3) Faculty qualifications. Faculty qualifications shall be consistent with the instructor qualifications set out in Sexual Assault Nurse Examiner (SANE) Education Guidelines. The name, title, and credentials identifying the educational and professional qualifications for each instructor shall be provided as part of the application.

(4) Course syllabus. The syllabus shall include:

(a) Course prerequisites, requirements, and fees;

(b) Course outcomes, which shall provide statements of observable competencies, which if taken as a whole, present a clear description of the entry level behaviors to be achieved by the learner;

(c) Unit objectives for an individual, which shall be stated in operational or behavioral terms with supportive content identified;

(d) Content as specified in subsection (6) of this section, which shall be described in detailed outline format with corresponding lesson plans and time frame, and which shall be related to, and consistent with, the unit objectives, and support achievement of expected course outcomes;

(e) Teaching methods with the activities of both instructor and learner specified in relation to the content outline, and which shall be congruent with stated course objectives and content, and reflect the application of adult learning principles;

(f) Evaluation methods, which shall be clearly defined for evaluating the learner's achievement of course outcomes, and which shall include a process for annual course evaluation by

students, providers, faculty, and administration; and

(g) Instructional or reference materials required, which shall be identified.

(5) Completion requirements. Requirements for successful completion of the SANE course shall be clearly specified and shall include demonstration of clinical competency. A statement of policy regarding a candidate who fails to successfully complete the course shall be included.

(6) The SANE-A/A course and the SANE-P/A course content shall be consistent with Sexual Assault Nurse Examiner (SANE) Education Guidelines.

(a) In addition to that content, the SANE-A/A course and the SANE-P/A course shall include:

1. Observing live or previously recorded criminal trials and meeting with the Commonwealth Attorney or a representative from the Commonwealth Attorney's office in order to gain an understanding of the trial process including testifying;

2. Meeting with the local rape crisis center and a rape crisis center victim advocate in order to gain an understanding of the services provided to victims by rape crisis centers and the role of an advocate;

3. Meeting with local law enforcement officers or investigators responsible for investigating reports of rape or sexual assault in order to gain an understanding of the investigative process; **and**

4. Application of the Kentucky statewide medical protocol relating to the forensic and medical examination of an individual reporting sexual assault pursuant to KRS 216B.400(2), **[and]** (4), **[;]** and **(5)**. The victim's bill of rights, KRS 421.500 through 421.575.

(b) In addition to the requirements of paragraph (a) of this subsection, the SANE-P/A course shall include:

1. Principles of child development;

2. Techniques for acute evaluations;

3. An overview of Kentucky Child Advocacy Centers; and

4. An overview of KRS 431.600 through 431.660 which shall include information about multidisciplinary teams and their functions, model protocols approved by the Kentucky Multidisciplinary Commission on Child Sexual Abuse, and the role of peer review in child sexual abuse cases.

Section 3. Contact Hour Credit for Continuing Education. (1) The SANE course shall be approved for contact hour credit which may be applied to licensure requirements.

(2) Approval period. Board approval for a SANE course shall be granted for a four (4) year period.

(3) Records shall be maintained for a period of five (5) years, including the following:

(a) Provider name, date, and site of the course; and

(b) Participant roster, containing at a minimum the name, Social Security number, and license number for each participant.

(4) A participant shall receive a certificate of completion that documents the following:

(a) Name of participant;

(b) Title of course, date, and location;

(c) Provider's name; and

(d) Name and signature of authorized provider representative.

Section 4. Continued Board Approval of a SANE Course. (1) An application for continued approval of a SANE course shall be submitted on the Application for Initial or Continued SANE Course Approval at least three (3) months prior to the end of the current approval period.

(2) A SANE course syllabus shall be submitted with the Application for Initial or Continued SANE Course Approval.

(3) Continued approval shall be based on the past approval period performance and compliance with the board standards described in this administrative regulation.

Section 5. The board may deny, revoke, or suspend the approval status of a SANE course for violation of this administrative regulation.

Section 6. Appeal. If a SANE course administrator is

dissatisfied with a board decision concerning approval and wishes a review of the decision, the procedure established in this section shall be followed.

(1) A written request for the review shall be filed with the board within thirty (30) days after the date of notification of the board action which the SANE course administrator contests.

(2) The board, or its designee, shall conduct a review in which the SANE course administrator may appear in person and with counsel to present reasons why the board's decision should be set aside or modified.

Section 7. Requirements for Sexual Assault Nurse Examiner (SANE) Credential. (1) The applicant for the SANE-A/A or SANE-P/A credential shall:

(a) Hold a current, active registered nurse license in Kentucky or a multistate licensure privilege pursuant to KRS 314.475;

(b) Have completed a board approved SANE educational course or a comparable course, **which the board or its designee shall[;]**

1. **[The board or its designee shall]** Evaluate **[the applicant's course]** to determine its course comparability; and

2. **[The board or its designee shall]** Advise an applicant if the course is not comparable and specify what additional components shall be completed to allow the applicant to be credentialed.**[;]**

(c) Complete the Sexual Assault Nurse Examiner Application for Credential;

(d) Pay the fee established in 201 KAR 20:240;

(e) Provide a criminal record check by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI);

(f) Use the FBI Applicant Fingerprint Card;

(g) Pay any required fee to the KSP and the FBI;

(h) Complete the criminal record check within six (6) months of the date of the application;

(i) Provide a certified or attested copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and

(j) Provide a letter of explanation that addresses each conviction, if applicable.

(2) Upon completion of the application process, the board shall issue the appropriate SANE credential for a period ending October 31.

(3) An applicant shall not be credentialed until a report is received from the FBI pursuant to the request submitted under subsection (1)(e) of this section and any conviction is addressed by the board.

Section 8. Renewal. (1) To renew the SANE-P/A or the SANE-A/A credential for the next period, each sexual assault nurse examiner shall complete at least five (5) contact hours of continuing education related to the role of the sexual assault nurse examiner or forensic nursing within each continuing education earning period. A provider of a board approved SANE course may offer continuing education related to the role of the sexual assault nurse examiner.

(2) Upon completion of the required continuing education, completion of the Annual Credential Renewal Application: SANE Credential with RN in Kentucky or Annual Credential Renewal Application: SANE with RN Compact License (Not Kentucky), as applicable, and payment of the fee established in 201 KAR 20:240, the appropriate SANE credential shall be renewed at the same time the registered nurse license is renewed.

(3) The five (5) contact hours may count toward the required contact hours of continuing education for renewal of the registered nurse license.

(4) Failure to meet the five (5) contact hour continuing education requirement shall cause the SANE credential to lapse.

Section 9. Reinstatement. (1) If the SANE credential has lapsed for a period of less than four (4) consecutive registered nurse licensure periods, and the individual wants the credential reinstated, the individual shall apply to reinstate the credential by:

(a) Submitting the Sexual Assault Nurse Examiner

Application for Credential;

- (b) Paying the fee established in 201 KAR 20:240;
 - (c) Submitting evidence of earning the continuing education requirement referenced in Section 8(1) of this administrative regulation for the number of registered nurse licensure periods since the SANE credential lapsed;
 - (d) Providing a criminal record check by the KSP and FBI;
 - (e) Using the FBI Applicant Fingerprint Card;
 - (f) Paying any required fee to the KSP and the FBI;
 - (g) Completing the criminal record check within six (6) months of the date of the application;
 - (h) Providing a certified or attested copy of the court record of any misdemeanor or felony conviction as required by 201 KAR 20:370, Section 1(3); and
 - (i) Providing a letter of explanation that addresses each conviction, if applicable.
- (2) An applicant shall not be credentialed until a report is received from the FBI pursuant to the request submitted under subsection (1)(d) of this section and any conviction is addressed by the board.
- (3) If the SANE credential has lapsed for more than four (4) consecutive licensure periods, the nurse shall complete a SANE course prior to reinstatement.

Section 10. The board shall obtain input from the Sexual Assault Response Team Advisory Committee concerning any proposed amendment to this administrative regulation as follows:

- (1) The board shall send a draft copy of any proposed amendment to the co-chairs of the Sexual Assault Response Team Advisory Committee prior to approval by the board;
- (2) The board shall request that comments on the proposed amendment be forwarded to the board's designated staff person within ninety (90) days; and
- (3) At the conclusion of that time period or upon receipt of comments, whichever is sooner, the board, at its next regularly scheduled meeting, shall consider the comments.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Application for Initial or Continued SANE Course Approval", 10/2018[~~Kentucky Board of Nursing~~];
 - (b) "Sexual Assault Nurse Examiner Application for Credential", 10/2018[~~Kentucky Board of Nursing~~];
 - (c) "Annual Credential Renewal Application: SANE Credential with RN in Kentucky", 2/2020[~~10/2018, Kentucky Board of Nursing~~];
 - (d) "Annual Credential Renewal Application: SANE with RN Compact License (Not Kentucky)", 2/2020[~~10/2018, Kentucky Board of Nursing~~]; and
 - (e) "Sexual Assault Nurse Examiner (SANE) Education Guidelines", 2018[~~2015~~], International Association of Forensic Nurses.
- (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 40222-5172, Monday through Friday, 8:00 a.m. to 4:30 p.m.

CONTACT PERSON: Morgan Ransdell, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3339, fax (502) 429-1248, email Morgan.Ransdell@ky.gov.

BOARDS AND COMMISSIONS

Board of Nursing

(As Amended at Interim Joint Committee on Health, Welfare, and Family Services, July 29, 2020)

201 KAR 20:650. Licensed certified professional midwives permitted medical tests and formulary.

RELATES TO: KRS 314.400 – 314.414[~~314.404 – 314.416~~]
 STATUTORY AUTHORITY: KRS 314.131(1), 314.404

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 314.404(7) ~~requires~~**[authorizes]** the board to promulgate an administrative regulation to establish a list of medical tests that a licensed certified professional midwife may order when providing certified professional midwifery services that is limited to only those tests that are indicated and approved for the safe conduct of pregnancy, labor or birth, and care of a client and not intended for the diagnosis or management of any acute condition unrelated to pregnancy. **This administrative regulation establishes the medical tests and formulary for licensed certified professional midwives.**

Section 1. An LCPM may independently order the following medical tests:

- (1) Complete blood count (CBC);
- (2) Blood type, Rh, and antibody screen;
- (3) Screening for gestational diabetes;
- (4) Hepatitis B and C panels for immunity or infection;
- (5) HIV test;
- (6) HPV test;
- (7) Pap smear;
- (8) Screen tests for syphilis, chlamydia, gonorrhea, and herpes;
- (9) Rubella titers;
- (10) Urine or serum HCG;
- (11) Urinalysis;
- (12) Urine culture including Group B strep;
- (13) Vaginal culture for Group B strep;
- (14) Varicella titers;
- (15) Ultrasound for fetal viability, confirmation of singleton intrauterine pregnancy, gestational age, fetal position, placental localization, anatomy scan, **amniotic fluid index**, or nuchal translucency;
- (16) Standard state newborn screening for metabolic disorders;
- (17) Newborn hearing screening;
- (18) Critical congenital heart disease screening (pulse oximetry);
- (19) Maternal prenatal genetic screening for errors of metabolism;
- (20) Hemoglobin A1C;
- (21) Standard screening tests for fetal genetic abnormalities including Quad Screen and cell-free DNA testing;
- (22) TSH screening; **and**
- (23) **[Complete Metabolic Panel (CMP); and**
- (24) Non-stress tests.**

Section 2. An LCPM may order any other test which is **determined as**~~deemed~~ necessary after consultation with a physician or other appropriate licensed healthcare provider.

Section 3. (1) An LCPM may obtain, transport, and administer the following legend medications:

- (a) Vitamin K;
- (b) Rho D immune globulin;
- (c) Erythromycin ophthalmic ointment USP, **five-tenths** (0.5~~%)~~ **percent**;
- (d) Oxygen;
- (e) Hepatitis B vaccine;
- (f) Antibiotics which shall be administered pursuant to United States Centers for Disease Control (CDC) Guidelines for Prophylaxis:
 - 1. Penicillin;
 - 2. Ampicillin;
 - 3. Cefazolin;
 - 4. Clindamycin; and
 - 5. Vancomycin;
- (g) Topical anesthetics:
 - 1. Procaine HCl;
 - 2. Novocaine;
 - 3. Benzocaine;

4. Cetacaine; and
5. Generic equivalents;
- (h) Lidocaine, one (1) percent[4%] up to twenty (20) milliliters per patient;
- (i) ~~[Lidocaine, two (2) percent] [2%] [may be obtained by a LCPM only if][in order that][it may be compounded to one (1) percent] [1%] [if Lidocaine one (1) percent] [1%] [is not available];~~
- ~~(j)~~ Epinephrine;
- ~~(i)(k)~~ Glucose gel to be administered orally for neonatal hypoglycemia;
- ~~(k)(4)~~ Normal saline; and
- ~~(l)(m)~~ Medical supplies needed to administer the medications listed in this administrative regulation.
- (2)(a) An LCPM shall obtain and transport for emergencies Oxytocin (Pitocin) for prevention of postpartum hemorrhage and Lactated Ringer's or Normal Saline for intravenous infusion.
- (b) The LCPM shall obtain and transport at least one (1) of the following to be used in the event of postpartum hemorrhage and if Oxytocin is not successful:
 1. Methylergonovine (Methergine);
 2. Hemabate; or
 3. Misoprostal (Cytotec).

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 429-1248, email ngoldman@ky.gov.

BOARDS AND COMMISSIONS

Board of Nursing

(As Amended at Interim Joint Committee on Health, Welfare, and Family Services, July 29, 2020)

201 KAR 20:670. Licensed certified professional midwives consultation, collaboration, and referral provisions.

RELATES TO: KRS ~~314.400 – 314.414~~[314.404 – 314.416]

STATUTORY AUTHORITY: KRS 314.131(1), 314.404

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 314.404(12) requires[authorizes] the board to promulgate an administrative regulation to define a list of conditions requiring collaboration, consultation, or referral of a client to a physician or other appropriate licensed health care provider, and the process for such collaboration, consultation, or referral. This administrative regulation establishes the process for and the list of conditions requiring collaboration, consultation, and referral.

Section 1. (1) Consultation does not require an in-person visit. It may include a discussion by the LCPM and an appropriate healthcare provider by telephone or other appropriate electronic communication.

(2) The consultant may recommend further evaluation which may be either in-person, by telehealth, or a records review.

(3) It is the responsibility of the LCPM to initiate a consultation and to communicate clearly to the consultant that the LCPM is seeking a consultation.

(4) A consultation may involve the consultant providing advice and information, providing care to the client or newborn, or prescribing treatment or medication for the client or newborn.

(5) It is the responsibility of the LCPM to provide all relevant client records to the consultant, including a written summary of the client's history and presenting problem, as appropriate.

(6) Consultation shall be fully documented by the LCPM in the client's record, including the consultant's name, date of service, and the consultant's findings, opinions, and recommendations. The LCPM shall discuss the consultant's recommendations with the client.

(7) After consultation and with the informed consent of the

client as required by 201 KAR 20:640, care of the client and responsibility for decision making either:

- (a) Continues with the LCPM;
- (b) Is shared in collaboration by the LCPM and an appropriate licensed healthcare provider;
- (c) Is referred completely to an appropriate licensed healthcare provider; or
- (d) Is transferred to a licensed healthcare facility providing a higher level of care pursuant to 201 KAR 20:690.
- (8) Referral or collaboration shall occur only after dialogue and agreement among the client, the LCPM, and the consultant.
- (9) The LCPM shall ensure that the client can understand each provider's role and is able to identify which healthcare provider is responsible for various aspects of the client's[their] care.
- (10) Collaboration shall be documented by the LCPM in the client's record, including the name of the collaborating provider and the conditions or symptoms the collaborating provider is managing.
- (11) The LCPM shall maintain communication with the collaborating provider to the extent necessary to coordinate client care.
- (12) If the condition or symptom requiring collaboration is resolved as mutually agreed upon by the LCPM and the collaborating provider, the LCPM may resume sole management of the client's care if appropriate, and document the decision in the client's record.
- (13) Discussion with the client regarding the indications for complete referral of care shall[should] take place in a timely manner following the decision for referral. If[When] possible, this discussion shall occur in person and be documented in the client's record.

(14) It is the responsibility of the LCPM to provide all relevant client records to appropriate providers or facilities, including a written summary of the client's history and presenting problem, as appropriate.

(15) If the condition or symptom requiring referral of care is resolved as mutually agreed upon by the LCPM and other participating providers, the LCPM may resume primary management or enter into a collaboration of care if appropriate, and document the decision in the client's record.

Section 2. (1) If, on initial or subsequent assessment, one (1) of the conditions listed in this subsection exists, the LCPM shall consult with a physician or other appropriate licensed healthcare provider and shall mutually select either[determine if][whether] collaboration or referral as[is] appropriate and shall document that recommendation in the client record:

- (a) Complete placenta previa;
- (b) Partial placenta previa persisting after thirty-two (32) weeks;
- (c) HIV infection;
- (d) Cardiovascular disease, including hypertension;
- (e) Severe psychiatric illness that may result in bodily harm to self or others;
- (f) History of cervical incompetence;
- (g) Pre-eclampsia or eclampsia;
- (h) Intrauterine growth restriction, oligohydramnios or polyhydramnios in the current pregnancy;
- (i) Known potentially serious anatomic fetal abnormalities;
- (j) Any type of diabetes not controlled by diet;
- (k) Substance use disorder with current or recent use; or
- (l) Any other condition or symptom which may[could] threaten the life of the client or fetus, as assessed by an LCPM exercising reasonable skill and knowledge.

(2) If a client with a condition listed in subsection (1) of this section declines to accept a medically indicated consultation, collaboration, or referral, the licensed certified professional midwife shall document the refusal in writing and shall transition the client to an appropriate higher level of care.

(3) If the condition mandating referral occurs during labor or delivery or the client is otherwise acutely in jeopardy but refuses the referral, the LCPM shall call 911 and provide care until another appropriate licensed healthcare provider assumes care.

Section 3. (1) If, on initial or subsequent assessment, one (1)

of the following conditions exists, the LCPM shall consult with a physician or other appropriate licensed healthcare provider to mutually ~~select either~~~~[determine if]~~~~[whether]~~ collaboration or referral ~~as/is~~ necessary and shall document the recommendation in the client record:

- (a) Prior Cesarean section or other surgery resulting in a uterine scar;
 - (b) Multifetal gestation;
 - (c) Non-cephalic presentation after thirty-six (36) weeks gestation;
 - (d) History of severe shoulder dystocia as documented by objective findings; or
 - (e) Gestational age greater than forty-two (42) weeks.
- (2) An individual with a condition listed in subsection (1) of this section may give informed refusal to a consultation or to the consultant's recommendation. Prior to giving informed refusal, the LCPM shall recommend that the individual discuss the condition and the risks involved with a physician or other appropriate licensed healthcare provider. If the client continues to refuse the consultation, collaboration, or referral, the LCPM shall document in the client's record that the client[she] was informed of the condition requiring consultation, collaboration, or referral and the possible consequences. The client shall complete the Informed Refusal Form. The LCPM may continue to assume primary management of the client unless and until the client subsequently consents to the collaborative care or referral.

Section 4. (1) If, on initial or subsequent assessment, one (1) of the following conditions exists, the LCPM shall recommend consultation, collaboration, or referral with a physician or other appropriate licensed healthcare provider:

- (a) Acute or chronic bacterial or fungal infection;
 - (b) Liver or kidney disease;
 - (c) Endocrinologic abnormalities;
 - (d) Hematologic abnormalities other than physiologic anemia of pregnancy;
 - (e) History of impaired glucose tolerance, history of diabetes satisfactorily controlled by diet and lifestyle changes alone, abnormal blood sugar or glucose tolerance test, or history of gestational diabetes;
 - (f) Substance use disorder, in remission;
 - (g) Current asthma or other significant pulmonary disease;
 - (h) Abnormality in a screening test indicative of possible genital tract malignancy or pre-malignant condition during the pregnancy;
 - (i) Seizure disorder or other significant neurologic disease;
 - (j) Abnormal vaginal bleeding during pregnancy other than first trimester bleeding;
 - (k) History of invasive malignancy;
 - (l) History of severe and persistent mental illness;
 - (m) History of prior intrauterine fetal demise or neonatal death;
 - (n) History of preterm birth; or
 - (o) Any other condition or symptom which could adversely affect the client or the fetus as assessed by an LCPM exercising reasonable skill and knowledge.
- (2) If the client refuses the recommended consultation, collaboration, or referral pursuant to subsection (1) of this section, the LCPM shall document the refusal in the client's record and may continue to assume primary management of the client.

Section 5. Incorporation by Reference.

- (1) "Informed Refusal Form", 1/2020~~[, Kentucky Board of Nursing]~~, is incorporated by reference.
- (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, 8:00 a.m. to 4:30 p.m.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 429-1248, email ngoldman@ky.gov.

LABOR CABINET
Department of Workers' Claims
(As Amended at ARRS, August 11, 2020)

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.

~~(11)~~~~(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.

~~(12)~~~~(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.

~~(13)~~~~(14)~~ "Signature" means actual personal handwritten signatures, and includes electronic signatures, which shall be treated as a personal signature for purposes of CR 11.

~~(14)~~~~(15)~~ "Special defenses" means defenses that shall be raised by ~~[]~~special answer~~[]~~ filed in accordance with Section 7(2)(d) of this administrative regulation.

~~(15)~~~~(16)~~ "Technical failure" means a failure of the Department of Workers' Claims hardware, software, or telecommunications facility that results in the impossibility for an external user to submit a filing electronically and does not include malfunctioning of an external user's equipment:

~~(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, ~~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 post injury 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) 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 [A/J] 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. (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

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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:

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- (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) Parties shall insert~~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 bene-fits 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",

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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)[(h)] 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.

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, email Scottc.wilhoit@ky.gov.

LABOR CABINET
Department of Workers' Claims
(As Amended at ARRS, August 11, 2020)

803 KAR 25:070. Charges for attorneys.

RELATES TO: KRS 342.320

STATUTORY AUTHORITY: KRS 342.260, 342.320

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260

requires the Commissioner [~~Workers' Compensation Board~~] to promulgate [~~prepare such rules and~~] administrative regulations as he [~~it~~] considers necessary to carry on the [~~its~~] work of the department and for carrying out the provisions of KRS Chapter 342. For injuries occurring or disabilities arising on or after July 15, 1982 and prior to April 4, 1994, KRS 342.320 requires an administrative law judge [~~the Workers' Compensation Board~~] to approve the payment of the attorney's fee in any case involving benefits under KRS Chapter 342 and to commute the final payments of benefits payable under the award to a lump sum for that purpose. KRS Chapter 342.120, as effective prior to April 4, 1994, provided [~~provides~~] the method by which an employer or its insurance carrier and the Special Fund shared [~~share~~] liability for awards for injuries occurring and disabilities arising on or after July 15, 1982, and prior to April 4, 1994, [The function of] This administrative regulation establishes [~~is to establish~~] a mechanism for crediting the above referenced parties for the payment of attorneys' fees in these cases.

Section 1. Credit for Lump Sum Payment of Charges by Attorneys. A party defendant shall be entitled, without further order of the administrative law judge [~~board~~], to credit for the lump sum value of any attorney's fee paid. The procedure for payment of attorney fees and the impact of such payment on weekly benefits shall be as follows:

(1) The Labor Cabinet [~~Department of Labor~~], Department [~~Office~~] of Workers' Claims, Division of the Workers' Compensation Funds, shall calculate the credit for attorney's fee as follows:

(a) Number of weeks as awarded due in future (do not include payments payable prior to attorney fee award) = X weeks.

(b) Obtain a lump sum of X (X weeks on lump sum table) = Y [~~Z~~] weeks.

(c) Divide amount of attorney fee by amount due per week = Z weeks.

(d) Y weeks minus Z weeks = A [~~Z~~] weeks.

(e) Look in table on lump sum and find A weeks in the Present Work column of the chart and then take the figure in the weeks column of the chart = B weeks, the total number of weeks of actual remaining award payments by parties defendant before the credit causes cessation of award payment checks.

(f) X minus B = C weeks, the number of weeks of benefit cessation required to equal the statutory credit.

(2) The Labor Cabinet [~~Department of Labor~~], Department [~~Office~~] of Workers' Claims, Division of Workers' Compensation Funds, shall calculate the employer's credit for attorney's fee as follows:

(a) Number of weeks due from employer or insurance carrier in future pursuant to KRS 342.120 (do not include payments payable prior to attorney fee award) = X₁.

(b) Obtain a lump sum of X₁ (X₁ weeks on lump sum table) = Y₁ weeks.

(c) Divide amount of attorney fee by amount due per week = Z weeks.

(d) Multiply Z weeks by employer's percentage of award = Z₁ weeks.

(e) Y₁ weeks minus Z₁ weeks = A₁ weeks.

(f) Look in table on lump sum and find A₁ weeks in the Present Work column of the chart and then take the figure in the weeks column of the chart = B₁ weeks, the number of weeks yet to be paid by the employer or the insurance carrier before the Special Fund begins to pay disability benefits.

(3) The calculations set forth in subsections (1) and (2) of this section shall be completed by the Division of the Workers' Compensation Funds and the results forwarded to the other payers, as well as the plaintiff. Any disagreements as to the application of the formula shall be resolved by an administrative law judge [~~the board~~] upon motion by any party. Special Fund's notice shall include the following information:

(a) Attorney fee to be paid by each party. The period of time for which each party defendant will be responsible for disability benefit payment and, in cases involving lifetime benefits, the date upon which benefits payments will be reinstated by the Special Fund after taking credit for the amount advanced to pay the attorney's fee in a lump sum.

(4) When any payer other than the Special Fund [~~the defendant payer or payers~~] has fulfilled its obligation [~~obligations~~] as reduced pursuant to subsection (2) of this section, payments will commence by the Special Fund (there will be no stoppage to recover advance attorney fee payments at this time). The Special Fund shall continue weekly benefit payments until such time as the number of weeks remaining in the specified benefit period or the life expectancy as determined by mortality tables approved by the Commissioner [~~Workers' Compensation Board~~], multiplied by the weekly benefit rate is equal to the total attorney fee and discount paid by all payers on behalf of the injured worker. In claims where benefits are payable for a lifetime, the weekly benefit payments will be reinstated by the Special Fund at such time as the payer [~~payor~~] surpasses the life expectancy as determined by the mortality table approved by the Commissioner [~~Workers' Compensation Board~~] and shall continue until terminated by death or order of an administrative law judge [~~the Workers' Compensation Board~~].

(5) No part of this section should be viewed as a limitation on the party's right to negotiate a settlement subject to statutory approval by an administrative law judge [~~the Workers' Compensation Board~~].

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, email Scottc.wilhoit@ky.gov.

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LABOR CABINET
Department of Workers' Claims
(As Amended at ARRS, August 11, 2020)

803 KAR 25:075. Attorney fee discount.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.260, ~~342.320~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260 requires the Commissioner [~~Executive Director~~] of the Department [~~Office~~] of Workers' Claims to promulgate [~~prepare~~] administrative regulations as he considers necessary to carry on the work of the department [~~office~~] and the work of the administrative law judges. KRS 342.320 requires the administrative law judges to approve the payment of the attorney's fee in any case involving benefits under KRS Chapter 342, and KRS 342.120, as effective between April 4, 1994 and December 12, 1996, provides the method by which an employer or its insurance carrier and the Special Fund share liabilities for awards or injuries occurring after April 4, 1994. [~~The function of~~] This administrative regulation establishes [~~is to establish~~] a mechanism for crediting the employer, the employer's insurance carrier, and the Special Fund for the payment of attorneys' fees for injuries occurring and disabilities arising after April 4, 1994, and prior to December 12, 1996, when the claimant elects to repay an attorney's fee through the reduction of weekly benefits.

Section 1. Employer's Calculation. For injuries occurring and disabilities arising on or after April 4, 1994, and prior to December 12, 1996, the employer or the insurance carrier making payment on behalf of the employer shall be entitled to credit for the lump sum value of any attorney's fee paid. The following formula shall be used:

(1) Employer weeks awarded - weeks paid = R [~~remaining~~] weeks.

(2) R weeks = P weeks (present worth).

(3) Employer [EMP %] share of attorney fee divided by [-:]P weeks = Y rate.

(4) [R weeks x Y rate = employer attorney fee and discount.

(5) EMP attorney fee and discount - EMP attorney fee = EMP discount.

(6) Weekly rate - Y rate = Employer reduced rate.

Section 2. Special Fund Credit. The Labor Cabinet, Department of Workers' Claims [~~Department of Labor, Office of Workplace Standards,~~] Division of Workers' Compensation Funds shall calculate its lump sum credit for attorney's fees in cases involving injuries occurring and disabilities arising on or after April 4, 1994, and prior to December 12, 1996, as follows:

(1) Employer weeks awarded - weeks paid = R [~~remaining~~] weeks.

(2) R weeks = P weeks (present worth).

(3) Total weeks awarded - weeks paid = total remaining (TR) weeks.

(4) TR weeks = PW weeks (present worth).

(5) PW weeks - P weeks = SF (Special Fund) weeks.

(6) SF [%] share of attorney fee divided by [-:]SF weeks = SF rate reduction.[

(7) SF rate reduction x SF weeks owed = SF attorney fee and discount.

(8) SF attorney fee and discount - SF attorney fee = SF discount.

Section 3. Procedure. The calculations set forth in Sections 1 and 2 of this administrative regulation shall be completed by the Division of Workers' Compensation Funds and the results forwarded to the other payers, as well as to the plaintiff, when the plaintiff elects to repay an attorney's fee through the reduction of weekly benefits. Any disagreements as to the application of the formula shall be resolved by the administrative law judge upon motion by any party.

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LABOR CABINET
Department of Workers' Claims
(As Amended at ARRS, August 11, 2020)

803 KAR 25:096. Selection of physicians, treatment plans and statements for medical services.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.020, 342.035, 342.260, 342.320, 342.735

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260 requires the Commissioner [~~Executive Director~~] of the Department [~~Office~~] of Workers' Claims to promulgate administrative regulations necessary to carry on the work of the department [~~office~~] under KRS Chapter 342. KRS 342.735 requires the commissioner [~~executive director~~] to promulgate administrative regulations to expedite the payment of medical expense benefits. This administrative regulation regulates the selection of physicians and provides for treatment plans under KRS Chapter 342 in order to assure high quality medical care at a reasonable cost.

Section 1. Definitions. (1) "Designated physician" means the physician selected by the employee for treatment pursuant to KRS 342.020 ~~(4)~~ ~~(5)~~.

(2) "Emergency care" means:

(a) [~~Those~~] Medical services required for the immediate diagnosis or treatment of a medical condition that if not immediately diagnosed or treated could lead to a serious physical or mental disability or death; or

(b) Medical services which are immediately necessary to alleviate severe pain.

(3) "Long-term medical care" means:

(a) Medical treatment or medical rehabilitation that is reasonably projected to require a regimen of medical care for a period extending beyond ninety (90) days;

(b) Medical treatment that continues for a period of more than ninety (90) days; or

(c) Medical treatment including the recommendation that the employee not engage in the performance of the employee's usual work for a period of more than sixty (60) days.

(4) "Physician" is defined in KRS 342.0011(32).

(5) "Statement for services" means:

(a) For a nonpharmaceutical bill, a completed Form HCFA 1500, or for a hospital, a completed Form UB-92, with an attached copy of legible treatment notes, hospital admission and discharge summary, or other supporting documentation for the billed medical treatment, procedure, or hospitalization; and

(b) For a pharmaceutical bill, a bill containing the identity of the prescribed medication, the number of units prescribed, the date of the prescription, and the name of the prescribing physician.

(6) "Treatment plan" means a written plan that:

(a) May consist of copies of charts, consultation reports or other written documents maintained by the employee's designated physician discussing symptoms, clinical findings, results of diagnostic studies, diagnosis, prognosis, and the objectives, modalities, frequency, and duration of treatment;

(b) Shall include, as appropriate, details of the course of ongoing and recommended treatment and the projected results; and

(c) May be amended, supplemented or changed as conditions warrant.

Section 2. Employer's Obligation to Supply Kentucky Workers' Compensation Designation and Medical Release Card (Form 113). Within ten (10) days following receipt of notice of a work injury or occupational disease causing lost work time or necessitating continuing medical treatment, the medical payment obligor shall mail a Form 113 to the employee, including a self-addressed,

postage prepaid envelope for returning the Form 113. Failure by the medical payment obligor to timely mail the form shall waive an objection to treatment by other than a designated physician prior to receipt by the employee of the form.

Section 3. Employee Selection of Physician. (1) Except for emergency care, treatment for a work-related injury or occupational disease shall be rendered under the coordination of a single physician selected by the employee. The employee shall give notice to the medical payment obligor of the identity of the designated physician by tendering the completed Form 113, including a written acceptance by the designated physician, within ten (10) days after treatment is commenced by that physician.

(2) Within ten (10) days following receipt of a Form 113 designating a treating physician, the medical payment obligor shall tender a card to the employee, which shall be presented to a medical provider each time that a medical service is sought in connection with the work-related injury or occupational disease.

(3) The card shall serve as notice to a medical provider of the identity of the designated physician, who shall have the sole authority to make a referral to a treatment facility or to a specialist.

(a) The card shall bear the legend "First Designated Physician-Workers' Compensation" and shall further contain the following information:

1. Name and telephone number of the first designated physician;
2. Name, Social Security number, date of birth, and date of work injury or occupational disease and last exposure of the employee; and
3. Name and telephone number of the medical payment obligor.

(b) The reverse side of the first designated physician card shall contain:

1. A notice that treatment shall be performed by or on referral from the first designated physician; and
2. Shall further contain space for the identification and notification of a change of designated physician.

(4) Failure by the medical payment obligor to timely mail the "First Designated Physician" card shall waive an objection to treatment by other than a designated physician prior to receipt by the employee of the card.

(5) The unreasonable failure of an employee to comply with the requirements of this section may suspend all benefits payable under KRS Chapter 342 until compliance by the employee and receipt of the Form 113 by the medical payment obligor has occurred.

Section 4. Change of Designated Physician. (1) Following initial selection of a designated physician, the employee may change designated physicians once without authorization of the employer or its medical payment obligor. Referral by a designated physician to a specialist shall not constitute a change of designated physician unless the latter physician is specifically selected by the employee as the second designated physician.

(2) Within ten (10) days of a decision to change the designated physician, the employee shall complete the back of the first designated physician card and return the card with the name of the second designated physician, including a written acceptance by the second designated physician, to the medical payment obligor, which shall issue a second card within ten (10) days.

(3) The card shall bear the legend "Second Designated Physician-Workers' Compensation" and shall further contain the information required on the first designated physician card. The reverse side of the card shall contain a notice that:

(a) Treatment shall be performed by or on referral from the second designated physician; and

(b) A further change of designated physician shall require the written consent of the employer, its medical payment obligor, arbitrator, or the administrative law judge.

(4) Failure by the medical payment obligor to timely mail the "Second Designated Physician" card shall waive an objection to treatment by other than a designated physician prior to receipt by the employee of the card.

(5) If an employee's two (2) choices of designated physician have been exhausted, he shall not, except as required by medical emergency, make an additional selection of a physician without the written consent of the employer, its medical payment obligor, arbitrator, or the administrative law judge. This consent shall not be unreasonably withheld.

(6) If the employer provides medical services through a managed health care system, it may establish alternate methods for provider selection within the managed health care plan.

Section 5. Treatment Plan. (1) A treatment plan shall be prepared if:

(a) Long-term medical care is required as a result of a work-related injury or occupational disease;

(b) The employee has received treatment with passive modalities, including electronic stimulation, heat or cold packs, massage, ultrasound, diathermy, whirlpool, or similar procedures for a period exceeding sixty (60) days. The treatment plan shall detail the need for the passive treatment, the benefits, if any, derived from the treatment, the risks attendant with termination of the treatment, and the projected period of future treatment; or

(c) An elective surgical procedure or placement into a resident work hardening, pain management, or medical rehabilitation program is recommended. The treatment plan shall set forth specific and measurable performance goals for the employee through the surgery, work hardening, or medical rehabilitation program.

(2) The designated physician shall provide a copy of the treatment plan to the medical payment obligor seven (7) days in advance of an elective surgical procedure or placement into a resident work hardening, pain management, or medical rehabilitation program. In all other instances when a treatment plan is required, a copy of the treatment plan shall be provided within fifteen (15) days following a request by the medical payment obligor. An amendment, supplement, or change to a treatment plan shall be furnished within fifteen (15) days following a request.

(3) Preparation of a treatment plan shall be a necessary part of the care to be rendered and shall be an integral part of the fee authorized in the medical fee schedule for the underlying services. An additional fee shall not be charged for the preparation of a treatment plan or progress report, except for the reasonable cost of photocopying and mailing the records.

Section 6. Tender of Statement for Services. If the medical services provider fails to submit a statement for services as required by KRS 342.020~~(4)~~~~(4)~~ without reasonable grounds, the medical bills shall not be compensable.

Section 7. Written Denial of Statement for Services Prior to the Resolution of Claim. (1) Prior to resolution of a workers' compensation claim by opinion or order of an [arbitrator or] administrative law judge, the medical payment obligor shall notify the medical provider and employee of its denial of a specific statement for services, or payment for future services from the same provider, in writing within thirty (30) days following receipt of a completed statement for services.

(2) A copy of the denial shall be mailed to the employee, employer, and medical service provider.

(3) The denial shall:

(a) Include a statement of the reasons for denial and a brief synopsis of available utilization review or medical bill audit procedures with relevant telephone contact numbers; and

(b) Be made for a good faith reason.

(4) Upon receipt of a denial from a medical payment obligor, a medical provider may tender a statement for services to another potential payment source or to the patient.

Section 8. Payment or Challenge to Statement for Services Following Resolution of Claim. (1) Following resolution of a claim by an opinion or order of an arbitrator or administrative law judge, including an order approving settlement of a disputed claim, the medical payment obligor shall tender payment or file a medical fee dispute with an appropriate motion to reopen the claim, within thirty

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(30) days following receipt of a completed statement for services.

(2) The thirty (30) day period provided in KRS 342.020~~(4)~~~~(1)~~ shall be tolled during a period in which:

(a) The medical provider submitted an incomplete statement for services. The payment obligor shall promptly notify the medical provider of a deficient statement and shall request specific documentation. The medical payment obligor shall tender payment or file a medical fee dispute within thirty (30) days following receipt of the required documentation;

(b) A medical provider fails to respond to a reasonable information request from the employer or its medical payment obligor pursuant to KRS 342.020(4);

(c) The employee's designated physician fails to provide a treatment plan if required by this administrative regulation; or

(d) The utilization review required by 803 KAR 25:190 is pending. The thirty (30) day period for filing a medical fee dispute shall commence on the date of rendition of the final decision from the utilization review. A medical fee dispute filed thereafter shall include a copy of the final utilization review decision and the supporting medical opinions.

(3) An obligation for payment or challenge shall not arise if a statement for services clearly indicates that the services were not performed for a work-related condition.

Section 9. Payment Pursuant to Fee Schedules. (1) If the statement for services contains charges in excess of those provided in the applicable fee schedule established in 803 KAR 25:089, 803 KAR 25:091, and 803 KAR 25:092, the medical payment obligor shall make payment in the scheduled amount and shall serve a written notice of denial setting forth the rea-son for refusal to pay a greater amount.

(2) Following receipt of a final medical bill audit reconsideration decision pursuant to 803 KAR 25:190, the medical provider shall file within thirty (30) days a medical fee dispute in accordance with 803 KAR 25:012 to dispute the amount of payment.

Section 10. Patient Billing. (1) A medical provider may tender a statement for services to a patient once it has received:

(a) A written denial from the medical payment obligor; or

(b) An opinion by an [arbitrator or] administrative law judge finding that the services were unrelated to a work injury or occupational disease.

(2) The medical provider shall not bill a patient for services which have been found to be unreasonable or unnecessary by an [arbitrator or] administrative law judge, if the medical provider has been joined as a party to a workers' compensation claim or to a medical fee dispute and has had an opportunity to present contrary evidence.

(3) The medical provider shall not bill a patient for services which have been denied by the payment obligor for failure to submit bills following treatment within forty-five (45) days as required by KRS 342.020 and Section 6 of this administrative regulation.

Section 11. Request for Payment for Services Provided or Expenses Incurred to Secure Medical Treatment. (1) If an individual who is not a physician or medical provider provides compensable services for the cure or relief of a work injury or occupational disease, including home nursing services, the individual shall submit a fully completed Form 114 to the employer or medical payment obligor within sixty (60) days of the date the service is initiated and every sixty (60) days thereafter, if appropriate, for so long as the services are rendered.

(2) Expenses incurred by an employee for access to compensable medical treatment for a work injury or occupational disease, including reasonable travel expenses, out-of-pocket payment for prescription medication, and similar items shall be submitted to the employer or its medical payment obligor within sixty (60) days of incurring of the expense. A request for payment shall be made on a Form 114.

(3) Failure to timely submit the Form 114, without reasonable grounds, may result in a finding that the expenses are not compensable.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form 113, "Notice of Designated Physician", (March 12, 2003 Edition), Department [Office] of Workers' Claims; and

(b) Form 114, "Request for Payment for Services or Reimbursement for Compensable Expenses", (October 30, 2017 Edition)[August 15, 1996 Edition], Department [Office] of Workers' Claims.

(2) This material may be inspected, copied, or obtained at the Department [Office] of Workers' Claims, Monday through Friday, 9 a.m. to 4 p.m., at the following locations:

(a) Mayo-Underwood Building, 3rd Floor, 500 Mero Street, [Prevention Park, 657 Chamberlin Avenue,] Frankfort, Kentucky 40601;

(b) [410 West Chestnut Street, Louisville, Kentucky 40202;

(c) 220B North 8th Street, Paducah, Kentucky 42001; or

(d) Uniplex Building, Suite 304, 126 Trivette Drive, Pikeville, Kentucky 41501 [407 Coal Hollow Road, Pikeville, Kentucky 41504]; or

(c) Online at "<https://labor.ky.gov/comp/Pages/default.aspx>".

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, email Scottc.wilhoit@ky.gov.

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(As Amended at ARRS, August 11, 2020)**

907 KAR 3:300. Enhanced and suspended Medicaid services and requirements if there is a declared national or state emergency.

RELATES TO: KRS Chapter 39A, 194A.060, 205.510(15), 205.559, 205.560~~[, KRS Chapter 39A]~~

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.559(2), (7), 205.560

NECESSITY, FUNCTION, AND CONFORMITY: In accordance with KRS 194A.030(2), 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. This administrative regulation establishes the requirements for enhancing or suspending certain Medicaid services and requirements if there is a declared national or state emergency.

Section 1. General Provisions Relating to a Declared Emergency. (1) In accordance with all applicable federal law, the department shall respond to a declared national or state emergency that is related to or rationally related to healthcare or public health by temporarily enhancing, expanding, or suspending Medicaid services and requirements as necessary to respond to the declared emergency.

(2) The department shall provide information about specific expanded services via the use of the department's Web site, electronic provider letters, or other reliable methods of communication with members, providers, and stakeholders.

(3) The department may target any activity undertaken pursuant to this administrative regulation to a subpopulation based on criteria that include:

(a) Geography;

(b) Age;

(c) Condition; or

(d) Disease.

Section 2. Enhanced or Expanded Medicaid Benefits. Medicaid services and requirements that may be enhanced or expanded include:

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(1) Any appropriate health service related to or rationally related to the declared emergency;

(2) Telehealth services, which may include:

(a) Those services that are otherwise designated as face-to-face only throughout KAR Title 907[KAR];

(b) The use of equipment, such as a telephone, that would not customarily be allowable for a telehealth service pursuant to KAR Title 907[KAR]; or

(c) Expanded use of asynchronous telehealth or store-and-forward telehealth, including:

1. Remote patient monitoring, as appropriate; or

2. Any other telehealth service for which an evidence base exists to justify the safety and efficacy of the service if/when provided as asynchronous telehealth;

(3) The introduction or expansion of any appropriate telecommunication or electronically mediated health service as allowable pursuant to federal law; or

(4) "Telehealth" or "telehealth service" or "telehealth consultation" as it is defined throughout KAR Title 907[Title KAR], which shall be equivalent to an in-person service or a service requiring physical presence.

Section 3. Eligibility. Pursuant to Section 1 of this administrative regulation, the department may:

(1) Temporarily expand eligibility to include individuals with higher income than currently allowed pursuant to 907 KAR 20:100;

(2) Temporarily suspend the requirement that a beneficiary eligible pursuant to 42 U.S.C. 1396a(a)(10)(A)(ii)(V) be institutionalized for at least thirty (30) days;

(3) Implement a simplified electronic or paper application for use by designated providers; or

(4) Extend the availability of presumptive eligibility to additional groups than allowed pursuant to 907 KAR 20:050.

Section 4. Temporary Enhancement of Rate or Rate Methodology. The department may temporarily enhance rates or rate methodology relating to a declared national or state emergency.

Section 5. Provider Enrollment. (1) In response to a declared national or state emergency, the department may:

(a) Simplify any existing provider enrollment process to meet an existing or anticipated demand for health services; or

(b) Reenroll retired or previously enrolled providers.

(2) Any enrollment or reenrollment process utilized pursuant to subsection (1) of this section shall exercise discretion when enrolling or not enrolling providers with a history of disenrollment for good cause or other negative criminal or registry record.

Section 6. Women, Infants, and Children (WIC) Program Services. (1) The department or any other agency of the Cabinet for Health and Family Services shall facilitate the provision of all appropriate WIC services via telehealth or as a telecommunications or other electronically mediated health service to the full extent allowable by federal or state law.

(2) For the purposes of all WIC services administered by the Cabinet for Health and Family Services, any requirement that a service be "face-to-face", "in-person", or "physically present" shall include a synchronous telehealth or telecommunication or other electronically mediated health service.

Section 7. Federal Financial Participation. A policy established in this administrative regulation may be null and void if the Centers for Medicare and Medicaid Services:

(1) Denies federal financial participation for the policy; or

(2) Disapproves the policy.

Section 8. If any policy stated in another administrative regulation within KAR Title 907[~~of the Kentucky Administrative Regulations~~] contradicts a policy stated in this administrative regulation, the policy stated in this administrative regulation shall supersede the policy stated elsewhere within KAR Title 907.

Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

CONTACT PERSON: Donna Little, Office of Legislative and

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

BOARDS AND COMMISSIONS

Board of Licensure of Marriage and Family Therapists
(Amended After Comments)

201 KAR 32:110. Telehealth.

RELATES TO: KRS 335.305, 335.310, 335.320, 335.325, 335.380, 335.399

STATUTORY AUTHORITY: KRS 335.320(9), 335.380

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.320(9) requires the Board of Licensure for Marriage and Family Therapists to promulgate administrative regulations to implement the purpose and scope of KRS 335.300 to 335.399. KRS 335.380 requires the board to promulgate administrative regulations to govern telehealth services in the provision of marriage and family therapy services. This administrative regulation establishes procedures for the use of telehealth by licensees and associates.

Section 1. Definitions.

(1) "Asynchronous" means a communication that does not occur simultaneously in real time.

(2) "Electronic communication" means the use of websites, cell phones, email, texting, online social networking, video, or other digital methods and technology used to send and receive messages or post information.

(3) "Encryption" means a mathematical process that converts text, video, or audio streams into a scrambled, unreadable format when transmitted electronically.

(4) "Fee-splitting" means offering or accepting payment for referrals other than in an employer-employee or contractor-contractee relationship.

(5) "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Pub L. No. 104-191, 110 Stat. 1936 (1996).

(6)(5) "HITECH" means the Health Information Technology for Economic and Clinical Health Act of 2009, 42 U.S.C. 17901-17953.

(7)(6) "Social media" means a Web-based communication tool that enables people to interact with each other by both sharing and consuming information.

(8)(7) "Synchronous" means a communication that occurs simultaneously in real time.

(9)(8) "Telehealth" is defined by KRS 335.380(3).

Section 2. Licensure, Standard of Practice, and Competency.

(1) License or permit required. Any licensed marriage and family therapist or marriage and family therapy associate practicing teletherapy in this state shall be licensed by the board or hold a permit issued by the board and comply with all statutes, administrative regulations, and ethics guidelines applicable to the practice of marriage and family therapy.

(2) Standard of appropriate practice. A licensed marriage and family therapist or marriage and family therapy associate providing telehealth services in this state shall be held to the same standards of practice as those applicable for in-person therapy settings.

(3) Competency. A licensed marriage and family therapist or marriage and family therapy associate shall only provide telehealth services in this state in those instances in which the licensed marriage and family therapist or marriage and family therapy associate has successfully completed all requirements set forth in Section 3(1) of this administrative regulation.

(4) Continued competency. A licensed marriage and family therapist or marriage and family therapy associate providing telehealth services in this state shall have an ongoing obligation to assess their technical and clinical competency to render these services by successfully completing all requirements set forth in Section 3(2) of this administrative regulation.

(5) Fee splitting. A licensed marriage and family therapist or marriage and family therapy associate providing telehealth

services shall not split fees.

Section 3. Education and Continuing Education Requirements.

(1) Initial educational requirements. Effective January 1, 2020, a licensed marriage and family therapist or marriage and family therapy associate providing telehealth services in this state or a licensed marriage and family therapist who is supervising a marriage and family therapy associate providing telehealth services in this state shall have completed fifteen (15) hours of board-approved training in the practice of telehealth as provided in 201 KAR 32:060, Section 2(2), which shall include three (3) hours of ethics in the practice of telehealth. Each approved course shall be live or online. Areas to be covered in the training shall include:

- (a) Appropriateness of teletherapy;
- (b) Teletherapy theory and practice;
- (c) Modes of delivery;
- (d) Legal and ethical issues;
- (e) Handling online emergencies; and
- (f) Best practices and informed consent.

(2) Continuing education requirements. A licensed marriage and family therapist or marriage and family therapy associate who has completed the initial training in the practice of telehealth shall complete at least two (2) credit hours of continuing education approved by the board, in accordance with 201 KAR 32:060, in the practice of telehealth during each subsequent [licensure] renewal period.

(3) Credit hours earned to comply with subsections (1) and (2) above may be applied to continuing education requirements set forth in 201 KAR 32:060.

Section 4. Verification of the Client. Prior to providing initial telehealth services in this state a licensed marriage and family therapist or marriage and family therapy associate shall require the client to produce a valid photo identification. If the client is a minor, prior to providing telehealth services in this state a licensed marriage and family therapist or marriage and family therapy associate shall verify the identity of the parent, guardian, or other person consenting to the minor's treatment.

Section 5. Client Assessment.

(1) Initial assessment. Prior to providing telehealth services in this state a licensed marriage and family therapist or marriage and family therapy associate shall conduct an initial assessment of the client to determine if telehealth is an appropriate delivery of treatment considering the professional, intellectual, or emotional needs of the client.

(2) Ongoing assessment. Throughout the duration of providing telehealth services in this state, a licensed marriage and family therapist or marriage and family therapy associate shall engage in a continual assessment of the appropriateness of providing these services to the client.

(3) Telehealth may not be appropriate if the client:

- (a) Recurrently experiences, or is likely to experience, crises or emergencies;
- (b) Is a suicide risk, or likely to become a suicide risk;
- (c) Is violent, or likely to become violent; or
- (d) Otherwise poses a risk to themselves or to others.

Section 6. Informed Consent. (1) Generally. Prior to providing telehealth services in this state, the licensed marriage and family therapist or marriage and family therapy associate providing these services shall obtain the informed consent of the client, which shall include:

- (a) Disclosure of specific information regarding the marriage and family therapist's:
 1. Training and credentials;
 2. License number;
 3. Physical location and contact information;
 4. Social media policy;
 5. Encryption policy; and

6. Collection, documentation, tracking, and storage of client information;

(b) Client confidentiality and the limits to confidentiality in electronic communication;

(c) Information on reporting complaints to the board and other appropriate licensing bodies;

(d) The specific services to be provided;

(e) The risks and benefits of engaging in telehealth in the clinical setting;

(f) The possibility of technology failure and alternate methods of service delivery;

(g) Time zone differences, if any;

(h) Cultural or language differences that may affect the delivery of services;

(i) The possible denial of insurance benefits;

(j) The pertinent legal rights and limitations governing practice across state lines or international boundaries, if applicable; and

(k) Whether delivery of service will be asynchronous or synchronous.

(2) Minors. **Except as allowed by KRS 214.185, if[he]** the client is a minor, prior to providing telehealth services in this state the licensed marriage and family therapist or marriage and family therapy associate shall, pursuant to Section 4 of this administrative regulation, verify the identity of the parent, guardian, or other person consenting to the minor's treatment and obtain from that person the informed consent required by this section.

Section 7. Emergency Procedures, Coordination of Care and Referrals. Prior to providing telehealth services in this state, the licensed marriage and family therapist or marriage and family therapy associate shall establish with the client:

(1) Acceptable ways to contact the marriage and family therapist in an emergency;

(2) Emergency procedures to include emergency services at the client's location;

(3) Coordination of care with other professionals; and

(4) Conditions under which telehealth services may be terminated and a referral made to in-person care.

Section 8. Compliance with Privacy Laws, Documentation, and Recordkeeping. A licensed marriage and family therapist or marriage and family therapy associate performing telehealth services in this state shall:

(1) Comply with all privacy laws and regulations relating to the transmission and protection of protected health information, including HIPAA and HITECH; and

(2) Comply with all state and federal laws and regulations relating to the practice of telehealth, documentation of services delivered, and related recordkeeping.

DR. C. SHAWN OAK, Ph.D., LMFT, Chairman

APPROVED BY AGENCY: August 10, 2020

FILED WITH LRC: August 13, 2020 at noon

CONTACT PERSON: Bryan D. Morrow, Board Attorney, 500 Mero Street, 218 NC, phone +1 (502) 782-0766, fax +1 (502) 564-3969, email Bryan.Morrow@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Bryan D. Morrow

(a) What this administrative regulation does: KRS 335.380 requires the board to promulgate administrative regulations to implement the practice of telehealth. This administrative regulation establishes procedures and education requirements for licensed marriage and family therapists and marriage and family therapy associates to provide telehealth services to patients in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 335.380(2).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 335.380 requires the board to promulgate administrative regulations to implement the practice of telehealth, including: (1) preventing abuse and fraud through the use of telehealth services; (2) preventing fee-splitting; and (3)

utilizing telehealth in the provision of marriage and family therapy services and in the provision of continuing education. This administrative regulation prevents fraud and abuse in six ways: (1) applying standards for in-person counseling to telehealth; (2) requiring verification of the client; (3) requiring an initial assessment to ensure the client is a proper candidate for telehealth services; (4) making that assessment an on-going concern; (5) obtaining the informed consent of the client; and (6) establishing procedures for the client in case of an emergency. This administrative regulation prohibits fee splitting in the delivery of services. Finally, the regulation sets forth education and continuing education requirements for telehealth services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS 335.380 by carrying out the legislative mandate for the board to establish a regulation regarding telehealth services.

(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 will change the existing administrative regulation in two ways: (1) by allowing marriage and family therapy associates to practice telehealth; and (2) prohibiting fee splitting.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to allow marriage and family therapy associates to practice telehealth. This is especially crucial under the State of Emergency declared in Executive Order 2020-215 on March 6, 2020 and Executive Order 2020-243 signed by Governor Beshear on March 18, 2020 requiring social distancing. The amendment prohibiting fee splitting is necessary because it is required by KRS 335.380(2)(b).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 335.380 which requires the board to promulgate regulations regarding telehealth services. It also conforms to KRS 335.380 which requires a prohibition on fee splitting in the delivering of telehealth services.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of KRS 335.380 by carrying out the legislative mandate for the board to establish a regulation regarding telehealth services.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 728 licensed Marriage and Family Therapists and Marriage and Family Therapy Associates in Kentucky, as well as an unknown number of Marriage and Family Therapists from other jurisdictions seeking to provide telehealth to clients located in Kentucky.

(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: In order to use telehealth to practice marriage and family therapy in Kentucky, each licensed marriage and family therapist, marriage and family therapy associate, and licensed marriage and family therapist supervising an associate practicing telehealth will be required to complete initial training and continuing education each subsequent year. The licensed therapist and marriage and family therapy associate will also have to verify the client, continuously assess the client as an appropriate recipient of telehealth, obtain consent from the client, establish emergency procedures, and ensure compliance with applicable privacy laws.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This regulation should add no additional cost to the licensed marriage and family therapist or marriage and family therapy associate. Licensed marriage and family therapist and marriage and family therapy associates continuing education requirements are already in place as part of 201 KAR Chapter 32. The education and continuing education requirements specific to telehealth will count

toward those hours licensed marriage and family therapists or marriage and family therapy associates are already required to obtain.

(c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance, licensed marriage and family therapists and marriage and family therapy associates and clients will be permitted to engage in telehealth, increasing access and availability of needed services.

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

(a) Initially: This administrative regulation does not create a cost for the administrative body; a licensed marriage and family therapist or marriage and family therapy associate that provides telehealth will be governed by the same process as a licensed marriage and family therapists or marriage and family therapy associates in an office setting.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body; a licensed marriage and family therapists or a marriage and family therapy associate that provides telehealth will be governed by the same process as a licensed marriage and family therapists or a marriage and family therapy associate in an office setting.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Marriage and Family Therapy Board is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement 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: No increases in fees or funding is necessary to implement the amendment to this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increases in fees or funding is necessary to implement this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated licensed marriage and family therapists and marriage and family therapy associates are treated similarly under this administrative regulation.

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 Licensure for Marriage and Family Therapists 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 335.380

(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 regulation will not 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? This regulation will not generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? A licensed marriage and family therapist or a marriage and family therapy associate providing telehealth services will abide by the same process as a licensed marriage and family therapist or a marriage and family therapy associate in an office setting so there will be no additional cost to administer this program.

(d) How much will it cost to administer this program for subsequent years? A licensed marriage and family therapist or a marriage and family therapy associate providing telehealth services will abide by the same process as a licensed marriage and family therapist or a marriage and family therapy associate in an office setting so there will be no additional cost to administer this program.

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

Office of Inspector General Division of Certificate of Need (Amended After Comments)

900 KAR 5:020. State Health Plan for facilities and services.

RELATES TO: KRS 216B.010-216B.130

STATUTORY AUTHORITY: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(28), 216B.040(2)(a)2.a

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)2.a requires the cabinet to promulgate an administrative regulation, updated annually, to establish the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the cabinet is given responsibility in KRS Chapter 216B. This administrative regulation establishes the State Health Plan for facilities and services.

Section 1. The ~~2020-2022~~ [2018 Update to the 2017-2019] State Health Plan shall be used to:

(1) Review a certificate of need application pursuant to KRS 216B.040; and

(2) Determine whether a substantial change to a health service has occurred pursuant to KRS 216B.015(29)(a) and 216B.061(1)(d).

Section 2. Incorporation by Reference. (1) The "~~2020-2022~~ [2018 Update to the 2017-2019] State Health Plan", August [April] 2020 [November 2018], is incorporated by reference. (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Inspector General, Division of Certificate of Need, 275 East Main Street, 5E-A, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ADAM D. MATHER, Inspector General

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: August 13, 2020

FILED WITH LRC: August 13, 2020 at 1 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kara Daniel or Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the 2020-2022 State Health Plan.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the content of the authorizing statutes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes, KRS 216B.010, 216B.015(28), and 216B.040(2)(a)2.a., by establishing the State

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Health Plan's review criteria, used for determinations regarding the issuance and denial of certificates of need.

(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 review criteria for certificate of need determinations.

(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 response to suggestions and comments submitted to the Cabinet by interested groups, the amendment to this administrative regulation filed April 3, 2020, made the following changes to the State Health Plan (SHP):

Updates the title and edition date of the SHP on page i of the Plan;

Updates the title of the SHP on page iii of the Plan under the heading "Purpose";

Adds language to page iii to establish a temporary waiver of certain certificate of need requirements as authorized by an Executive Order during a State of Emergency declared as the result of a public health crisis;

Adds language to the review criteria on page 37 to clarify the prohibition against transferring public intermediate care facility for individuals with an intellectual disability (ICF/IID) beds to a private ICF/IID;

Revises the language of the review criteria on page 39 to clarify that the addition of a cardiac catheterization program at a hospital shall be based on the existing program's utilization, rather than a specific laboratory's utilization; and

Revises the language of the review criteria on pages 52 – 54 to enable a Kentucky-licensed acute care hospital to establish an ambulatory surgical center in the same county as the hospital

Base upon comments received during the public comment period and because of the uncertainty created by the ongoing COVID-19 pandemic, the Cabinet has made the following substantive revisions in the proposed "Amended After Comments" administrative regulation:

The proposed substantive changes to the review criteria on page 37 regarding a prohibition on transferring public intermediate care facility for individuals with an intellectual disability (ICF/IID) beds to a private ICF/IID were removed;

The proposed substantive changes to the review criteria on page 39 regarding cardiac catheterization programs were removed; and

The proposed substantive changes to the review criteria on pages 52-54 regarding ambulatory surgical centers were removed.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to address annual updates to the State Health Plan as required by KRS 216.015(28).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes because it incorporates by reference the 2020-2022 State Health Plan.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by establishing review criteria for certificate of need determinations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects certificate of need applicants and affected persons as defined by KRS 216B.015(3). In calendar year 2018, eighty-three (83) certificate of need applications were filed and in calendar year 2019, eighty-four (84) applications were filed.

(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 that submit a certificate of need application are subject to the criteria set forth in the 2020-2022

State Health Plan.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to entities to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities subject to certificate of need approval must demonstrate that their proposal is consistent with the State Health Plan pursuant to KRS 216B.040(2)(a)2.a.

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

(a) Initially: No additional costs will be incurred to implement this administrative regulation.

(b) On a continuing basis: No additional costs will be incurred to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds and agency monies are used to implement and enforce 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 increase in fees or funding is 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 or increase any fees.

(9) TIERING: Is tiering applied? (explain why or why not) Yes, tiering is used as there are different certificate of need review criteria for each licensure category addressed in the State Health Plan.

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 impacts the Cabinet for Health and Family Services, Office of Inspector General, and may impact any government owned or controlled health care facility.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.010, 216B.015(28), and 216B.040(2)(a)2.a.

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? This administrative regulation will not 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? This administrative regulation will not generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred to implement this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

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

Revenues (+/-): See response above.

Expenditures (+/-): This administrative regulation is anticipated to have minimal fiscal impact to the cabinet.

Other Explanation:

PROPOSED AMENDMENTS

Public comment periods are at least two months long. For other regulations with open comment periods, please also see last month's *Administrative Register of Kentucky*.

**AUDITOR OF PUBLIC ACCOUNTS
(Amendment)**

45 KAR 1:050. Audits of fiscal courts.

RELATES TO: KRS 43.070, 43.075, 64.810, 68.210, 31 U.S.C. 7501-7507

STATUTORY AUTHORITY: KRS 43.075

NECESSITY, FUNCTION, AND CONFORMITY: KRS 43.075 requires the Auditor of Public Accounts to promulgate administrative regulations developing uniform standards and procedures for conducting, and uniform formats for reporting, audits of the funds contained in county budgets (fiscal courts). This administrative regulation establishes the auditing standards, procedures, and formats for fiscal court audits.

Section 1. Definition. "Generally accepted government auditing standards" means the "Government Auditing Standards" issued by the Comptroller General of the United States.

Section 2. Auditing Standards, Procedures, and Formats. The financial and compliance audit of the funds contained in each county's budget shall be conducted in accordance with:

- (1) Auditing standards generally accepted in the United States of America, referenced in 201 KAR 1:300, Section 3;
- (2) Generally accepted government auditing standards, referenced in 201 KAR 1:300, Section 3; and
- (3) Fiscal Court Audit Guide, issued by the Auditor of Public Accounts, August 14, 2020~~[August 9, 2019]~~.

Section 3. Auditor's Independent Judgement. The requirements of this administrative regulation shall not be interpreted in a manner that restricts the independent judgment of a certified public accountant or the Auditor of Public Accounts.

Section 4. Audit Objective. (1) The primary objective of an audit of a fiscal court shall be an audit report that provides an opinion on whether the financial statements of a fiscal court are presented fairly, in all material respects, in accordance with a basis of accounting prescribed or permitted by the Department for Local Government, which is the regulatory basis of accounting or Generally Accepted Accounting Principles (GAAP).

(2) Any audit report of a fiscal court that is required to comply with the requirements of the Single Audit Act Amendments of 1996 and Title 2 C.F.R. Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), shall include a statement concerning whether:

- (a) The Schedule of Expenditure of Federal Awards is fairly stated, in all material respects, in relation to the financial statements taken as a whole; and
 - (b) The fiscal court has complied, in all material respects, with the requirements applicable to each of its major federal programs.
- (3) An auditor shall make tests sufficient to determine whether:
- (a) The fiscal court has complied with the requirements of the uniform system of accounts adopted under KRS 68.210;
 - (b) Receipts have been accurately recorded by source;
 - (c) Expenditures have been accurately recorded by payee; and
 - (d) The county has complied with all other legal requirements relating to the management of public funds.

Section 5. Allowance of Audit Fees; Acceptance of Report. (1) Fees for county fiscal court audits shall be allowable as reasonable and necessary expenses of a county if the independent accountant's examination has been performed and reported in compliance with the standards, procedures, and formats promulgated by this administrative regulation.

- (2) A county shall obtain written approval of an audit report

from the Auditor of Public Accounts prior to the:

- (a) Release of an audit report; and
 - (b) Payment of fees for a fiscal court audit.
- (3) Failure by an independent certified public accountant to comply with the Fiscal Court Audit Guide and this administrative regulation shall disqualify him from conducting fiscal court audits.

Section 6. Incorporation by Reference. (1) The "Fiscal Court Audit Guide," Auditor of Public Accounts, August 14, 2020~~[August 9, 2019]~~ is incorporated by reference.

(2) This document may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Auditor of Public Accounts, 209 Saint Clair Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5:00 p.m.

MIKE HARMON, Auditor of Public Accounts

APPROVED BY AGENCY: August 13, 2020

FILED WITH LRC: August 13, 2020 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 29, 2020 at 10:00 a.m. via the video teleconference platform ZOOM. At the time of filing this amendment, all state government offices are closed to in-person services. The public hearing will allow an option for in-person attendance if this restriction on in-person services is lifted by the date of the hearing, and if so lifted, the in-person option, in addition to the Zoom based format, will be held at the office of the Auditor of Public Accounts, 209 St. Clair Street, 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, and will receive meeting ID and credentials in response to that notification. 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 October 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: Jonathan Grate, General Counsel, Auditor of Public Accounts, 209 St. Clair Street, Frankfort, Kentucky 40601; phone 502-209-2863; fax 502-564-2912; e-mail Jonathan.Grate@ky.gov.

REGULATORY IMPACT ANALYSIS AND IMPACT STATEMENT

Contact Person: Jonathan R Grate

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes uniform standards and procedures for conducting, and uniform formats for reporting, all audits of county budgets and the accounts, books and papers of county government.
 - (b) The necessity of this administrative regulation: KRS 43.075(1) states in part, "The Auditor shall promulgate the uniform standards and procedures by administrative regulation according to KRS Chapter 13A."
 - (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 promulgating uniform standards and procedures for conducting, and uniform formats for reporting, all audits of fiscal courts performed under KRS 43.070 or KRS 64.810.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This

administrative regulation currently assists or will assist in the effective administration of the statute by promulgating uniform standards and procedures for conducting, and uniform formats for reporting, all audits of fiscal courts performed under KRS 43.070 or KRS 64.810.

(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 will change the existing administrative regulation by replacing the "Fiscal Court Audit Guide," issued by the Auditor of Public Accounts, August 9, 2019, with "Fiscal Court Audit Guide," issued by the Auditor of Public Accounts, August 14, 2020 which is incorporated by reference, to make auditing procedures and report formats conform to the regulatory basis of accounting and applicable auditing standards.

(b) The necessity of the amendment to this administrative regulation: Amending this administrative regulation by incorporating the updated "Fiscal Court Audit Guide" is necessary to conform this administrative regulation to current fiscal court practices and procedures and to stay current with the current, updated practices as required by the profession of accountancy.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute, KRS 43.075, by updating current standards and procedures for conducting, and formats for reporting, fiscal court audits performed under KRS 43.070 or KRS 64.810.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statute, KRS 43.075, by updating current standards and procedures for conducting, and uniform formats for reporting, all fiscal court audits performed under KRS 43.070 or KRS 64.810.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All Kentucky counties, certified public accountants licensed in Kentucky who perform audits of fiscal courts, and the Auditor of Public Accounts, are affected 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: The county governments will not be required to change any practices. Auditors will update internal audit protocols and criteria and the groups identified will continue to audit and be audited using uniform standards and procedures for conducting, and uniform formats for reporting, fiscal court audits.

(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 new additional cost to the entities identified in question (3) in complying with the amendment to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified in question (3) will all benefit by having an updated "Fiscal Court Audit Guide" to follow in completing all audits of fiscal courts conducted pursuant to KRS 43.070 or KRS 64.810, consistent with the regulatory basis of accounting or Generally Accepted Accounting Principles (GAAP).

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

(a) Initially: No additional cost.

(b) On a continuing basis: No additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency receipts of payments by the fiscal courts for the expense of the audits per KRS 43.070.

(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 will be necessary to implement the change in the amendment of 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 fees, nor does it increase any fees, directly or indirectly.

(9) TIERING: Is tiering applied? No, tiering was not applied. Tiering is not applicable to this amendment to this administrative regulation. Neither the amendment nor the administrative regulation disproportionately impact certain classes of regulated entities, as all fiscal courts are audited using the same uniform standards and procedures for conducting, and uniform formats for reporting, audits.

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? All 120 Kentucky counties, certified public accountants licensed in Kentucky that perform fiscal court audits, and the Auditor of Public Accounts are 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. The state statute that requires or authorizes the action taken by the administrative regulation is KRS 43.075.

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. The effect of this amended administrative regulation on the expenditures and revenues of fiscal courts is neutral, resulting in no increase or decrease in expenditures or revenues.

(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 any revenue for the fiscal courts 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 any revenue for fiscal courts for subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no cost to administer this program for the first year, other than the expenses provided for under KRS 43.070.

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer this program for subsequent years, other than the expenses provided for under KRS 43.070.

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

Revenues (+/-): The fiscal impact of this amendment to this administrative regulation on the revenues of fiscal courts is neutral, resulting in no increase or decrease in revenues.

Expenditures (+/-): The fiscal impact of this amendment to this administrative regulation on the expenditures of fiscal courts is neutral, resulting in no increase or decrease in expenditures.

Other Explanation: None.

BOARDS AND COMMISSIONS

Board of Nursing (Amendment)

201 KAR 20:085. Licensure periods and miscellaneous requirements.

RELATES TO: KRS 314.041, 314.051, 314.071, 314.073

STATUTORY AUTHORITY: KRS 314.071, 314.131

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.071 requires the board to establish licensure periods for licenses issued by the board. This administrative regulation establishes the licensure periods. It also establishes miscellaneous requirements.

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Section 1. (1) A nursing license or credential issued during the first six (6) months of a licensure period shall expire at the end (October 31) of the current licensure period.

(2) A nursing license or credential issued during the last six (6) months of a licensure period shall expire at the end (October 31) of the succeeding licensure period.

Section 2. Licensure Periods. (1) The licensure period for all licenses and credentials, except for provisional, inactive, and retired status licenses, shall be for one (1) year beginning on November 1.

Section 3. For the purposes of the practice of nursing, a nurse shall use the name under which he or she is licensed with the board of nursing.

Section 4. (1) A nurse shall provide the board with an electronic mail (email) address to receive communications from the board.

(2) This requirement shall also apply to dialysis technicians and certified professional midwives.

(3) The email address provided shall be exempt from disclosure pursuant to KRS 61.878(1)(a).

DINA BYERS, President

APPROVED BY AGENCY: June 18, 2020

FILED WITH LRC: August 13, 2020 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 27, 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.) October 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: Morgan Ransdell, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3339, fax (502) 429-1248, email Morgan.Ransdell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Morgan Ransdell

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets the licensure period and also contains several miscellaneous requirements.

(b) The necessity of this administrative regulation: It is required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting the licensure period.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting the licensure period.

(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: It adds a requirement that all licensees provide the Board with an email address.

(b) The necessity of the amendment to this administrative regulation: In the present day, an email address is the most efficient way to contact licensees.

(c) How the amendment conforms to the content of the authorizing statutes: The intent of the statutes is to give the Board the authority to utilize email addresses as a method of contact.

(d) How the amendment will assist in the effective administration of the statutes: By providing an efficient and timely method of contacting licensees.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Licensed Practical Nurses, Registered Nurses, Advanced Practice Registered Nurses, Dialysis Technicians, and Certified Professional Midwives; approximately 90,000 licensees.

(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 provide an email address to the Board.

(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 anticipated 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 regulation and will have quicker communication with the Board.

(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: General agency funds, to the extent funding is necessary.

(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 necessary.

(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 20:161. Investigation and disposition of complaints.

RELATES TO: KRS Chapter 13B, 218A.205, 314.011, 314.031, 314.071(4), 314.091, 314.107, 314.475, 314.991(3)
STATUTORY AUTHORITY: KRS 218A.205, 314.131(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations to effect the provisions of KRS Chapter 314. This administrative regulation establishes the procedures for the investigation and disposition of complaints received by the board.

Section 1. Receipt of Complaints.

(1) The board shall receive and process each complaint made against a licensee, holder of a multistate licensure privilege pursuant to KRS 314.475, or applicant or unlicensed individual if the complaint alleges acts that may be in violation of the provisions of KRS Chapter 314.

(2)(a) A complaint shall be in writing and shall be dated and fully identify the individual by name. The complaint may be submitted electronically, by fax, or mail.

(b) The president of the board or the executive director or designee shall file a complaint based upon information received by oral, telephone, or written communications if the facts of the complaint are found to be accurate and indicate acts that may be in violation of the provisions of KRS Chapter 314.

(3) A certified copy of a court record for a misdemeanor or felony conviction or a certified copy of disciplinary action in another jurisdiction shall be considered a valid complaint.

(4) A complaint shall be investigated.

(a) If the complaint establishes a potential violation or the conduct falls within the statutory instances which shall be investigated, the board shall send a copy of the complaint to the licensee, holder of a multistate privilege, or applicant to the address of record by United States Postal Service regular mail. If the board is aware of the person's email address, it may send a copy by email as well.

1. For licensees, the address of record is the last known address in accordance with KRS 314.107.

2. For applicants, the address of record is the last known address in accordance with 201 KAR 20:370, Section 1(10).

3. For holders of a multistate privilege, the address of record is the last known mailing address of record reported by the primary state of residence board of nursing to the NURSYS database.

4. All further mailings to the respondent subsequent to the complaint shall be mailed by U.S. Postal Service regular mail to the address of record, except a notice of hearing pursuant to KRS 13B.050 and a final order pursuant to KRS 13B.120, both of which shall be mailed by U.S. Postal Service certified mail to the address of record.

(b) A written, legible, verified response shall be filed with the board within thirty (30) days of receipt by the individual against whom the complaint has been made.

(c) The staff may request an informal conference with the individual against whom the complaint has been made.

(5)(a) A complaint shall be evaluated to find if a violation of the provisions of KRS Chapter 314 has been alleged.

(b) The credentials review panel or the executive director or designee shall make the determination as to the disposition of the complaint pursuant to Section 2 of this administrative regulation.

(6)(a) All preliminary information shall be treated as confidential during the investigation and shall not be disclosed to board members or to the public, except as provided by KRS 314.475. The board shall make available to the public the fact that an investigation is pending.

(b) If a board member has participated in the investigation or has substantial knowledge of facts prior to a hearing on the complaint that may influence an impartial decision by the member,

that member shall not participate in the adjudication of the complaint.

(7)(a) When the board receives a report of improper, inappropriate, or illegal prescribing or dispensing of a controlled substance by an advanced practice registered nurse (APRN), it shall notify, within three (3) business days:

1. The Department of Kentucky State Police;
2. The Office of the Attorney General; and
3. The Cabinet for Health and Family Services, Office of the Inspector General.

(b) An investigation concerning a complaint filed against an APRN pertaining to the improper, inappropriate, or illegal prescribing or dispensing of controlled substances shall be commenced within seven (7) days of the filing of the complaint.

(c) The investigation shall be completed and a determination as to the disposition of the complaint shall be made within 120 days of the receipt of the complaint, unless an extension of time is requested by a law enforcement agency due to an ongoing criminal investigation.

Section 2. Disposition of Complaints.

(1) Disposition of complaints shall be as follows:

(a) If there is a determination by the executive director or designee that there is insufficient evidence of a violation or that a violation has not occurred, there shall not be further action unless warranted by future evidence;

(b)1. The complaint may be referred to the credentials review panel of the board by the executive director or designee for disposition pursuant to this section or for issuance of a letter of concern; or

2. It may be found that there is probable cause that a violation of KRS 314.091 has occurred.

(c) In cases involving practice as a nurse on the privilege pursuant to KRS 314.475, the case may be referred to the home state.

(2) Upon determination that there is probable cause that a violation of KRS 314.091 has occurred, the complaint shall be handled as follows:

(a) An administrative hearing may be scheduled pursuant to subsection (3) of this section;

(b) An agreed order may be offered pursuant to subsection (4) of this section; or

(c) A consent decree may be offered, pursuant to subsection (5) of this section.

(3) Administrative hearings.

(a) Hearings shall be held pursuant to KRS 314.091, Chapter 13B, and 201 KAR 20:162.

(b) Notice of the hearing and charges shall be signed by the executive director or designee.

(4) Agreed order.

(a) The board may enter into an agreement with an individual for denial, revocation, voluntary surrender, suspension, probation, reinstatement, limitation of license or reprimand, and to impose a civil penalty, if the individual agrees to waive the right to a hearing. The terms of the agreement may include other conditions or requirements to be met by the individual, including those listed in Section 4 of this administrative regulation.

(b) The agreed order may contain terms that ensure protection of public health and safety or that serve to educate or rehabilitate the individual.

(c) The agreed order, if approved by the board, shall terminate the investigation of a specific complaint.

(d) If the agreed order is not approved by the board, charges may be brought pursuant to KRS 314.091, and the matter shall be resolved as directed therein.

(5) Consent decree.

(a) If an individual agrees to waive the right to a hearing, the board may issue a consent decree in accordance with the provisions of KRS 314.991 to impose a civil penalty and other terms and conditions as listed in Section 4 of this administrative regulation against an individual who has:

1. Practiced as a nurse in the Commonwealth of Kentucky without a temporary work permit, multistate licensure privilege

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pursuant to KRS 314.475, or a current license or provisional license issued by the board;

2. Practiced as an advanced practice registered nurse in the Commonwealth of Kentucky without current licensure issued by the board prior to filing an application for licensure;

3. Practiced as an advanced practice registered nurse after expiration of the current certification granted by the appropriate national organization or agency;

4. Rectified noncompliance with continuing education requirements, as established in 201 KAR 20:215, Section 3;

5. Tested positive on a drug screen for a nonprescribed drug or illicit substance and obtained a substance use disorder evaluation that does not indicate a diagnosis of substance use disorder;

6. Failed to report a criminal conviction or disciplinary action against any professional license or credential in Kentucky or in another jurisdiction on an application;

7. Committed a substandard nursing act where:

a. The continuing practice by the nurse does not pose a risk of harm to the client or another;

b. The potential risk of physical, emotional, or financial harm to the client due to the incident is minimal;

c. The nurse subsequently exhibits a conscientious approach to and accountability for his or her practice; and

d. The nurse subsequently has demonstrated the knowledge and skill to practice safely; or

8. As an advanced practice registered nurse (APRN) with a Collaborative Agreement for Prescriptive Authority for Controlled Substances (CAPA-CS):

a. Failed to register with KASPER;

b. Failed to report a DEA registration number to the board; or

c. Failed to notify the board of the CAPA-CS.

(b) The issuance of a consent decree shall be restricted to only those individuals described in paragraph (a) of this subsection who have not previously been issued a consent decree for the same or substantially similar violation and who have not violated any other provision of KRS Chapter 314 or any other laws of the Commonwealth of Kentucky or of the United States.

(c) The license may be issued by board staff after the individual meets all requirements for licensure upon ratification of the consent decree by the board.

(d) Upon ratification by the board of the consent decree, the investigation of the specific complaint shall be terminated.

(e) If the consent decree is not ratified by the board, charges may be brought pursuant to KRS 314.091, and the matter shall be resolved as directed therein.

(f) Consent decrees that have been ratified by the board shall not be reported to other state boards of nursing, the national council of state boards of nursing, or other organizations, unless required by law.

(6) Special standards for an Advanced Practice Registered Nurse (APRN) with a Collaborative Agreement for Prescriptive Authority for Controlled Substances (CAPA-CS).

(a) An APRN licensed in Kentucky or an applicant for licensure in Kentucky who has been convicted of any felony offense after July 20, 2012 relating to controlled substances in any state shall be permanently banned from prescribing controlled substances.

(b) An APRN licensed in Kentucky or an applicant for licensure in Kentucky who has been convicted of any misdemeanor offense after July 20, 2012 relating to prescribing or dispensing controlled substances in any state shall have their authority to prescribe controlled substances suspended for at least three (3) months and further restricted as established by the board.

(c) The board shall mirror in time and scope any disciplinary limitation placed on an APRN licensed in Kentucky by a licensing board of another state if the disciplinary action resulted from improper, inappropriate, or illegal prescribing or dispensing of controlled substances.

(d) An applicant for licensure in Kentucky as an APRN who has disciplinary action by a licensing board of another state which resulted from improper, inappropriate, or illegal prescribing or dispensing of controlled substances shall have his or her application denied.

(e) Cases that come under KRS 314.011(21)(c) shall not be

considered convictions for the purpose of this subsection.

Section 3. The executive director or designee shall notify the complainant and the person against whom the complaint was made of the final disposition of the case.

Section 4. The restrictions or conditions imposed by the board on a temporary work permit, holder of a multistate licensure privilege, or license or provisional license may include the following:

(1) Prohibiting the performance of specific nursing acts including access to, responsibility for, or the administration of controlled substances; administration of medication; supervisory functions; or any act that the individual is unable to safely perform;

(2) Requiring the individual have continuous, direct, on-site supervision by a licensed nurse, physician, or another specifically identified classification of professional licensure in Kentucky[dentist];

(3) Specifying the individual's practice setting;

(4) Specifying the types of patients to whom the individual may give nursing care;

(5) Requiring the individual to notify the board in writing of a change in name, address, or employment;

(6) Requiring the individual to have his or her employer submit to the board written reports of performance or compliance with the requirements established by the board;

(7) Requiring the individual to submit to the board evidence of physical, mental health, neuropsychological, psychosocial, psychosexual, or substance use disorder evaluations, counseling, therapy, or drug screens;

(8) Meeting with representatives of the board;

(9) Issuing the license or temporary work permit for a specified period of time;

(10) Requiring the individual to notify the board in writing of criminal arrests, charges, or convictions;

(11) Requiring the individual to be employed as a nurse for a specified period of time; or

(12) Requiring the individual to complete continuing education in a specific subject.

Section 5. Anonymous Complaints. Section 1(2)(a) of this administrative regulation notwithstanding, the board shall accept an anonymous complaint if the complaint is accompanied by sufficient corroborating evidence as would allow the board to believe, based upon a totality of the circumstances, that a reasonable probability exists that the complaint is meritorious.

Section 6. In accordance with federal law, the board shall submit all disciplinary actions to the National Practitioner Data Bank of the United States Department of Health and Human Services either directly or through a reporting agent.

Section 7. (1) The board may conduct a random audit of the prescribing practices of an advanced practice registered nurse (APRN) through a review of KASPER data, patient records, pharmacy records, or other relevant material.

(2) An APRN who is audited shall cooperate with the audit. Failure to cooperate may subject the APRN to disciplinary action pursuant to KRS 314.091.

(3) The board may initiate disciplinary action pursuant to this administrative regulation for any potential violation of the law.

DINA BYERS, President

APPROVED BY AGENCY: June 18, 2020

FILED WITH LRC: August 13, 2020 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 27, 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

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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.) October 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: Morgan Ransdell, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3339, fax (502) 429-1248, email Morgan.Ransdell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Morgan Ransdell

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets out the process for investigation and disposition of complaints against nurses.

(b) The necessity of this administrative regulation: It is required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting the processes.

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

(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: It makes some minor changes to allow receipt and notice of complaints electronically. It also adds a section to allow the Board to conduct audits of APRN prescribing practices.

(b) The necessity of the amendment to this administrative regulation: The Board is responsible for public protection of APRN prescribing practices. An audit will assist the Board in fulfilling that responsibility.

(c) How the amendment conforms to the content of the authorizing statutes: The statutes charge the Board with the responsibility of protecting the public.

(d) How the amendment will assist in the effective administration of the statutes: By providing the Board an important tool in its public protection mission.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Advanced Practice Registered Nurses, approximately 10,000.

(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 do not need to take any action other than responding to requests from the Board pursuant to an audit.

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

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

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

(a) Initially: Unknown.

(b) On a continuing basis: Unknown.

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

(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 Licensure of Marriage and Family Therapists (Amendment)

201 KAR 32:035. Supervision of marriage and family therapist associates.

RELATES TO: KRS 335.300, 335.320(6), 335.330, 335.332

STATUTORY AUTHORITY: KRS 335.320(4), (5), (9)

NECESSITY FUNCTION AND CONFORMITY: KRS 335.320(9) requires the board to promulgate administrative regulations to implement KRS 335.300 to 335.399. KRS 335.320(4) requires the board to license applicants who satisfy the experience and educational requirements and who have paid the fee. KRS 335.320(5) requires the board to review and approve supervision contracts between marriage and family therapy associates and their approved supervisors. This administrative regulation establishes the supervision requirements for marriage and family therapy associates and their board-approved supervisors.

Section 1. Definitions. (1) "Group supervision" means supervision of three (3) to six (6) supervisees with the supervisor.

(2) "Individual supervision" means supervision of one (1) or two (2) supervisees with the supervisor.

(3) "Qualified mental health professional" means a licensed marriage and family therapist, licensed psychologist, licensed psychiatrist, licensed professional clinical counselor, or licensed clinical social worker.

(4) "Raw data" means video recorded sessions, live observation, or co-therapy with a board-approved supervisor.

(5) "Two (2) years of post-licensure experience in the practice

of marriage and family therapy" means a minimum of two (2) years of the practice of marriage and family therapy consisting of 1,000 hours of direct, face-to-face contact with individuals, couples, and families in the practice of marriage and family therapy under the supervision of an approved supervisor.

Section 2. Qualifications for Board-Approved Supervisors Status. (1) Until December 31, 2015, a board-approved supervisor shall be:

(a) An American Association for Marriage and Family Therapy (AAMFT) approved supervisor in good standing;

(b) An AAMFT supervisor candidate; or

(c) A marriage and family therapist in good standing, who is licensed in Kentucky and has a minimum of five (5) years of post-licensure[~~postlicensure~~] experience in the practice of marriage and family therapy.

(2) Except as established in subsection (3) of this section, effective January 1, 2016, a board-approved supervisor shall be:

(a) An American Association for Marriage and Family Therapy (AAMFT) approved supervisor in good standing, who is licensed in Kentucky and has a minimum of two (2) years of post-licensure experience in the practice of marriage and family therapy;

(b) An AAMFT supervisor candidate in good standing who is licensed in Kentucky and has three (3) years of post-licensure[~~postlicensure~~] experience in the practice of marriage and family therapy; or

(c) A marriage and family therapist in good standing, who is licensed in Kentucky and has a minimum of five (5) years of post-licensure[~~postlicensure~~] experience in the practice of marriage and family therapy, with the last eighteen (18) months of experience being in Kentucky.

(3) AAMFT approved supervisors, AAMFT supervisor candidates, and non-AAMFT board approved supervisors, approved as of December 31, 2015, shall maintain board approved status.

(4) To obtain initial board-approved supervisor status, an applicant who is not an AAMFT supervisor or supervisor candidate in good standing shall provide proof of completion of six (6) hours of board-approved continuing education courses in supervision.

(a) The course shall be taken within the two (2) years preceding the date of application to become a board-approved supervisor.

(b) This requirement shall be in addition to the hours of continuing education required for licensure renewal.

(c) Each approved course shall be live or online and shall include:

1. Kentucky law governing the practice of marriage and family therapy, both in KRS 335.300 to 335.399 and 201 KAR Chapter 32;

2. Theories of supervision;

3. Ethical issues involved in supervision; and

4. Supervisor responsibilities such as logs, treatment planning, and recording.

(5) To maintain board-approved supervisor status, a non-AAMFT approved supervisor shall complete at least two (2) hours of continuing education in supervision every year. These two (2) hours shall be included in the hours of continuing education required for licensure renewal. Each approved course shall be live or online and shall include:

(a) Kentucky law governing the practice of marriage and family therapy, both in KRS 335.300 to 335.399 and 201 KAR Chapter 32;

(b) Theories of supervision;

(c) Ethical issues involved in supervision; and

(d) Supervisor responsibilities such as logs, treatment planning, and recording.

(6) To renew as a board-approved supervisor, an AAMFT approved supervisor or supervisor candidate shall complete at least one (1) hour of continuing education every year in Kentucky law governing the practice of marriage and family therapy found both in KRS 335.300 to 335.399 and 201 KAR Chapter 32. The course shall be attended live or online. The one (1) hour shall be included in the hours of continuing education required for licensure

renewal.

Section 3. Clinical Supervision. (1) Clinical supervision shall:

(a) Be equally distributed throughout the qualifying period and shall average at least four (4) hours per month as specified in the supervision contract;

(b) Be clearly distinguishable from psychotherapy, didactic enrichment, or training activities;

(c) Focus on raw data from the supervisee's clinical work within in the last twelve (12) months;

(d) Be direct, face-to-face contact between the supervisor and supervisee[;] or be conducted via live video conferencing if both the supervisor and supervisee have met the educational requirements of 201 KAR 32:110, Section 3(1) and (2)[~~unless an alternative form of supervision has been approved by the board based on undue burden for the supervisor or supervisee such as in cases of serious illness or injury~~]; and

(e) Continue until the supervisee is licensed by the board.

(2) The supervision process shall focus on:

(a) Accurate diagnosis of client problems leading to proficiency in applying professionally recognized nomenclature and developing a plan for treatment as established in DSM 5: Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (2013);

(b) Development of treatment skills appropriate to the therapeutic process;

(c) Development of sensitivity to context and issues relating specifically to the family or individual being counseled;

(d) Acknowledgment of an awareness of the use of the professional self of the therapist in the process of therapy;

(e) Increased theoretical and applied knowledge for the therapist;

(f) Acquisition of a greater depth of knowledge and range of techniques in the provision of marriage and family therapy; and

(g) Awareness of ethical issues in practice, in order to safeguard and enhance the quality of care available to marriage and family therapy clients.

Section 4. Standards for Raw Data Used for Supervision. The use of raw data in a supervision session shall constitute a minimum of fifty (50) hours of the 200 hours of required supervision. Raw data can only be used for individual supervision not group supervision.

Section 5. In a therapy session involving a board-approved supervisor and supervisee:

(1) The role of the board-approved supervisor as a supervisor or co-therapist shall be clearly defined prior to beginning a therapy session; and

(2) The supervisees shall receive credit for client contact hours and supervision hours.

Section 6. Documentation Requirements. (1) The board-approved supervisor and marriage and family therapist associate shall maintain copies of the completed Supervisory Log, which shall document:

(a) The frequency and type of supervision provided; and

(b) The method of supervision utilized, such as observation, dialogue and discussion, and instructional techniques employed.

(2) No more than 100 hours of supervision shall take place in group supervision.

(3) At least 100 hours shall take place in individual supervision.

Section 7. Number of Supervisees. (1) A board-approved supervisor shall not supervise more than six (6) marriage and family therapist associates at the same time, unless approved by the board.

(2) A request to supervise more than six (6) marriage and family therapist associates shall be submitted to the board for approval and shall demonstrate in writing the supervisor's plan and ability to supervise additional marriage and family therapist associates.

Section 8. Temporary Supervision. (1) In extenuating

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circumstances, if a marriage and family therapist associate is without supervision, the associate may continue working up to ninety (90) calendar days under the supervision of a qualified mental health professional while an appropriate board-approved supervisor is sought and a new supervision contract is submitted to the board. Extenuating circumstances include situations such as death or serious illness of the board-approved supervisor, a leave of absence by the supervisor, or the termination of the supervisor's employment.

(2)(a) Within thirty (30) calendar days of a change in status of board-approved supervision, the supervisee shall:

- 1. Notify the board of these circumstances; and
2. Submit, in writing, a plan for resolution of the situation.

(b) The written plan shall include:

- 1. The name of the temporary supervisor;
2. Verification of the credential held by the temporary supervisor;
3. An address for the temporary supervisor; and
4. A telephone number for the temporary supervisor.

Section 9. Board-approved Supervisor's Responsibilities to Clients and Supervisees. (1) A board-approved supervisor shall be responsible for ensuring the proper and appropriate delivery of marriage and family therapy services to clients.

(2) A board-approved supervisor shall be responsible for fostering the professional competence and development of the marriage and family therapist associates under his or her supervision.

(3) A board-approved supervisor shall be responsible for compliance with the code of ethics established in 201 KAR 32:050 and take steps to ensure that supervisees comply with the code of ethics as well.

Section 10. Incorporation by Reference. (1) "Supervisory Log", 7/2015, is incorporated by reference. (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office of Occupations and Professions, 500 Mero Street, 218NC[911 Leawood Drive], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. C. SHAWN OAK, Ph.D., LMFT, Chair

APPROVED BY AGENCY: August 10, 2020

FILED WITH LRC: August 12, 2020 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on October 21, 2020 at 500 Mero Street, 127CW, Frankfort, Kentucky 40601. In the event the declaration of a State of Emergency in Executive Order 2020-215 and the State of Emergency Relating to Social Distancing in Executive Order 2020-243 are not rescinded by October 21, 2020, this hearing will be done by video teleconference. Members of the public wishing to attend may utilize the following link:

Join from PC, Mac, Linux, iOS or Android:
https://zoom.us/j/94529163629?pwd=Tm9HRXNkUThjQzdDZH4c jZaRDd2QT09

Password: 971304

Or Telephone:

Dial:

USA 713 353 0212

USA 8888227517 (US Toll Free)

Conference code: 497796

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 October 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: Bryan D. Morrow, Attorney for the Board of Marriage and Family Therapists, 500 Mero Street, 218NC, Frankfort, Kentucky 40601, phone +1 (502) 229-6917, fax +1 (502) 564-3696, email: Bryan.Morrow@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Bryan D. Morrow

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the requirements of supervision of marriage and family therapist associates.

(b) The necessity of this administrative regulation: The administrative regulation is necessary under KRS 335.320(5), which requires the Board to review and approve contracts between marriage and family therapy associates and approved supervisors for their supervision of practice during the qualifying terms, and KRS 335.320(9), which requires the Board to promulgate administrative regulations to implement the purpose and scope of KRS 335.300 to 335.399.

(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 forth the requirements for supervision of marriage and family therapy associates.

(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 authorizing statutes by setting forth the supervisory requirements for a board-approved supervisor.

(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 will change the existing administrative regulation by: (1) clearly defining "two (2) years of post-licensure experience in the practice of marriage and family therapy"; (2) by allowing supervision to take place by live video conference; (3) by clarifying that raw data can only be used for individual supervision not group supervision; and (4) updating the Board's address.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the definition of a "two (2) years of post-licensure experience in the practice of marriage and family therapy" and to allow supervision to continue by live video conferencing as it has been allowed during the current state of emergency.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is consistent with the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide licensees and associates with clarity regarding board-approved supervisors and allow supervisors and supervisees to continue conducting supervision via live video conferencing.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Board-approved supervisors and supervisees are affected by this administrative regulation. As of July 13, 2020, there were 170 marriage and family therapy associates in need of supervision and 109 board-approved supervisors.

(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: In order to provide supervision via live video conferencing, the supervisor and supervisee will be required to meet the educational requirements of 201 KAR 32:110, Section 3(1) and (2).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Supervisors and supervisees wanting to conduct supervision via live video conferencing will be required to pay for educational classes to meet the requirements contained in 201 KAR 32:110, Section 3(1) and (2).

(c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance, supervisors and supervisees will be able to conduct supervision via live video conferencing.

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

(a) Initially: Initially, there is no additional cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: On a continuing basis, there is no additional cost to the administrative body 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: The board's operation is funded by the registration fees paid by licensed marriage and family therapists, marriage and family therapy associates, and applicants.

(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 is necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The administrative regulation did not establish any fees or increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply to all supervisors and supervisees.

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 Licensure for Marriage and Family Therapists 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 335.320(4), (5), (9)

(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 regulation will not 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? This regulation will not generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? There will be no additional cost to administer this program.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to administer this program.

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

BOARDS AND COMMISSIONS
Board of Alcohol and Drug Counselors
(Amendment)

201 KAR 35:040. Continuing education requirements.

RELATES TO: KRS 309.085(1)(b)

STATUTORY AUTHORITY: KRS 309.0813(2), 309.085(1)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.0813[309.813](2) and 309.085(1)(b) authorize the Board of Alcohol and Drug Counselors to promulgate administrative regulations establishing continuing education requirements. This administrative regulation establishes the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

Section 1. Basic Continuing Education Requirements. (1)(a) A minimum of ten (10) continuing education hours each year shall be accrued by each person holding a registration as an alcohol and drug peer support specialist.

(b) A minimum of sixty (60) continuing education hours shall be accrued by each person holding a certificate as a certified alcohol and drug counselor during the three (3) year certification period for renewal with at least three (3) continuing education hours in ethics.

(c) A minimum of sixty (60) continuing education hours shall be accrued by each person holding a license as a licensed clinical alcohol and drug counselor during the three (3) year licensure period for renewal with at least three (3) continuing education hours in ethics.

(d) A minimum of twenty (20) continuing education hours each year shall be accrued by each person holding a license as a licensed clinical alcohol and drug counselor associate. A licensed clinical alcohol and drug counselor associate shall obtain at least three (3) continuing education hours in ethics during the renewal cycle.

(2) All continuing education hours shall be relevant to the field of alcohol and drug counseling.

(3) A credential holder shall determine prior to attending a specific continuing education program that the program:

(a) Has been approved by the board; or

(b) Is offered or sponsored by an organization approved by the board to provide continuing education programs.

(4) If the specific continuing education program is not preapproved as established in subsection (3) of this section, the certificate holder may apply for board approval by providing the information required by Section 4 of this administrative regulation.

(5) A credential holder shall complete a minimum of six (6) hours of continuing education in suicide assessment, treatment, and management as required by KRS 210.366. The suicide assessment, treatment, and management continuing education course shall be approved by the board, be provided by an entity identified in Section 2(4)(b) of this administrative regulation, or be approved by one (1) of the following boards:

(a) Kentucky Board of Social Work;

(b) Kentucky Board of Licensure of Marriage and Family Therapists;

(c) Kentucky Board of Licensed Professional Counselors;

(d) Kentucky Board of Licensure for Pastoral Counselors;

(e) Kentucky Board of Examiners of Psychology; or

(f) Kentucky Board of Licensure for Occupational Therapy.

Section 2. Methods of Acquiring Continuing Education Hours. (1) Continuing education hours applicable to the renewal of the credential shall be directly related to the professional growth and development of a credential holder.

(2) Continuing education hours may be earned by: (a) Attending a continuing education program that has prior approval by the board;

(b) The completion of appropriate academic coursework; or

(c) Other alternative methods approved by the board in accordance with subsection (6) of this section.

(3) At least fifty (50) percent of the required continuing education hours for a credential holder shall be earned through

live, face to face, continuing education presentations.

(4) Attendance at continuing education programs automatically approved by the board.

(a) A program relevant to the practice of alcohol and drug counseling that is provided, approved, or sponsored by any of the providers listed in paragraph (b) of this subsection shall be:

1. Approved without further review; and
2. Exempt from the program fee established in 201 KAR 35:020, Section 8.

(b) The provisions of this subsection shall apply to the following providers:

1. The National Association of Addiction Professionals (NAADAC) and its member boards;
2. The International Certification and Reciprocity Consortium (ICRC);
3. The Kentucky Cabinet for Health and Family Services, Division of Mental Health and Substance Abuse and its subcontractors;
4. The Kentucky School of Alcohol and Drug Studies;
5. An Addiction Technology Transfer Center (ATTC);
6. State or United States Regional Addiction Training Institute;
- [er] 7. Clinical Applications of the Principles on Treatment of Addictions and Substance Abuse (CAPTASA); or
8. National Conference on Addiction Disorders (NCAD).

(5)(a) Academic coursework. An academic course, as defined in 201 KAR 35:010, Section 1(1), shall not require board review or approval.

(b) A general education course, or elective designated to meet academic degree requirements, shall be acceptable for continuing education credit if it is relevant to the practice of alcohol and drug counseling.

(c) Academic credit equivalency for continuing education hours shall be based on one (1) credit hour equaling fifteen (15) continuing education hours.

(6) Alternative methods for obtaining continuing education hours; programs requiring board review and approval. The following activities shall be reviewed by the board to determine whether or not the activity complies with the requirements of Section 3(2) of this administrative regulation:

(a)1. A program, including a home study course and in-service training provided by an organization or education institution not listed in subsection (4)(b) of this section; or

2. A program or academic course presented by the credential holder, who shall earn two (2) continuing education hours for each contact hour of instruction, unless it is repeated instruction of the same course; or

(b) A relevant publication in a professionally recognized or juried publication authored by the credential holder, who shall earn continuing hours as follows:

1. Five (5) continuing education hours for each published abstract or book review in a refereed journal;
2. Ten (10) continuing education hours for each book chapter or monograph;
3. Fifteen (15) continuing education hours for each published article in a refereed journal; and
4. Twenty (20) continuing education hours for each published book.

Section 3. Procedures for Preapproval of Continuing Education Programs. (1) An applicant seeking to obtain approval of a continuing education program prior to its offering shall apply to the board at least thirty (30) days in advance of the commencement of the program, and shall provide the information required in Section 4 of this administrative regulation.

(2) A continuing education activity shall be qualified for approval if the activity:

- (a) Is an organized program of learning;
- (b) Pertains to subject matter relating to alcohol and drug counseling;
- (c) Enhances the professional competence of the credential holder by:
 1. Refreshing knowledge and skills; or

2. Educating on a new topic or subject; and
(d) Is conducted by a competent instructor, as documented by appropriate academic training, professional licensure or certification, or professionally recognized experience.

(3)(a) The board may monitor or review a continuing education program approved by the board, in accordance with this section.

(b) Upon evidence of significant variation in the program presented from the program approved, the board shall withdraw approval of the hours granted to the program.

Section 4. Subsequent Approval of Continuing Education Programs. (1) A course that has not been preapproved by the board may be used for continuing education if approval is subsequently secured from the board.

(2) The following information shall be submitted for board review of a program:

- (a) A published course or seminar description;
- (b) The name and qualifications of the instructor;
- (c) A copy of the program agenda indicating hours of education;
- (d) Number of continuing education hours requested;
- (e) Official certificate of completion or college transcript from the sponsoring agency or college; and
- (f) Continuing Education Program Application for continuing education credits approval.

Section 5. Application for Approved Sponsor. (1) A company, individual, or association that wishes to be designated as an approved sponsor of continuing education shall complete a Continuing Education Sponsor Application, and pay the provider fee established in 201 KAR 35:020, Section 8.

(2) An approved sponsor of continuing education shall be allowed to advertise the program as preapproved to meet the continuing education requirements for credential renewal.

(3)(a) Approval shall be for one (1) year from date of approval unless substantial course changes occur.

(b) For purposes of this section, a substantial course change shall be a change in the curriculum in excess of twenty (20) percent.

Section 6. Responsibilities and Reporting Requirements of Credential Holder; Audit. (1)(a) During the renewal period, the board shall review at least fifteen (15) percent of all credential holders' documentation supporting the completion of the appropriate number of continuing education hours through a random audit process.

(b) Copies of supporting documentation submitted to the board shall be shredded and shall not be returned to the certificate holder upon completion of the audit process.

(c) Verification of continuing education hours shall not otherwise be reported to the board.

(2) A credential holder shall:

- (a) Be responsible for obtaining the required continuing education hours;
- (b) Identify personal continuing education needs and seek activities that meets those needs;
- (c) Seek ways to integrate new knowledge, skills, and activities;
- (d) Select approved activities by which to earn continuing education hours;

(e) Submit to the board, if applicable, a request for approval for continuing education activities not approved as established in Section 3 of this administrative regulation;

(f) Document attendance, participation in, and successful completion of continuing education activity; and

(g) Maintain records of continuing education hours for five (5) years from the date of the offering of the continuing education activity.

(3) The following items may be used to document continuing education activity:

- (a) Transcript;
- (b) Certificate;
- (c) Affidavit signed by the instructor;

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- (d) Receipt for the fee paid to the sponsor; or
- (e) Written summary of experiences that are not formally or officially documented otherwise.

(4) Failure to comply with this administrative regulation shall constitute a violation of KRS 309.085(1)(b) and shall result in board:

- (a) Refusal to renew credential;
- (b) Suspension of credential; or
- (c) Revocation of credential.

Section 7. Carryover of Continuing Education Hours Prohibited. Continuing education hours earned in excess of those required pursuant to Section 1 of this administrative regulation shall not be carried forward.

Section 8. Waiver or Extensions of Continuing Education. (1) On application, the board may grant a waiver of the continuing education requirements or an extension of time within which to fulfill the requirements in the following cases:

- (a) Medical disability or serious injury of the credential holder;
 - (b) Serious illness of the credential holder or of an immediate family member; or
 - (c) Death or serious injury of an immediate family member.
- (2) A written request for waiver or extension of time involving medical disability or illness shall be:
- (a) Submitted by the certificate holder; and
 - (b) Accompanied by a verifying document signed by a licensed physician or an advanced practice registered nurse.
- (3) A waiver of or extension of time within which to fulfill the minimum continuing education requirements shall not exceed one (1) year.
- (4) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the credential holder shall reapply for the waiver or extension.

Section 9. Continuing Education Requirements for Reinstatement or Reactivation of a Credential. (1) A person requesting reinstatement of certification or licensure shall:

- (a) Submit evidence of receiving sixty (60) hours of continuing education within the three (3) year period immediately preceding the date that reinstatement is requested; or
 - (b) Obtain sixty (60) hours of continuing education within six (6) months of reinstatement of certification or licensure.
- (2) Failure to obtain sixty (60) hours within six (6) months shall result in termination of certification or licensure.
- (3) A person requesting reinstatement of a registration shall:
- (a) Submit evidence of receiving thirty (30) hours of continuing education within the three (3) year period immediately preceding the date that reinstatement is requested; or
 - (b) Obtain ten (10) hours of continuing education within six (6) months of reinstatement of registration.
- (4) Failure to obtain ten (10) hours within six (6) months shall result in termination of registration.
- (5) A person requesting reactivation of registration, certification, or licensure shall submit evidence of receiving twenty (20) hours of continuing education within one (1) year immediately preceding the date that reactivation is requested. A minimum of ten (10) hours shall be live, face to face continuing education presentations.
- (6) The continuing education hours received in compliance with this section shall be in addition to the continuing education requirements established in Section 1 of this administrative regulation and shall not be used to comply with the requirements of that section.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Continuing Education Sponsor Application Form", 2008; and
 - (b) "Continuing Education Program Application", June 2015.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of

Alcohol and Drug Counselors, 500 Mero Street, 2 SC 32[914 Leawood Drive], Frankfort, Kentucky, telephone (502) 782-8814[564-3296 ext.-222], Monday through Friday, 8:30 a.m. to 4:30 p.m.

APPROVED BY AGENCY: June 5, 2020

FILED WITH LRC: August 11, 2020 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on October 21, 2020 at 500 Mero Street, 127CW, Frankfort, Kentucky 40601. In the event the declaration of a State of Emergency in Executive Order 2020-215 and the State of Emergency Relating to Social Distancing in Executive Order 2020-243 are not rescinded by October 21, 2020, this hearing will be done by video teleconference. Members of the public wishing to attend may utilize the following link:

<https://zoom.us/j/95919926027?pwd=YTJ5Q2diMGVMNjA2SzhyNmU2NHhmUT09>

Join from PC, Mac, Linux, iOS or Android:

Password: 945112

Or Telephone:

Dial:

USA 713 353 0212

USA 8888227517 (US Toll Free)

Conference code: 995892

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 October 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: Bryan D. Morrow, Title: Attorney for the Board of Alcohol and Drug Counselors, 500 Mero Street, 218NC, Frankfort, Kentucky 40601, phone +1 (502) 229-6917, fax +1 (502) 564-3969, email Bryan.Morrow@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Bryan D. Morrow

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the continuing education requirements for a credential holder.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish a continuing education requirement for a credential holder to maintain competency in the practice.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the continuing education requirement for a credential holder.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation assists in establishing the continuing education requirements of a credential holder and protects the public seeking alcohol and drug related services.

(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 an organization to the list of preapproved continuing education providers and makes a technical amendment to update the Board's physical address and phone

number.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to establish a continuing education requirement for a credential holder with a credential issued by the board.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the continuing education requirement for a credential holder.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in establishing a continuing education requirement for all credential holders.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board is unable to determine the exact number of persons who would be impacted by this regulation since the applications vary from month to month. As of August 1, 2020, there are 495 Licensed Alcohol and Drug Counselors, 14 Licensed Alcohol and Drug Counselor Associates, 441 Certified Alcohol and Drug Counselors, 871 Temporary Certified Alcohol and Drug Counselors, 97 Temporary Registered Alcohol and Drug Peer Support Specialists, and 14 Registered Alcohol and Drug Peer Support Specialists.

(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: A credential holder does not have to take any actions to comply with this amendment as it just lists an organization whose continuing education programs are automatically approved.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There are no additional costs to credential holders in complying with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance, credential holders will know that continuing education programs provided by NCAD are preapproved by the Board.

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

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(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 funded by fees paid by credential holders and applicants.

(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 increases in fees or funding is required to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no new fees or fee increases associated with the amendments.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all credential holders. This regulation does not distinguish between similarly situated individuals on the basis of any factor.

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 Board of Alcohol and Drug Counselors.

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

regulation. KRS 309.0813(1) and (2).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The administrative regulation will generate no revenue for the state 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? The administrative regulation will generate no revenue for the state for subsequent years.

(c) How much will it cost to administer this program for the first year? The amendment to the administrative regulation will not cost the Board to administer for the first year.

(d) How much will it cost to administer this program for subsequent years? The amendment to the administrative regulation will not cost the Board to administer 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 (+/-): The amendment is revenue neutral.

Expenditures (+/-): The amendment is expenditure neutral.

Other Explanation: NA

DEPARTMENT OF AGRICULTURE
Office of Agricultural Marketing
(Amendment)

302 KAR 50:080. Materials incorporated by reference.

RELATES TO: KRS 260.850-260.869, 7 U.S.C. 1739p. [7 U.S.C. 5940]

STATUTORY AUTHORITY: 260.850-260.869, 7 U.S.C. 1739p.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.862(1)(a) authorizes the department to promulgate administrative regulations for any industrial hemp research pilot program in the Commonwealth of Kentucky. This administrative regulation establishes material incorporated by reference for 302 KAR Chapter 50, except 302 KAR 50:056[50:050].

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

- (a) "~~Hemp~~ Grower License Application Packet", 2020[2019];
- (b) "Field Planting Report", 2020[2018];
- (c) "Greenhouse/Indoor Planting Report", 2020[2018];
- (d) "Harvest/~~Destruction~~ Report", 2020[2018];
- (e) "~~New Hemp Variety or Strain Request~~", 2020[Grower Production Report Form", 2017];
- (f) "~~Process/Handler Production Report and Annual License Renewal~~", 2017;
- (f)[(g)] "Site Modification Request [Form]", 2020[2018];
- (h) "~~Domestic Seed/Propagule Request Requirements~~", 2018;
- (i) "~~International Seed Request Requirements~~", 2018;
- (g)[(i)] "Processor/Handler License Application Packet", 2020[2019]; and
- (h)[(k)] "University/College [Affiliation] Application Packet", 2020[2019].

(2) These materials may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Office of Agricultural Marketing, 105 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. These materials may also be obtained at www.kyagr.com/.

VOLUME 47, NUMBER 3– SEPTEMBER 1, 2020

RYAN F. QUARLES, Commissioner
APPROVED BY AGENCY: August 13, 2020
FILED WITH LRC: August 14, 2020

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2020, at 1:00 p.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, 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 was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. 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 October 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: 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.

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 established the guidelines for participation in the Industrial Hemp Pilot Project administered by the Kentucky Department of Agriculture.

(b) The necessity of this administrative regulation: This regulation is necessary to establish provisions for growing, movement, processing and possession of industrial hemp.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 260.850-260.869 requires the Kentucky Department of Agriculture to regulate industrial hemp. This administrative regulation satisfies this mandate.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation hemp program that has been administered by the KDA since the 2014 growing season and creates form for program use.

(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 undated current forms and overall reduces the total number used.

(b) The necessity of the amendment to this administrative regulation: This regulation is necessary to establish provisions for growing, movement, processing and possession of industrial hemp my laying out the forms required for the program.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 260.850-260.869 requires the Kentucky Department of Agriculture to regulate industrial hemp. This administrative regulation satisfies this mandate by creating easy to use forms.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation hemp program that has been administered by the KDA since the 2014 growing season and creates form for program use.

(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, 970 growers, 12 Universities and 170 processors.

(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 instructions in the filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Likely no modification of current actions would be needed, so little to no costs would be incurred.

(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.

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

(a) Initially: Expenses for the entire hemp program for 2019 were approximately \$1,156,000.

(b) On a continuing basis: Market forces will determine participation levels for 2020 and beyond. Ongoing costs will be a function of grower numbers and location modifications.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The hemp program is funded by the fees set for in 302 KAR 50:060.

(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 increases in funding are required currently.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This filing does not contain fees. The hemp program is funded by the fees set for in 302 KAR 50:060.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 U.S.C. 1739p.

2. State compliance standards. KRS 260.850-260.869

3. Minimum or uniform standards contained in the federal mandate. 7 U.S.C. 1739p. establish requirements for industrial hemp pilot programs. This administrative regulation establishes the requirements for participation in Kentucky.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, this administrative regulation does not impose stricter, additional, or different requirements or responsibilities 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 requirements or responsibilities 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? Kentucky Department of Agriculture, and any agency that might concern hemp 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 260.682

(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? Income for the entire hemp program for 2019 was approximately \$1,575,000.

(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? Even with a fixed fee structure, revenue is almost entire

determined by participation. Market forces will dictate revenue to a point the KDA cannot guess with any certainty.

(c) How much will it cost to administer this program for the first year? Expenses for the entire hemp program for 2019 were approximately \$1,156,000.

(d) How much will it cost to administer this program for subsequent years? The KDA expects this spending trendline to continue for the hemp program as a whole, but based on producer participation.

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

Revenues (+/-): \$1,575,000
 Expenditures (+/-): \$1,156,000
 Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(Amendment)

702 KAR 4:090. Property disposal.

RELATES TO: KRS [456.034,] 156.160

STATUTORY AUTHORITY: KRS 156.160, 156.070

NECESSITY, FUNCTION, AND CONFORMITY: [~~KRS 156.034 requires that administrative regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary and resubmitted to the Legislative Research Commission prior to December 30, 1990; and~~] KRS 156.160 requires the State Board for Elementary and Secondary Education to promulgate administrative regulations dealing with the disposal of real and personal property owned by local boards of education. This administrative regulation is necessary to provide for real property disposal, leases, and easements in accordance with an approved educational program. KRS 156.070 provides that the Kentucky Board of Education shall have the management and control of the common schools.

Section 1. Disposition of Real Property. (1) School property proposed for disposal shall be surplus to the [need for the] educational program need of the district as determined by the effective district facility plan. Surplus property includes real property designated as a "Transitional Center" or not listed on the effective district facility plan. Request for approval to dispose of real property shall be submitted in writing to the Kentucky Department of Education [chief state school officer]. The request shall identify the property by its address and last reported name and include a plan for resolving mortgage liens or other encumbrances. Upon receipt of written contingent approval from the department, the district may start the disposal process using one of the following methods that secures the fair market value for the property and ensures that the district retains no residual interest as owner or lender:

- (a) By public auction;
- (b) By accepting sealed bids; or
- (c) By setting a minimum acceptable price, which is at least the fair market value of the property.

(2) For property disposal by public auction or sealed bids, the proposed sale shall be advertised in accordance with KRS 424.130(1)(b), and the legal notice shall include the following statement: "The board of education reserves the right to reject any and all bids and final approval by the Kentucky Department of Education is required." Following the conclusion of the auction or receipt of bids, the local board of education shall submit the following to the department for review and final approval:

- (a) The appraisal;
- (b) An affidavit attesting to the publication of legal notice;
- (c) Results of the public auction or sealed bids;
- (d) The proposed sale agreement reviewed and approved by the board's attorney; and
- (e) The local board order approving the sale contingent on

approval by the department.

(3) For property disposal by setting a minimum acceptable price, the minimum acceptable price shall be the fair market value, which shall be determined by an appraisal from a certified general real property appraiser commissioned by the school district and obtained in connection with the disposal of the property. Following receipt of an acceptable offer to purchase, the local board of education shall submit the following documentation to the department for review and final approval:

- (a) The appraisal;
- (b) The proposed sale agreement reviewed and approved by the board's attorney; and
- (c) The local board order approving the sale contingent on approval by the department.

(4) Upon receipt of written final approval from the department, the local school district may execute the sale agreement. The district shall provide the department with a copy of the executed agreement within thirty (30) days from the date of execution. [Disposal may be implemented upon approval.]

Section 2. Disposition by Easement. (1) Prior to the execution of a proposed easement upon school property, the agreement shall be reviewed by the local district's board attorney. The reviewed agreement and an appraisal from a certified general real property appraiser commissioned by the school district and obtained in connection with the easement[the proposed lease agreement for, or easement upon, public school property] shall be submitted to the local board of education for its consideration. Upon approval, the local school district's [and] written board order[recommendation] shall be forwarded to the department[chief state school officer] for review and approval.[his review, approval and] The local board of education shall include assurance that disposal will not affect the integrity or usefulness of property crucial to the educational needs of the district.

(2) Proposed easement agreements, including but not limited to utility and access easement agreements shall include:

- (a) The parties to the agreement;
- (b) A legal description of the easement;
- (c) Documentation regarding receipt of fair market value as determined by an appraisal from a certified general real property appraiser commissioned by the school district and obtained in connection with the disposal of the property or equivalent valuable consideration;

(d) A reversionary clause that reverts the property back to the exclusive unrestricted control of the local board of education when the need for the easement no longer exists; and

(e) A plat by a licensed surveyor indicating the easement boundaries, acreage and its relationship to the larger property.

(3) Upon receipt of written final approval from the department, the local school district may execute the agreement. The district shall provide the department with a copy of the executed agreement within thirty (30) days from the date of execution.

(4) Temporary and construction easements do not require department approval but shall include provisions related to the amount of time in effect, and a requirement that any disturbed areas shall be returned to original condition.

Section 3. Disposition by Lease (District as Lessor/Landlord).

(1) Prior to the execution of a proposed lease agreement for school property, the proposed lease agreement shall be reviewed by the local district's board attorney and the board's insurance carrier. The proposed lease agreement shall be submitted to the local board of education for its consideration and a written board order forwarded to the department for review and approval. The local board of education shall provide assurance that the disposal will not affect the integrity or the usefulness of the property subject to the educational need of the district.

(2) The proposed lease agreement shall include, but is not limited to the following provisions:

- (a) The parties to the agreement;
- (b) The proposed use and occupation;
- (c) A description of the leased space including square footage and description of common areas if applicable;

- (d) Use of site and parking;
 - (e) Term of lease including beginning and ending dates. The term shall include an annual renewal/cancellation provisions;
 - (f) Determination of fair market value and how payments are to be made;
 - (g) Insurance requirements of the parties;
 - (h) Identification of the parties' responsibilities for payment of utilities, performance of maintenance and related supplies;
 - (i) Notice provisions;
 - (j) Provisions for security;
 - (k) Requirements for compliance with established board policies if tenants will be in contact with students; and
 - (l) Any other applicable terms or conditions.
- (3) Upon receipt of written final approval from the department, the local school district may execute the lease agreement. The district shall provide the department with a copy of the executed agreement within thirty (30) days from the date of execution.

Section 4. Conflict of Interest. (1) Members of the local school board requesting department approval to lease or dispose of surplus property shall submit a certification that the members of the local school board have no conflict of interest with regard to the transaction and that neither board members, nor member of their family, have any financial interest in the transaction. In the event of any conflict of interest in the transaction, a conflicted local school board member shall publicly disclose the conflict of interest to the school board and recuse himself/herself from voting on the matter. The local school board shall provide minutes of any such meeting to the department when requesting approval under any section of this administrative regulation.

(2) If a local school board uses a third party to dispose of or lease property, the third party shall not have any financial interest in the transaction or adjacent property beyond a standard commission approved by the school board. In the event the third party has any financial interest in the transaction or adjacent property beyond a standard commission, the third party must publicly disclose his/her conflict of interest to the local school board and said conflict shall be spread on the local school board's meeting minutes. The local school board shall provide minutes of any such meeting to the department when requesting approval under any section of this administrative regulation.

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).

KEVIN C. BROWN, Interim Commissioner
LU YOUNG, Chair

APPROVED BY AGENCY: August 11, 2020
FILED WITH LRC: August 12, 2020

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on October 22, 2020 at 10am in the State Board Room, 5th Floor, 300 Sower Blvd., Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five (5) working days prior to this 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 October 31, 2020.

CONTACT PERSON: Todd G. Allen, Interim 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.

Contact Person: Todd G. Allen

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation sets forth the procedures for the disposition of surplus real property by a local board of education.
 - (b) The necessity of this administrative regulation: The regulation is necessary to clarify the process by which local boards of education dispose of surplus real property to explicitly include the constitutionally required steps for a district to obtain fair market value for the property.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations dealing with the disposal of real and personal property owned by local boards of education. This administrative regulation is necessary to provide for real property disposal, leases, and easements in accordance with an approved educational program. KRS 156.070 provides that the Kentucky Board of Education shall have the management and control of the common schools.

- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the processes by which local boards of education may dispose of surplus real property. KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations dealing with the disposal of real and personal property owned by local boards of education.

(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 regulation sets out the steps a local board of education must undertake when disposing of surplus real property. Prior to the amendment the requirements for disposal were informed by court cases and Attorney General Opinions. This regulation clarifies the process to explicitly include the required steps for a district to obtain fair market value for the property in one location.

(b) The necessity of the amendment to this administrative regulation: The regulation is necessary to clarify the process by which local boards of education dispose of surplus real property to explicitly include the constitutionally required steps for a district to obtain fair market value for the property.

- (c) How the amendment conforms to the content of the authorizing statutes: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations dealing with the disposal of real and personal property owned by local boards of education. This administrative regulation is necessary to provide for real property disposal, leases, and easements in accordance with an approved educational program. KRS 156.070 provides that the Kentucky Board of Education shall have the management and control of the common schools.

(d) How the amendment will assist in the effective administration of the statutes: This regulation establishes the processes by which local boards of education may dispose of surplus real property. KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations dealing with the disposal of real and personal property owned by local boards of education.

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

(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 regulation sets out the steps a local board of education must undertake when disposing of surplus real property. Prior to the amendment the requirements for disposal were informed by court cases and Attorney General Opinions. This

regulation does not change the process but rather puts the required steps for a district to obtain fair market value for the property in one location.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no new costs associated with the amendment. The regulation codifies existing requirements for the disposal of surplus property.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation provides clarification to local boards of education when disposing of surplus property. The regulation sets out the steps a local board of education must undertake when disposing of surplus real property. Prior to the amendment the requirements for disposal were informed by court cases and Attorney General Opinions. This regulation does not change the process but rather puts the required steps for a district to obtain fair market value for the property in one location.

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

(a) Initially: Since the proposed amendment merely codifies the existing requirements for the disposal of surplus property, there will be no new cost to implement the regulation.

(b) On a continuing basis: No new costs are expected related to the regulation amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Department of Education General 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: There are no fees associated with this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: There are no fees associated with this regulation.

(9) TIERING: Is tiering applied? Tiering was not applied. The regulation applies equally to all Kentucky school districts.

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? School districts

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation establishes the processes by which local boards of education may dispose of surplus real property. KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations dealing with the disposal of real and personal property owned by local boards of education.

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? This regulation should have no impact on revenue, beyond the proceeds generated from the sale of any surplus property. The amendment clarifies the process for the disposal of local board of education surplus property.

(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 regulation should have no impact on revenue, beyond the proceeds generated from the sale of any surplus property. The amendment clarifies the process for the disposal of local board of education surplus property.

(c) How much will it cost to administer this program for the first year? This regulation is not expected create any new costs. It merely reduces existing requirements to inside of the regulation. The costs associated with the administration of this regulation is

mainly staff time.

(d) How much will it cost to administer this program for subsequent years? This regulation is not expected create any new costs. It merely reduces existing requirements to inside of the regulation. The costs associated with the administration of this regulation is mainly staff time.

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

Revenues (+/-): N/A.

Expenditures (+/-): N/A.

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(Amendment)

702 KAR 7:065. Designation of agent to manage middle and high school interscholastic athletics.

RELATES TO: KRS 61.805 - 61.850, 156.070(2), 160.380, 160.445, 20 U.S.C. 1681

STATUTORY AUTHORITY: KRS 156.070(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070(1) requires the Kentucky Board of Education to manage and control the common schools, including interscholastic athletics in the schools. KRS 156.070(2) authorizes the board to designate an agency to manage athletics. This administrative regulation designates an agent for middle and high school athletics; establishes the financial planning and review processes for the agent; and incorporates by reference the bylaws, procedures, and rules of the agent.

Section 1. Definitions. (1) "Contact" means that drills are run at Level 3, thud, or Level 4, live action.

(2) "KBE" means Kentucky Board of Education.

(3) "KHSAA" means Kentucky High School Athletics Association.

(4) "Level 0" or "air" means that players run a drill unopposed and without contact.

(5) "Level 1" or "bags" means that a drill is run against a bag or another soft contact surface.

(6) "Level 2" or "control" means that a drill is run at the assigned speed until the moment of contact; one (1) player is predetermined the winner by the coach; contact remains above the waist, and players stay on their feet.

(7) "Level 3" or "thud" means that a drill is run at the assigned speed through the moment of contact; there is not a predetermined winner; contact remains above the waist; players stay on their feet, and a quick whistle ends the drill.

(8) "Level 4" or "live action" means that a drill is run in game-like conditions and is the only time that players are taken to the ground.

(9) "Non-contact" means that drills are run at Level 0, air; Level 1, bags; or Level 2, control.

(10) "OCR" means Office for Civil Rights.

Section 2. The KHSAA shall be the Kentucky Board of Education's agent to manage interscholastic athletics at the middle and high school level in the common schools and private schools[~~including a private school~~] desiring to associate with KHSAA or to compete with a common school.

Section 3. To remain eligible to maintain the designation as the agent to manage interscholastic high school athletics, the KHSAA shall:

(1) Accept four (4) at-large members appointed by the Kentucky Board of Education to its high school Board of Control;

(2) Sponsor an annual meeting of its member high schools;

(3) Provide for each member high school to have a vote on the KHSAA constitution and bylaw changes submitted for

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consideration;

(4) Provide for high school regional postseason tournament net revenues to be distributed to the member high schools in that region participating in that sport, utilizing a share approach determined by the high schools within that region playing that sport;

(5) Provide for students desiring to participate at the high school level (regardless of the level of play) to be enrolled in at least grade seven (7) [~~unless the student has participated at the high school level before the 2014 – 2015 school year~~];

(6) Require its governing body to annually establish goals and objectives for its commissioner and perform a self-assessment and submit the results annually to the KBE by December 31;

(7) Advise the Department of Education of all legal action brought against the KHSAA;

(8) Permit a board of control member to serve a maximum of two (2) consecutive four (4) year terms with no region represented for more than eight (8) consecutive years;

(9) Employ a commissioner and evaluate that person's performance annually by October 31, and establish all staff positions upon recommendation of the commissioner;

(10) Permit the commissioner to employ other personnel necessary to perform the staff responsibilities;

(11) Permit the Board of Control to assess fines on a member high school;

(12) Utilize a trained independent hearing officer instead of an eligibility committee for a high school athletic eligibility appeal;

(13) Establish a philosophical statement of principles to use as a guide in a high school eligibility case;

(14) Conduct continual cycles of field audits of the association's entire high school membership, which provides that each high school is audited regarding each school's compliance with 20 U.S.C. Section 1681 (Title IX) and submit annual summary reports, including the highlighting of any potential deficiencies in OCR compliance to the Kentucky Board of Education;

(15) As a condition precedent to high school membership, require each member high school and superintendent to annually submit a written certification of compliance with 20 U.S.C. Section 1681 (Title IX);

(16) Conduct all meetings related to high school athletics in accordance with KRS 61.805 through 61.850;

(17) Provide written reports of any investigations into possible violations of statute, administrative regulation, KHSAA Constitution, KHSAA Bylaws, or other rules governing the conduct of high school interscholastic athletics conducted by KHSAA or their designees to the superintendent and principal of the involved school district and school before being made public;

(18) Not punish or sanction, in any manner, a school, student, coach, or administrator for allowing a student to play in an athletic contest or practice with the team during a time when an order of a court of competent jurisdiction permits the student to participate or otherwise stays or enjoins enforcement of a KHSAA final decision on eligibility; and

(19) Require any student enrolled initially in grade seven (7) through twelve (12) who is repeating a grade for any reason, to be ineligible, during the school year that the grade is repeated, to compete in an interscholastic athletics competition at any level.

Section 4. To remain eligible to maintain the designation as the agent to manage interscholastic athletics at the middle school level, the KHSAA shall implement the following requirements for all participants in middle school interscholastic athletics, distribute these requirements to all middle schools, and publish via the KHSAA Web site:

(1) Require that these provisions apply to all middle school interscholastic athletics. The following indicates that a team is representative of a school and classified as middle school athletics:

(a) The contest, event, or tournament is sponsored by a school or combined group of schools;

(b) Competitors wear a school-issued uniform;

(c) The contest, event, or tournament is sponsored by an outside entity as a school entry event, which is advertised or promoted as a school event, whether or not an entry fee is

required;

(d) A school entity pays an entry fee, for the student or team, including payment by booster organizations;

(e) A school representative accompanies the student-athlete or transports the student-athlete to the contest, event, or tournament;

(f) A designated or hired member of a school coaching staff, whether paid or unpaid, is present and offering instruction, advice, evaluation, or refinement of skills or exercising other duties defined as coaching within the sport rules;

(g) Transportation to or from the contest, event, or tournament utilizes school provided or approved transportation;

(h) Competitors in the contest, event, or tournament wear apparel identifying them by the name of the school, including the formal name, informal name, or team nickname;

(i) Competitors in the contest, event, or tournament are provided promotional or other resources by the school including school media recognition, signage, and items indicative of school representation;

(j) Competition in a contest, event, or tournament has, in any form, jurisdiction of the local school board or school-based decision-making body, including financial or other approval control; or

(k) Competition in a contest, event, or tournament is covered by any school or school system provided or procured insurance policy;

(2) Require that any head or assistant coach, whether paid or unpaid, desiring to coach interscholastic athletics at the middle school level:

(a) Meet the requirements of KRS 156.070(2)(g)2 [~~156.070(2)(f)2~~];

(b) Meet the requirements of KRS 160.380(5) [~~160.380(4)~~] and (6); and

(c) Provide to the school documentation of successful completion of a C.P.R. course including the use of an automatic external defibrillator and the first aid training, conducted by an instructor or program approved by a college or university, the American Red Cross, the American Heart Association, or other bona fide accrediting agency that is approved by the KHSAA based upon industry standards. The [initial] certification shall [use in-person instruction and certification shall] be updated as required by the approving agency;

(3) Require adherence to the following items regarding safety, sports medicine, and risk minimization for all interscholastic athletics at the middle school level:

(a) Each student, before trying for a place on a middle school athletic team, shall provide an annual medical examination, in accordance with KRS 156.070(2)(e) [~~156.070(2)(d)~~], and shall use the KHSAA form PPE01, with PPE02 being optional for the health care provider;

(b) All participants at the middle school level shall adhere to all sports medicine and risk minimization policies in use at the high school level that may be supplemented by the school, school district, conference, or association including:

1. Heat index and heat illness programs;

2. Wrestling weight management programs;

3. Concussion and other head injury policies including policies for minimizing impact exposure and concussion risks;

4. The following football drill work and practice activity limitations:

a. Football contact and non-contact practice shall use the appropriate clothing and equipment for the level of drill, including:

(i) A drill conducted in helmets-only shall be a Level 0, air, or Level 1, bags;

(ii) A drill conducted in shells (shorts, shoulder pads, and helmets) shall be a non-contact drill; and

(iii) A contact drill shall be conducted in full equipment;

b. Middle school football shall practice a minimum of eleven (11) days before engaging another group or opponent in full contact, using the following minimum schedule:

(i) Five (5) days in helmets;

(ii) Followed by three (3) days in helmets and shoulder pads; and

(iii) Concluding with three (3) days in full equipment practice;

and

c. Contact drills shall not be conducted more than twenty-one (21) days before the first regular-season contest;

d. Beginning July 1, 2020, the first regular season interscholastic contest shall not be played before the Saturday preceding week seven (7) of the National Federation of High Schools Standardized Procedure for Numbering Calendar Weeks;

5. The following baseball pitching limitations shall apply to all interscholastic play at the middle school level including scrimmages, regular season, and post season games:

a. The pitch count shall be based on pitches thrown for strikes (including foul balls), balls, balls in play, and outs;

b. Warm-up pitches allowed before each inning, warm-up pitches allowed by the umpire in case of injury or game delay, and plays attempted against the batter-runner or any runner at first, second, or third base shall not count against this limit;

c. A pitcher at any level who reaches the pitch count limit in the middle of an at-bat shall be allowed to finish that hitter;

d. The required calendar rest shall begin on the day following the date on which the game began, or a resumed game began regardless of the conclusion time of the game; and

e. The rest periods shall be based on the following total pitches:

(i) Maximum pitches - eighty-five (85);

(ii) Fifty-six (56) pitches or more - three (3) calendar days rest;

(iii) Thirty-six (36) to fifty-five (55) pitches - two (2) calendar days rest;

(iv) Twenty (20) to thirty-five (35) pitches - one (1) calendar day rest; and

(v) One (1) to nineteen (19) pitches - no mandated rest;

6. Students seeking to play or practice, including scrimmages, regular season, and post season games, in the sport of fastpitch softball, shall be required to wear face protection, commercially manufactured for softball facial protection and worn as intended by the manufacturer, when playing the positions of first base, third base, and pitcher; and

7. Teams participating in middle school athletics as defined by subsection (1) of this section shall use KHSAA licensed officials in the sports of baseball, basketball, field hockey, football, soccer, softball, and volleyball;

(4) Create a permanent Middle School Athletics Advisory Committee. This committee shall:

(a) Be autonomous with respect to the Board of Control of the KHSAA;

(b) Be composed of no less than three (3) middle school representatives from each Supreme Court district as well as no less than three (3) at large representatives from throughout the state;

(c) Provide an opportunity for nonprofit athletic groups, parents, and others to participate and provide input on the sport, athletic event, or athletes involved in interscholastic activities through local school districts;

(d) Meet not less than twice annually to review current programs and policies, make recommendations for improvements to and participation in middle school interscholastic activities, as well as any changes in statute, administrative regulation, or policy related to middle school interscholastic athletics, and assist in the development of model guidelines for schools, districts, conferences, and associations to be used in implementing a middle school athletic program; and

(e) Report regularly, not less than annually, to the commissioner of the KHSAA and issue, in conjunction with the commissioner, a formal written report annually to the KBE with recommendations for changes in statute, administrative regulation, or policy;

(5) Require any organization conducting a school-based event at the middle school level to submit the following, which shall be published and listed on the KHSAA Web site:

(a) Annual financial reports of all sanctioned and approved events sponsored by the organization; and

(b) Documentation of financial accountability including verification of federal status and tax documents including an annual IRS Form 990;

(6) Provide notice to the middle schools related to any program conducted by KHSAA related to educating school administrators about the provisions of 20 U.S.C. 1681, Title IX;

(7) Provide educational materials and a mechanism to facilitate the monitoring and tracking capabilities for the middle schools to ensure compliance with the provisions of KRS 160.445 and other requirements for coaches at the middle school level;

~~(8) [Require any student enrolled initially in grade five (5) through eight (8) who is repeating a grade for any reason, to be ineligible, during the school year that the grade is repeated, to compete in interscholastic athletics competition at any level;~~

~~(9) Require that any student who turns:~~

(a) Fifteen (15) years of age before August 1 of the current school year shall not be eligible for interscholastic athletics in Kentucky in competition against students exclusively enrolled in grades eight (8) and below;

(b) Fourteen (14) years of age before August 1 of the current year shall not be eligible for interscholastic athletics in Kentucky in competition against students exclusively enrolled in grades seven (7) and below; and

(c) Thirteen (13) years of age before August 1 of the current school year shall not be eligible for interscholastic athletics in Kentucky in competition against students exclusively enrolled in grades six (6) and below;

~~(9) [(40)]~~ Require each school, school district, conference, or association of schools to develop rules and limitations regarding student participation at the middle school level to include:

(a) A defined age limitation for participating students;

(b) A policy regarding the participation of students below grade six (6);

(c) A limitation on practice time before the season in any sport or sport activity which shall not exceed the practice time adopted for play at the high school level;

(d) A limitation on the number of school-based scrimmages and regular season, school based contests in each sport or sport-activity, which shall not include post season contests and shall not exceed the allowable number of contests for that sport or sport-activity at the high school level; and

(e) A limitation on the length of the regular competitive season in each sport or sport-activity, not including any post season activities, which shall not exceed the length for that sport or sport-activity at the high school level;

~~(10) [(44)]~~ Conduct all meetings related to middle school athletics in accordance with KRS 61.805 through 61.850;

~~(11) [(42)]~~ Issue an annual report to the KBE on the status of interscholastic athletics at the middle school level, including any recommendations for changes in statute, administrative regulation, or policy;

~~(12) [(43)]~~ Allow a school or school district to join a conference or association that has developed rules for any particular sport or sport-activity to satisfy the requirements of this administrative regulation; and

~~(13) [(44)]~~ The period of June 25 to July 9, inclusive, shall be a dead period for middle school athletics. During the dead period:

(a) Students shall not receive coaching or training from school personnel, whether salaried or non-salaried;

(b) School facilities, uniforms, nicknames, transportation, or equipment shall not be used;

(c) School funds shall not be expended in support of interscholastic athletics; and

(d) A postseason wrap-up activity, celebration, or recognition event relating to a spring sports team at a school may be held.

Section 5. Financial Planning and Review Requirements. (1) KHSAA shall annually submit the following documents to the KBE by October 31:

(a) Draft budget for the next two (2) fiscal years, including the current year;

(b) End-of-year budget status report for the previous fiscal year;

(c) Revisions to the KHSAA Strategic Plan as a result of an annual review of the plan by the KHSAA governing body;

(d) A summary report of operations including summaries of

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financial, legal, and administrative actions taken and other items ongoing within KHSAA. This report shall also include a summary of items affecting:

1. Athletic appeals and their disposition, including the name of the individual, grade, school, and the action taken by KHSAA;
2. Eligibility rules;
3. Duties of school officials;
4. Contests and contest limitations;
5. Requirements for officials and coaches; and
6. Results of a biennial review of its bylaws that results in a recommendation for a change, directing any proposals for change in association rules to be considered for a vote by the member schools at the next legislative opportunity; and

(e) A review of all items which have been submitted to the membership for approval through the processes established in the KHSAA Constitution and the result of the voting on those issues.

(2) The KHSAA shall annually submit at the next meeting of the Kentucky Board of Education following receipt and adoption by the Board of Control, audited financial statements with the KHSAA Commissioner's letter addressing exceptions or notes contained in management correspondence if any.

Section 6. Forms. The forms incorporated by reference in this administrative regulation shall be filed:

(1) Using the paper form; or

(2) Using the electronic forms found on the Kentucky High School Athletic Association Web site at www.khsaa.org.

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

- (a) "KHSAA Constitution", 6/2017;
 - (b) "KHSAA Bylaws", 7/2020 [6/2019];
 - (c) "KHSAA Due Process Procedure", 6/2017;
 - (d) "KHSAA Board of Control and Officials Division Policies", 7/2020 [6/2019];
 - (e) KHSAA Form BA101- Baseball Pitching Limitation", 6/2016;
 - (f) KHSAA Form GE01, "Application for Membership", 5/2020 [5/2017];
 - (g) KHSAA Form GE04, "Athletic Participation Form, Parental and Student Consent and Release for High School Level (grades 9 - 12) Participation", 7/2020 [7/2019];
 - (h) KHSAA Form DP02, "Request for Statutory Waiver of Bylaw 2", 6/2018;
 - (i) KHSAA Form DP06, "Application for Athletic Eligibility for Domestic Students", 7/2020 [6/2019];
 - (j) KHSAA Form DP07, "Application for Athletic Eligibility for Students having J-1 or F-1 Status", 7/2020 [7/2019];
 - (k) KHSAA Form DP08, "Application for Non U.S. Student Athletic Eligibility for Students Not having J-1/F-1 Status ", 7/2020 [7/2019];
 - (l) KHSAA Form DP16, "Request for Waiver of 20 Day Notice", 6/2018;
 - (m) KHSAA Form DP17, "Add. Info for Appeal", 6/2018;
 - (n) KHSAA Form DP18 "Waiver – 15 Day Exceptions", 6/2018;
 - (o) "KHSAA Form GE14- Contract for Athletic Contests", 7/2020 [8/2017];
 - (p) "KHSAA Form GE19-Title IX Procedures Verification", 5/2011;
 - (q) KHSAA Form GE20, "Heat Index Measurement and Record", 4/2014;
 - (r) ~~KHSAA Form PPE01/Physician Clearance, "PPE01-Physician Clearance Form (Grades 6-12)", 7/2020~~ [KHSAA Form PPE/Physical Exam, "PPE Physical Exam History/Physician Clearance Form (Grades 6 - 12)", 7/2019];
 - (s) ~~KHSAA Form PPE02/Physical Exam, "PPE02 Physical Exam Form (Grades 6-12)", 7/2020~~;
 - (t) KHSAA Form PPE/Supplemental, "PPE- Physical Exam History Supplemental Form for Athletes With Special Needs (Grades 6 - 12)", 7/2019; and
 - (u) [(t)] "KHSAA Form MS01- Athletic Participation Parental and Student Consent and Release for Middle School (grades 5-8) Participation", 7/2020 [4/2015].
- (2) This material may be inspected, copied, or obtained,

subject to applicable copyright law, at the Office of Legal, Legislative and Communication Services, Department of Education, 5th Floor, 300 Sower Blvd, 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).

KEVIN BROWN, Interim Commissioner
LU YOUNG, Chairperson

APPROVED BY AGENCY:

FILED WITH LRC: August 13, 2020 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on October 22, 2020 at 10 a.m. in the State Board Room, 5th Floor, 300 Sower Blvd., Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five (5) working days prior to this 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 October 31, 2020.

CONTACT PERSON: Todd G. Allen, Interim 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Todd Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 156.070 requires the Kentucky Board of Education (KBE) to manage and control the common schools, including interscholastic athletics in the schools, and authorizes the KBE to designate an agency to manage athletics. This regulation designates the Kentucky High School Athletic Association (KHSAA) as the agent to manage high school and middle school interscholastic athletics, and incorporates by reference the bylaws, procedures and rules governing interscholastic sports.

(b) The necessity of this administrative regulation: This regulation is necessary to designate the agency to provide the day-to-day management activities of interscholastic athletics in Kentucky; to set forth the financial, planning and review processes governing the agent; and to incorporate by reference the bylaws, procedures and rules of the agency.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation designates the agency to manage interscholastic athletics, as authorized by the authorizing statute, and outlines the conditions under which this authority is granted.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It designates the KHSAA as the agent to manage interscholastic athletics in the schools and districts at the high school and middle school levels, and publishes changes in bylaws, procedures and rules for affected schools and districts.

(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: These amendments make changes to the documents incorporated by reference, including the bylaws, specifically Bylaws 6, 7, and 8 (Transfer Rule) to make the rule more objective when evaluating whether a change of schools was motivated by athletics. These changes were adopted by the annual KHSAA Delegate Assembly.

(b) The necessity of the amendment to this administrative regulation: Pursuant to the KHSAA Constitution, which is incorporated by reference in this regulation, the members are required to have an annual meeting to discuss and recommend any needed changes to the Constitution and Bylaws. While they are not required to make changes to the Constitution and Bylaws, changes must be made through this process. This amendment incorporates changes approved at the annual meeting of the Delegate Assembly. This amendment also is necessary to designate the KHSAA as the agent to manage interscholastic athletics at the high school and middle school level.

(c) How the amendment conforms to the content of the authorizing statutes: The statute authorizes the KBE to designate an agency to manage interscholastic athletics in the common schools. The regulation designates the KHSAA as that agent at both the high school and middle school levels, and incorporates by reference the KHSAA Handbook, which consists of the KHSAA Constitution, Bylaws, Due Process Procedure, and Board of Control Policies to provide rules and guidance to the member schools and districts governing sporting events. The amendments in the Bylaws are made annually, according to the process outlined in the Constitution, and reflect input given by member schools and districts on changes that need to be made to provide a sounder structure of governance.

(d) How the amendment will assist in the effective administration of the statutes: See (c) above.

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

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: There will be little impact because of the nature of the changes to the regulation. There are requirements that continue to be placed on schools and coaching personnel, however the training required to meet these requirements will be provided at no costs to the schools or the coaching personnel.

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

- (a) Initially: Minimal
(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: KHSAA is funded through membership dues, as well as from gate receipts and sponsorships related to the various state championships.

(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: None

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None

(9) TIERING: Is tiering applied? (Explain why tiering was or was not used) Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

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? School districts, the Department of Education, and the Kentucky High School Athletic Association.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.070 and 702 KAR 7:065.

(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 is no additional expense to the school districts or the department as a result of this administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? The costs associated to the KHSAA in administrating this program for the first year are minimal.

(d) How much will it cost to administer this program for subsequent years? The costs associated to the KHSAA in administrating this program in subsequent years are minimal.

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
Kentucky Board of Education
Department of Education
(Amendment)

704 KAR 3:303. Required academic standards.

RELATES TO: KRS 156.070, 156.160, 158.6451, 158.6453, 160.290

STATUTORY AUTHORITY: KRS 156.070, 156.160, 158.6453, 160.290

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board of Education to establish courses of study for the different grades and kinds of common schools, with the courses of study to comply with the expected goals, outcomes, and assessment strategies developed under KRS 158.645 and 158.6451. KRS 158.6453 requires the revision of academic content standards. KRS 156.070(1) requires the Kentucky Board of Education to manage and control the common schools and all programs operated in the schools. KRS 160.290 authorizes local boards of education to provide for courses and other services for students consistent with the administrative regulations of the Kentucky Board of Education. This administrative regulation incorporates by reference the required academic standards, which contain the general courses of study and academic content standards for use in Kentucky's common schools unless specifically incorporated in another administrative regulation in Title 704, Chapter 8.

Section 1. Before graduating from a Kentucky public high school, a student shall meet the minimum content requirements established in the required academic standards.

Section 2. Incorporation by Reference. (1) The "Kentucky Academic Standards", August 2020[2019], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Program Standards, Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Monday through Friday, 8:00 a.m. through 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).

KEVIN BROWN, Interim Commissioner
LU YOUNG, Chairperson

APPROVED BY AGENCY: August 12, 2020
FILED WITH LRC: August 13, 2020 at 9 a.m.

VOLUME 47, NUMBER 3– SEPTEMBER 1, 2020

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on October 22, 2020 at 10 a.m. in the State Board Room, 5th Floor, 300 Sower Blvd., Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five (5) working days prior to this 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 October 31, 2020.

CONTACT PERSON: Todd G. Allen, Interim 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Todd Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the minimum content standards for use in Kentucky's common schools.

(b) The necessity of this administrative regulation: KRS 156.160 requires the Kentucky Board of Education to establish courses of study for the different grades and kinds of common schools, with the courses of study to comply with the expected outcomes for students and school established in KRS 158.6451

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 158.6453 requires the revision of academic content standards. KRS 156.070(1) requires the Kentucky Board of Education to manage and control the common schools and all programs operated in the schools. KRS 160.290 authorizes local boards of education to provide for courses and other services for students consistent with the administrative regulations of the Kentucky Board of Education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation incorporates by reference the Kentucky Academic Standards, which contain the general courses of study and academic content standards for use in Kentucky's common schools pursuant to KRS 158.6451.

(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 regulation will amend the document incorporated by reference in 704 KAR 3:303 to remove the standards related to technology, as new standards have been developed and are incorporated by reference in new administrative regulation 704 KAR 8:090.

(b) The necessity of the amendment to this administrative regulation: This regulation will amend the document incorporated by reference in 704 KAR 3:303 to remove the standards related to technology, as new standards have been developed and are incorporated by reference in new administrative regulation 704 KAR 8:090.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 156.160 requires the Kentucky Board of Education to establish courses of study for the different grades and kinds of common schools, with the courses of study to comply with the expected goals, outcomes, and assessment strategies developed under KRS 158.645, 158.6451 and 158.6453. KRS 156.070(1) requires the Kentucky Department of Education to manage and control the common schools and all programs operated in the schools. KRS 160.290 authorizes local boards of education to provide for courses and other services for students consistent with the administrative regulations of the Kentucky Board of Education.

(d) How the amendment will assist in the effective

administration of the statutes: This regulation will amend the document incorporated by reference in 704 KAR 3:303 to remove the standards incorporated by reference in 704 KAR 8:090. This will increase the efficiency of the review and revision process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Department of Education will need to modify the document incorporated by reference in 704 KAR 3:303; this amendment will require local districts to conform to the contents of the academic standards incorporated by reference in this and other regulations.

(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: This amendment will not require any action by local districts. The Kentucky Department of Education will need to modify the document incorporated by reference in 704 KAR 3:303.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Kentucky Department of Education staff time will be impacted to revise the document incorporated by reference.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will increase the efficiency of the Kentucky Department of Education once standards are revised by having them in their own regulations.

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

(a) Initially: Minimal staff time at the Kentucky Department of Education will be required to implement this amendment.

(b) On a continuing basis: Minimal staff time at the Kentucky Department of Education will be required to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State 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 in funding will be necessary to implement 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 fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate for this administrative regulation because the administrative regulations applies equally to all schools and local education agencies.

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 Education staff time will be impacted to revise the document incorporated by reference.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.160 requires the Kentucky Board of Education to establish courses of study for the different grades and kinds of common schools, with the courses of study to comply with the expected goals, outcomes, and assessment strategies developed under KRS 158.645, 158.6451, and 158.6453. KRS 156.070(1) requires the Kentucky Board of Education to manage and control the common schools and all programs operated in the schools. KRS 160.290 authorizes local boards of education to provide for courses and other services for students consistent with the administrative regulations of the Kentucky Board of Education.

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. This amendment will not have any impact on expenditures or revenues.

(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? Minimal staff time by Kentucky Department of Education will be required to implement this amendment.

(d) How much will it cost to administer this program for subsequent years? Amendment adds no additional costs. Minimal staff time at the Kentucky Department of education will be required to implement this amendment.

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

Revenues (+/-): N/A
Expenditures (+/-): N/A
Other Explanation: N/A

**KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM
Kentucky Fire Commission
(Amendment)**

739 KAR 2:050. Volunteer fire department aid.

RELATES TO: KRS Chapter 75, KRS 95A.262. KRS 273.401
STATUTORY AUTHORITY: KRS 95A.055(13), KRS 95A.050(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 95A.055(13)[95A.262(2)] requires the Commission to promulgate administrative regulations to implement KRS 75.430 and KRS 95A.055 [on Fire Protection Personnel Standards and Education to allot funds to local volunteer fire departments in order to promote better fire protection through better facilities and equipment]. This administrative regulation establishes [the] requirements for volunteer fire departments[department] aid.

Section 1. Definition. "Fire apparatus" means a motorized vehicle specifically designed to perform firefighting operations, with a minimum rated pump capacity of 750 gallons per minute (gpm), and which met or meets the associated National Fire Protection Association (NFPA) standard at the time of manufacture.

Section 2. Eligibility. (1) To qualify for aid, a volunteer fire department shall meet the requirements established in KRS 95A.262 and submit to the commission proof of the required annual twenty (20) hours of recognized training for each firefighter by June 30[December 31].

(2) Even if all volunteer firefighters have not yet become certified volunteer firefighters, as defined by 739 KAR 2:060, a new fire department shall be eligible for aid if the fire department has:

- (a) Been recognized by the commission;
- (b) Been established for less than two (2) years;
- (c) A staff consisting of at least fifty (50) percent certified volunteer firefighters; and
- (d) Twelve (12) or more firefighters and a chief who have not qualified another fire department for volunteer department aid.

Section 3. Applying for Aid. The chief officer or the appointed representative of the department shall submit a Volunteer Fire Department State-Aid Application.

Section 4. Eligible Items and Report of Purchase. (1) Funds may be used:

- (a) To purchase items such as firefighting and special operations equipment;
- (b) To purchase fire apparatus;
- (c) To purchase a fire station; or
- (d) For the maintenance or repair of a fire station.

(2)(a) Funds shall not be expended for ineligible items unless the commission receives a written request from the chief explaining the need for the items and the request is approved by the commission staff, in accordance with this section.

(b) If the request is denied and the volunteer department does not desire to use the funds for approved items, the allotment shall be refunded to the commission.

(3) Each fire department receiving aid shall submit the State-Aid Report of Purchase form to the commission staff by July 31 of the following year the aid was granted. Failure to do so shall disqualify the department from receiving aid the following year.

(a) The commission or its designee may make an inspection of the applicant's fire department to determine comparative needs within the department before making the allotment.

(b) The inspection may include an accounting to assure that equipment previously purchased is currently in the possession of the fire department.

Section 5. Holding of Funds. (1)(a) If the approved allotment is insufficient to cover the cost of equipment or other approved purpose, the full aid granted for a fiscal year may be held by the fire department for a period not to exceed five (5) years from the initial granting of funds.

(b) If the funds will be held, a written explanation for the holding request shall be submitted to the commission upon receiving the funds.

(c) The funds shall be held in a special and separate bank account marked "Fire Department Aid Fund."

(2)(a) Upon the expenditure of funds, the chief or appointed representative shall submit the State-Aid Report of Purchase to the commission.

(b) If the funds are used toward the retirement of a preexisting debt for purchase of land, buildings, or equipment, proof of the expenditure in the form of an affidavit or cancelled note shall be submitted to the commission.

(c) An applicant who knowingly makes a false statement regarding volunteer fire department aid shall subject the grant to refund and prosecution for fraud.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) Volunteer Fire Department State-Aid Application 8/2017; and
- (b) State-Aid Report of Purchase, 8/2017.

(2) This material may be inspected, copied, or obtained subject to applicable copyright law, at the Kentucky Fire Commission [on ~~Fire Protection Personnel Standards and Education~~], 118 James Court, Lexington, Kentucky 40505, Monday through Friday, 8 a.m. to 4:30 p.m.

SCOTT LAWSON, Chairman

APPROVED BY AGENCY: August 12, 2020

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

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on October 22, 2020 at 10:00 a.m. Eastern Standard Time at 118 James Court, Lexington, Kentucky 40505. Individuals interested in being heard at this hearing shall notify this agency in writing by 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 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 October 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: Jonathan L. Gay, Counsel for the Kentucky Fire Commission, phone (859) 225-4714, fax (859) 225-1493, 163 E. Main Street, Suite 200, Lexington, Kentucky 40507, email: administrativeregulations@wgmfirm.com.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jonathan L. Gay

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for volunteer fire department aid.

(b) The necessity of this administrative regulation: This administrative regulation is mandated by KRS 95A.055(13), which requires the Commission to promulgate administrative regulations to implement KRS 75.430 and 95A.055. With this amendment, the Commission has changed the deadline for volunteer firefighter training hours from December 31 to June 30.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 95A.055 by establishing requirements for volunteer fire department aid.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing a deadline for volunteer firefighter training hours consistent with other reporting deadlines.

(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 changes the deadline for volunteer firefighter training hours from December 31 to June 30.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to establish consistent reporting deadlines.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 95A.055(13) requires the Commission to promulgate administrative regulations to implement KRS 75.430 and 95A.055. This amendment conforms with these statutes by establishing requirements for volunteer fire department aid.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the statutes by establishing a deadline for volunteer firefighter training hours consistent with other reporting deadlines.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Commission, volunteer fire departments, and volunteer firefighters.

(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: Volunteer fire department will be required to report firefighter training hours by June 30 to qualify for aid.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to any entity identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All entities will benefit from consistent training reporting requirements.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There will be no cost to the administrative body to implement this administrative regulation initially or in the future.

(a) Initially: The above paragraph is accurate for initial costs. This administrative regulation will not add any further cost to the administrative body.

(b) On a continuing basis: The above paragraph is accurate for

continuing costs. This administrative regulation will not add any further cost to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Commission is a state agency that receives its annual budget from the state government. The implementation and enforcement of this administrative regulation will be funded through the Commission's general 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 in fees or funding will be necessary.

(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.

(9) TIERING: Is tiering applied? Tiering is not applied in this administrative regulation because all volunteer fire departments in the Commonwealth are required to meet the standards mandated by this administrative regulation.

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 will impact the Commission, volunteer fire departments, and volunteer firefighters.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 95A.055(13) requires the Commission to promulgate administrative regulations to implement KRS 75.430 and 95A.055.

(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? This administrative regulation will generate no revenue 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 generate no revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? This administrative regulation will not impose any costs on state or local government.

(d) How much will it cost 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. This administrative regulation will not impose any costs on state or local government.

Revenues (+/-): This administrative regulation will not generate revenue.

Expenditures (+/-): This administrative regulation will not impose any costs on state or local government.

Other Explanation: These proposed amendments create no fiscal impact.

**LABOR CABINET
Department of Workers' Claims
(Amendment)**

803 KAR 25:240. Workers' compensation unfair claims settlement practices.

RELATES TO: KRS 304.12-230, 342.267
STATUTORY AUTHORITY: KRS 342.260(1)
NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to KRS 342.260(1), the Commissioner [~~Executive Director~~] of the

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Department [Office] of Workers' Claims is authorized to promulgate administrative regulations necessary to carry on the work of the Department [Office] of Workers' Claims, and administrative law judges [and-arbitrators]. KRS 342.267 requires the Commissioner [Executive Director] to fine carriers for engaging in unfair claims settlement practices under KRS Chapter 342 or 304.12-230. This administrative regulation establishes standards for the Commissioner [executive-director] and carriers with regard to unfair claims settlement practices.

Section 1. Definitions. (1) "Agent" means a person or entity performing claims adjusting, case management, utilization review, or other service on behalf of a carrier.

(2) "Carrier" is defined in KRS 342.0011(6).

Section 2. File and Record Documentation. (1) Each carrier's claim files and files held by an agent of the carrier shall be subject to examination by the commissioner [executive-director] or the commissioner's [executive-director's] designee.

(2) Each carrier or agent of the carrier shall maintain claim data that is readily accessible and retrievable for examination.

(3) Documentation shall be contained in each claim file:

(a) Detailing the activities of each carrier and any agent of the carrier; and

(b) Detailing the basis[foundations] for the decision of the carrier or agent of the carrier upon material matters of the claim.

(4) Each document within a claim file shall be noted as to date received, date processed, or date mailed.

(5) For a carrier which does not maintain hard copy files, claim files shall be capable of duplication to legible hard copy.

(6) A claim file shall be maintained for a period not less than five (5) years following the creation of the material or the completion of the purpose for which it was created, whichever shall occur last.

Section 3. Notice of Policy Provisions and Information. (1) A carrier shall provide adequate notice with regard to policy provisions and information with regard to coverage and benefits.

(2) Failure of a carrier to provide the notice required by KRS 342.610(7)(6) in the form prescribed by 803 KAR 25:200 shall constitute an unfair claims settlement practice.

Section 4. Duty to Investigate. Upon notice of a work-related injury, a carrier shall diligently investigate a claim for facts warranting the extension or denial of benefits.

Section 5. Standards for Prompt and Timely Actions. (1) After receipt of notice of a work-related injury necessitating medical care or causing lost work days, a carrier shall as soon as practicable advise an injured employee of acceptance or denial of the claim.

(2) A carrier shall provide to the employee in writing the specific reasons for denial of a claim.

(3) A carrier shall inform an employee of additional information needed for the claim to be accepted.

(4) A carrier shall meet the time constraints for accepting and paying workers' compensation claims established in KRS Chapter 342 and applicable administrative regulations.

Section 6. Standards for Fair and Equitable Settlement. (1) A carrier shall attempt in good faith to promptly pay a claim in which liability is clear;

(2) A carrier shall not misrepresent pertinent facts or law with regard to a claim;

(3) A carrier shall not compel an employee to institute formal proceedings with the Department [Office] of Workers' Claims to recover benefits where liability is clear;

(4) A carrier shall not offer a settlement which is substantially less than the reasonable value of a claim;

(5) A carrier shall not threaten to file or invoke a policy of filing appeals for the purpose of compelling a settlement for less than a workers' compensation award [~~or benefit review determination~~]; and

(6) A carrier shall not require an employee to obtain

information which is accessible to the carrier.

Section 7. Acknowledgment of Communications. (1) Upon receipt of an inquiry from the Department[Office] of Workers' Claims, each carrier shall furnish the Department[Office] of Workers' Claims a full response within fifteen (15) days.

(2) Upon receipt of a communication from an injured employee which reasonably suggests a response is expected, a carrier shall make a prompt and appropriate reply to the employee.

This is to certify 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: July 31, 2020

FILED WITH LRC: July 31, 2020 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 22, 2020, at 10:00 a.m. (EDT) by video teleconference pursuant to KRS 61.800, et seq. In keeping with KRS 13A.270, individuals interested in attending or 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 along with contact information. Upon notification of intent to attend, individuals will be provided information necessary to attend the video teleconference. 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 October 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, email 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 sets standards of behavior for entities providing workers' compensation coverage; the failure to meet those standards constitutes unfair claims settlement practices.

(b) The necessity of this administrative regulation: Pursuant to KRS 342.260(1), the Commissioner of the Department of Workers' Claims is authorized to promulgate administrative regulations necessary to carry on the work of the Department of Workers' Claims. KRS 342.267 requires the Commissioner to fine carriers for engaging in unfair claims settlement practices under KRS Chapter 342 or 304.12-230. This administrative regulation sets standards of behavior for entities providing workers' compensation coverage; the failure to meet those standards constitutes unfair claims settlement practices.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes provide that entities providing workers' compensation coverage must meet certain standards. This administrative regulation establishes standards for entities providing workers' compensation coverage; the failure to meet those standards constitutes an unfair claims settlement practice.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides guidance to those providing workers' compensation coverage regarding the issuance of fines for the failure to meet certain standards.

(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 language to match the current Department structure and operation.

(b) The necessity of the amendment to this administrative regulation: The amendment updates the language to match the Department's current structure and operation.

(c) How the amendment conforms to the content of the authorizing statutes: The Commissioner is required to issue fines for unfair claims settlement practices. The administrative regulation sets standards to be met by those providing workers' compensation coverage; the failure to meet those standards constitute unfair claims settlement practices.

(d) How the amendment will assist in the effective administration of the statutes: The Commissioner is required to issue fines for unfair claims settlement practices; the amendment clarifies the standards to be met in order to avoid committing an unfair claims settlement practice.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All insurance carriers, self-insurance groups, self-insured employers and third party administrators, administering workers' compensation claims.

(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: Insurance carriers, self-insured groups, self-insured employers, and third party administrators will have to ensure they meet the standards set forth in the administrative regulation so as to avoid committing an unfair claims settlement practices.

(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 associated cost if those entities comply with the standards set forth in administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will avoid fines by complying with standards set forth in the regulation and injured employees will be treated fairly.

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

(a) Initially: There is no cost.

(b) On a continuing basis: There is no continuing cost.

(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 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 but specifies behavior that constitutes unfair claims settlement practices.

(9) TIERING: Is tiering applied? Tiering is not applied, the amendment and regulation apply 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 parts 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 304.12-230, 342.260(1), 342.267

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. This administrative regulation will have no effect on the expenditures and revenues of state and local governmental agencies.

(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 for use by 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? None.

(c) How much will it cost to administer this program for the first year? There will be no administrative costs.

(d) How much will it cost to administer this program for subsequent years? There will be no subsequent administrative 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: There is no fiscal impact on state or local government; the administrative regulation sets standards of behavior for entities with workers' compensation obligations.

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amendment)**

902 KAR 50:050. Manufacturing plant requirements.

RELATES TO: KRS 211.090, 217C.010[~~—247C.040~~], 217C.070, 217C.990, 260.813, 7 C.F.R. 58 Subpart B
STATUTORY AUTHORITY: KRS 194A.050(1), 211.180(1)(c)[~~244.090~~], 217C.040, 217C.060

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 211.180(1)(c) authorizes the cabinet to promulgate administrative regulations for the safe handling of food and food products. KRS 217C.040 requires the secretary to regulate, in the interest of the public health, all aspects relating to the production and sale of milk. KRS 217C.060 authorizes the cabinet to enter into reciprocal agreements with milk control officials of federal and state agencies having standards substantially equivalent to the regulations of the secretary. This administrative regulation establishes[~~:- (1)~~] uniform sanitary and operational standards for manufactured[manufacturing] milk plants, receiving stations, transfer stations, and handlers[;] and [~~{2}~~] the process for issuance and revocation of permits [~~relating thereto~~].

Section 1. Permits and Inspections. (1) All persons desiring to operate a manufactured milk plant, receiving station, transfer station, or be a handler of manufactured milk, shall submit to the cabinet a "Plant Application for Permit".

~~(2)[(a) A person who does not possess a valid permit, issued as provided in this administrative regulation, shall not:~~

- ~~1. Operate a manufacturing milk plant;~~
- ~~2. Operate a receiving station;~~
- ~~3. Operate a transfer station; or~~
- ~~4. Be a handler of manufacturing milk.~~

~~(b) A qualified representative of the cabinet shall inspect each plant, receiving station, and transfer station:~~

- ~~(a)[4-] Prior to issuance of a permit; and~~
- ~~(b)[2-] At least annually thereafter.~~

~~(3)[(2)] Only a person in [satisfactory] compliance with the requirements of this administrative regulation shall be entitled to a permit.~~

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(4) A permit shall not be transferable with respect to persons or locations.

(5)(3) Manufactured milk and milk products from points beyond the limits of routine inspection of the Commonwealth of Kentucky, or its police jurisdiction, may be sold in the Commonwealth of Kentucky, or its police jurisdiction, if the milk or milk products are:

(a) Produced and processed under administrative regulations substantially equivalent to this administrative regulation; and

(b) The out-of-jurisdiction governmental unit concerned accepts Kentucky's manufactured[manufacturing] milk and milk products on a reciprocal basis.

(6)(4) Properly prepared plans for transfer stations, receiving stations, and milk plants regulated under this administrative regulation that[which] are hereafter constructed, reconstructed or extensively altered, shall be submitted to the cabinet for approval before work is begun.

Section 2. Standards for Manufactured Milk Plants, Receiving Stations, Transfer Stations, and Handlers. (1) All premises, buildings, facilities, equipment and utensils shall comply with 7 C.F.R. 58.125 through 128.

(2) All personnel shall comply with:

(a) 7 C.F.R. 58.129 for cleanliness; and

(b) 7 C.F.R. 58.130 for health.

(3) The transport of raw milk shall be in compliance with 7 C.F.R. 58.131 except that milk shall not be transported in milk cans.

(4) Receiving stations shall comply with 7 C.F.R. 58.131(b)(1).

(5) Transfer stations shall comply with 7 C.F.R. 58.131(b)(2).

Section 3. Prohibited Acts Relating to Manufactured[Manufacturing] Milk Plants, Receiving Stations, Transfer Stations, and Handlers[-within the Commonwealth of Kentucky]. A person shall not:

(1) [Process, handle, sell or offer for sale milk or a milk product for manufacturing purposes without a permit issued in accordance with this administrative regulation;

(2) Process, handle, provide, sell, offer or expose for sale, or have in possession with intent to sell a milk or milk product for manufacturing purposes which is adulterated, misbranded or otherwise in violation of this administrative regulation;

(2)(3) Prohibit, to a duly-authorized agent of the cabinet:

(a) Entry or inspection;

(b) The taking of a sample; or

(c) Access to records or evidence;

(3)(4) Remove, destroy, alter, forge or falsely represent[, without proper authority,] a tag, stamp, mark, or label used by the cabinet; or

(4)(5) Remove or dispose of a detained or quarantined article without proper authorization from the cabinet.

Section 4. Manufactured [Manufacturing] Milk Plant, Receiving Station, Transfer Station and Handler Permit Suspension and Reinstatement. (1) In addition to the penalties established in KRS 217C.990, the cabinet may suspend or revoke a permit issued under this administrative regulation.

(2) The cabinet shall, upon notice to the permit holder, immediately suspend the permit if:

(a) There is reason to believe that an imminent public health hazard exists;

(b) The permit holder or an employee has interfered with the cabinet in the performance of the cabinet's duties; or

(c) The permit holder or an employee has falsified any records or documents.

(3) In all other instances of violation of this administrative regulation, the cabinet shall:

(a) Serve on the permit holder a written notice stating the violation; and

(b) Afford the permit holder a reasonable opportunity to correct the violation.

(4) A permit holder whose permit has been suspended may, at any time, submit an "Application for Reinstatement of Permit",

incorporated by reference in 902 KAR 50:033.

(5) Suspension of a permit shall remain in effect until the violation has been corrected to the satisfaction of the cabinet.

(6) For serious or repeated violations of this administrative regulation the permit may be permanently revoked.

(7) Prior to revocation, the cabinet shall notify the permit holder in writing, stating the reasons for which the permit is subject to revocation and advising the permit shall be permanently revoked at the end of ten (10) days following the service of the notice, unless the "Request for a Hearing", incorporated by reference in 902 KAR 50:033, is filed with the Milk Safety Branch[A permit issued under this administrative regulation may be suspended if:

(a) The cabinet has reason to believe that a public health hazard exists;

(b) The permit holder has violated the requirements of this administrative regulation; or

(c) The permit holder has interfered with the cabinet in the performance of its duties.

(2) The cabinet shall serve upon a permit holder a written notice of intent to suspend the permit, except in a case in which:

(a) The milk or milk product involved creates, or reasonably appears to create, an imminent hazard to the public health; or

(b) There has been a willful refusal to permit authorized inspection.

(3) The cabinet's written notice of intent to suspend shall:

(a) Specify with particularity the violation alleged; and

(b) Afford the permit holder reasonable opportunity to correct the violation alleged.

(4) A permit shall remain in suspension until the violation has been corrected to the satisfaction of the cabinet, in accordance with the requirements of this administrative regulation.

(5) The cabinet may require a second inspection if, during an annual inspection, a violation of a requirement established in this administrative regulation is found to exist. The second inspection shall occur at least three (3) days after the violation is discovered and verbal or other notice given. If, upon reinspection, the violation continues to exist, the cabinet shall issue official written notice, specifying a time in which the violation shall be corrected. Failure of the permit holder to comply with the requirements of the official notice shall be cause for permit suspension, in accordance with this administrative regulation.

(6) Appeal rights-

(a) A person who has been served with a notice of intent to suspend may, within forty-eight (48) hours of receipt of notice, apply in writing for an informal appeal. The cabinet shall, prior to suspension, proceed to informal hearing to ascertain the facts of the alleged violation.

(b) A person whose permit has been suspended may apply in writing for an informal appeal. The cabinet shall, within a reasonable time, proceed to informal hearing to ascertain the facts of the alleged violation.

(c) The cabinet, upon evidence presented at the hearing, shall affirm, modify, or rescind the suspension or intent to suspend. A permit suspended under the provisions of this subsection may be reinstated by submission of evidence that the violation has been corrected, in accordance with the requirements of this administrative regulation.

(d) A party aggrieved by a decision of the cabinet may appeal the decision in accordance with KRS Chapter 13B].

Section 5[4]. Trade Secrets. A person who, in an official capacity, obtains under the provisions of this administrative regulation, information which is entitled to protection as a trade secret, including information as to quantity, quality, source of disposition of milk or milk products, or results of an inspection or test, shall not use the information to his own advantage or reveal it to an unauthorized person.

Section 6. Incorporation by Reference.[5-] (1) [The] "Plant Application for Permit", 1/2020, [following material] is incorporated by reference:

(a) Requirements for Manufactured Milk Product Plants in Kentucky; and

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~~(b) Code of Federal Regulations, Title 7, Part 58, Subpart B, effective August 28, 2002].~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Milk Safety Branch, Division of Public Health Protection and Safety, Department for Public Health~~[Office of the Commissioner for Health Services]~~, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.].

~~(3) Copies are also available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., 20402.]~~

STEVEN J. STACK, MD, MBA, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: August 7, 2020

FILED WITH LRC: August 11, 2020 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 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 October 19, 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 October 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; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Julie Brooks or Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the uniform sanitary and operational standards for manufactured milk plants, receiving stations, transfer stations, and handlers, and outlines the process for issuance and revocation of permits relating to these activities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the quality standards specific to the activities related to milk for manufacturing purposes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 217C.040 authorizes the secretary to adopt separate regulations regulating grade A milk products and milk for manufacturing purposes, and for the transportation, processing, handling of milk and milk products, the inspection of milk plants, and the issuing and revocation of permits to milk producers, haulers, transfer stations, and processing plants.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures that all persons engaged in activities related to manufactured milk and milk products are following uniform sanitary and operational standards.

(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 incorporates by reference the Plant Application for Permit, adds citations to the applicable code of federal regulation for manufactured milk and milk products, updates the permit

revocation procedures, and makes other changes necessary to comply with KRS 13A drafting rules.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure uniform sanitary and operational standards for all persons engaged in activities related to manufactured milk and milk products.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 217C.040 authorizes the secretary to adopt rules and regulations regulating the transportation, processing, handling of milk and milk products, the inspection of milk plants, and the issuing and revocation of permits to milk producers, haulers, transfer stations, and processing plants.

(d) How the amendment will assist in the effective administration of the statutes: KRS 217C.060 authorizes the cabinet to enter into reciprocal agreements with milk control officials of federal or state agencies having standards substantially equivalent to the requirements of KRS Chapter 217C. By adopting the code of federal regulations related to manufactured milk and milk products the cabinet is better able to enter into reciprocal agreements with federal and state milk control agencies.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts fifty-three (53) permitted dairy processing plants.

(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 questions (3) will have to take to comply with this administrative regulation or amendment: All personnel engaged in the manufacture of milk and milk products, those operating a receiving or transfer station, and handlers of milk and milk products will need to be aware of the uniform sanitary and operational standards contained in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): There should be no costs associated with implementing the requirements in this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment to this administrative regulation simplifies the permitting process for dairy processing plants. By incorporating the federal standards, dairy plants will be better able to offer products under reciprocal agreements with other states.

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

(a) Initially: This is an ongoing program. There are no initial costs.

(b) On a continuing basis: There are no ongoing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Milk Safety program operates with approximately \$1 million from the General Fund. There are no additional costs associated with this amendment.

(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: An increase in fees or funding is not needed to implement the amendment to this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. There are no fees associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied. The standards in this administrative regulation are applied equally to all manufactured dairy plants.

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

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regulation will impact the Milk Safety Branch in the Division of Public Health Protection and Safety.

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), 211.180(c), 217C.040, 217C.060, and 7 C.F.R. Part 58.

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? This administrative regulation does not generate 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 does not generate revenue.

(c) How much will it cost to administer this program for the first year? This is an ongoing program and there will be no increase in cost to administer this program.

(d) How much will it cost to administer this program for subsequent years? The entire Milk Safety program operates with approximately \$1 million from the General Fund.

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. 7 C.F.R Part 58.

2. State compliance standards. KRS 217C.010 provides for uniform state standards and requirements for milk and milk products. Pursuant to KRS 217C.050 the cabinet is designated as the single state agency for the purpose of carrying out a statewide milk control program and pursuant to KRS 217C.060 the cabinet is authorized to enter into reciprocal agreements with milk control officials of federal or state agencies having standards substantially equivalent to the requirements of the regulations of the secretary.

3. Minimum or uniform standards contained in the federal mandate. By referencing the federal standards for manufactured milk and milk products, the cabinet is assuring a uniform 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. A stricter standard, or additional or different responsibilities or requirements is not imposed by this administrative regulation.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amendment)

902 KAR 50:080. Standards of identity and labeling [Open dating] requirements.

RELATES TO: KRS 217.035, 217.037, 217C.030, 217C.060, [217C.040-]217C.990, 21 C.F.R. Parts 101, 131, 133, 135, 166
STATUTORY AUTHORITY: KRS 194A.050(1), 211.180(1)(c), 217C.040[194.050, 211.090]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 211.180(1)(c) authorizes the cabinet to promulgate administrative regulations for the safe handling of food and food products.[The

Cabinet for Human Resources is directed by] KRS [Chapter] 217C.040 requires the cabinet adopt rules and regulations regulating the [to regulate the production, transportation, processing, handling, sampling, examination, grading,] labeling, standards of identity, sale and other matters relating to milk and milk products as may be necessary to protect the public health. This administrative regulation establishes uniform standards for identifying and labeling[the open dating of] Grade A pasteurized milk and milk products sold in Kentucky [and requires that an open date be legibly applied to retail packages offered for sale to the final consumer].

Section 1. Labeling and Identification Requirements. (1) All Grade A pasteurized milk and milk products offered for sale or sold in this state shall be labeled in accordance with 21 C.F.R Part 101.

(2) Milk, cream, and yogurt shall be identified in accordance with 21 C.F.R. Part 131.

(3) Cheese and related cheese products shall be identified in accordance with 21 C.F.R. Part 133.

(4) Frozen desserts shall be identified in accordance with 21 C.F.R. Part 135.

(5) Margarine shall be identified in accordance with 21 C.F.R. Part 166.

Section 2. Use By[Open] Date Required. (1) No person shall sell or offer for sale any Grade A pasteurized milk or milk product in this state in a consumer package that does not bear the use by[open] date as required by this administrative regulation.

(2) [Section 2. Open Date Labeling. (1)] The use by[open] date shall:

(a) Be[Appear] in a form that is conspicuous, legible, and understandable;

(b) Be boldface print in contrast to the background, by typography, color, embossing, debossing, molding, or other manner on the package;

(c) Be placed on the[that] part of the container most likely to be displayed for retail sale; and

(d) Not interfere with legibility of other mandatory labeling requirements of the product.

(3)[(2)] The use by[open] date shall be expressed:

(a) By the first three (3) letters of the month followed by or preceded by the numeral or numerals constituting the appropriate calendar date[;] or

(b) [Expressed] Numerically by the number of the month preceding the number of the day. [(For example: June 1 may be expressed "Jun-1" "1 Jun," "0601," or "06-01.")]

(3) The open dating of Grade A pasteurized milk and milk products bottled in glass containers for home delivery are exempt from this administrative regulation.]

Section 3. Certification of Use By[Open] Date Required. (1) Each distributor or processor manufacturing, processing, or packaging Grade A pasteurized milk and milk products for sale within this state shall:

(a) Comply with the provisions of this administrative regulation; [and]

(b) [File and] Certify to[with] the cabinet the use by[open] date for each product; and[;]

(c) [The processor or distributor requesting an open date certification for a product shall] Provide the cabinet with the research data used to support the product use by[open] date certification request.

(2) Samples of products for use by[open] date evaluation may be obtained at processing plants, delivery trucks, distributors, or from retail outlets. The temperature and use by[open] date shall be officially recorded at the time of sample collection.

Section 4. Enforcement. (1) No milk or milk products shall be offered for sale as a Grade A product after the expiration of the use by date shown on the container.

(2) All milk and milk products offered for sale after the expiration of the use by date shall be deemed to be misbranded.

(3) If a product is not sold within the period specified by[in] the use by[open] date, the product shall[cabinet shall take action to

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remedy the condition consistent with this administrative regulation by removing the product from consumer channels and causing the product to be returned to the milk plant of origin for destruction.

STEVEN J. STACK, MD, MBA, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: August 7, 2020

FILED WITH LRC: August 11, 2020 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 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 October 19, 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 October 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; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Julie Brooks or Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes uniform standards for identifying and labeling Grade A pasteurized milk and milk products sold in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure all Grade A milk and milk products sold meet the highest quality standard possible.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 217C.040 authorizes the secretary to adopt rules and regulations regulating the labeling, standards of identity, and sale of milk and milk products.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures all Grade A milk and milk products sold to consumers in the Commonwealth are properly labeled.

(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 adds labeling requirements and standards of identifying Grade A milk and milk products, and clarifies the use by dating requirements for Grade A milk and milk products.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure all Grade A milk and milk products are properly identified and labeled, and to ensure the quality of these products.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to KRS 217C.040 for labeling, standards of identity, and sale of milk and milk products by establishing the standards of identity and labeling requirements for Grade A milk and milk products.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation ensures all Grade A milk and milk

products are properly identified and labeled, and that no misbranded product is sold to a consumer.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation impacts all dairy producers, dairy processing plants, all retail stores offering Grade A milk and milk products for sale, and all consumers who purchase these products. There are approximately 470 permitted dairy producers, and fifty-three (53) permitted dairy processing plants.

(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 questions (3) will have to take to comply with this administrative regulation or amendment: Businesses engaged in the processing of milk and milk products will need to be aware of the standards for labeling and identifying those products. These standards are not new and will not require any change in the production and labeling processes. Stores who offer milk and milk products for sale will need to be aware of the requirements for proper labeling and will need to establish protocols for removing out of date products and returning them to the dairy plant of origin for destruction.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): The requirements in this administrative regulation are not new requirements. There are no additional costs to dairy plants or retail stores to comply with these requirements.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Consistent standards of identity and labeling will increase consumer confidence in the quality of the milk and milk products. This may reduce consumer confusion regarding the safety of the milk and milk products, and may reduce food waste.

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

(a) Initially: This is an ongoing program, there are no initial costs associated with this amended regulation.

(b) On a continuing basis: There will be no costs to the cabinet 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: The Milk Safety Branch operates with approximately \$1 million from the General Fund. There are no costs associated with this amendment.

(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: An increase in fees or funding is not necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. There are no fees associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied as the requirements of this administrative regulation impact all persons 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? This administrative regulation affects the Milk Safety Branch in the Division of Public Health, Protection and Safety.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 217.035, 217.037, 217C.040, 217C.060, 217C.990, and 21 C.F.R. Parts 101, 131, 133, 135, 166.

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? This administrative regulation does not generate 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 does not generate revenue.

(c) How much will it cost to administer this program for the first year? The Milk Safety Branch operates with approximately \$1 million from the General Fund. This is an ongoing program and there will be no increase in cost to administer this program.

(d) How much will it cost to administer this program for subsequent years? This is an ongoing program and there will be no increase in cost to administer this program.

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. 21 C.F.R. Part 101 for food labeling, 21 C.F.R. Part 131 for milk, cream, and yogurt, 21 C.F.R. Part 133 for cheeses and related cheese products, 21 C.F.R. Part 135 for frozen desserts, and 21 C.F.R. Part 166 for margarine.

2. State compliance standards. KRS 217C.010 provides for uniform state standards and requirements for milk and milk products. Pursuant to KRS 217C.050 the cabinet is designated as the single state agency for the purpose of carrying out a statewide milk control program and pursuant to KRS 217C.060 the cabinet is authorized to enter into reciprocal agreements with milk control officials of federal or state agencies having standards substantially equivalent to the requirements of the regulations of the secretary.

3. Minimum or uniform standards contained in the federal mandate. By referencing the federal standards for food labeling and identification of milk and milk products the cabinet is assuring a uniform 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. A stricter standard, or additional or different responsibilities or requirements is not imposed by this administrative regulation.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Public Health Protection and Safety

(Amendment)

902 KAR 50:090. Milk adulteration.

RELATES TO: KRS Chapter 13B, 211.090, 217.025, 217C.060, 217C.100[217.005-217.215, 217.992, 217C.010-217C.990]

STATUTORY AUTHORITY: KRS 194A.050(1), 211.180(1)(c), 217C.040[194.050, 211.090]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Cabinet for Health and Family Service to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 211.180(1)(c) authorizes the cabinet to promulgate administrative regulations for the safe handling of food and food products.[The Cabinet for Human Resources is directed by] KRS 217C.040 authorizes the cabinet to promulgate regulations for the [to regulate] the production, transportation, processing, handling, sampling, examination, grading, sale, and other matters relating to Grade A and manufactured[manufacturing] milk and milk products as may be necessary to protect the public health. This administrative regulation

establishes enforcement procedures to prevent the sale of Grade A and manufactured milk and milk products adulterated with antibiotics and other inhibitory substances, chemicals, and excessive water.

Section 1. Antibiotics and other Inhibitory Substances Enforcement Procedure.

(1) Sampling procedure.

(a) Antibiotic tests shall be performed a minimum of four (4) times during any consecutive six (6) months on each producer's milk[milk producer] or on raw commingled loads and all Grade A processed milk (except cultured products). When commingled milk is tested, milk from each individual producer[all producers] shall be represented in the sample.

(b) Commingled loads that show[Any loads showing] any level of antibiotics shall require each individual producer's milk on the load to be tested.

(c) 1. An individual producer's milk sample found to be positive shall be reported to the Milk Safety Branch and confirmed by laboratory report; and

2. No additional milk shall be collected from the individual producer until the producer is compliant with enforcement procedures listed in subsection (4) of this section.

(2) All loads of raw milk shall be screened for antibiotics and other inhibitory substances prior to receipt by the plant.

(3) Utilization of milk on a load showing levels of antibiotics shall be as follows:

(a) A load of raw milk with an antibiotic level[1-Loads showing levels of antibiotics] below the M-a-85 (Revision #16) standards[acceptable standard of sixteen (16) mm zone size by the Bacillus stearothermophilus disk assay method, or any procedure approved in the 15th edition of "Standard Methods for the Examination of Dairy Products"], may be accepted by the plant [; however, each individual producer's milk on the load shall be tested, and any producer sample found to be positive shall be reported to the Milk Control Branch and confirmed later in writing (laboratory report)]. No additional milk shall be collected from that producer until enforcement procedures listed in this administrative regulation are complied with].

(b) A load of raw milk with a positive antibiotic level above the M-a-85 (Revision #16) standards[2- Loads testing positive (sixteen (16) mm zone size or greater)] shall not be utilized by the plant[company] and shall be reported to the Milk Safety[Control] Branch.

(c) If a load of raw milk is[Also, all producers' milk represented on the load shall be tested, and any producer sample found to be positive shall be reported to the Milk Control Branch and confirmed later in writing (laboratory report)]. No additional milk shall be collected from that producer until enforcement procedures listed in this administrative regulation are complied with.

3. Should a load be] commingled into a plant storage tank with other loads and later found to be positive, the storage tank shall be tested and found to be negative prior to processing.

(d)[4-] Intentional blending of loads found to be positive for antibiotics shall be prohibited.

(e)[5-] Raw milk inadvertently processed and later found to be positive for antibiotics or other inhibitory substances shall be reported to the Milk Safety[Control] Branch prior to shipment for sale. Each case will be handled individually and may require testing to determine if antibiotics are present which would prohibit sale.

(4)[(d) It is recommended that all loads of raw milk be screened for antibiotics and other inhibitory substances prior to receipt by the plant.

(2)] Enforcement procedures.

(a) [All loads found to be positive for antibiotics or other inhibitory substances prior to receipt by the plant shall not be received. All producer samples included in the load shall be tested, and the results of the load and producer samples reported to the Milk Control Branch by telephone as soon as possible and confirmed later in writing (laboratory report).

(b) No milk shall be collected from producers with a positive antibiotic test until the following conditions are met:

4-] Producers with first antibiotic or other inhibitory substances violation during the past twelve (12)[twenty-four (24)] months shall require a negative sample to be obtained from the producer's

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~~mil[producer] supply by a certified sample collector prior to the milk being collected by the hauler. Test[The negative] results shall be reported to the Milk Safety[Control] Branch as soon as possible.~~

~~(b)[2-] Producers with the second antibiotic or other inhibitory substances violation during the past twelve (12)~~[twenty-four (24)]~~ months shall:~~

~~1.[a-] Be notified by the Milk Safety[Control] Branch of the suspension by telephone and confirmed by letter. The letter confirming the suspension shall include an Application for Reinstatement of [the] Permit, DFS-7A, incorporated by reference in 902 KAR 50:033.~~

~~2.[b-] Prior to an official sample being collected for reinstatement purposes, the producer shall request permit reinstatement in writing and indicate [he believes] the problem has[to have] been corrected.~~

~~3.[c- Require] A representative of the Milk Safety[Control] Branch shall[te] visit the dairy producer [dairy] after the request for reinstatement is received and prior to the first official sample being taken.~~

~~4. During this farm visit the producer shall demonstrate a method of marking cows treated with antibiotics to[which will] assure milk from treated cows is not offered for sale.~~

~~5. Upon acceptance of the exclusion procedure for treated cows, an official sample shall be collected and found to be negative for antibiotics prior to shipment.~~

~~6. The first shipment of milk following the negative sample shall not exceed four (4) milkings for Grade A purposes or six (6) milkings for manufacturing purposes.~~

~~(c)[limits listed in this administrative regulation.~~

~~d. After receipt of the written request for reinstatement and a farm visit by the Milk Control Branch, a sample of the producer's milk shall be collected by a certified sample collector and found to be free of antibiotics prior to the first shipment.~~

~~e. Milk collected on the first shipment shall not exceed four (4) milkings for Grade A purposes or six (6) milkings for manufacturing purposes.~~

~~3-] Producers with more than two (2) antibiotic or other inhibitory substances violations during the past twelve (12)~~[twenty-four (24)]~~ months shall:~~

~~1.[a-] Have their permits suspended [in accordance with the provisions of paragraphs 2a and b of this subsection]; and~~

~~2.[b-] May request an administrative hearing by submitting a Request for a Hearing, incorporated by reference in 902 KAR 50:033, to the Milk Safety Branch within ten (10) days.[be required to attend a hearing with the Milk Control Branch and/or other representatives of the Department for Health Services] to show cause why their permit should not be revoked.~~

~~3. The hearing shall be conducted in accordance with KRS 217C.100.~~

~~(5)[(3)] Company or producer association policy. Companies or producer associations having policies requiring producer penalties for offering milk for sale containing antibiotics or other inhibitory substances may have precedence over the enforcement policy outlined in this administrative regulation provided that:~~

~~(a) The policy is filed in writing with the Milk Safety[Control] Branch[.];~~

~~(b) The policy is approved by the Milk Safety[Control] Branch as being as or more stringent than the enforcement procedures listed in this administrative regulation; and[.];~~

~~(c) Evidence is forwarded in writing that company policy was carried out on each positive producer's milk[producer] sample found.[~~

~~(d) The procedures outlined in this administrative regulation apply to both Grade A milk and milk for manufacturing whose permits are suspended because of a positive antibiotic test shall not be allowed to ship milk to a manufacturing or Grade A plant until the procedures outlined in this administrative regulation have been complied with.]~~

Section 2. [Sale of] Adulterated Milk (Excessive Water). (1)(a) Producers whose milk [producers whose] supplies are found to contain over ten (10) percent excessive water shall be issued a notice requiring the supply to be withheld from sale immediately.

(b) Milk from this supply shall not be sold until a sample is collected by a certified sample collector, analyzed in a certified

laboratory, and is negative for excessive water.

(2)(a) Producers whose milk [producers whose] supplies are found to contain more than[over] two (2) percent but less than[te] ten (10) percent excessive water shall be issued a notice of adulteration and the milk supply resampled after the lapse of three (3) days.

(b) Should the resample continue to show more than[over] two (2) percent excessive water, the producer shall be issued a notice requiring the supply to be withheld from sale immediately.

(c) Milk shall not be sold from this supply until a sample is collected by a certified sample collector, analyzed in a certified laboratory, and is negative for excessive water.

(3)(a) Producers whose milk [producers whose] supplies are found to contain between five-tenths (.5) percent to two (2) percent excessive water shall be notified and the milk supply resampled after a lapse of three (3) days.

~~(b)[and] Should the resample continue to have between[following sample show] five-tenths (.5) percent to two (2) percent excessive water, a supervised sample shall be collected by an inspector or other authorized person. The supervised sample shall be used as a future reference point for the accurate freezing point for the supply.~~

(4) Producers who repeatedly have milk samples test positive for excessive water shall be issued a notice of permit suspension.

(5) A producer whose permit has been suspended may, at any time, submit an "Application for Reinstatement of Permit", DFS-7A, incorporated by reference in 902 KAR 50:033, to the Milk Safety Branch.

(6) Suspension of a permit shall remain in effect until a negative excessive water sample is obtained[repeated violation of any of these procedures listed in this administrative regulation may require permit suspension, a written request for reinstatement, and the resample to be collected by the inspector. Also, the sample shall be negative for excessive water prior to reinstatement of the permit].

Section 3. Procedures for Testing Milk Samples for Chemical Contaminants. (1) Raw milk samples shall[will] be collected and analyzed for chemical contaminants a minimum of annually from all bulk tank truck loads [of raw milk] representing Kentucky dairy producers and imported supplies from other states.

(2) Semiannual samples shall[will] be collected from loads having a previous history of chemical contaminants.

(3) Finished milk and milk products manufactured and sold within Kentucky shall[will] also be collected and analyzed[screened].

(4)(a)(2) Whenever a Kentucky inspected bulk tank load of raw milk tests positive for[is found to contain] any level of a chemical contaminant, the individual milk producers represented on the load will be immediately notified by telephone and[,] confirmed by letter.

(b) Milk from each individual producer shall be[, and individually] sampled on a screening basis after notification.

(c) If out-of-state bulk tank loads are found to be contaminated, the shipping state regulatory agency will be immediately notified by telephone and confirmed in writing.

(5)(a)(3) Whenever laboratory results of an individual producer's milk[producer] sample shows a violation of an established tolerance level for a particular chemical contaminant, the supply shall[will] be withheld from the market channels.

(b) The producer shall be notified[Notice shall be] by telephone and confirmed in writing.

(c) An additional follow-up confirming sample shall be collected within ten (10) working days after notification of exclusion.

(d)(4) Continued sampling of an excluded milk producer's supply shall[will] be maintained until an acceptable level of the contaminant is attained.

(e) The frequency of additional sampling may be at seven (7), fifteen (15), thirty (30), or sixty (60) day intervals[, depending on laboratory workload capabilities and levels found in the confirming sample and as experienced from previous test indicators]. Higher levels will be sampled on a more frequent basis[at lesser frequencies].

(f)(5) Whenever levels based on an official sample fall below acceptable tolerance levels, the producer will be notified by telephone and confirmed in writing that the supply is again acceptable for sale.

~~(6)(a) A producer may assist with [Producer assistance in] testing individual cows, feeds, and water supplies at their own expense[may be obtained on an unofficial basis from the Kentucky Diagnostic Laboratories and commercial laboratories].~~

~~(b) Results from producer obtained testing shall be submitted to the Milk Safety Branch.~~

(7) The following procedure will be followed whenever any level of polychlorinated biphenyls (PCBs) [PCB's] are found in a producer's milk supply:

(a) The milk producer shall be notified of the level of PCBs in the milk supply by telephone, confirmed by letter, and the milk supply excluded.

~~(b)[Whenever levels of PCB's are found in a producer's milk supply:] A farm inspection shall be made to determine the type of silo[silo(s)] being used.~~

~~(c)[(b) All producers (showing levels of PCB's in their milk supply) having] Concrete silos coated with cumar[“cumar”] or other sealers containing PCBs shall[PCB's will] be condemned for use with the dairy herd.~~

~~(d)[(e) The following options may be used by] A producer with a condemned silo may:~~

1. Abandon the silo (do not store feed); ~~or[-]~~

2. Recoat the silo. If a silo is recoated, the producer shall notify the Milk Safety[Control] Branch for approval prior to the silo being filled.

~~(e) The producer's milk supply shall[(d) Once a producer is notified that a silo(s) has been condemned, continued use of the silo may require immediate suspension of the milk supply whenever any level of PCB's are found by the regulatory agency.~~

~~(8) The producer's supply will] be placed on a continuous surveillance program until a negative sample is obtained.~~

Section 4. Incorporation by Reference. (1) “M-a-85 (Revision #16)”, December 2018, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Milk Safety Branch, Division of Public Health Protection and Safety, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. [The following material is integrated by reference:

(1) “Standard Methods for Examination of Dairy Products”

(2) A copy of the publication is available for inspection and copying, 8 a.m. until 4:30 p.m., at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.]

STEVEN J. STACK, MD, MBA, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: August 7, 2020

FILED WITH LRC: August 11, 2020 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 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 October 19, 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 October 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; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Julie Brooks or Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes enforcement procedures to prevent the sale of milk and milk products adulterated with antibiotics and other inhibitory substances, chemicals, and excessive water.

(b) The necessity of this administrative regulation: KRS 217C.040 authorizes the cabinet to adopt rules and regulations for sampling and examination of milk and milk products, and regulating all other such matters relating to milk and milk products as may be necessary to protect the public health. This administrative regulation is necessary to ensure antibiotics or other inhibitory substances, chemicals, and excessive water do not adulterate milk and milk products.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 217C.040 authorizes the secretary to adopt rules and regulations regulating such matters relating to milk and milk products as may be necessary to protect the public health.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure all personnel involved in producing, transporting, processing, handling, sampling, examining, grading, and labeling milk and milk products are able to ensure the products are not adulterated with antibiotics and other inhibitory substances, chemicals, or excessive water.

(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 updates the standards and testing methods for testing antibiotics in milk by incorporating M-a-85 (Revision #16) regarding Beta Lactam and Other Test Methods For Use Under Appendix N And Section 6 of the Grade “A” Pasteurized Milk Ordinance (PMO) issued by the Food and Drug Administration through the National Conference on Interstate Milk Shipments (NCIMS) and makes other changes necessary for compliance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure the most up to date testing methods are utilized to protect the supply of milk and milk products.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 217C.040 authorizes the cabinet to adopt rules and regulations for sampling and examination of milk and milk products and regulating all other such matters relating to milk and milk products as may be necessary to protect the public health. KRS 217C.060 authorizes the cabinet to enter into reciprocal agreements with milk control officials of federal or state agencies having standards substantially equivalent to the requirements of this chapter and the regulations of the secretary, which are enforced with equal effectiveness.

(d) How the amendment will assist in the effective administration of the statutes: By incorporating the most up to date standards and test methods to detect antibiotics and other inhibitory substances, chemicals, and excessive water, the Milk Safety Branch can ensure the safety of milk and milk products and is better able to enter into reciprocal agreements with other states.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment to this administrative regulation will impact 470 registered dairy farms, forty-nine (49) registered dairy plants, 202 haulers of raw milk, ninety-two (92) collectors, and twenty (20) distributors.

(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 questions (3) will have to take to comply with this administrative regulation or amendment: All those engaged in the production of

milk and milk products, including haulers of raw milk, will need to be aware of the updated standards and test methods.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): The average cost for a beta lactam test kit is \$326 for 100 count. There would be costs associated with the laboratory analysis as well.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By testing milk and milk products for antibiotics and other inhibitory substances, chemicals, and excessive water, producers can assure they are offering a quality product that is safe for human consumption.

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

(a) Initially: There will be no cost to the cabinet to implement this administrative regulation.

(b) On a continuing basis: There will be no cost to the cabinet 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: The Milk Safety Branch operates with approximately \$1 million from the General Fund. There are no costs associated with this amendment.

(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: An increase in fees or funding is not 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 or increase fees.

(9) TIERING: Is tiering applied? Tiering is not applied. The requirements of this administrative regulation are applied equally to the regulated community.

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 impacts the Milk Safety Branch in the Department for Public Health.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194.050(1), 211.180(1)(c), and 217C.040.

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? This administrative regulation does not generate 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 does not generate revenue.

(c) How much will it cost to administer this program for the first year? The Milk Safety Branch operates with approximately \$1 million from the General Fund. This is an ongoing program and there will be no increase in cost to administer this program.

(d) How much will it cost to administer this program for subsequent years? This is an ongoing program and there will be no increase in cost to administer this program.

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
Department for Public Health
Division of Public Health Protection and Safety
(Amendment)

902 KAR 50:120. Unpasteurized goat milk.

RELATES TO: KRS Chapter 217C

STATUTORY AUTHORITY: KRS [~~194.050,~~] 217C.090

NECESSITY, FUNCTION, AND CONFORMITY: [~~The Cabinet for Human Resources is directed by]~~ KRS 217C.090 authorizes the secretary of the Cabinet for Health and Family Services to issue administrative regulations allowing, upon written recommendation of a physician, the sale of goat milk which has not been pasteurized. This administrative regulation establishes[sets] uniform standards for the production, handling, sampling, examination, and sale, at the farm, of goat's milk which has not been pasteurized, ~~[and for]~~ the inspection of the goat farm facilities,~~;~~ and ~~[provides for]~~ the issuance, revocation, and reinstatement of farm permits.

Section 1. Applicability. (1) This administrative regulation is applicable only to dairy goat farms offering unpasteurized goat milk direct to the consumer.

(2) All other dairy goat farms shall follow the applicable administrative regulation under 902 KAR Chapter 50.

(3) Milk produced in compliance with the requirements of this administrative regulation does not guarantee the absence of pathogenic organisms.

Section 2. Sale Restrictions. (1) The sale of unpasteurized goat milk pursuant to this administrative regulation shall be from on the farm sales only.

(2) Unpasteurized goat milk for direct consumer consumption shall only be sold from a permitted goat producer to persons with a written recommendation from a physician.

(3) A written recommendation statement from a physician shall be:

(a) For a specific individual;

(b) Kept on file at the producer location for one (1) year; and

(c) Subject to inspection by the cabinet.

(4) The producer shall keep on file records stating the volume of unpasteurized goat milk sold and the date of sales to each person having submitted a written recommendation statement.

Section 3. Permits. (1) No person shall sell or offer for sale unpasteurized goat milk, without first obtaining a permit from the cabinet.

(2) Prior to the issuance of a permit to dairy goat producer offering unpasteurized goat milk for sale, the cabinet shall conduct an inspection of the producer's facilities.

(3) If the producer is not in compliance with this administrative regulation:

(a) The permit shall not be issued;

(b) The violations shall be given to the producer in writing; and

(c) The findings posted in a conspicuous place at the farm.

(4) A permit shall be issued if the inspection reveals compliance with this administrative regulation.

(5) Permits shall not be transferable with respect to persons or locations and shall remain valid unless suspended or revoked by the cabinet.

Section 4. Inspection of Goat Farm. (1) Each dairy goat farm offering unpasteurized milk for sale shall be inspected at least one (1) time each two (2) months after the issuance of a permit.

(2) If the violation of any requirement of this administrative regulation is found to exist on an inspection, a second inspection shall be required after the time deemed necessary to remedy the violation, but not before three (3) days.

(3) This second inspection shall be used to determine compliance with the requirements of this administrative regulation.

(4) If a violation of the same requirement of this administrative regulation is found on the second inspection, the permit shall be suspended in accordance with Section 12 of this administrative

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regulation.

(5) A copy of the inspection report shall be:

(a) Provided to the producer or other responsible person;

(b) Posted in a conspicuous place on an inside wall of the milk house; and

(c) Filed with the department.

(6) Every producer offering unpasteurized goat milk for sell shall, upon request of the cabinet, permit access of officially designated persons to all parts of the milk house or facilities to determine compliance with the provisions of this administrative regulation.

Section 5. Animal Health. (1) All milk shall be from herds that are free from tuberculosis and brucellosis.

(a) Tuberculin test. The herd shall be located in an area within the state which meets the requirements of a modified accredited area in which not more than one-half (1/2) of one (1) percent of the goat herd have been found to be infected with tuberculosis. This requirement is in accordance with the "Bovine Tuberculosis Eradication, Uniform Methods and Rules", incorporated by reference in 902 KAR 50:032.

(b) Brucellosis test. The herd shall be located in an area within the state in which the percentage of the goat herd affected with brucellosis does not exceed one (1) percent and the percentage of herds in which brucellosis is present does not exceed five (5) percent. This requirement is in accordance with the "Brucellosis Eradication, Uniform Methods and Rules", incorporated by reference in 902 KAR 50:032.

(2) A certificate identifying test results of each animal, signed by a veterinarian, shall be submitted to the cabinet for each test required by this section.

(3) Failure to comply with the requirements of this section shall result in immediate permit suspension.

Section 6. Sampling Frequency and Required Test. (1) A representative sample of the unpasteurized goat milk shall be collected at the farm by the cabinet each month.

(2) All samples shall be analyzed for bacteria count, somatic cell count, antibiotics, adulteration with water, and temperature in an official laboratory or an officially designated laboratory.

(3) Additional samples shall be collected at the farm by the cabinet at least every two (2) months and analyzed for pathogenic organisms in an official laboratory.

(4) Samples of unpasteurized goat milk may be collected for pesticide analysis as directed by the cabinet.

(5)(a) If two (2) of the last four (4) consecutive bacterial counts, somatic cell counts, or cooling temperatures, taken on separate days, exceed the limit established in Section 7 of this administrative regulation, the cabinet shall send a written notice to the producer;

(b) The notice shall be in effect so long as two (2) of the last four (4) consecutive samples exceed the limit of the standard; and

(c) An additional sample shall be taken within twenty-one (21) days of the sending of the notice, but not before the lapse of three (3) days.

(6) Immediate suspension of permit in accordance with Section 12 of this administrative regulation shall be instituted if the limit established in Section 7 of this administrative regulation is violated by three (3) of the last five (5) bacterial counts, cooling temperatures, or somatic cell counts.

(7)(a) If an antibiotic or pesticide residue test is positive, an investigation shall be made to determine the cause, and the cause shall be corrected;

(b) An additional sample shall be taken and tested for antibiotic or pesticide residues; and

(c) No milk shall be offered for sale until it is shown, by a subsequent sample, to be free of antibiotic or pesticide residues or below the actionable levels established for residues.

(8) If pathogenic organisms are found in the milk, immediate permit suspension shall occur and no milk shall be sold from the farm until at least four (4) consecutive tests taken on separate days contain no pathogenic organisms upon laboratory analysis.

Section 7. Bacterial, Chemical, and Temperature Standards. (1) Unpasteurized goat milk shall be produced, handled, stored, and

packaged to conform to the following standards:

(a) Temperature - cooled to between thirty-six (36) and forty (40) degrees Fahrenheit or less within two (2) hours after milking. Subsequent milkings shall not exceed forty-five (45) degrees Fahrenheit if blended with previous milkings.

(b) Bacterial limits - not to exceed 20,000 per milliliter.

(c) Somatic cells - not to exceed 1,000,000 per milliliter.

(d) Antibiotics - negative.

(e) Coliform - not to exceed ten (10) per milliliter.

(f) Pathogens - negative.

(g) Pesticides and chemical adulterants - negative.

(2) No process, manipulation, or additives shall be applied to the milk, other than appropriate refrigeration, for the purpose of removing or deactivating microorganisms.

Section 8. Sanitation Requirements. (1) The milking area, milk house operations, and equipment shall be located and conducted to prevent contamination of milk, equipment, containers, and utensils.

(2) Abnormal milk.

(a) Goats that show evidence of secreting abnormal milk based upon bacteriological, chemical, or physical examination, shall be milked last or with separate equipment and the milk shall be discarded; and

(b) Goats treated with, or who have consumed chemical, medicinal, or radioactive agents capable of being secreted in the milk and damaging to human health, shall be milked last or with separate equipment and the milk discarded.

(3) Milking barn or parlor construction.

(a) A milking barn or parlor shall be provided on all farms and located to be readily accessible to both the milk room and animal housing area.

(b) The milking barn or parlor shall:

1. Have floors constructed of concrete or equally impervious material;

2. Have walls and ceiling that are water resistant, cleanable, smooth, in good repair, and the ceiling dust tight;

3. Be provided with natural or artificial light, well distributed for day or night milking;

4. Have ventilation and fresh air inlets for air circulation to prevent condensation and excessive odors;

5. Not be overcrowded; and

6. Have dust tight covered boxes or bins, or separate storage facilities for feed.

(c) The interior of the milking barn or parlor shall be kept clean.

(d) Swine and fowl shall be kept out of the milking area.

(4) Goat yard.

(a) The goat yard shall be graded and drained, and shall have no standing pools of water or accumulations of organic wastes;

(b) In loafing or goat housing areas, goat droppings and soiled bedding shall be removed, or clean bedding added, at sufficiently frequent intervals to prevent the soiling of the goat's udder and flanks;

(c) Waste feed shall not be allowed to accumulate;

(d) Manure packs shall be properly drained and shall provide a firm footing; and

(e) Swine shall be kept out of the goat yard.

(5) Milk house or room construction and facilities.

(a) A milk house or room shall:

1. Be a sufficient size for the:

a. Cooling, handling, storing, and packaging of milk; and

b. Washing, sanitizing, and storing of milk containers and utensils, except as provided in subsections (8)(c) and (d) of this section;

2. Have a smooth floor constructed of concrete or equally impervious material graded to drain, and maintained in good repair;

3. Have walls and ceilings constructed of smooth material, in good repair, and well painted or finished in an equally suitable manner;

4. Have adequate natural or artificial light and be well ventilated;

5. Be used for only milk house operations; and

6. Be free of trash, animals, and fowl.

(b) There shall be no direct opening from the milk house or room into a barn, stable, or room used for domestic purposes.

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(c) A direct opening between the milk house and milking barn, or parlor, is permitted if a tight-fitting, self-closing solid door hinged to be single or double acting is provided.

(d) Potable water under pressure shall be piped into the milk house.

(e) The milk house shall be equipped with a two (2) compartment wash vat and adequate hot water heating facilities.

(f) Separate handwashing facilities shall be provided in the milk house with running potable water, soap or detergent, and individual sanitary towels.

(g) Bottling or packaging may be carried out in the milk house or room if it is done in a sanitary manner and by a method that prevents contamination.

(6) Toilet. Every farm shall be provided with one (1) or more toilets, conveniently located and properly constructed, operated, and maintained in a sanitary manner. The waste shall be inaccessible to flies and shall not pollute the soil surface or contaminate the water supply.

(7) Water supply. Water for milk house or room, and milking operations shall be:

(a) From a supply properly located, protected, and operated; and

(b) Easily accessible, adequate, and of a safe, sanitary quality.

(c) No cross-connection shall exist between a safe water supply and an unsafe or questionable water supply, or any other source of pollution.

(d) A well or other source of water shall be located and constructed to prevent underground or surface contamination from a sewerage system, privy, or other source of pollution from reaching the water supply.

(e) Individual water supplies and water supply systems that have been repaired or become contaminated shall be thoroughly disinfected before being placed in use. The supply shall be made free of the disinfectant by pumping to waste before a sample for bacteriological testing shall be collected.

(f) All containers and tanks used in the transportation of water shall be sealed and protected from possible contamination. These containers and tanks shall be subjected to a thorough cleaning and a bacteriological treatment prior to filling with potable water to be used at the farm.

(g) Samples for bacteriological examination shall be taken upon the initial approval of the physical structure, if a repair or alteration of the water supply system has been made, and at least every year.

(8) Utensils and equipment.

(a) All multiuse containers, equipment, and utensils used in the handling, storage, or transportation of milk shall be:

1. Made of smooth, nonabsorbent, corrosion-resistant, nontoxic materials;

2. Constructed for easy cleaning; and

3. In good repair.

(b) Multiple-use woven material shall not be used for straining milk.

(c) All single-service articles shall be manufactured, packaged, transported, and handled in a sanitary manner. Articles intended for single-service use shall not be reused.

(d) Containers for purchasing milk may be provided by the person purchasing the milk, and these containers shall not be washed, sanitized, or stored at the farm.

(e) The product-contact surfaces of all multiuse containers, equipment, and utensils used in the handling, storage, or transportation of milk shall be:

1. Cleaned after each usage; and

2. Sanitized before each use.

(f) After sanitization, all containers, utensils, and equipment shall be handled in a manner to prevent contamination of a product-contact surface.

(g) All containers, utensils, and equipment used in the handling, storage, or transportation of milk, unless stored in sanitizing solutions, shall be stored to assure complete drainage, and protected from contamination prior to use.

(h) Pipeline milking equipment such as milker claws, inflations, weigh jars, meters, milk hoses, milk receivers, tubular coolers, and milk pumps that are designed for mechanical cleaning may be stored in the milking barn or parlor if this equipment is designed, installed,

and operated to protect the product and solution-contact surfaces from contamination at all times.

(9) Insect and rodent control.

(a) Effective measures shall be taken to prevent the contamination of milk, containers, equipment, and utensils by insects, rodents, and chemicals used to control vermin;

(b) Milk houses or rooms shall be free of insects and rodents; and

(c) Surroundings shall be kept neat, clean, and free of conditions that harbor or are conducive to the breeding of insects and rodents.

Section 9. Milking Procedures. (1) All milking shall be done in the milking barn or parlor.

(2) Milking by hand shall be prohibited.

(3) The flanks, udders, and bellies of all milking goats shall be free from visible dirt.

(4) All brushing shall be completed prior to milking.

(5) The udders and teats of all milking goats shall be cleaned and treated with a sanitizing solution prior to milking, and shall be dry before milking.

(6) Hands shall be washed clean and dried with an individual sanitary towel immediately before milking or performing any milk house function, and immediately after the interruption of any of these activities.

(7) All personnel shall wear clean outer garments while milking or handling milk, milk containers, utensils, or equipment.

Section 10. Personnel Health. (1) A person shall not work at the farm in any capacity while having a disease in a communicable form, or being a carrier of a communicable disease.

(2) The owner of a dairy goat farm on which a communicable disease occurs, or who suspects that an employee has contracted a disease in a communicable form, or has become a carrier of a disease, shall notify the cabinet immediately.

(3) If reasonable cause exists to suspect the possibility of transmission of infection from a person involved with the handling of milk, the cabinet shall require the following measures:

(a) The immediate exclusion of that person from milk handling;

(b) The immediate exclusion of the milk supply concerned from distribution and sale; and

(c) Adequate medical and bacteriological examination of the person involved in milk production or handling activities.

Section 11. Trade Secrets. No person shall, in an official capacity, obtain information under the provisions of this administrative regulation including information as to the quantity, quality, source, or disposition of milk or milk products, or results of inspections or tests to use the information to his or her own advantage or to reveal it to an unauthorized person.

Section 12. Permit Suspension, Revocation and Hearing Procedure. In addition to the penalties established in KRS 217C.990, the cabinet may suspend or revoke an individual producer's permit, in accordance with KRS 217C.040.

(1) The cabinet shall, upon notice to the producer, immediately suspend the permit if:

(a) There is reason to believe that an imminent public health hazard exists;

(b) The producer or an employee has interfered with the cabinet in the performance of the cabinet's duties; or

(c) The producer or an employee has falsified records.

(2)(a) A producer whose permit has been suspended three (3) times within a twelve (12) month period for a violation of any type in accordance with this administrative regulation, shall be issued a notice that upon the fourth suspension within a twelve (12) month period the producer shall appear at the cabinet for a conference to show cause why the permit should be reinstated.

(b) Upon the fourth suspension within a twelve (12) month period, the producer shall appear before the cabinet to show cause why the permit should be reinstated.

(c) At this conference the cabinet may set conditions under which the permit may be reinstated.

(d) This permit suspension shall remain in effect until the

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conditions of the conference have been met.

(3) In all other instances of violation of this administrative regulation, the cabinet shall:

(a) Serve on the producer a written notice stating the violation; and

(b) Afford the producer a reasonable opportunity to correct the violation.

(4) A producer whose permit has been suspended may, at any time, submit an "Application for Reinstatement of Permit" incorporated by reference in 902 KAR 50:033.

(5) Suspension of a permit shall remain in effect until the violation has been corrected to the satisfaction of the cabinet.

(6) For serious or repeated violations of any of the requirements of this administrative regulation the producer's permit may be permanently revoked.

(7) Prior to revocation, the cabinet shall notify the producer in writing, stating the reasons for which the permit is subject to revocation and advising the permit shall be permanently revoked at the end of ten (10) days following the service of the notice, unless the "Request for a Hearing", incorporated by reference in 902 KAR 50:033, is filed in accordance with KRS 217C.100. [Permits. (1) No person shall sell or offer for sale unpasteurized goat milk, without first obtaining a permit from the cabinet.

(2) Prior to the issuance of a permit to a goat milk producer, the cabinet shall conduct an inspection of the producer's facilities. A producer not in compliance with this administrative regulation, shall not be issued a permit, and violations shall be given to the producer in writing and posted in a conspicuous place at the farm. A permit may be issued if the inspection reveals compliance with this administrative regulation.

(3) Permits shall not be transferable with respect to persons or locations and shall remain valid unless suspended or revoked by the cabinet.

(4) The cabinet shall suspend the permit, if the cabinet has reason to believe that a public health hazard exists; the permit holder has violated any of the requirements of this administrative regulation; or the permit holder has interfered with the cabinet in the performance of its duties. The cabinet shall in all cases, except if the milk involved creates, or appears to create, an imminent hazard to the public health; or in a case of willful refusal to permit authorized inspection, serve upon the permit holder a written notice of intent to suspend permit. The notice shall specify the violation in question and afford the permit holder reasonable opportunity to correct the violation as may be agreed to by the parties; or in the absence of agreement, fixed by the cabinet before making an order of suspension effective. A suspension of permit shall remain in effect until the violation has been corrected to the satisfaction of the cabinet. Upon notification acceptable to the cabinet by a person whose permit has been suspended, or upon application within forty-eight (48) hours by a person who has been served with a notice of intention to suspend, and in the latter case before suspension, the cabinet shall within seventy-two (72) hours proceed to a hearing to ascertain the facts of the violation or interference. Upon evidence presented at the hearing the hearing officer shall affirm, modify, or rescind the suspension or intention to suspend. Upon repeated violation, the cabinet may revoke the permit following reasonable notice to the permit holder and an opportunity for a hearing.

(5) A producer whose permit has been suspended may make written application for reinstatement of the permit on Form DFS-7A, "Application for Reinstatement of Permit", incorporated by reference. A copy of Form DFS-7A, "Application for Reinstatement of Permit", revised October 1986, is available for inspection and copying, 8 a.m. until 4:30 p.m., Monday through Friday, at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

(6) If the permit suspension has been due to violation of quality or temperature standards, the cabinet, within one (1) week after receipt of Form DFS-7A, "Application for Reinstatement of Permit", shall conduct an inspection and collect a sample to determine if compliance with this administrative regulation has been met. If the inspection and sample analysis indicate compliance with this administrative regulation, permit reinstatement may be made.

(7) If the permit suspension has been due to the presence of a

pathogenic organism in the milk sample, collection and analysis shall continue at the rate of at least two (2) per week for two (2) weeks after conditions of subsection (6) of this section have been met.

Section 2. Sale Restrictions and Volume Control. (1) Unpasteurized goat milk shall be sold from a permitted goat producer only to persons with a written recommendation from a physician.

(2) A written recommendation statement from a physician shall be for a specific individual and shall be kept on file at the producer location and subject to inspection by the cabinet.

(3) Written recommendation statements shall be kept on file by the producer for at least one (1) year.

(4) The producer shall keep on file records stating volume of unpasteurized goat milk sold and date of sales to each person having submitted a written recommendation statement.

(5) All sale of unpasteurized goat milk regulated under this administrative regulation shall be from on-the-farm sales only.

Section 3. Inspection of Goat Farm. (1) Inspection of each goat farm shall be made prior to the issuance of a permit.

(2) Inspection of each goat farm shall be made at least one (1) time each two (2) months after the issuance of a permit.

(3) If the violation of any requirement [in Section 6] of this administrative regulation is found to exist on an inspection, a second inspection shall be required after the time deemed necessary to remedy the violation, but not before three (3) days. This second inspection shall be used to determine compliance with the requirements of Section 6 of this administrative regulation. A violation of the same requirement of Section 6 of this administrative regulation on the second inspection shall call for permit suspension in accordance with Section 1(4) of this administrative regulation.

(4) One (1) copy of the inspection report shall be provided the operator, or other responsible person, or be posted in a conspicuous place on an inside wall of the milk house. The inspection report shall not be defaced and shall be made available to the cabinet upon request. An identical copy of the inspection report shall be filed with the records of the cabinet.

(5) Every goat producer shall, upon request of the cabinet, permit access of officially designated persons to all parts of the milk house or facilities to determine compliance with the provisions of this administrative regulation.

(6) No person shall, in an official capacity, obtain information under the provisions of this administrative regulation (including information as to the quantity, quality, source, or disposition of milk or milk products, or results of inspections or tests to use the information to his own advantage or to reveal it to an unauthorized person.

Section 4. Sampling Frequency and Required Test. (1) A representative sample of each producer's milk shall be collected at the farm by the cabinet each month and analyzed in an official laboratory for bacteria count, somatic cell count, antibiotics, adulteration with water, and temperature.

(2) Additional samples shall be collected at the farm by the cabinet at least every two (2) months and analyzed for pathogenic organisms in an official laboratory as directed by the cabinet.

(3) Samples of raw milk may be collected for pesticide analysis as directed by the cabinet.

(4) If two (2) of the last four (4) consecutive bacterial counts, somatic cell counts, or cooling temperatures, taken on separate days, exceed the limit of the standard, the cabinet shall send a written notice to the person concerned. The notice shall be in effect so long as two (2) of the last four (4) consecutive samples exceed the limit of the standard. An additional sample shall be taken within twenty-one (21) days of the sending of the notice, but not before the lapse of three (3) days. Immediate suspension of permit in accordance with Section 1(4) of this administrative regulation or court action shall be instituted if the standard is violated by three (3) of the last five (5) bacterial counts, cooling temperatures, or somatic cell counts.

(5) If an antibiotic or pesticide residue test is positive, an investigation shall be made to determine the cause, and the cause shall be corrected. An additional sample shall be taken and tested for antibiotic or pesticide residues. No milk shall be offered for sale until

it is shown, by a subsequent sample, to be free of antibiotic or pesticide residues or below the actionable levels established for residues.

(6) If pathogenic organisms are found in the milk, immediate permit suspension shall occur and no milk shall be sold from the farm until at least four (4) consecutive tests taken on separate days contain no pathogenic organisms upon laboratory analysis.

(7) All samples shall be analyzed in an official laboratory or an officially designated laboratory. Analytical procedures shall be in compliance with "Standard Methods for the Examination of Dairy Products" or "Official Methods of Analysis" of the Association of Official Analytical Chemists. Methods for determining quality testing shall be those described in the "Standard Methods for the Examination of Dairy Products", 16th Edition, 1992, published by the American Public Health Association, and the "Official Methods of Analysis", 15th Edition, 1990, Volumes I and II, published by the Association of Official Analytical Chemists, Inc., unless otherwise approved by the cabinet. Copies of the "Standard Methods for the Examination of Dairy Products", revised 1992, incorporated by reference, and the "Official Methods of Analysis", revised 1990, incorporated by reference, are available for inspection and copying, 8 a.m. until 4:30 p.m., Monday through Friday, at the Office of the Commissioner, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

Section 5. Bacterial, Chemical, and Temperature Standards. (1) Unpasteurized goat milk shall be produced, handled, stored, and packaged to conform with the following standards:

(a) Temperature – cooled to forty-five (45) degrees Fahrenheit or less within two (2) hours after milking. Subsequent milkings shall not exceed fifty (50) degrees Fahrenheit if blended with previous milkings.

(b) Bacterial limits – not to exceed 20,000 per ml.

(c) Somatic cells – not to exceed 1,000,000 per ml.

(d) Antibiotics – negative.

(e) Coliform – not to exceed ten (10) per ml.

(f) Pathogens – negative.

(g) Pesticides and chemical adulterants – negative.

(2) No process, manipulation, or additives shall be applied to the milk, other than appropriate refrigeration, for the purpose of removing or deactivating microorganisms.

Section 6. Sanitation Requirements. (1) Abnormal milk. Goats, which show evidence of the secretion of abnormal milk based upon bacteriological, chemical, or physical examination, shall be milked last or with separate equipment and the milk shall be discarded. Goats treated with, or goats which have consumed chemical, medicinal, or radioactive agents which are capable of being secreted in the milk and which, in the judgment of the cabinet may be damaging to human health, shall be milked last or with separate equipment and the milk disposed of as the cabinet may direct.

(2) Milking barn or parlor construction. A milking barn or parlor shall be provided on all farms in which the milking herd shall be housed during milking operations. The areas used for milking purposes shall:

(a) Have floors constructed of concrete or equally impervious material;

(b) Have walls and ceiling which are smooth, painted or finished in an approved manner, in good repair, and ceiling dust tight;

(c) Be provided with natural or artificial light, well distributed for day or night milking;

(d) Provide sufficient air space and air circulation to prevent condensation and excessive odors;

(e) Not be overcrowded; and

(f) Have dust tight covered boxes or bins, or separate storage facilities for ground, chopped, or concentrated feed.

(3) Milking barn or parlor cleanliness. The interior shall be kept clean. Floors, walls, ceilings, windows, pipelines, and equipment shall be clean and free of filth or litter. Swine and fowl shall be kept out of the milking area.

(4) Goat yard. The goat yard shall be graded and drained, and shall have no standing pools of water or accumulations of organic wastes. In loafing or goat housing areas, goat droppings and soiled

bedding shall be removed, or clean bedding added, at sufficiently frequent intervals to prevent the soiling of the goat's udder and flanks. Waste feed shall not be allowed to accumulate. Manure packs shall be properly drained and shall provide a firm footing. Swine shall be kept out of the goat yard.

(5) Milk house or room construction and facilities. A milk house or room shall be a sufficient size for the cooling, handling, storing, and packaging of milk; and the washing, sanitizing, and storing of milk containers and utensils, except as provided for in subsection (12) of this section.

(a) The milk house shall have a smooth floor constructed of concrete or equally impervious material graded to drain and maintained in good repair. Liquid waste shall be disposed of in a sanitary manner; all floor drains shall be accessible and shall be trapped if connected to a sanitary sewer system.

(b) Walls and ceilings shall be constructed of smooth material, in good repair, and well painted or finished in an equally suitable manner.

(c) The milk house shall have adequate natural or artificial light and be well ventilated.

(d) The milk house shall be used for only milk house operations; there shall be no direct opening into a barn, stable, or room used for domestic purposes. A direct opening between the milk house and milking barn, or parlor is permitted if a tight-fitting, self-closing solid door hinged to be single or double acting is provided.

(e) Potable water under pressure shall be piped into the milk house.

(f) The milk house shall be equipped with a two (2) compartment wash vat and adequate hot water heating facilities.

(g) Bottling or packaging may be carried out in the milk room if it is done in a sanitary manner and by a method which prevents contamination.

(6) Milk house or room cleanliness. The floors, walls, ceilings, windows, tables, shelves, cabinets, wash vats, nonproduct contact surfaces of milk containers, utensils, and equipment shall be clean. Only articles directly related to milk room activities shall be permitted in the milk room. The milk room shall be free of trash, animals, and fowl.

(7) Toilet. Every farm shall be provided with one (1) or more toilets, conveniently located and properly constructed, operated, and maintained in a sanitary manner. The waste shall be inaccessible to flies and shall not pollute the soil surface or contaminate the water supply.

(8) Water supply. Water for milk house and milking operations shall be from a supply properly located, protected, and operated; and shall be easily accessible, adequate, and of a safe, sanitary quality.

(a) No cross-connection shall exist between a safe water supply and an unsafe or questionable water supply, or any other source of pollution.

(b) The well or other source of water shall be located and constructed to prevent underground or surface contamination from a sewerage systems, privy, or other source of pollution from reaching the water supply.

(c) Individual water supplies and water supply systems which have been repaired or become contaminated shall be thoroughly disinfected before being placed in use. The supply shall be made free of the disinfectant by pumping to waste before a sample for bacteriological testing shall be collected.

(d) All containers and tanks used in the transportation of water shall be sealed and protected from possible contamination. These containers and tanks shall be subjected to a thorough cleaning and a bacteriological treatment prior to filling with potable water to be used at the farm.

(e) Samples for bacteriological examination shall be taken upon the initial approval of the physical structure, if a repair or alteration of the water supply system has been made, and at least every year.

(9) Utensils and equipment construction. All multiuse containers, equipment, and utensils used in the handling, storage, or transportation of milk shall be made of smooth, nonabsorbent, corrosion resistant, nontoxic materials, and shall be constructed for easy cleaning. All containers, utensils, and equipment shall be in good repair. All milk pails used for hand milking and stripping shall be seamless and of the hooded type. Multiple-use woven material shall

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not be used for straining milk. All single-service articles shall be manufactured, packaged, transported, and handled in a sanitary manner and shall comply with requirements of subsection (14) of this section. Articles intended for single-service use shall not be reused. Containers for purchasing milk may be provided by the person purchasing the milk; in which case, the containers shall not be washed, sanitized, or stored at the farm.

(10) Utensils and equipment cleaning. The product-contact surfaces of all multiuse containers, equipment, and utensils used in the handling, storage, or transportation of milk shall be cleaned after each usage.

(11) Utensils and equipment sanitation. The product contact surfaces of all multiuse containers, equipment, and utensils used in the handling, storage, or transportation of milk shall be sanitized before each use.

(12) Utensils and equipment storage. All containers, utensils, and equipment used in the handling, storage, or transportation of milk, unless stored in sanitizing solutions, shall be stored to assure complete drainage, and protected from contamination prior to use. Pipeline milking equipment such as milker claws, inflations, weigh jars, meters, milk hoses, milk receivers, tubular coolers, and milk pumps which are designed for mechanical cleaning may be stored in the milking barn or parlor if this equipment is designed, installed, and operated to protect the product and solution-contact surfaces from contamination at all times.

(13) Utensils and equipment handling. After sanitization, all containers, utensils, and equipment shall be handled in a manner to prevent contamination of a product-contact surface.

(14) Milking flanks, udders, and teats. Milking shall be done in the milking barn or parlor. The flanks, udders, and bellies of all milking goats shall be free from visible dirt. All brushing shall be completed prior to milking. The udders and teats of all milking goats shall be cleaned and treated with a sanitizing solution prior to milking, and shall be dry before milking. Wet hand milking is prohibited.

(15) Milking surcingles, milk stools, and antikickers. Surcingles, milk stools, and antikickers shall be kept clean and stored above the floor.

(16) Protection from contamination. The milking area, milk house operations, and equipment shall be located and conducted to prevent contamination of milk, equipment, containers, and utensils. No milk shall be strained, poured, transferred, or stored unless it is properly protected from contamination. Hand capping of bottles, containers, or packages may be done if volume does not cause this to be impractical and protection from contamination is maintained.

(17) Personnel handwashing facilities. Adequate handwashing facilities shall be provided in the milk house with running potable water, soap or detergent, and individual sanitary towels.

(18) Personnel cleanliness. Hands shall be washed clean and dried with an individual sanitary towel immediately before milking or performing any milk house function, and immediately after the interruption of any of these activities. Milkers shall wear clean outer garments while milking or handling milk, milk containers, utensils, or equipment.

(19) Cooling. Raw milk shall be cooled to forty-five (45) degrees Fahrenheit or less within two (2) hours after milking. The blend temperature after the first milking and subsequent milkings shall not exceed fifty (50) degrees Fahrenheit.

(20) Insect and rodent control. Effective measures shall be taken to prevent the contamination of milk, containers, equipment, and utensils by insects, rodents, and chemicals used to control vermin. Milk rooms shall be free of insects and rodents. Surroundings shall be kept neat, clean, and free of conditions which might harbor or be conducive to the breeding of insects and rodents.

Section 7. Animal Health. (1) All milk shall be from herds which are free from tuberculosis and brucellosis.

(a) Tuberculin test. The herd shall be located in an area within the state which meets the requirements of a modified accredited area in which not more than one-half (1/2) of one (1) percent of the goat herd have been found to be infected with tuberculosis. This requirement is in accordance with the "Bovine Tuberculosis Eradication, Uniform Methods and Rules", February 3, 1989, for establishing and maintaining tuberculosis-free herds of goat and

modified accredited areas approved by the Animal and Plant Health Inspection Service, Veterinary Services, U. S. Department of Agriculture. If the herd is not located in a modified accredited area, it shall be tested annually under the jurisdiction of the program. Additions to the herd shall be from a modified accredited area or from herds meeting the requirements of this administrative regulation. Copies of the "Bovine Tuberculosis Eradication, Uniform Methods and Rules", incorporated by reference, are available for inspection and copying, 8 a.m. until 4:30 p.m., Monday through Friday, at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621. This publication may also be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., 20402.

(b) Brucellosis test. The herd shall be located in an area within the state in which the percentage of the goat herd affected with brucellosis does not exceed one (1) percent and the percentage of herds in which brucellosis is present does not exceed five (5) percent. This requirement is in accordance with the "Brucellosis Eradication, Uniform Methods and Rules", May 6, 1992, for establishing and maintaining certified brucellosis-free areas approved by the Animal and Plant Health Inspection Service, Veterinary Services, U. S. Department of Agriculture. If the herd is located in an area that does not meet these requirements, the herd shall be blood-tested annually or milk-ring-tested semiannually. Additions to the herd shall be from herds meeting the requirements of this administrative regulation. Copies of the "Brucellosis Eradication, Uniform Methods and Rules", incorporated by reference, are available for inspection and copying, 8 a.m. until 4:30 p.m., Monday through Friday, at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621. This publication may also be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., 20402.

(2) The cabinet shall require physical, chemical, or bacteriological tests necessary to prevent the spread of diseases or the contamination of the milk with pathogenic organisms.

(3) A certificate identifying test results of each animal, signed by a veterinarian, shall be submitted to the cabinet for each test required by this section.

(4) Failure to comply with the requirements of this section shall result in immediate permit suspension.

Section 8. Milk which May be Sold. Goat milk sold at a farm permitted under this administrative regulation shall be limited to milk produced at the particular farm and no milk shall be transferred from one farm to another or delivered from the farm to another place or location for sale.

Section 9. Construction Plan. Properly prepared plans for all milking barns, parlors, and milk houses shall be submitted to the cabinet for written approval prior to a permit being issued.

Section 10. Personnel Health. No person affected with a disease in a communicable form, or while a carrier of disease, shall work at the farm in any capacity which brings him in contact with the handling, storage, or sale of milk, containers, equipment, and utensils. No farm operator shall employ in any capacity a person suspected of having a disease in a communicable form, or of being a carrier of a communicable disease. An owner of a dairy farm on which a communicable disease occurs, or who suspects that an employee has contracted a disease in a communicable form, or has become a carrier of a disease, shall notify the cabinet immediately.

Section 11. Procedure if Infection is Suspected. If reasonable cause exists to suspect the possibility of transmission of infection from a person concerned with the handling of milk, the cabinet shall require any or all of the following measures:

- (1) The immediate exclusion of that person from milk handling;
- (2) The immediate exclusion of the milk supply concerned from distribution and sale;
- (3) Adequate medical and bacteriological examination of the person, involved in milk production or handling activities.

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~~Section 12. Disclaimer. Milk produced in compliance with the requirements of this administrative regulation does not assure the absence of pathogenic organisms.~~

~~Section 13. Hearing Procedure. (1) Upon notification of intent to suspend or upon suspension, the producer may request a hearing. The request for a hearing shall be made in writing on Form DFS-8, "Request for Hearing", revised January 1989, to the cabinet within ten (10) days after notification by the cabinet of an enforcement proceeding. Form DFS-8, "Request for Hearing", is incorporated by reference and may be viewed or obtained, 8 a.m. until 4:30 p.m., Monday through Friday, at the Office of the Commissioner of Health Services, 275 East Main Street, Frankfort, Kentucky 40621.~~

~~(2) The cabinet shall notify the requesting party in writing of the:~~

~~(a) Name of the hearing officer; and~~

~~(b) Time and place of the hearing;~~

~~(3) All parties shall be allowed a reasonable time to prepare for the hearing, including the right to:~~

~~(a) Be represented by counsel;~~

~~(b) Present evidence on his behalf; and~~

~~(c) Cross-examine witnesses.~~

~~(4) A transcript of the hearing shall not be made unless requested. The expense of transcribing the hearing shall be the responsibility of the requesting party.~~

~~(5) The hearing officer shall make written findings of fact and conclusions of law, and render a decision based upon the evidence presented. The decision of the hearing officer shall be the final decision of the cabinet.]~~

STEVEN J. STACK, MD, MBA, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: August 7, 2020

FILED WITH LRC: August 11, 2020 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 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 October 19, 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 October 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; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Julie Brooks or Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes uniform standards for the production, handling, sampling, examination, and sale, at the farm, of goat's milk which has not been pasteurized, and for the inspection of the goat farm facilities, and the issuance, revocation, and reinstatement of farm permits.

(b) The necessity of this administrative regulation: KRS 217C.090 authorizes the cabinet to issue administrative regulations allowing the sale, upon written recommendation of a physician, of goat's milk that has not been pasteurized.

(c) How this administrative regulation conforms to the content

of the authorizing statutes: This administrative regulation establishes the standards for the production, handling, sampling, examination, and sale of unpasteurized goat's milk.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures unpasteurized goat milk, if produced in a safe and sanitary manner, will reduce the likely spread of infection, and that those individuals consuming unpasteurized goat milk are doing so only under the recommendation of a physician.

(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 clarifies that this administrative regulation is applicable only to those dairy goat milk producers offering unpasteurized milk directly to the consumer, updates the permit suspension, revocation and hearing procedures, and makes other changes necessary to comply with KRS Chapter 13A drafting rules.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure dairy goat farmers offering milk directly to the consumer are following the most current requirements for the safe and sanitary milking of dairy goats.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 217C.090 authorizes the sale of unpasteurized goat milk directly to the consumer who has a written recommendation from a physician.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation ensures the safe and sanitary milking of goats for the sale of unpasteurized milk.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: At this time, there are no permitted dairy goat farms offering unpasteurized milk directly to the consumer from the farm.

(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 questions (3) will have to take to comply with this administrative regulation or amendment: While there are currently no dairy goat farms offering unpasteurized milk directly to the consumer, should the cabinet receive an application for a permit, the producer would need to be aware of the requirements for recordkeeping, and the safe and sanitary production of goat's milk.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): There are no known costs associated with this administrative regulation at this time. An individual interested in a permit to sell unpasteurized goat milk directly to the consumer may incur costs between \$630 to \$2730 per goat, depending on the size of the dairy goat milking operation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Farms offering unpasteurized goat milk directly to the consumer will be offering a product in a safe and sanitary manner.

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

(a) Initially: This is an ongoing program, there are no initial costs.

(b) On a continuing basis: This is an ongoing program that will not impact costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Milk Safety Branch operates on a budget of approximately \$1 million in state general fund dollars.

(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: An increase in fees and funding is not necessary to implement the

amendment to this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. There are no fees associated with the amendment to this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied. All those interested in offering unpasteurized goat milk directly to the consumer would be required to follow the requirements of this administrative regulation.

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 impacts the Milk Safety Branch in the Division of Public Health Protection and Safety within the Department for Public Health.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 217C.090.

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? This administrative regulation does not generate 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 does not generate revenue.

(c) How much will it cost to administer this program for the first year? The Milk Safety Branch operates on approximately \$1 million in state general fund monies. There will be no impact on costs to implement this administrative regulation in the first year.

(d) How much will it cost to administer this program for subsequent years? This is an ongoing program that will have no impact on 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:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(Amendment)

921 KAR 3:035. Certification process.

RELATES TO: 7 C.F.R. 271.2, 273.1, 273.2, 273.4, 273.5, 273.10, 273.11, 273.12, 273.14, 274, 280.1, 7 U.S.C. 2014, 2015(d), 42 U.S.C. 5122, 5179

STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. 271.4

NECESSITY, FUNCTION, AND CONFORMITY: 7 C.F.R. 271.4 requires the Cabinet for Health and Family Services to administer a Supplemental Nutrition Assistance Program (SNAP) within the state. KRS 194A.050(1) requires the secretary to promulgate 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 the proper administration of the cabinet and its programs. This administrative regulation establishes the certification process used by the cabinet in the administration of SNAP.

Section 1. Eligibility and Benefit Levels. (1) Eligibility and benefit levels shall be determined by the cabinet by considering a

household's circumstance for the entire period for which each household is certified.

(2) Certification criteria shall be applicable to all households.

(3) Certain households shall require special or additional certification procedures as established in Section 5 of this administrative regulation.

Section 2. Certification Periods. (1) In accordance with 7 C.F.R. 273.10(f), the cabinet shall establish a definite period of time within which a household shall be eligible to receive benefits.

(2) Except as provided in subsection (3) of this section, a household shall be certified for:

(a) Four (4) months if the household contains an able-bodied adult without dependent (ABAWD) in accordance with 7 U.S.C. 2015(d);

(b) Twelve (12) [~~Six (6)~~] months if the household includes a member who is not ABAWD or elderly or disabled with no earned income; or

(c) Twenty-four (24) [~~Twelve (12)~~] months if all household members:

1. Are elderly or have a disability as defined in 921 KAR 3:010; and

2. Have no earned income.

(3)(a) A household shall be certified for one (1) or two (2) months if the household meets criteria to:

1. Expedite benefits in accordance with 7 C.F.R. 273.2(i)(1); and

2. Postpone verification.

(b) At the end of a one (1) or two (2) month certification, a household may be recertified for a four (4), twelve (12) [~~six (6)~~], or twenty-four (24) [~~twelve (12)~~] month certification as established in subsection (2) of this section.

(4)(a) In accordance with 7 C.F.R. 273.12, a household certified for twelve (12) or twenty-four (24) months in accordance with subsection (2)(b) or (c) of this section; ~~which reports a change during the household's initial five (5) months of the certification period of earned income or a new member who is not elderly or disabled;~~ shall complete an interim report using the FS-2, MID [SNAP] REVIEW NOTICE, during the sixth month or twelfth month of the household's certification period, respectively.

(b) If a household fails to return a completed FS-2 or the required verification, the cabinet shall take action in accordance with 7 C.F.R. 273.12(a)(5).

Section 3. Certification Notices to Households. In accordance with 7 C.F.R. 273.10(g), the cabinet shall provide an applicant with one (1) of the following written notices as soon as a determination is made, but no later than thirty (30) days after the date of the initial application:

- (1) Notice of eligibility;
- (2) Notice of denial; or
- (3) Notice of pending status.

Section 4. Application for Recertification. The cabinet shall process an application for recertification as established in 921 KAR 3:030, Section 1, as follows:

(1) If a household files the application:

(a) By the 15th day of the last month of the certification, the cabinet shall:

1. Allow the household to return verification or complete a required action through the last calendar day of the application month; and

2. Provide uninterrupted benefits, if the household is otherwise eligible; or

(b) After the 15th day, but prior to the last day of the last month of the certification, the cabinet shall allow the household thirty (30) days to return verification or complete a required action; or

(2) If the household fails to provide information required for the cabinet to process the application for recertification within a time period established in subsection (1) of this section, the cabinet shall take action in accordance with 7 C.F.R. 273.14(e)(2).

Section 5. Certification Process for Specific Households.

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Pursuant to 7 C.F.R. 273.11, certain households have circumstances that are substantially different from other households and therefore shall require special or additional certification procedures. (1) A household with a self-employed member shall have its case processed as established in this subsection.

(a) Income shall be annualized over a twelve (12) month period, if self-employment income:

1. Represents a household's annual income; or
2. Is received on a monthly basis that represents a household's annual support.

(b) Self-employment income, which is intended to meet the household's needs for only part of the year, shall be averaged over the period of time the income is intended to cover.

(c) Income from a household's self-employment enterprise that has been in existence for less than one (1) year shall be averaged over the period of time the business has been in operation and a monthly amount projected over the coming year.

(d) The cabinet shall calculate the self-employment income on anticipated earnings if the:

1. Averaged annualized amount does not accurately reflect the household's actual circumstances; and
2. Household has experienced a substantial increase or decrease in business.

(2) A household with a boarder shall have its case processed as established in this subsection.

(a) Income from the boarder shall:

1. Be treated as self-employment income; and
2. Include all direct payments to the household for:
 - a. Room;
 - b. Meals; and
 - c. Shelter expenses.

(b) Deductible expenses shall include:

1. Cost of doing business;
2. Twenty (20) percent of the earned income; and
3. Shelter costs.

(3) A household with a member ineligible due to an intentional program violation, or failure to comply with the work requirements or work registration requirements, shall be processed as established in this subsection.

(a) Income and resources of the ineligible member shall be counted in their entirety as income available to the remaining household members.

(b) Remaining household members shall receive standard earned income, medical, dependent care, and excess shelter deductions.

(c) The ineligible member shall not be included if:

1. Assigning benefit levels;
2. Comparing monthly income with income eligibility standards; and
3. Comparing household resources with resource eligibility standards.

(4) A household with a member ineligible due to failure to provide a Social Security number[~~-, delinquency in payment of court-ordered child support through the Department of Income Support, Child Support Enforcement Program in accordance with 924 KAR 3:025, Section 3(14),]~~ or ineligible alien status[~~-]~~ shall be processed as established in this subsection.

(a) All resources of an ineligible member shall be considered available to the remaining household members.

(b) A pro rata share, as established in 7 C.F.R. 273.11(c)(2)(ii), of the ineligible member's income shall be attributed to remaining household members.

(c) The twenty (20) percent earned income deduction shall be applied to the pro rata share of earnings.

(d) The ineligible member's share of dependent care and shelter expenses shall not be counted.

(e) The ineligible member shall not be included as established in subsection (3)(c) of this section.

(5) A household with a nonhousehold member shall be processed as established in this subsection.

(a) With the exception of an ineligible member, the income and resources of a nonhousehold member shall not be considered

available to the household with whom they reside.

(b) If the earned income of a household member and a nonhousehold member are combined into one (1) wage, the cabinet shall:

1. Count that portion due to the household as earned income, if identifiable; or

2. Count a pro rata share of earned income, if the nonhousehold member's share cannot be identified.

(c) A nonhousehold member shall not be included in the household size, if determining the eligibility and benefits for the household.

(6) The cabinet shall process the case of a drug or alcoholic treatment program resident, as established in 7 C.F.R. 271.2, as established in this subsection.

(a) An eligible household shall include:

- 1.a. A narcotic addict; or
- b. An alcoholic; and
2. A child of the narcotic addict or alcoholic.

(b) Certification shall be accomplished through use of the treatment program's authorized representative.

(c) SNAP processing standards and notice provisions shall apply to a resident recipient.

(d) A treatment program shall notify the cabinet of a change in a resident's circumstance.

(e) Upon departure of the treatment program, the resident shall be eligible to receive remaining benefits, if otherwise eligible.

(f) The treatment program shall be responsible for knowingly misrepresenting a household circumstance.

(7) The case processing procedures established in this subsection shall apply to residents of a group living arrangement, as defined in 7 C.F.R. 271.2.

(a) Application shall be made by a resident or through use of the group living arrangement's authorized representative.

(b) Certification provisions applicable to all other households shall be applied.

(c) Responsibility for reporting changes shall depend upon who files the application:

1. If a resident applies, the household shall report a change in household circumstance to the cabinet; or

2. If the group living arrangement acts as authorized representative, the group living arrangement shall report a change in household circumstance.

(d) Eligibility of the resident shall continue after departure from the group living arrangement, if otherwise eligible.

(e) Unless the household applied on its own behalf, the group living arrangement shall be responsible for knowingly misrepresenting a household circumstance.

(8) A case of a resident in a shelter for battered women and children shall be processed as established in this subsection.

(a) The shelter shall:

1. Have FNS authorization to redeem SNAP benefits at wholesalers; or
2. Meet the federal definition of a shelter as defined in 7 C.F.R. 271.2.

(b) A shelter resident shall be certified for benefits as established in 7 C.F.R. 273.11(g).

(c) The cabinet shall promptly remove the resident from the former household's case, upon notification.

(9) The case of an SSI recipient shall be processed as established in this subsection.

(a) An application may be filed at the:

1. Social Security Administration (SSA) Office; or
2. Local Department for Community Based Services office.

(b) The cabinet shall not require an additional interview for applications filed at the SSA.

(c) The cabinet shall obtain all necessary verification prior to approving benefits.

(d) Certification periods shall conform to Section 2 of this administrative regulation.

(e) A household change in circumstance shall conform to Section 7 of this administrative regulation.

(10) A household with a member who is on strike shall have its eligibility determined by:

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(a) Comparing the striking member's income the day prior to the strike, to the striker's current income;

(b) Adding the higher of the prestrike income or current income to other current household income; and

(c) Allowing the appropriate earnings deduction.

(11) Sponsored aliens.

(a) Income of a sponsored alien, as defined in 7 C.F.R. 273.4(c)(2), shall be:

1. Deemed income from a sponsor and sponsor's spouse, which shall:

a. Include total monthly earned and unearned income; and

b. Be reduced by:

(i) The twenty (20) percent earned income disregard, if appropriate; and

(ii) The SNAP gross income eligibility limit for a household equal in size to the sponsor's household;

2. Subject to appropriate income exclusions as established in 921 KAR 3:020, Section 3; and

3. Reduced by the twenty (20) percent earned income disregard, if appropriate.

(b) If the sponsor is financially responsible for more than one (1) sponsored alien, the sponsor's income shall be pro-rated among each sponsored alien.

(c) A portion of income, as established in paragraph (a) of this subsection, of the sponsor and of the sponsor's spouse shall be deemed unearned income until the sponsored alien:

1. Becomes a naturalized citizen;

2. Is credited with forty (40) qualifying quarters of work;

3. Meets criteria to be exempt from deeming, in accordance with 7 C.F.R. 273.4(c)(3);

4. Is no longer considered lawfully admitted for permanent residence and leaves the United States; or

5. Dies, or the sponsor dies.

(d) In accordance with 7 U.S.C. 2014(i)(2)(E), deeming requirements shall not apply to sponsored alien children under eighteen (18) years of age.

Section 6. Disaster Certification. The cabinet shall distribute emergency SNAP benefits, pursuant to 42 U.S.C. 5122, to a household residing in a county determined to be a disaster area in accordance with 42 U.S.C. 5179 and 7 C.F.R. 280.1.

Section 7. Reporting Changes. (1) Within ten (10) days of the end of the month in which the change occurs, a household shall report a change that causes:

(a) The household's gross monthly income to exceed 130 percent of poverty level based on household size; or

(b) A household member, who does not have an exemption from work requirements, as established in 921 KAR 3:025, Section 3(8)(b), to work less than twenty (20) hours per week.

(2) An applying household shall report a change related to its SNAP eligibility and benefits:

(a) At the certification interview; or

(b) Within ten (10) days of the date of the notice of eligibility, if the change occurs after the interview, but prior to receipt of the notice.

Section 8. Incorporation by Reference. (1) The "FS-2, MID [SNAP] REVIEW NOTICE", 8/20 [9/46], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

MARTA MIRANDA-STRAUB, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: July 16, 2020

FILED WITH LRC: July 29, 2020 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be October 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 October 19, 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 October 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; 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 the certification process used by the cabinet in the administration of the Supplemental Nutrition Assistance Program (SNAP).

(b) The necessity of this administrative regulation: This administrative regulation establishes the certification process necessary to determine SNAP eligibility.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by establishing the certification process for SNAP eligibility determination.

(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 certification process for SNAP.

(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 extends SNAP certification periods, potentially to decrease applicant or system error. For households including elderly members or members with a disability and no earned income, the certification period is changed from twelve (12) months to twenty-four (24) months. For households including members who are not able-bodied adults without dependents or elderly or disabled with no earned income, the certification period is changed from six (6) months to twelve (12) months. The certification period for households with an able-bodied adult without dependents will remain at four (4) months. The amendment also removes reference to the disqualification of a household member who is a non-custodial parent with child support arrears as this program disqualification no longer exists. The amendment incorporates the 8/20 revision of form FS-2, MID REVIEW NOTICE, which amends the title of the form and makes minor technical amendments.

(b) The necessity of the amendment to this administrative regulation: This regulatory amendment is necessary to decrease the possibility of certification errors that could jeopardize the food security of Kentucky residents who participate in the SNAP program and assists in department caseload management. The lack of food is an imminent threat to public health, safety, and welfare and assistance in purchasing food and reducing program error is especially necessary to many affected by the COVID-19 pandemic.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by aligning SNAP certification periods with state options found in Public Law 110-246 and 7 C.F.R. 273.2.

(d) How the amendment will assist in the effective

administration of the statutes: The amendment will assist in the effective administration of the statutes through its modification of certification periods to improve the overall administration of SNAP and ensure assistance in purchasing food is available to those eligible.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All households participating in SNAP will be affected by this regulatory amendment. In January 2020, there were 218,060 active SNAP households.

(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: This regulatory amendment will require affected SNAP households to submit an interim report during their extended certification time periods.

(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 SNAP households affected by the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Although an interim report is required, affected households will have a longer period of time before program recertification. This should result in less hardship associated with participating in SNAP and less chance of applicant or system error.

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

(a) Initially: The initial cost for system design changes to implement this regulatory amendment is \$94,000.00.

(b) On a continuing basis: Implementation of this regulatory amendment will require mailing costs for issuing interim report forms to SNAP households, but will decrease the administrative burden on staff.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: SNAP benefits are 100% federally funded. Administrative functions are funded at a 50% state and 50% federal match rate. The funding has been appropriated in the enacted budget.

(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 to implement this administrative regulation 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. 7 C.F.R. 271.2, 273.1, 273.2, 273.4, 273.5, 273.10, 273.11, 273.12, 273.14, 274, 280.1, 7 U.S.C. 2014, 2015, 42 U.S.C. 5122, 5179

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

3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate.

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. Not

applicable.

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. 7 C.F.R. 271.2, 273.1, 273.2, 273.4, 273.5, 273.10, 273.11, 273.12, 273.14, 274, 280.1, 7 U.S.C. 2014, 2015, 42 U.S.C. 5122, 5179, KRS 194A.050(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.

(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 new 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? This administrative regulation will not generate new revenue for state or local government.

(c) How much will it cost to administer this program for the first year? This administrative regulation will result in new technology costs for the administering agency in its first year, but these costs are not ongoing and the amendment should decrease administrative burden for staff.

(d) How much will it cost to administer this program for subsequent years? There is no new ongoing costs to administer this program as a result of this administrative regulation 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:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amendment)

922 KAR 1:500. Educational and training vouchers.

RELATES TO: KRS Chapter 13B, 164.2847, 610.110(6), 620.020(5), 620.140(1)(d), 45 C.F.R. 1355.20(a), 20 U.S.C. 1001, 1002, 1087II, 42 U.S.C. 677(d)(2), (i)

STATUTORY AUTHORITY: KRS 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) authorizes 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 addition, 42 U.S.C. 677(i) makes available vouchers for education and training to youths who have aged out of foster care or were adopted from foster care at age sixteen (16) or older. This administrative regulation establishes eligibility and an application process, specifies allowable uses, and provides a procedure for administrative hearings pertaining to the educational and training vouchers.

Section 1. Definitions. (1) "Cost of attendance" is defined by 20 U.S.C. 1087II.

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(2) "Educational and training voucher" means resources provided to an eligible individual to meet educational or training purposes as specified under 42 U.S.C. 677(i).

(3) "Foster care" is defined by KRS 620.020(5) and 45 C.F.R. 1355.20(a).

(4) "Institution of higher education" is defined by 20 U.S.C. 1001 and 1002.

(5) "Tuition waiver" means waiver of tuition and mandatory fees for Kentucky foster or adopted children pursuant to KRS 164.2847 and 922 KAR 1:450.

Section 2. Eligibility. (1) An individual shall be eligible to receive an educational and training voucher if the individual:

(a) Is committed to the cabinet in accordance with:

1. KRS 620.140(1)(d); or
2. KRS 610.110(6);

(b) Was adopted or entered a state Title IV-E Guardianship Assistance Program from foster care after attaining sixteen (16) years of age; or

(c) Left foster care upon attaining eighteen (18) years of age.

(2) An individual shall be eligible to participate in the voucher program for a maximum of five (5) years until twenty-six (26) years of age if the individual is enrolled in an institution of higher education and is making satisfactory progress towards completion:

(a) As determined by the institution of higher education; and

(b) In accordance with Section 3(2) of this administrative regulation.

Section 3. Application Process. (1) To request an educational and training voucher, an applicant shall submit a completed DPP-334, Request for Educational and Training Voucher Funds, to the cabinet:

(a) Upon initial application for enrollment into an institution of higher education;

(b) When the student transfers to another institution of higher education; or

(c) If a student has not been enrolled continuously at the same institution of higher education.

(2) (a) To maintain eligibility in accordance with Section 2 of this administrative regulation, for each semester or equivalent term of instruction, the cabinet shall contact the National Student Clearinghouse to verify an applicant's enrollment in an institution of higher education.

(b) If verification cannot be obtained through the National Student Clearinghouse in accordance with paragraph (a) of this subsection, the cabinet shall notify the applicant, and the applicant shall:

1. Contact the applicant's institution of higher education; and
2. Request that written confirmation of enrollment from the institution of higher education be sent to the cabinet.

(3) If an applicant is determined ineligible by the cabinet, the cabinet shall provide notification, in writing, to the applicant stating the reason for ineligibility.

Section 4. Allowable Payments. (1) An educational and training voucher shall be used to:

(a) Assist an eligible individual to prepare for and enter an institution of higher education, including:

1. A fee for an educational aptitude examination to qualify for or apply to an institution of higher education;

2. An entrance or application fee required by an institution of higher education;

3. An enrollment fee or deposit required by an institution of higher education;

4. Cost of an educational aptitude course to prepare the eligible individual for an examination as specified in this subsection; or

5. An expense, in addition to an expense specified in subparagraphs 2 and 3 of this paragraph, required for entrance by the institution of higher education; or

(b) Pay for the cost of attendance at an institution of higher education.

(2) An educational and training voucher shall not exceed the

lesser of \$5,000 per year or the total cost of attendance per year.

(3) To the extent that funds are available, the cabinet shall authorize payment for an application for an educational and training voucher to an eligible individual.

(4) In accordance with 42 U.S.C. 677(d)(2), an educational and training voucher shall not be approved for the same purpose as a tuition waiver or other student financial aid.

Section 5. Service Appeal. An applicant who is determined ineligible for an educational and training voucher shall have access to an administrative hearing in accordance with 922 KAR 1:320.

Section 6. Incorporation by Reference. (1) "DPP-334, Request for Educational and Training Voucher Funds", 08/20 [44/46], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

MARTA MIRANDA-STRAUB, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: August 3, 2020

FILED WITH LRC: August 5, 2020 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be October 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 October 19, 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 October 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; 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 eligibility and an application process, specifies allowable uses, and provides a procedure for administrative hearings pertaining to educational and training vouchers.

(b) The necessity of this administrative regulation:

KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce 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. 42 U.S.C. 677(i) makes available vouchers for education and training to youths who have aged out of foster care or were adopted from foster care at age sixteen (16) or older. This administrative regulation outlines this process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with state statute KRS 194A.050(1) and federal code 42 U.S.C. 677.

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(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 explaining the process through which an education and training voucher may be obtained and how it may be used.

(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 is necessary to update the material incorporated by reference, the DPP-334 form. The amendment also includes reference to a federal program for consistency with the federal rule. Although Kentucky does not participate in this program, Kentucky does provide educational and training voucher (ETV) funds to individuals who were eligible in other states if pursuing their education or training in Kentucky.

(b) The necessity of the amendment to this administrative regulation: The amendment is needed in the material incorporated by reference, the DPP-334, to include students who are currently in the legal custody of the Cabinet for Health and Family Services as meeting the eligibility for educational and training voucher funds. This was inadvertently excluded from previous versions of the form.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is necessary to conform to state statute and federal rule.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through clarifying the instructions and making technical corrections to assist an individual in the application for educational and training voucher funds.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There were 146 individuals who received education and training voucher funds in State Fiscal Year 2018 and 195 individuals who received these funds in SFY 2019.

(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: Eligible individuals may receive educational and training voucher funds up to the age of twenty-six (26) if they have not received these funds for five (5) years already when they complete the application and submit it as outlined in this administrative regulation. The amendment includes more individuals in the eligibility, consistent with state statute and federal rule.

(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 imposes no new or additional costs on eligible individuals.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Eligible individuals will benefit through the eligibility process and utilization of educational and training voucher funds.

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

(a) Initially: This is an existing program and the cabinet projects there will be no costs. The educational and training voucher program is funded through a federal grant that requires no matching state funds.

(b) On a continuing basis: This is an existing program and the cabinet projects there will be no continuing costs to implement this amendment. The educational and training voucher program is funded through a federal grant that requires no matching state funds.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This program is entirely funded by federal 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:

An increase in fees or funding is not 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 fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering is not applied, because this administrative regulation is applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 677(d)(2), (i)

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

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 677(d)(2), (i)

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amended administrative regulation does not impose stricter requirements or responsibilities. This amendment conforms with federal rule.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or 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), 42 U.S.C. 677(d)(2), (i)

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? This administrative regulation will not generate any 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? This administrative regulation will not generate any revenue for state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? An increase in fees or funding is not necessary to implement this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation is not projected to have a new fiscal impact on the administrative body.

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:

NEW ADMINISTRATIVE REGULATIONS

Public comment periods are at least two months long. For other regulations with open comment periods, please also see last month's *Administrative Register of Kentucky*.

GOVERNOR'S OFFICE
Kentucky Department of Veterans' Affairs
(New Administrative Regulation)

17 KAR 1:040. Application requirements for tuition waiver programs related to veterans.

RELATES TO: KRS 164.505, 164.507, 164.512, 164.515

STATUTORY AUTHORITY: KRS 164.479(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.479(2) requires the Kentucky Department of Veterans Affairs to promulgate administrative regulations regarding the eligibility of applicants to participate in tuition waiver programs. This administrative regulation establishes the application requirements for these programs.

Section 1. Definition. "Honorable discharge" means a discharge from service in the Kentucky National Guard or a branch of the U.S. Armed Forces that is:

- (1) Classified as:
 - (a) Honorable; or
 - (b) General under honorable conditions; and
- (2) Not classified as:
 - (a) Other than honorable;
 - (b) Bad conduct;
 - (c) Dishonorable; or
 - (d) Dismissed by court-martial.

Section 2. Application. (1) An application for tuition waiver pursuant to KRS 164.505, 164.507, 164.512, or 164.515 shall submit the "Kentucky Department of Veterans Affairs Tuition Waiver Application" to the department.

(2) In addition to the requirements in subsection (1) of this section, an application for tuition waiver pursuant to KRS 164.505, 164.507, or 164.515, who is the stepchild of a veteran, shall submit to the department the sworn "Affidavit of Membership in the Veteran's Household" to document that the stepchild is a current member of the living veteran's household or was a member of the veteran's household at the time of the veteran's death.

Section 3. Certification. (1) An application for tuition waiver shall be issued a "Certificate of Entitlement to Waiver of Tuition" from the department if the department determines that the applicant qualifies for the tuition waiver.

(2) If the applicant does not qualify for the tuition waiver, the department shall notify the applicant in writing of the reasons for the denial.

Section 4. Extension Request. (1) An applicant for extension of tuition waiver benefits who is under the age of twenty-six (26) and whose tuition waiver certificate expired at age twenty-three (23) shall submit to the department the "Application for Extension of Tuition Waiver Benefit".

(2) An applicant for extension of tuition waiver benefits whose tuition waiver certificate expired after thirty-six (36) months of benefits shall submit to the department the "Application for Extension of Tuition Waiver Benefit".

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Kentucky Department of Veterans Affairs Tuition Waiver Application", KDVA Form TW 1, April 2020;
- (b) "Affidavit of Membership in the Veteran's Household", KDVA Form TW 3, September 2011;
- (c) "Certificate of Entitlement to Waiver of Tuition", KDVA Form TW 2, May 2007; and (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky

Department of Veterans Affairs, Attention: Tuition Waiver Coordinator, 1111B Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

KEITH L. JACKSON, Commissioner

APPROVED BY AGENCY: August 7, 2020

FILED WITH LRC: August 7, 2020 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 29, at 10:30 a.m. Eastern Time at the Kentucky Department of Veterans Affairs, 1111B Louisville 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 October 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: Donna Scrivener, Field Operations Branch Chief, Kentucky Department of Veterans Affairs, 1111B Louisville Road, Frankfort, Kentucky 40601, phone (502) 564-9203 fax (502) 564-9240, email donna.scrivener@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Donna Scrivener

(1) Provide a brief summary of:

(a) What this administrative regulation does: For those who qualify for tuition waiver under the applicable statutes, this regulation provides the admissions process to actually obtain the waiver.

(b) The necessity of this administrative regulation: This regulation is essential to the proper application of the tuition waiver statutes for disabled veterans and qualifying dependents of veterans.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation ensures that residency requirements, service characterization, age requirements, and all criteria listed in the applicable statutes are met by those applying for tuition waiver.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation is the vehicle used to apply the tuition waiver statutes.

(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: N/A

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Permanent and totally disabled veterans, widows and widowers of deceased veterans, children of veterans, spouses of veterans, state institutions of higher education.

(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: The individuals who qualify will receive a tuition free education. The state institutions will accept and absorb the fiscal impact of the tuition waivers.

(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 individuals will be required to provide the admissions information in order to qualify for the waiver. The state institutions will have to admit these students tuition free to conform with the tuition waiver statutes that are applicable.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The state institutions will incur the cost of in-state tuition for each tuition waiver that is approved.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation implements tuition waiver statutes KRS 164.505, 164.507, 164.512, 164.515 which are intended to provide tuition payment relief for veterans and their dependents when those veterans have either dies in combat or in service, or when those veterans are permanently and totally disabled due to military service.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There is no budgetary impact on KDVA in operating the KDVA Tuition Waiver Program.

- (a) Initially: 0
(b) On a continuing basis: 0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Each state institution of higher education will be responsible for absorbing the tuition waiver through its budget.

(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: N/A

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

(9) TIERING: Is tiering applied? No. The regulated entities (tuition waiver applicants) are limited by statute as to residence, veteran status, discharge characterization, and dependent status.

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? Institutions of higher education.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 164.505, 164.507, 164.512, 164.515.

(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. Number of tuition waivers per state institution times the current tuition cost per institution.

(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?

(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 regulation does not generate revenue.

(c) How much will it cost to administer this program for the first year? Number of tuition waivers granted multiplied by the current tuition cost per institution.

(d) How much will it cost to administer this program for subsequent years? The tuition times number of applicants formula will always apply each year.

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:

GOVERNOR'S OFFICE
Kentucky Department of Veterans Affairs
(New Administrative Regulation)

17 KAR 3:050. Drug testing procedures at Kentucky Department of Veterans Affairs state Veterans nursing homes.

RELATES TO: 41 U.S.C. 701-707

STATUTORY AUTHORITY: KRS 40.325(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 40.325 authorizes the Kentucky Department of Veterans Affairs to promulgate any administrative regulations necessary to operate veterans' nursing homes in compliance with applicable state and federal statutes and regulations. This administrative regulation establishes procedures that will ensure state veteran nursing homes comply with KRS 18A.043, 41 U.S.C. 701-707, and 82 Federal Register 7920 (Mandatory Guidelines for Federal Workplace Drug Testing Programs) through drug testing of employees caring for veteran residents in veteran nursing homes.

Section 1. Definitions. (1) "Administrator" means the person in charge of a Kentucky Veterans Center, or that person's specific designee.

(2) "Applicant" means an individual seeking employment in a test-designated position at a facility operated by the department.

(3) "Appointing authority" means the Commissioner, Kentucky Department of Veterans Affairs or the Commissioner's designee.

(4) "Controlled substance" is defined in KRS 218A.010.

(5) "Confirmatory test" means a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle from that of the initial test in order to ensure reliability and accuracy.

(6) "Department" means the Kentucky Department of Veterans Affairs.

(7) "Donor" means the individual from whom a urine specimen is collected.

(8) "Drug" is defined in KRS 218A.010.

(9) "Initial test" or "screening test" means an immunoassay test to eliminate negative urine specimens from further consideration and to identify the presumptively positive specimens that require confirmation or further testing.

(10) "Kentucky Veterans Center" means a state veterans nursing home operated by the Kentucky Department of Veterans Affairs.

(11) "On duty" means being engaged in or on-call to be engaged in, the performance of work responsibilities for the employer.

(12) "Reasonable suspicion" means the quantity of proof or evidence, based on specific, objective facts and rationally-derived inferences from those facts about the conduct of an individual that would lead a reasonable person, based upon his or her training or life experiences, to suspect that a KDVA employee has been using illegal drugs, controlled substances, prescription or nonprescription medication, or alcohol in violation of this administrative regulation.

(13) "Refusal to submit to a drug test" means the following:

(a) Failing to provide an adequate urine sample without an adequate medical explanation;

(b) Engaging in conduct that obstructs the testing process; or

(c) Refusing to be tested.

(14) "Sample" means a representative portion of a urine specimen or quality control sample used for testing.

(15) "Serious work accident" means any on-duty accident or incident resulting in personal injury or death to any person.

(16) "Specimen" means the portion of urine that is collected from a donor.

(17) "Support services" means positions that do not provide direct resident or child care and includes employees in the fields of maintenance, dietary services, social services, recreational

services, and administrative services.

(18) "Test-designated employee" means an individual employed at a KDVA Veterans Center who provides care, treatment, or support services to a resident of the facility.

Section 2. Applicability. (1) The Department shall develop and implement test-designated employee drug testing procedures subject to the approval of the appointing authority.

(2) This administrative regulation applies to test-designated position applicants and test-designated position employees.

(3) This administrative regulation applies to drug testing conducted under the authority of KRS 40.325 to carry out the requirements of 18A.043 and 41 U.S.C. 701-707 regarding a drug-free workplace.

(4) Coordination of state and federal administrative regulations. This administrative regulation shall also apply to an employee subject to mandatory federal regulations governing drug testing. However, the employee is subject only to the provision of the federal regulation in any circumstance in which:

(a) It is not possible to comply with both this administrative regulation and the federal regulation; or

(b) Compliance with this administrative regulation is an obstacle to the accomplishment and execution of any requirement of the federal regulation.

Section 3. Prohibited Behavior. The following activities are prohibited while on duty or on KDVA Veteran Center grounds:

(1) The unlawful manufacture, distribution, sale, dispensation, possession, or use of any controlled substance;

(2) Consuming or being under the influence of illegal drugs, drugs illegally obtained, or alcoholic substances;

(3) The use, misuse, or abuse of prescription or non-prescription medication in a quantity sufficient to impair a test-designated employee's ability to perform assigned duties or in any way place patient or fellow employee safety at risk; or

(4) Interfering with any testing procedure or tampering with any test sample.

Section 4. Testing of Test-Designated Employees. (1) An applicant for a test-designated position, as a condition of continued employment, shall be subject to a drug test as provided in this administrative regulation.

(2) The Department shall establish and have operational the test-designated employee drug testing procedures as provided in this administrative regulation within 120 days of the effective date of this administrative regulation.

(3) Tests authorized. The following tests shall be authorized:

(a) Reasonable suspicion testing. A test-designated employee shall submit to a drug test if there is reasonable suspicion that the employee has violated this administrative regulation.

(b) Preappointment testing. An applicant being considered for a test-designated position shall submit to and pass a drug test prior to being appointed to the position.

(c) Postaccident testing. A test-designated employee shall submit to a drug test if there is evidence that the test-designated employee may have caused or contributed to a serious work accident.

(d) Random drug testing: A test-designated employee shall submit to a drug test if the employee is selected as part of the random drug testing component of the KDVA Drug Testing Program.

1. The appointing authority may direct that up to twenty-five (25) percent of the total number of test-designated employees per each KDVA Veterans Center be selected for drug testing each year.

2. Selection shall be done on a purely random basis according to drug testing procedures adopted within 120 days of the effective date of this regulation.

3. Should a test-designated employee be randomly selected more than once per year, that employee shall not be tested if the immediate previous testing of that person took place within sixty (60) days of the new random selection date.

(e) Follow-up testing. A test-designated employee shall submit

to up to three (3) follow-up drug tests per year at the direction of the appointing authority within one year of any of the following occurrences:

1. The employee's voluntary disclosure of drug problems;
2. Entry into, or completion of a drug rehabilitation program;
3. Employee failure in a pre-appointment drug test or refusal to take a pre-appointment drug test; or
4. Any time the employee has been disciplined for violating this regulation.

Section 5. Penalties. (1) Positive test results.

(a) A positive test result shall constitute a violation of this administrative regulation and shall constitute just cause for the appointing authority to discipline the donor, up to and including dismissal, according to applicable laws, regulations, and policies.

(b) The appointing authority shall notify the donor, in writing, of the penalty that may be imposed, including any mandatory penalties, for violating this administrative regulation.

(c) An appointing authority shall immediately remove a test-designated employee from the employee's duties if the employee tests positive for prohibited drugs or otherwise violates this administrative regulation.

(2) Employees selected for a test-designated position. An employee selected for a test-designated position is prohibited from serving in the test-designated position until the employee has submitted to and passed a pre-appointment drug test. If the employee fails or refuses to submit to the drug test, interferes with a test procedure, or tampers with a test sample, the following shall occur:

(a) An applicant not presently employed by the Commonwealth shall not be appointed to the test-designated position;

(b) An applicant who is employed by the Commonwealth, but is being considered for promotion to or otherwise appointment to the test-designated position, shall not be promoted or otherwise appointed to that position; and

(c) An applicant who is employed by the Department, who fails or refuses to submit to the drug test, shall be subject to disciplinary actions for the failure or refusal.

(3) Self-reporting. A test-designated employee who voluntarily discloses to the appointing authority a problem with drug abuse (controlled substances, illegal substances, or alcohol abuse) shall not be disciplined for the disclosure if it occurs prior to submitting to a drug test authorized by Section 4(3)(a) through (d) of this administrative regulation (preappointment, reasonable suspicion, postaccident, or random), but shall be provided an opportunity to take leave to enter a drug rehabilitation program.

(a) If a test-designated employee self-reports drug abuse as stated in this subsection, the appointing authority may remove the employee from the care of residents and of children upon receiving the report from the employee.

(b) A test-designated employee may self-report and avoid disciplinary action only once during his or her employment.

(c) A self-reporting employee remains subject to all drug testing requirements and other requirements outlined in this regulation.

(4) Federal drug testing programs. Nothing in this administrative regulation shall preclude the appointing authority from implementing a drug-testing program required by federal law.

Section 6. Drugs Included. (1) When a drug test is administered, the department shall, at a minimum, test for:

- (a) Marijuana;
- (b) Cocaine;
- (c) Opiates;
- (d) Amphetamines;
- (e) Phencyclidine;
- (f) Morphine;
- (g) MDMA (Ecstasy);
- (h) Methadone;
- (i) Benzodiazepines;
- (j) Barbiturates; and
- (k) Oxycodone.

(2) If conducting reasonable suspicion or post-accident drug

testing, the department may test for any drug listed in Schedule 1 or 2 as defined in KRS Chapter 218A.

(3) Before the department tests for other drugs, it must first obtain approval from the appointing authority.

(4) The department or contract agency requesting approval for the testing of other drugs shall submit to the appointing authority the agency's proposed initial test methods, testing levels, and proposed performance test program.

(5) This administrative regulation shall not limit an agency that is specifically authorized by law to include additional categories of drugs in the drug testing of its own employees.

(6) Initial and confirmatory drug testing conducted pursuant to this administrative regulation shall utilize cutoff levels as specified in the federal "Mandatory Guidelines for Federal Workplace Drug Testing Programs," cited as 82 Federal Register 7920.

(7) Drug test specimens that meet or exceed the cutoff levels as specified in subsection (6) of this section shall be reported as a positive test result and shall constitute a failed drug test.

(8) Drug test specimens that test below the cutoff levels as specified in subsection (6) of this section shall be reported as a negative test result and shall constitute a passed drug test. No further testing of a negative specimen for drugs shall be permitted, and the negative specimen shall be discarded or pooled for use in a laboratory's internal quality control program.

Section 7. Test-Designated Employee Drug Testing Procedures. (1) The test-designated employee drug-testing program developed pursuant to Section 2 of this administrative regulation shall be implemented in accordance with nationally recognized standards as specified in the federal "Mandatory Guidelines for Federal Workplace Drug Testing Programs."

(2) All costs associated with implementing the test-designated employee drug-testing program developed pursuant to Section 2 of this administrative regulation shall be borne by the Office of the Kentucky Veterans Center.

(3) The appointing authority shall maintain records concerning all Veterans Center employee drug testing in a secure manner, so that disclosure of information to unauthorized persons does not occur.

(4) Except as required by law or expressly authorized or required in this section, the appointing authority or anyone with knowledge shall not release employee information that is contained in the records maintained pursuant to this administrative regulation.

(5) An employee subject to testing shall be entitled, upon written request, to obtain copies of any records pertaining to the employee's drug tests. The appointing authority shall promptly provide the records requested by the employee. Access to an employee's records shall not be contingent upon payment for records other than those specifically requested.

(6) The appointing authority may disclose information required to be maintained under this administrative regulation pertaining to an employee to that employee or to the decision-maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of a drug test administered under the requirements of this administrative regulation or from the appointing authority's determination that the employee engaged in prohibited conduct (including a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee).

(7) The appointing authority shall release information regarding an employee's records as directed by the specific, written consent of the employee authorizing release of the information to an identified person. Release of this information shall be in accordance with the terms of the employee's consent.

Section 8. Test-Designated Employee Notification. (1) New employees shall receive information and training concerning this administrative regulation as part of the employee's initial orientation training.

(2) Current employees shall receive information and training concerning this administrative regulation within the first three (3) months following the effective date of this administrative regulation.

(3) Information and training provided pursuant to subsection (2)

of this section shall include information regarding the type and nature of services and supports available through the Kentucky Employee Assistance Program, as well as how to access these services and supports.

(4) The Personnel Office within each Veterans Center shall maintain documentation that all employees have received information and training concerning this administrative regulation and shall provide a copy of that documentation to the Administrative Branch Manager, Office of Kentucky Veterans Center, who shall coordinate with the Personnel Administrator of the Office of the Commissioner, Frankfort, Kentucky.

(5) All test-designated employees shall sign a document certifying:

(a) Receipt of information and training concerning this administrative regulation;

(b) An understanding of the requirements, limitations, and restrictions on employee conduct contained in this administrative regulation; and

(c) An understanding of the potential consequences, up to and including dismissal, for violation of this administrative regulation.

Section 9. Employee Duty to Report Convictions. A test-designated employee shall report to the KDVA headquarters through his or her immediate supervisor any criminal drug statute for which he or she was convicted within five (5) working days of the conviction.

Section 10. Prescription and Nonprescription Medications. (1) A test-designated employee taking a prescription or nonprescription medication prior to or during the work shift shall immediately inform his or her supervisor of this fact if:

(a) The medication's indications and contraindications give the employee reason to believe that the medication may in some way impair work performance; or

(b) Having once taken the medication, the employee begins to experience an unexpected, typical, or adverse reaction to the medication, which impairs work performance.

(2) An employee who fails to comply with subsection (1) of this section shall be subject to disciplinary action up to and including termination of employment.

(3) Having been notified by an employee pursuant to subsection (1) of this section the employee's supervisor shall closely monitor the employee's work performance throughout the employee's work shift. If the supervisor determines that there is a sufficient perceived impairment of the employee's work performance so as to raise concerns related to employee, resident, or child safety, the supervisor shall notify the administrator concerning the employee's impaired work performance. The administrator shall then conduct an assessment and make a determination regarding the employee's impaired work performance.

(4) If the results of an assessment conducted pursuant to subsection (3) of this section indicate that the employee's work performance is impaired so as to raise concerns related to employee or resident or child safety, the administrator shall:

(a) Transfer or temporarily assign the employee away from resident care or child care, and to a job function unrelated to such care, provided that the transfer or temporary reassignment does not place the employee or other employees at risk of injury or otherwise jeopardize the orderly operation of the Veterans Center; or

(b) Allow the employee to depart the workplace and use available leave time, taking care to assist the employee if the impairment jeopardizes the safety of the employee or other employees.

(5) The employee shall be allowed to return to regular work duties if the results of an assessment conducted pursuant to subsection (3) of this section indicate that the employee's work performance is not impaired.

KEITH L. JACKSON, Commissioner

APPROVED BY AGENCY: August 7, 2020

FILED WITH LRC: August 7, 2020 at 10 a.m.

VOLUME 47, NUMBER 3– SEPTEMBER 1, 2020

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 29, at 10:30 a.m. Eastern Time at the Kentucky Department of Veterans Affairs, 1111B Louisville 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 October 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: Dennis W. Shepherd, General Counsel, Kentucky Department of Veterans Affairs, 1111B Louisville Road, Frankfort, Kentucky 40601, phone (502) 564-9203 fax (502) 564-9240, email dennis.shepherd@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Dennis Shepherd

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation authorizes drug testing that is limited to KDVA employees working at state veterans nursing homes.

(b) The necessity of this administrative regulation: This regulation ensures that those employees who provide direct (nurses, doctors, nurses aids, nurse practitioners) and indirect care (dietary, housecleaning, administrative support) are drug free so the safety and well-being of those veterans requiring long-term care will be preserved.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation ensures that state veterans nursing homes remain drug free as required by KRS 18A.043.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides pre-appointment, random, post-accident, and reasonable suspicion testing of nursing home employees.

(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: N/A

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects all KDVA employees who work at KDVA's state veterans' nursing homes. It indirectly affects the veterans who are resident of these nursing homes.

(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: The individuals who qualify will receive a tuition free education. The employees will be required to submit to the authorized drug tests in a minimally invasive way.

(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 affected employees will be required to provide urine samples when chosen for pre-appointment, random, post-accident, or reasonable suspicion drug tests.

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

question (3): The agency will incur the cost of hiring a drug-testing contractor to provide the testing. The employees will not be charged for any testing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The employees affected will be drug free. The veterans being served will have a safeguard against employees who otherwise may have been under the influence.

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

(a) Initially: Approximately \$85,000 per year.

(b) On a continuing basis: Approximately the same as in (a).

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This is funded via the KDVA budget.

(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 only increases expected are the normal increases over time with drug testing vendors.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: None.

(9) TIERING: Is tiering applied? No. Drug testing in state government is limited to key agencies providing direct care and supervision of at risk populations, such as the Department of Corrections and KDVA.

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 18A.043 and 41 U.S.C. 701-707

(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 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? Approximately \$85,000 per year.

(d) How much will it cost to administer this program for subsequent years? Approximately the same as in (c) with increases due to inflation.

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:

GOVERNOR'S OFFICE
Kentucky Department of Veterans' Affairs
(New Administrative Regulation)

17 KAR 4:030. Veterans' Service Organization Burial Honor Guard Program.

RELATES TO: KRS 40.360, 40.362, 40.364, 40.366, 10 U.S.C. 1491

STATUTORY AUTHORITY: KRS 40.360(3), 40.364(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 40.360(3) and 40.364(1) require the Kentucky Department of

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Veterans Affairs to promulgate administrative regulations to implement and administer the Veterans' Service Organization Burial Honor Guard Program. This administrative regulation establishes the requirements for the Veterans' Service Organization Burial Honor Guard Program.

Section 1. Definitions. (1) "Authorized provider" means a veterans' service organization or any other military or civilian organization that has been trained in rendering military funeral honors according to requirements established in 10 U.S.C. 1491.

(2) "Eligible veteran" means a person who:

(a)1.a. Has served the state and nation in the armed forces; and

b. Was discharged under other than dishonorable conditions, i.e. with an honorable or general under honorable conditions service characterization; or

2. At the time of death, was a member of the Selective Reserve or Kentucky National Guard;

(b) Was recently deceased, or cremated remains are being interred, or, if not recently deceased, the burial honors are being rendered for historical reasons; and

(c) Was never convicted of a federal or state capital offense.

(3) "Veterans' service organization" or "VSO" means an organization serving American veterans such as Veterans of Foreign Wars, AMVETS, Disabled American Veterans, Vietnam Veterans of America, and American Legion.

Section 2. Program Responsibilities. (1) The Kentucky Department of Veterans Affairs shall:

(a) Pay a stipend in the amount provided by subsection (2) of this section to the military burial honor guard detail supplied by the authorized provider for the military honors rendered by that detail; and

(b) Maintain a central repository for recording all data required by KDVA Form Veterans' Service Organization Request for Honors Stipend.

(2) The maximum amount of the stipend shall be sixty (60) dollars for each ceremony provided by the VSO. The stipend amount shall be determined as follows:

(a) For playing "Taps" on CD or other recording device, zero dollars;

(b) For having a live bugler or ceremonial bugler or ceremonial bugler play the song "Taps", instead of using a CD or other recording device, ten (10) dollars;

(c) For folding and presenting the United States Flag with the song "Taps":

1. Played on CD, twenty-five (25) dollars; or

2. Performed by a live bugler or ceremonial bugler, \$35; or

(d) For folding and presenting the United States Flag with a rifle team, with a minimum of three (3) firers, with the song "Taps";

1. Played on CD or other pre-recorded device, fifty (50) dollars;

or

2. Performed by a live bugler or ceremonial bugler, sixty (60) dollars.

(3) Authorized providers shall:

(a) Render military burial honors in accordance with the requirements established in 10 U.S.C. 1491;

(b) Require a flag folding ceremony as part of the military burial honors in which the United States flag is folded by the military burial honor guard;

(c) Ensure that the folded flag is presented during the ceremony to the deceased's next of kin or family representative by a member of the eligible veteran's own military service (USMC, USA, USAF, USN, U.S.C.G.); and

(d) After each rendering of military burial honors, provide the Kentucky Department of Veterans Affairs a completed KDVA Form 01/04.

Section 3. To be eligible to receive a stipend, a veterans' service organization shall:

(1) Register as a state vendor and receive a state vendor number. Registration shall be completed online at www.eprocurement.ky.gov;

(2) Verify the veteran's service from the veteran's DD-214 form; and

(3) Not receive an honorarium, donation, or other payment from the funeral home or the veteran's family for the military burial honors provided for the veteran.

Section 4. Incorporation by Reference. (1) KDVA Form, Veterans' Service Organization Request for Honors Stipend, 11/06, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Veterans Affairs, 1111B Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

KEITH L. JACKSON, Commissioner

APPROVED BY AGENCY: August 7, 2020

FILED WITH LRC: August 7, 2020 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 29, at 10:30 a.m. Eastern Time at the Kentucky Department of Veterans Affairs, 1111B Louisville 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 October 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: Al Duncan, Cemeteries Branch Manager, Kentucky Department of Veterans Affairs, 1111B Louisville Road, Frankfort, Kentucky 40601, phone (502) 564-9203 fax (502) 564-9240, email alvin.duncan@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Al Duncan

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation ensures that Kentucky veterans being interred in cemeteries throughout the Commonwealth receive the military honors befitting their honorable service. .

(b) The necessity of this administrative regulation: This regulation authorizes payment of sixty (60) dollars for each military burial honors performed by a veteran service organization and mandates the minimum acceptable guidelines for these services

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation ensures that KRS 40.360 is implemented.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the guidance all veteran service organization must follow in order to present military burial honors at all cemeteries throughout the Commonwealth.

(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: N/A

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

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

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

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

Disabled American Veterans (DAV), American Veterans (AMVETS), Veterans of Foreign Wars (VFW), etc.

(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: Veteran service organizations will be governed by the language of the regulation as to what The veteran service organization will be required to present a live bugler or recorded bugler to play taps at the funeral of the veteran. The ceremonial folding of the United States flag and presenting the flag to the veteran's next of kin are also requirements under this regulation.

(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 to the entities. In fact, in present military burial honors the veteran service organization is paid by the Kentucky Department of Veterans Affairs a stipend of sixty (60) dollars.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The veteran service organizations will be able to foster their mission of helping veterans and the families of veterans while receiving a small stipend that barely covers the cost of their transportation to a given cemetery.

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

(a) Initially: \$132,000 based upon a fifteen year average of conducting this program.

(b) On a continuing basis: \$132,000.

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

(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: Funding has increased gradually over the years and that gradual increment should continue.

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

(9) TIERING: Is tiering applied? No. This is a unique program not subject to comparison with other such programs.

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 40.360, 40.362, 40.364, 40.366, 10 U.S.C. 1491

(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? This is not a revenue producing 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? N/A This regulation does not generate revenue.

(c) How much will it cost to administer this program for the first year? Approximately \$132,000.

(d) How much will it cost to administer this program for subsequent years? Gradually, it will increase beyond \$132,000.

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:

GOVERNOR'S OFFICE
Kentucky Department of Veterans Affairs
(New Administrative Regulation)

17 KAR 4:040. Indigent Veterans' Burial Program.

RELATES TO: KRS 40.355, 40.357, 38 U.S.C. 101(2)

STATUTORY AUTHORITY: KRS 40.357(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 40.357(1) directs the Kentucky Department of Veterans Affairs (KDVA) to promulgate administrative regulations to implement the Indigent Veterans' Burial Program. This administrative regulation establishes rules to operate this program, including oversight by this department and required eligibility criteria applicable before state funds shall be used to defray funeral costs.

Section 1. Eligibility Criteria under KRS 40.355. To be eligible for state funds to defray the costs of funeral expenses for burial in a cemetery in Kentucky, private or public, the following requirements shall be met:

(1) The deceased shall be a veteran as defined by 38 U.S.C. 101(2) and as verified by discharge records; and who:

(2) The deceased shall have died in Kentucky.

(3) The deceased shall have been indigent at the time of death, meaning:

(a) The deceased's estate did not possess money or other assets to pay for or defray the costs of the deceased's funeral;

(b) There was not a person obligated by law to pay for the funeral expenses of the deceased; and

(c) After diligent efforts, there was not a funeral home, cemetery, veteran service organization, or entity that was able to obtain funds to pay funeral expenses from another private or public source;

(4) Priority shall be given to an indigent veteran whose records indicate that the veteran had established Kentucky residency prior to death so that General Funds expended to defray funeral costs shall be used for the citizens of Kentucky first.

(5) The following records may be used to establish state residency:

(a) Military service records, such as a DD Form 214;

(b) The deceased's driver's license; or

(c) Another official record clearly showing the deceased was a Kentucky resident.

Section 2. Reimbursement. The amount of reimbursement authorized is limited as follows:

(1) Except as provided by subsection (2) of this section, the department shall reimburse a cemetery or funeral home its costs for burying an indigent veteran.

(2) The maximum amount reimbursed shall not exceed \$1,000 per indigent veteran.

Section 3. Application Process. (1) To request state funds to defray the funeral costs of an eligible indigent veteran, each funeral home, cemetery, veterans service organization, private citizen, or other entity shall submit an Indigent Veteran Burial Application, designated as KDVA Form 6.

(2) State and federal veterans cemetery priority. Each funeral home, cemetery, veteran service organization, or other entity seeking defrayment of burial costs shall first seek burial of the indigent veteran in a state or federal veterans cemetery before considering burial in another cemetery.

Section 4. Approval Process. (1) The final decision to approve an Indigent Burial Application shall be made by the Commissioner, Kentucky Department of Veterans Affairs.

(2) In the absence of the commissioner, approval authority shall be delegated to the deputy commissioner or, in the absence of both the commissioner and the deputy commissioner, approval authority shall be delegated to the staff assistant in charge of Kentucky Veterans Cemeteries.

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(3) The approval authority shall decide whether the deceased meets the eligibility criteria established in this administrative regulation, and, if so, shall approve funds to defray burial costs.

Section 5. Incorporation by Reference. (1) "Indigent Veteran Burial Application", KDVA Form 6", January 2009, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Veterans Affairs, 1111B Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

KEITH L. JACKSON, Commissioner
APPROVED BY AGENCY: August 7, 2020
FILED WITH LRC: August 7, 2020 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 29, at 10:30 a.m. Eastern Time at the Kentucky Department of Veterans Affairs, 1111B Louisville 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 October 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: Al Duncan, Cemeteries Branch Manager, Kentucky Department of Veterans Affairs, 1111B Louisville Road, Frankfort, Kentucky 40601, phone (502) 564-9203 fax (502) 564-9240, email alvin.duncan@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Al Duncan

(1) Provide a brief summary of:

(a) What this administrative regulation does: When a veteran dies without funds for burial with no one in the veteran's family legally obligated to pay for the funeral, or with no discoverable family members at all, this regulation authorized a payment to the state funeral home of up to one thousand (1,000) dollars.

(b) The necessity of this administrative regulation: This regulation provides the means of providing indigent veterans a respectable interment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation implements the Indigent Burial Program authorized by KRS 40.357.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation places necessary limits on how a veteran is considered indigent to safeguard the funds expended on this 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: N/A

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any licensed funeral home in the Commonwealth of Kentucky may apply for the burial allotment under this 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: The funeral homes must file an Indigent Burial Application in order to qualify for this monetary payment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The funeral homes benefit by up to a thousand dollars. This rarely covers their entire costs of burial, but given their good will towards veterans, and the agency's desire to provide a final resting place for indigent veterans, both the funeral homes and the agency gain in the process.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The funeral homes will receive the money payment.

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

(a) Initially: Approximately \$10,000-\$12,000 per year, but this can fluctuate. Over the past twelve years, the programs sees on average, about eleven indigent interments

(b) On a continuing basis: While the number of indigent veterans changes each year, the average has been eleven veterans and a funding range of \$10,000-\$12,000 per year.

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

(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 the allotment to funeral homes is deemed necessary for the foreseeable future.

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

(9) TIERING: Is tiering applied? No. This is a KDVA-unique program not comparable to any other program.

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 40.355, 40.357, 38 U.S.C. 101(2).

(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 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? Negligible.

(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? \$10,000-\$12,000.

(d) How much will it cost to administer this program for subsequent years? The number of indigent veterans fluctuates from year to year. The tuition times number of applicants formula will always apply each year. The average over the past twelve years has been eleven indigent burials per year.

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:

GOVERNOR'S OFFICE
Kentucky Department of Veterans Affairs
(New Administrative Regulation)

17 KAR 5:020. Kentucky Medal for Freedom.

RELATES TO: KRS 40.353

STATUTORY AUTHORITY: KRS 40.353

NECESSITY, FUNCTION, AND CONFORMITY: KRS 40.353 authorizes the Kentucky Department of Veterans Affairs (KDVA) to award the Kentucky Medal for Freedom to eligible recipients and to maintain a Kentucky Medal for Freedom honor roll. This administrative regulation establishes the requirements for the Kentucky Medal for Freedom program.

Section 1. Definitions. (1) "Applicant" means a person, eighteen years old or older, who is seeking the Medal for Freedom on behalf of the deceased recipient.

(2) "Primary next of kin" means the person or persons with whom the Medal for Freedom.

(3) "Recipient" means the deceased military person who was killed in action and is being honored by award of the Medal for Freedom.

Section 2. Application Procedure to Nominate Recipient. (1) Any adult, age eighteen (18) or older, may nominate someone to receive the Kentucky Medal for Freedom.

(2) The nomination process shall be initiated by filling out a Kentucky Medal for Freedom Nomination.

(3) All requests and inquiries concerning the Kentucky Medal for Freedom shall be directed to: Kentucky Department of Veterans Affairs, Kentucky Medal for Freedom Contact Person, 1111B Louisville Rd., Frankfort, Kentucky 40601.

(4) Each Medal for Freedom that is awarded shall be presented to the primary next of kin using this order of priority:

- (a) Widow or widower;
- (b) Children;
- (c) Parents, unless legal custody was granted to another person;
- (d) Blood or adoptive relative granted legal custody;
- (e) Siblings in the order of age, beginning with the oldest;
- (f) Grandparents;
- (g) Another relative; or
- (h) Close friend or associate.

Section 3. Medal for Freedom Award Panel. (1) A panel of three full-time employees of the Kentucky Department of Veterans Affairs shall review all applications.

(2) The commissioner or the deputy commissioner shall act as chairperson for the award panel.

(3) The other two (2) members of the Panel shall be chosen from among the senior staff of the department, such as the executive director, Office of Kentucky Veterans Centers; Cemetery Branch Manager; Field Operations Branch Manager; cemetery directors; and administrators of the state veterans nursing homes.

(4) The award panel shall decide whether an application shall be approved and, if so, which primary next of kin shall receive the medal.

(5) Multiple medals for the same recipient may be awarded at the discretion of the award panel.

Section 4. Kentucky Medal for Freedom Honor Roll. The Department shall establish a permanent honor roll, listing each recipient's name and branch of service.

(1) The honor roll shall reside on a permanent basis in the Office of the Commissioner, Kentucky Department of Veterans Affairs, Frankfort, Kentucky.

(2) The Honor Roll shall be made available for display at special occasions such as Memorial Day, Veterans Day, or during special ceremonies conducted at state or federal cemeteries located throughout the Commonwealth.

Section 5. Incorporation by Reference.

(1) Kentucky Medal for Freedom Nomination, KDVA Form 5, January 2009, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Veterans Affairs, 1111B Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material shall also be available on the department's Web site at www.veterans.ky.gov.

KEITH L. JACKSON, Commissioner

APPROVED BY AGENCY: August 7, 2020

FILED BY LRC: August 7, 2020 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 29, at 10:30 a.m. Eastern Time at the Kentucky Department of Veterans Affairs, 1111B Louisville 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 October 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: Al Duncan, Cemeteries Branch Manager, Kentucky Department of Veterans Affairs, 1111B Louisville Road, Frankfort, Kentucky 40601, phone (502) 564-9203 fax (502) 564-9240, email alvin.duncan@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Al Duncan

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation makes it possible to nominate a deceased veteran, killed in action, for this special state medal.

(b) The necessity of this administrative regulation: This regulation is essential to showing appropriate recognition for those who gave all for this Commonwealth and for our nation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation implements KRS 40.353 by providing an application for those who seek to recognize a loved one killed in action.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This regulation establishes the guidelines and nomination process for recipients of this special Medal for Freedom.

(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: N/A

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Widows, widowers, children, parents, and other loved ones of their loved one who was killed in action.

(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: The impact is largely intangible and involves in conveying the honor and respect upon their loved one to show the awareness by our state that the ultimate sacrifice was given.

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(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: This is a recognition regulation and it regulates the nomination process for receiving this Medal for Freedom.

(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 to those who nominate a recipient at any point in the process, from application to actual receipt of this Medal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The intangible benefits associated with knowing their loved one was recognized by the Commonwealth of Kentucky for giving all in the line of military duty.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There is only a nominal budgetary impact on KDVA in operating the Medal for Freedom Program.

(a) Initially: Nominally.

(b) On a continuing basis: Nominally.

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

(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: N/A

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

(9) TIERING: Is tiering applied? No. The regulated entities (tuition waiver applicants) are limited by statute as to residence, veteran status, discharge characterization, and dependent status.

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? N/A

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 40.353.

(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. Nominal.

(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? Nominal.

(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? Nominal.

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

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

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:

BOARD OF OPTOMETRIC EXAMINERS (New Administrative Regulation)

201 KAR 5:140. Dispensing.

RELATES TO: KRS 217.182(3); KRS 217.015(35); KRS 320.210(2)

STATUTORY AUTHORITY: KRS 320.240

NECESSITY, FUNCTION and CONFORMITY: KRS 320.240(4) requires the Board of Optometric Examiners to promulgate administrative regulations for the reasonable regulation of the profession of optometry and the practice thereof by licensed optometrists. The Kentucky Food, Drug and Cosmetic Act (KRS 217.005 to 217.218) authorizes optometrists to administer, dispense, or prescribe a legend drug for a legitimate medical purpose and in the course of professional practice, as authorized in KRS 320.240(12) to (14). This administrative regulation establishes the requirements for licensed optometrists to dispense pharmaceutical agents.

Section 1. An optometrist may dispense pharmaceutical agents as authorized in KRS 320.240(12) to (14), other than controlled substances.

Section 2. Dispensing of pharmaceutical agents to a patient shall be:

(1) For a legitimate medical purpose;

(2) In the course of the optometrist's professional practice; and,

(3) Limited based upon the authority conferred upon the optometrist by the board consistent with the educational qualifications of the optometrist provided in KRS 320.240.

Section 3. An optometrist must be on the premises when a pharmaceutical agent is dispensed and the optometrist must be actively involved in the dispensing process.

Section 4. When a pharmaceutical agent is dispensed by an optometrist, an optometrist must:

(1) Inform the patient on the appropriate use of the pharmaceutical agent; and

(2) Document in the patient's record the name, strength, quantity and appropriate use of the pharmaceutical agent provided to the patient.

Section 5. An optometrist shall maintain a readily retrievable record system by manual or electronic means of all pharmaceutical agents purchased for administration or dispensing in the course of professional practice.

Section 6. The pharmaceutical agent must be purchased, possessed, labeled and packaged in accordance with the Kentucky Food, Drug and Cosmetic Act and applicable federal law.

Section 7. Nothing in this section shall expand the administrative or prescriptive authority of an optometrist.

JONATHAN SHREWSBURY, O.D., President

APPROVED BY AGENCY: August 13, 2020

FILED WITH LRC: August 14, 2020 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Thursday, October 22, 2020 at 10:00 a.m. at 2365 Harrodsburg Road, Suite A240, Lexington, Kentucky 40504. Individuals interested in being heard at this hearing shall notify this agency of their intent to attend in writing five 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 until 11:59 p.m. on October 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: Carson Kerr, Executive Director, Board of Optometric Examiners, 2365 Harrodsburg Road, Suite A240, Lexington, Kentucky 40504, phone (859) 246-2744, fax (859) 246-2746, email Carson.Kerr@ky.gov.

VOLUME 47, NUMBER 3– SEPTEMBER 1, 2020

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Carson Kerr

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation establishes standards for optometrists to dispense pharmaceutical agents as authorized by existing statutory law.

(b) The necessity of this administrative regulation: While statutory authority exists for optometrists to dispense pharmaceutical agents, this regulation establishes the guidelines and recordkeeping requirements for optometrists. This regulation is necessary for consistent handling, appropriate oversight by the Board of Examiners and to set forth the documentation that must be maintained for proper inspection by the Cabinet for Health & Family Services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Kentucky Food, Drug and Cosmetic Act authorizes optometrists to purchase legend drugs and dispense legend drugs for a legitimate medical purpose or in the course of professional practice. KRS 217.015(35); KRS 217.182(1)(c); KRS 217.182(3). The Board of Optometric Examiners is required to promulgate regulations deemed necessary for the proper regulation of the profession and practice of optometry. KRS 320.240(4). This regulation complies with the administrative regulation requirements in KRS 13A.100(1), as the regulation establishes the dispensing requirements for optometrists consistent with the applicable statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation establishes the process and requirements for dispensing of pharmaceutical agents by optometrists, and is necessary for consistent application of these requirements.

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

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This 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: Eligible Kentucky optometrists who choose to dispense pharmaceutical agents are subject to the requirements within this regulation. The Board of Optometric Examiners is affected by this regulation, as it is the administrative body with the sole authority and jurisdiction over the practice of optometry. The Cabinet for Health and Family Services may be affected by this regulation, as it also has the right to inspect the premises and records when legend drugs are held for sale or after receipt in commerce. KRS 217.155(1).

(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: An optometrist who chooses to dispense pharmaceutical agents will need to ensure compliance with all requirements established, including the documentation in a patient's record of dispensing, mandatory involvement in the dispensing process, accounting of the pharmaceutical agents purchased for dispensing, and discussion on appropriate use of the pharmaceutical agent. The Board of Optometric Examiners and Cabinet for Health & Family Services will be responsible for oversight and regulation of these requirements, as needed.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs will be incurred to comply with this regulation. An optometrist who wishes to dispense medication will

incur costs with the purchase of pharmaceutical agents, but dispensing of medication is not required for optometrists. It is an option available for optometrists based upon their educational background.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An optometrist will likely benefit from providing direct medical treatment to a patient, and the optometrist will have better oversight of the treatment and medicine use by the patient.

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

(a) Initially: No additional costs to implement.

(b) On a continuing basis: No additional costs to implement.

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

(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 necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are established by this regulation.

(9) TIERING: Is tiering applied? No. This administrative regulation 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 Board of Optometric Examiners and Cabinet for Health & Family Services, Office of Inspector General.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 217.182(3); KRS 217.015(35); KRS 320.210(2); KRS 320.240.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(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? No costs to administer in the first year.

(d) How much will it cost to administer this program for subsequent years? No costs to administer 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 (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS

Board of Architects

(New Administrative Regulation)

201 KAR 19:215. Accredited schools and colleges.

RELATES TO: KRS 323.050

STATUTORY AUTHORITY: KRS 323.210

NECESSITY, FUNCTION, AND CONFORMITY: Defines accredited schools of architecture.

Section 1. Accredited Schools and Colleges: Schools and

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colleges of architecture that have professional degree programs meeting the requirements of the National Architectural Accrediting Board (NAAB) shall constitute the list of accredited programs of the schools and colleges.

STEPHANIE R MCCRERY, Board
CORDELIA HARBUT, Executive Director

APPROVED BY AGENCY: August 7, 2020

FILED WITH LRC: August 10, 2020 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 27, 2020 at 2:00 PM Eastern Time via Zoom video conference, see more information and link below. Individuals interested in being heard at this hearing shall notify this agency in writing by October 20, 2020, 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 October 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: Cordelia Harbut, Executive Director, Kentucky Board of Architects, 155 E Main Street, Suite 300, Lexington, Kentucky 40507, phone (859) 246-2069, fax (859) 346-2431, email boa.irc@ky.gov.

Join Zoom Meeting

<https://us02web.zoom.us/j/82797946682?pwd=bTB5cW9nU0h0NXJlaDlpQzZod0NBZz09>

Meeting ID: 827 9794 6682

Passcode: 0zVWwa4

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+1 346 248 7799 US (Houston)

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Meeting ID: 827 9794 6682

Passcode: 190433

Find your local number: <https://us02web.zoom.us/j/kdvgrk3zt>

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cordelia Harbut

(1) Provide a brief summary of:

(a) What this administrative regulation does: The administrative regulation defines accredited schools of architecture.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to define the requirements for accredited schools of architecture.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with KRS 323.210 that describes the function of the Board and the authority for promulgating all administrative regulations and KRS 323.050 that requires licensees to hold a professional degree from an accredited architectural program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Accredited schools and colleges must meet or exceed a minimum standard of quality which ensures architectural students get a quality education and have certain level of understanding and proficiency when they

graduate.

(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:

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Forty four (44) Colleges and schools in the United States will be affected 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: Schools and colleges of architecture that have professional degree programs must meet the requirements of the National Architectural Accrediting Board (NAAB) to be included in the list of accredited architectural programs.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Annual cost to institutions ranges from roughly \$32,000 to \$41,000 per year for accreditation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The schools and colleges will be included in the list of accredited architectural programs which helps students to determine acceptable institutions for enrollment.

(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: The Board is a self-supporting agency. It is funded entirely through fees assessed for regulating its profession.

(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 is required to implement this 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 fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all.

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 impacts the Kentucky Board of Architects' definition for accredited schools and colleges.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 323.210 authorizes 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. This administrative regulation does not directly affect expenditures or revenues.

(4) 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 with this administrative regulation 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? No revenue will be generated with this administrative regulation in subsequent years.

(c) How much will it cost to administer this program for the first year? The administrative regulation does not result in additional cost the first year.

(d) How much will it cost to administer this program for subsequent years? The administrative regulation does not result in additional cost 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 (+/-):
- Expenditures (+/-):
- Other Explanation:

BOARDS AND COMMISSIONS
Board of Architects
(New Administrative Regulation)

201 KAR 19:220. Application for examination.

RELATES TO: KRS 323.050, 323.215

STATUTORY AUTHORITY: KRS 323.210(1)(b), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.210(1)(b), (2) requires the board to promulgate administrative regulations governing the contents and conduct of examinations, the method and time for filing applications, and the time within which an applicant shall be examined after his application has been filed. This administrative regulation prescribes the application process for the examination.

Section 1. Application for Examination and Registration.

(1) Each applicant shall:

- (a) Submit an Application for Architect Registration; and
- (b) Comply with the requirements of KRS 323.050 through 323.090 and the administrative regulations promulgated by the board.

(2) The requirements are summarized in "Information and Instructions for Applicants for the Architects Registration Examination".

Section 2. Examination Applications. An application for admission to the Architect Registration Examination (ARE) shall be accompanied by the payment of the fees established in 201 KAR 19:255

Section 3. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "Application for Architect Registration Examination", June 2019 Edition, Kentucky Board of Architects; and
- (b) "Information and Instructions for Applicants for the Architects Registration Examination", 2019 July, Kentucky Board of Architects.

(2) This material may be inspected, copied, or obtained at the Kentucky Board of Architects, 155 East Main Street, Suite 300, Lexington, Kentucky 40507, Monday through Friday, 8 a.m. to 4 p.m.

STEPHANIE R MCCRERY, Board
CORDELIA HARBUT, Executive Director

APPROVED BY AGENCY: August 7, 2020

FILED WITH LRC: August 10, 2020 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 27, 2020 at 2:00 PM Eastern Time via Zoom video conference, see more information and link below. Individuals interested in being heard at this hearing shall notify this agency in writing by October 20, 2020, 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 October 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the pro-posed administrative regulation to the contact person.

CONTACT PERSON: Cordelia Harbut, Executive Director, Kentucky Board of Architects, 155 E Main Street, Suite 300, Lexington, Kentucky 40507, phone (859) 246-2069, fax (859) 346-2431, email boa.irc@ky.gov.

Join Zoom Meeting

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Meeting ID: 827 9794 6682

Passcode: 0zWwa4

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Meeting ID: 827 9794 6682

Passcode: 190433

Find your local number: <https://us02web.zoom.us/j/82797946682?pwd=bTB5cW9nU0h0NXJlaDlpQzZod0NBZz09>

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cordelia Harbut

(1) Provide a brief summary of:

(a) What this administrative regulation does: The administrative regulation prescribes the application process for the examination.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to instruct individuals on the process to apply for examination and registration

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation is in conformity with KRS 323.210(1)(b), (2) which requires the board to promulgate administrative regulation governing the contents and conduct of examinations, the method and time for filing application, and the time with which and applicant shall be examined after his application has been filed.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specifics and materials incorporated by reference on the application process for examination and registration.

(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:

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board estimates individuals seeking application for examination and registration is approximately 15

annually.

(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: Each applicant shall submit an Application for Architect Registration; and comply with the requirements of KRS 323.050 through 323.090 and the administrative regulations promulgated by the board.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An application for admission to the Architect Registration Examination (ARE®) shall be accompanied by a \$100 payment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities' applications shall be reviewed to determine eligibility to take the Architect Registration Examination (ARE®).

(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: The Board is a self-supporting agency. It is funded entirely through fees assessed for regulating its profession.

(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 is required to implement this 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 fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all.

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 will impact applicants seeking application for examination and registration with the Kentucky Board of Architects.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 323.210(1) (b), (2) authorizes 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. This administrative regulation does not directly affect expenditures or revenues.

(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 with this administrative regulation 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? No revenue will be generated with this administrative regulation in subsequent years.

(c) How much will it cost to administer this program for the first year? The administrative regulation does not result in additional cost the first year.

(d) How much will it cost to administer this program for subsequent years? The administrative regulation does not result in additional cost 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 (+/-):
Expenditures (+/-):
Other Explanation:

**BOARDS AND COMMISSIONS
Kentucky Board of Architects
(New Administrative Regulation)**

201 KAR 19:225. Examinations required; general provisions.

RELATES TO: KRS 323.050, 323.215

STATUTORY AUTHORITY: KRS 323.210(1)(b), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.210(1)(b), (2) requires the board to promulgate administrative regulations governing the contents and conduct of examinations, the method and time for filing applications, and the time within which an applicant shall be examined after his application has been filed. This administrative regulation specifies the examination required by the board, and establishes general provisions relating to the administration of the examination.

Section 1. Examination Definition; Administration.

(1) Each applicant for licensure shall successfully complete the Architect Registration Examination (ARE), which is developed and graded by the National Council of Architectural Registration Boards (NCARB).

(2) The board shall designate each testing service consultant who shall administer the examination in accordance with the agreement between the consultant and NCARB.

(3) The examination sites and schedules shall be as designated by the testing service and agreed to by NCARB.

Section 2. Conditions of Examination.

(1) Grading of the examination shall be in accordance with the national grading procedure administered by NCARB.

(2) The board shall adopt the scoring procedures recommended by NCARB.

(3) Information pertaining to the subject matter of the examination shall not be given to an applicant in advance, except as specifically authorized by the board.

(4) The board may approve transfer credits for each part of the examination passed prior to the 1983 ARE. Information as to transfer credits shall be provided, if appropriate, to an applicant who requests an application form.

Section 3. (1) An applicant who has passed all divisions of the ARE by January 1, 2006, regardless of the time taken, has passed the examination.

(2) An applicant who has passed one or more but not all divisions of the ARE by January 1, 2006, shall have five (5) years to pass all remaining divisions.

(a) A passing grade for any remaining division shall be valid for five (5) years, after which time the division shall be retaken if the remaining divisions have not been passed.

(b) The five (5) year-period shall commence after January 1, 2006, on the date when the passed division is administered.

(c) Divisions passed before January 1, 2006 shall not have to be retaken.

(3) An applicant who has not passed any division of the ARE by January 1, 2006 shall be governed by the five (5) year requirement, which shall commence on the date when the first passed division is administered.

Section 4. Applicant Notice. Each applicant who has applied and been deemed eligible to take the examination shall be notified of the examination sites and the procedures to make the appointments with the testing service centers to take the examination divisions of his choosing. Special instructions and

limitations shall be issued to each applicant.

Section 5. Transfer of Scores.

(1) The board, upon proper application, may accept passing scores achieved on divisions of the ARE administered and attested to by another NCARB member board under the terms of Section 3 of this administrative regulation.

(2) The board, upon proper application and payment of the applicable fee, may forward the grades achieved by an applicant in the various divisions of the examination given under the board's jurisdiction to any other duly constituted architectural registration board and to NCARB for use in evaluating the applicant's eligibility for NCARB certification. The applicant shall state his or her reason for requesting transfer. The transfer shall terminate the applicant's application pending before the board.

Section 6. Conditions of Examination.

(1) Upon allegation of misbehavior on the part of an applicant in connection with taking the examination, the board shall investigate the allegation and take appropriate action including suspending or revoking test taking privileges and the cancellation of test scores.

(2) Misbehavior shall include:

- (a) Falsifying information on the examination application;
- (b) Cheating on the examination;
- (c) A violation of examination guidelines; or
- (d) A violation of a confidentiality agreement with respect to the examination.

STEPHANIE R MCCRERY, Board President
CORDELIA HARBUT, Executive Director

APPROVED BY AGENCY: August 7, 2020

FILED WITH LRC: August 10, 2020 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 27, 2020 at 2:00 PM Eastern Time via Zoom video conference, see more information and link below. Individuals interested in being heard at this hearing shall notify this agency in writing by October 20, 2020, 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 October 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: Cordelia Harbut, Executive Director, Kentucky Board of Architects, 155 E Main Street, Suite 300, Lexington, Kentucky 40507, phone (859) 246-2069, fax (859) 346-2431, email boa.irc@ky.gov

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cordelia Harbut, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation specifies the examination required by the board, and establishes general provisions relating to the administration of the examination.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to specify the examination required and detail the general provisions of the examination.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation is in conformity with KRS 323.210(1)(b), (2) which requires the board to promulgate administrative regulation governing the contents and conduct of examinations, the method and time for filing application, and the time with which and applicant shall be examined after his application has been filed.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides information on the general provisions for taking the required Architect Registration Examination (ARE®) examination.

(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:

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board estimates individuals seeking application for examination is approximately fifteen (15) annually.

(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: Each applicant for licensure shall successfully complete the Architect Registration Examination (ARE®) developed by the National Council of Architectural Registration Boards (NCARB).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): NCARB requires a fee of \$1,410 to take the Architect Registration Examination (ARE®).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities shall be allowed to take the Architect Registration Examination (ARE®).

(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: The Board is a self-supporting agency. It is funded entirely through fees assessed for regulating its profession.

(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 is required to implement this 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 fees or directly or indirectly increase any fees.

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(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all.

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 will impact individuals seeking application for examination with the Kentucky Board of Architects.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 323.210(1) (b), (2) authorizes 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. This administrative regulation does not directly affect expenditures or revenues.

(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 with this administrative regulation 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? No revenue will be generated with this administrative regulation in subsequent years.

(c) How much will it cost to administer this program for the first year? The administrative regulation does not result in additional cost the first year.

(d) How much will it cost to administer this program for subsequent years? The administrative regulation does not result in additional cost 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 (+/-):
Expenditures (+/-):
Other Explanation:

BOARDS AND COMMISSIONS
Kentucky Board of Architects
(New Administrative Regulation)

201 KAR 19:230. Reexamination; reconsideration.

RELATES TO: KRS 323.090, 323.210

STATUTORY AUTHORITY: KRS 323.210(1)(b), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.210(1)(b), (2) requires the board to promulgate administrative regulations governing the contents and conduct of examinations, the method and time for filing applications, and the time within which an applicant shall be examined after his application has been filed. This administrative regulation prescribes conditions for reexamination and reconsideration of applications.

Section 1. Reexamination Applicants. An applicant who failed to successfully complete the examination under the provisions of KRS 323.090 and 201 KAR 19:225:

- (1) Shall be considered a new applicant for the examination; and
(2) Shall submit a new application and processing fee.

Section 2. Reconsideration of Applicants who were Denied Admission to Examination.

(1) An applicant whose original application for admission to the examination was denied may request reconsideration by letter to the board with evidence that he has made up the deficiencies which caused the denial. A formal application or application fees shall not be required for this request if it is made within a period of

three (3) years from the date denied.

(2) After three (3) years a new application shall be submitted containing relative information on training and experience subsequent to the original application.

STEPHANIE R MCCRERY, Board President
CORDELIA HARBUT, Executive Director

APPROVED BY AGENCY: August 7, 2020

FILED WITH LRC: August 10, 2020 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 27, 2020 at 2:00 PM Eastern Time via Zoom video conference, see more information and link below. Individuals interested in being heard at this hearing shall notify this agency in writing by October 20, 2020, 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 October 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: Cordelia Harbut, Executive Director, Kentucky Board of Architects, 155 E Main Street, Suite 300, Lexington, Kentucky 40507, phone (859) 246-2069, fax (859) 346-2431, email boa.irc@ky.gov

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cordelia Harbut, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation prescribes the general provisions for applicants who failed or were denied admission to the examination to apply for reexamination or reconsideration.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to prescribe the conditions for reexamination and reconsideration of applications.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation is in conformity with KRS 323.210(1)(b), (2) which requires the board to promulgate administrative regulation governing the contents and conduct of examinations, the method and time for filing application, and the time with which and applicant shall be examined after his application has been filed.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides general conditions for

reexamination or reconsideration.

(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:

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board estimates individuals seeking reexamination or reconsideration is approximately eight (8) annually.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants for reexamination shall submit a new application and processing fee. Applicants for reconsideration shall request reconsideration by letter.

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

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

(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: The Board is a self-supporting agency. It is funded entirely through fees assessed for regulating its profession.

(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 is required to implement this 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 fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all.

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 will impact applicants seeking application for reexamination or reconsideration with the Kentucky Board of Architects.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 323.210(1) (b), (2) authorizes 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. This administrative regulation does not directly affect expenditures or revenues.

(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 with this administrative regulation 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? No revenue will be generated with this administrative regulation in subsequent years.

(c) How much will it cost to administer this program for the first year? The administrative regulation does not result in additional cost the first year.

(d) How much will it cost to administer this program for subsequent years? The administrative regulation does not result in additional cost 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 (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS
Kentucky Board of Architects
(New Administrative Regulation)

201 KAR 19:235. Reciprocity; registration without examination.

RELATES TO: KRS 323.060, 323.210

STATUTORY AUTHORITY: KRS 323.210

NECESSITY, FUNCTION, AND CONFORMITY: To define basis and rules for registration of nonresident architects.

Section 1. General Requirements of Nonresident Architects.

(1) Nonresident architects shall be fully registered in Kentucky before they practice architecture in the Commonwealth. Any nonresident architect who desires registration in Kentucky, and whose state of residence grants reciprocal licensing privileges satisfactory to this board, may apply for a license in Kentucky.

(2) He shall make application through the National Council of Architectural Registration Boards, 1401 H ST NW #500, Washington, DC 20005, and obtain NCARB certification.

(3) An NCARB record plus certification shall provide all, or most of the information needed in applying for registration.

Section 2. Review of Applications. Registration by reciprocity shall be based upon equivalent examinations, experience, character and education requirements. An application received through the National Council of Architectural Registration Boards shall be accepted for review to determine if the qualifications for licensing by examination were, in the opinion of the board, equal to those prescribed in Kentucky.

Section 3. Additional Provisions. The board may, in its discretion:

(1) Call for personal interview any applicant whose record is not sufficiently clear as to his technical, ethical and moral qualifications, for further judgment thereon.

(2) Grant registration without examination to any architect whose application shows him to be so qualified and so fitted to practice architecture that his services will, in the opinion of this board, be a valuable asset to both the Commonwealth of Kentucky, and the profession of architecture.

(3) In any case the board reserves unto itself alone the right of decision to grant or deny registration by reciprocity to any applicant.

STEPHANIE R MCCRERY, Board President

CORDELIA HARBUT, Executive Director

APPROVED BY AGENCY: August 7, 2020

FILED WITH LRC: August 10, 2020 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 27, 2020 at 2:00 PM Eastern Time via Zoom video conference, see more information and link below. Individuals interested in being heard at this hearing shall notify this agency in writing by October 20, 2020, five workdays prior to the hearing, of their intent to attend. If no

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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 October 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: Cordelia Harbut, Executive Director, Kentucky Board of Architects, 155 E Main Street, Suite 300, Lexington, Kentucky 40507, phone (859) 246-2069, fax (859) 346-2431, email boa.irc@ky.gov

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cordelia Harbut, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: The administrative regulation defines the basis and rules for registration of nonresident architects.

(b) The necessity of this administrative regulation: This administrative regulation is necessary define the requirements for nonresident architects to be registered by reciprocity.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation is in conformity with KRS 323.210 that gives the board the authority to promulgate appropriate administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will apprise nonresident architects the requirements for reciprocity.

(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:

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board estimates nonresident architects seeking reciprocity is approximately 200 annually.

(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: Nonresident architects shall make application to the board for reciprocity and have their NCARB file submitted to the board for review for equivalent resident examinations, experience, education and character requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): A nonresident architect’s application shall be accompanied by a \$200 payment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities’ credentials shall be reviewed to determine their qualification to obtain a registration to practice architecture in Kentucky.

(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: The Board is a self-supporting agency. It is funded entirely through fees assessed for regulating its profession.

(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 is required to implement this 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 fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all.

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 will impact nonresident architects seeking reciprocity with the Kentucky Board of Architects.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 323.210 authorizes 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. This administrative regulation does not directly affect expenditures or revenues.

(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 with this administrative regulation 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? No revenue will be generated with this administrative regulation in subsequent years.

(c) How much will it cost to administer this program for the first year? The administrative regulation does not result in additional cost the first year.

(d) How much will it cost to administer this program for subsequent years? The administrative regulation does not result in additional cost 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 (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS
Kentucky Board of Architects
(New Administrative Regulation)

201 KAR 19:240. Resident licensed in another state; reciprocity.

RELATES TO: KRS 323.060

STATUTORY AUTHORITY: KRS 323.210

NECESSITY, FUNCTION, AND CONFORMITY: To further relate registration through reciprocity.

Section 1. Residents Licensed in other States but not in Kentucky. A resident of Kentucky who is licensed in another state but not in Kentucky who wishes to obtain a license by reciprocity shall follow the same procedure and meet the same standards as required for nonresident architects.

STEPHANIE R MCCRERY, Board President

CORDELIA HARBUT, Executive Director

APPROVED BY AGENCY: August 7, 2020

FILED WITH LRC: August 10, 2020 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 27, 2020 at 2:00 PM Eastern Time via Zoom video conference, see more information and link below. Individuals interested in being heard at this hearing shall notify this agency in writing by October 20, 2020, 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 October 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: Cordelia Harbut, Executive Director, Kentucky Board of Architects, 155 E Main Street, Suite 300, Lexington, Kentucky 40507, phone (859) 246-2069, fax (859) 346-2431, email boa.irc@ky.gov

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cordelia Harbut, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: The administrative regulation further relates registration through reciprocity.

(b) The necessity of this administrative regulation: To further

relate registration through reciprocity.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation is in conformity with KRS 323.210 that gives the board the authority to promulgate appropriate administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will apprise residents licensed in other states the requirements to obtain a license in Kentucky.

(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:

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board estimates residents licensed in other states seeking a Kentucky license is approximately 2 annually.

(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: Residents licensed in another state but not Kentucky, shall follow the same procedures and meet the same standards as required for nonresident architects.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): A resident licensed in another state application shall be accompanied by a \$200 payment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities credentials shall be reviewed to determine their qualification to obtain a license to practice architecture in Kentucky.

(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: The Board is a self-supporting agency. It is funded entirely through fees assessed for regulating its profession.

(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 is required to implement this 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 fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all.

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 impacts resident architects licensed in other states seeking reciprocity with the Kentucky Board of Architects.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 323.210 authorizes 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. This administrative regulation does not directly affect expenditures or revenues.

(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 with this administrative regulation 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? No revenue will be generated with this administrative regulation in subsequent years.

(c) How much will it cost to administer this program for the first year? The administrative regulation does not result in additional cost the first year.

(d) How much will it cost to administer this program for subsequent years? The administrative regulation does not result in additional cost 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 (+/-):
- Expenditures (+/-):
- Other Explanation:

**BOARDS AND COMMISSIONS
Kentucky Board of Architects
(New Administrative Regulation)**

201 KAR 19:245. Duplicate certificates.

RELATES TO: KRS 323.100, 323.210(2), (5), (7)
STATUTORY AUTHORITY: KRS 323.210(2), (5), (7)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.100 specifies the form of the license issued by the board. This administrative regulation provides the basis for issuing duplicate certificates.

Section 1. Request and Conditions. An architect who is registered in the Commonwealth of Kentucky may secure a duplicate certificate by requesting a duplicate certificate and accompanying this request with the fee established by 201 KAR 19:255, Section 2(11).

STEPHANIE R MCCRERY, Board President
CORDELIA HARBUT, Executive Director

APPROVED BY AGENCY: August 7, 2020
FILED WITH LRC: August 10, 2020 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 27, 2020 at 2:00 PM Eastern Time via Zoom video conference, see more information and link below. Individuals interested in being heard at this hearing shall notify this agency in writing by October 20, 2020, 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 October 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: Cordelia Harbut, Executive Director, Kentucky Board of Architects, 155 E Main Street, Suite 300, Lexington, Kentucky 40507, phone (859) 246-2069, fax (859) 346-2431, email boa.irc@ky.gov

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cordelia Harbut, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the basis for issuing duplicate certificates.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to apprise interested licensed architects that duplicate certificates are available.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with KRS 323.100 that specifies the form of the license issued by the board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Architect registered in the Commonwealth of Kentucky may secure a duplicate certificate if requested.

(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:

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 2700 architects will be affected by this registration.

(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: An architect may request a duplicate certificate along with the established fee to receive it.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Duplicate certificates require a payment of \$25.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will be provided a duplicate certificate.

(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:

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The Board is a self-supporting agency. It is funded entirely through fees assessed for regulating its profession.

(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 is required to implement this 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 fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all.

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 impacts architects licensed in Kentucky requesting a duplicate certificate from the Kentucky Board of Architects.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 323.100 authorizes 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. This administrative regulation does not directly affect expenditures or revenues.

(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 with this administrative regulation 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? No revenue will be generated with this administrative regulation in subsequent years.

(c) How much will it cost to administer this program for the first year? The administrative regulation does not result in additional cost the first year.

(d) How much will it cost to administer this program for subsequent years? The administrative regulation does not result in additional cost 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 (+/-):
Expenditures (+/-):
Other Explanation:

BOARDS AND COMMISSIONS
Kentucky Board of Architects
(New Administrative Regulation)

201 KAR 19:250. Temporary licensing not permitted.

RELATES TO: KRS 323.020
STATUTORY AUTHORITY: KRS 323.210
NECESSITY, FUNCTION, AND CONFORMITY: To further define requirements for license.

Section 1. Temporary Licensing: Temporary registration, licenses or permits will not be granted.

STEPHANIE R MCCRERY, Board President
CORDELIA HARBUT, Executive Director
APPROVED BY AGENCY: August 7, 2020
FILED WITH LRC: August 10, 2020 at 9 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held on October 27, 2020 at 2:00 PM Eastern Time via Zoom video conference, see more information and link below. Individuals interested in being heard at this hearing shall notify this agency in writing by October 20, 2020, 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 October 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: Cordelia Harbut, Executive Director, Kentucky Board of Architects, 155 E Main Street, Suite 300, Lexington, Kentucky 40507, phone (859) 246-2069, fax (859) 346-2431, email boa.irc@ky.gov

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cordelia Harbut, Executive Director

- (1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation appraises interested individuals that temporary registration, licenses or permits will not be granted.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to further define the requirements for licensure.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with KRS 323.210 that describes the function of the Board and the authority for promulgating all administrative regulations
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation will assist by adding additional detail to the 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:
(b) The necessity of the amendment to this administrative regulation:
(c) How the amendment conforms to the content of the authorizing statutes:
(d) How the amendment will assist in the effective administration of the statutes:
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this

administrative regulation: This administrative regulation affects approximately 110,000 nonresident licensed architects in the United States.

(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 are not allowed to apply for a temporary license; therefore, they will apply for a regular license to practice in Kentucky.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Temporary licensing is not permitted; therefore, no fee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entity is required to verify he/she has the equivalent of a resident's examinations, experience, education and character requirements to before acquiring a license.

(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: The Board is a self-supporting agency. It is funded entirely through fees assessed for regulating its profession.

(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 is required to implement this 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 fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all.

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 impacts architects seeking a temporary license with the Kentucky Board of Architects.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 323.210 authorizes 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. This administrative regulation does not directly affect expenditures or revenues.

(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 with this administrative regulation 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? No revenue will be generated with this administrative regulation in subsequent years.

(c) How much will it cost to administer this program for the first year? The administrative regulation does not result in additional cost the first year.

(d) How much will it cost to administer this program for subsequent years? The administrative regulation does not result in additional cost 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 (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS Kentucky Board of Architects (New Administrative Regulation)

201 KAR 19:255. Fees.

RELATES TO: KRS 323.080, 323.110

STATUTORY AUTHORITY: KRS 323.080, 323.210(1)(b), (2), (3)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.080, 323.210(1)(b), (2), (3)(b) require the board to promulgate administrative regulations establishing fees for services. This administrative regulation establishes the deadline for paying the renewal fee and a fee schedule.

Section 1. License Renewal.

(1) The renewal fee shall be due and paid before the first day of the year designated as the licensee's renewal period. Except as provided in subsection (3) of this section, a licensee failing to pay the renewal fee on or before the 30th day of August, of that designated year, who has not voluntarily surrendered his registration by that date, shall be guilty of violation of the law and his or her license shall be automatically revoked.

(2)(a) Except as provided by paragraph (b) of this subsection, a license shall be renewed, restored, or reinstated by July 1 of each calendar year.

(b) A license issued between January 1 and June 30 of a calendar year shall not be renewed until the following July 1.

(3)(a) During a period of active military duty, a licensee in the military may, upon written application to the board, be excused from paying the renewal fee until the military service is terminated and the licensee wishes to resume practice.

(b) An identification card or renewal certificate shall be issued upon notification of the licensee's return from duty and payment of the current renewal fee.

(4)(a) An architect whose license has been revoked for failure to pay the renewal fee, who wishes to have his or her license reinstated, shall make a written request giving the reason why the licensee neither surrendered his registration nor paid the fee within the time prescribed by law.

(b) Upon payment of the prescribed fees and acceptance by the board, the license shall be reinstated.

(5)(a) The application for license renewal shall include a signed affidavit that the licensee has not been in violation of the professional practice standards stated in 201 KAR 19:260.

(b) Failure to sign the affidavit shall be cause for the renewal application to be rejected.

Section 2. Fee Schedule.

(1) Application for admission to the Architect Registration Examination - \$100.

(2) Reapplication for admission to the Architect Registration Examination after original application has expired - \$100.

(3) For a license certificate after passing of examination - twenty-five (25) dollars.

(4) Application for restoration of a voluntarily surrendered license - \$150.

(5) Application for a license by reciprocity with another state or country - \$200.

(6) Application for reinstatement of license revoked for failure to pay renewal fee, or suspended by the board; renewal fees from date of revocation plus - \$150.

(7)(a) Annual renewal fee for a license renewal submitted and received before July 1: \$125.

(b) Annual renewal fee for a license renewal submitted and

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received on or after July 1 and before August 1: \$150.

(c) Annual renewal fee for a license renewal submitted and received on or after August 1 and before August 30: \$175.

(8) Annual renewal fee for an emeritus architect: fifty (50) dollars.

(9) Certifying the active license of a registrant to the licensing agency of another jurisdiction: twenty-five (25) dollars.

(10) Administrative fee of twenty-five (25) dollars for failure to notify the board of change of an address, telephone number, email address or employment within thirty (30) days of the change.

(11) Administrative fee of twenty-five (25) dollars for duplicate documents, including renewal forms, wallet cards, or wall certificates.

(12)(a) A fee shall not be refunded.

(b) Each payment shall be by check made payable to "Kentucky State Treasurer."

(c) Each check shall be certified except those for the renewal fee.

Section 3. Charges for Examination. (1) An applicant shall register with and pay the cost of taking the examination directly to the designated testing service.

(2) The examination fee shall be paid each time the examinations are taken and shall not be refunded.

STEPHANIE R MCCRERY, Board President

CORDELIA HARBUT, Executive Director

APPROVED BY AGENCY: August 7, 2020

FILED WITH LRC: August 10, 2020 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 27, 2020 at 2:00 PM Eastern Time via Zoom video conference, see more information and link below. Individuals interested in being heard at this hearing shall notify this agency in writing by October 20, 2020, 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 October 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: Cordelia Harbut, Executive Director, Kentucky Board of Architects, 155 E Main Street, Suite 300, Lexington, Kentucky 40507, phone (859) 246-2069, fax (859) 346-2431, email boa.irc@ky.gov

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cordelia Harbut, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the deadline for paying the renewal fee and fee schedule.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to satisfy the requirement for the board to promulgate administrative regulation establishing fees for services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides specifics for the fee schedule as required in KRS 323.080, 323.210(1)(b), (2), (3)(b).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Board is a self-supporting agency. The fees will provide revenue for the board to provide services and regulate the profession.

(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:

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 2700 licensed Kentucky architects.

(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 be required to pay selected fees for services provided.

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

1. Application for admission to the Architect Registration Examination - \$100.

2. Reapplication for admission to the Architect Registration Examination after original application has expired - \$100.

3. For a license certificate after passing of examination - twenty-five (25) dollars.

4. Application for restoration of a voluntarily surrendered license - \$150.

5. Application for a license by reciprocity with another state or country - \$200.

6. Application for reinstatement of license revoked for failure to pay renewal fee, or suspended by the board; renewal fees from date of revocation plus - \$150.

7.a. Annual renewal fee for a license renewal submitted and received before July 1: \$125.

b. Annual renewal fee for a license renewal submitted and received on or after July 1 and before August 1: \$150.

c. Annual renewal fee for a license renewal submitted and received on or after August 1 and before August 30: \$175.

8. Annual renewal fee for an emeritus architect: fifty (50) dollars.

9. Certifying the active license of a registrant to the licensing agency of another jurisdiction: twenty-five (25) dollars.

10. Administrative fee of twenty-five (25) dollars for failure to notify the board of change of an address, telephone number, email address or employment within thirty (30) days of the change.

11. Administrative fee of twenty-five (25) dollars for duplicate documents, including renewal forms, wallet cards, or wall certificates.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities shall receive the above named services for the fee paid.

(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: The Board is a self-supporting agency. It is funded entirely through fees assessed for regulating its profession.

(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 is required to implement this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes the above fees.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all.

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 impacts architects licensed with the Kentucky Board of Architects and the fees their fee schedule.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 323.080, 323.210(1) (b), (2), (3) (b) authorizes 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. This administrative regulation is expected to generate \$390,000 in revenue and \$375,000 in expenses to administer the program.

(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 is expected to generate \$390,000 in revenue 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 is expected to generate \$390,000 in revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? This administrative regulation is expected to cost \$375,000 in expenses to administer the program.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation is expected to cost \$375,000 in expenses to administer 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 (+/-):
- Expenditures (+/-):
- Other Explanation:

**BOARDS AND COMMISSIONS
Kentucky Board of Architects
(New Administrative Regulation)**

201 KAR 19:260. Professional practice standards; violations, penalties.

RELATES TO: KRS 323.095, 323.120
STATUTORY AUTHORITY: KRS 323.210(2), (3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.210(2) and (3) authorizes the board to establish administrative

regulations relating to architecture and continuing education requirements. This administrative regulation establishes penalties for unprofessional practice and the failure to comply with continuing education requirements.

Section 1. Unprofessional Practice, Penalties, and Procedure.

- (1) The following shall constitute unprofessional practice:
 - (a) Gross incompetence or negligence;
 - (b) Unprofessional conduct or conduct tending to bring the profession into disrepute;
 - (c) Conviction of a felony;
 - (d) Fraudulent or dishonest architectural practice;
 - (e) Use of false evidence or misrepresentation in an:
 - 1. Application for licensing; or
 - 2. License renewal application;
 - (f) Signing or affixing a seal to a plan, print, specifications for a building, or report which have not been prepared by the architect or an employee under his supervision; and
 - (g) Failure to comply with continuing education requirements in 201 KAR 19:087.
- (2) The following penalties may be imposed on an architect for unprofessional practice:
 - (a) Refusal of to grant a license;
 - (b) Refusal to renew or reissue a license;
 - (c) Private or public reprimand;
 - (d) Imposition of probation;
 - (e) Suspension of a license;
 - (f) Revocation of a license.
- (3) The procedure for imposing a penalty on an architect shall be conducted in accordance with KRS Chapter 13B and 323.130.

Section 2. Gross Incompetence and Gross Negligence Defined. The following acts or omissions by an architect shall be deemed to be gross incompetence or gross negligence within the meaning of the law:

- (1) Willfully failing to use reasonable care and diligence in his professional practice, resulting in a building or structure being improperly constructed to the detriment of the occupants.
- (2) Willfully failing to use reasonable care and diligence in preparing drawings, specifications, and other documents relating to the design and construction of buildings for the protection of a client in all relationships as agent of the client.

Section 3. Unprofessional Conduct Defined. The following acts by an architect shall be deemed to be "unprofessional conduct":

- (1) Accepting compensation for architectural services from any entity other than his client or employer.
- (2) Offering or making a payment or gift to a government official (whether elected or appointed) with the intent to influence the official judgment in connection with a prospective or existing project in which the architect has an interest in providing architectural services.
- (3)(a) Offering or making a payment or gift, as an individual architect or as a participating member of a partnership or corporation, to an elected governmental official, candidate for governmental office, or the campaign of a candidate for governmental office, when the payment or gift is a violation of federal or state campaign finance laws or administrative regulations.
 - (b) Entering a plea of guilty or an "Alford" plea to, or having been found guilty of, or having been convicted of, a felony or misdemeanor involving the violation of federal or state campaign finance laws, and the time for appeal has lapsed or the judgment or conviction has been affirmed on appeal, irrespective of an order granting probation following the conviction, suspending imposition of sentence shall be conclusive proof of a violation of this section, and a certified copy of the judgment or order shall constitute sufficient proof of a violation.
- (4) Offering or making any gifts, except gifts of nominal value (including, for example, reasonable entertainment and hospitality), with the intent to influence the judgment of an existing or prospective client in connection with a project in which the architect has an interest.

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(5) Having a financial interest in the manufacture, sale or installation of any component or process used in a project for which he is the architect unless the client has been advised and has waived any objection.

(6) Publicly endorsing a product, system, or service, or permitting the use of his name or photograph to imply endorsement of a product, system, or service not designed or developed by him; or

(7)(a) Using paid advertising on behalf of himself, his partner, associate, or any other architect affiliated with him or his firm, that contains a statement or claim which is false or tends to be misleading, deceptive, or unfair, or which makes material claims of superiority which cannot be substantiated rather than being designed to inform the public.

(b) Advertising may include the name of the architect or firm, address, telephone number, a statement of the fields of practice, and a statement of the geographical area where services are rendered, and cost of services.

(c) An architect or architectural firm which advertises a fee for a specific service and accepts employment for that service shall perform for the amount stated, and a statement to that effect shall be included in every advertisement.

(d) Advertisements may be by newspaper or magazine advertisements, radio or television announcements, or display advertisements in the city or telephone directories.

Section 4. Fraudulent or Dishonest Practice Defined. The following practices by an architect shall be deemed to be "fraudulent or dishonest practice" within the meaning of the law:

(1) Making an untrue or deceitful statement in an application for examination or registration, or in an application for license renewal or in any other statements or representations to the board.

(2) Affixing his seal to a drawing:

(a) For which he was not:

- 1. The author; or
2. In charge of preparing the plan; or
(b) Which was not prepared under his supervision.

(3) Bribing a person who may influence the selection of an architect.

(4) Willfully misleading or defrauding a person employing him as an architect.

(5) Willful violation of:

(a) A Kentucky or other state law relating to the practice of architecture; or

(b) An administrative regulation promulgated by the board.

(6) Using, or attempting to use, or practicing under, a license that has been suspended or revoked or which has not been renewed as required by law and the administrative regulations of the board.

Section 5. Registration while Working for Others. (1) Without affecting the status of his registration, an architect may as an employee of:

- (a) Another architect; or
(b) A firm, if his duties are nonarchitectural.

(2) If an architect works as an architect for or with a nonarchitect or corporation not under the control of architects:

- (a) He shall maintain:
1. Free and unbiased judgment;
2. Unrestrained use of his professional prerogatives and services to clients; and

(b) The terms of his employment shall permit full compliance with the:

- 1. Obligations of practice; and
2. Administrative regulations.

Section 6. Office Staffing. An office maintained for the preparation of drawings, specifications, reports and other professional work shall have a regularly employed architect duly registered with this board, in full authority and responsible charge, having direct knowledge and supervisory control of all work.

STEPHANIE R MCCRERY, Board President

CORDELIA HARBUT, Executive Director
APPROVED BY AGENCY: August 7, 2020
FILED WITH LRC: August 10, 2020 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 27, 2020 at 2:00 PM Eastern Time via Zoom video conference, see more information and link below. Individuals interested in being heard at this hearing shall notify this agency in writing by October 20, 2020, 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 October 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: Cordelia Harbut, Executive Director, Kentucky Board of Architects, 155 E Main Street, Suite 300, Lexington, Kentucky 40507, phone (859) 246-2069, fax (859) 346-2431, email boa.irc@ky.gov

Join Zoom Meeting

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Passcode: 190433

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cordelia Harbut

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes penalties for unprofessional practice and the failure to comply with continuing education requirements.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to protect the general public by apprising the regulated entities of professional practice standards, violations and penalties.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administration is in conformity with KRS 323.210(2) and (3) that authorizes the board to establish administrative regulation relating to architecture and continuing education requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation apprises the regulated entities of the penalties for violating professional practice standards.

(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:

(b) The necessity of the amendment to this administrative

regulation:

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 2700 licensed Kentucky architects

(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 regulated entities will be required to adhere to the professional standards or face penalties for violations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no fees for complying with the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will not face penalties as a result of compliance.

(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: The Board is a self-supporting agency. It is funded entirely through fees assessed for regulating its profession.

(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 is required to implement this 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 fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all.

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 impacts professional practice standards; violations, and penalties for architects licensed with the Kentucky Board of Architects.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 323.210(2), (3) authorizes 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. This administrative regulation does not directly affect expenditures or revenues.

(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 with this administrative regulation 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? No revenue will be generated with this administrative regulation in subsequent years.

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

year? The administrative regulation does not result in additional cost the first year.

(d) How much will it cost to administer this program for subsequent years? The administrative regulation does not result in additional cost 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 (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS
Kentucky Board of Architects
(New Administrative Regulation)

201 KAR 19:265. Individual seals; office titles.

RELATES TO: KRS 323.095

STATUTORY AUTHORITY: KRS 323.210

NECESSITY, FUNCTION, AND CONFORMITY: To describe the required seal acceptable to the board.

Section 1. Individual Seals Required. Each architect registered for practice within the Commonwealth of Kentucky shall sign, date and imprint with his seal all documents prepared by him or under his supervision, and shall secure and use for this purpose a seal of the following design:

(1) Two (2) concentric circles;

(a) The outer circle to be one and nine-sixteenths (1 9/16) inches in diameter and the inner circle to one (1) inch in diameter.

(b) The upper portion of the annular space between the two (2) circles shall bear the name of the registrant.

(c) The lower portion of the annular space shall bear the word "Architect."

(d) The space enclosed by the inner circle shall be divided into an upper and lower half.

1. The upper portion shall consist of three (3) lines, the word "Registered," then the abbreviation "No.," and then the number of the certificate of the registrant.

2. The lower portion shall contain, in three (3) lines, the words "Commonwealth of Kentucky."

(2) It shall be permissible to combine the names and registration numbers of two (2) or more registered architects from the same office on one (1) seal. The names of any persons who are not registered architects on any such combination shall not be permitted.

(3) It shall be made clear, by proper use of seal that only those who are licensed architects in Kentucky are in charge and fully responsible for the work involved.

Section 2. Office and Firm Names.

(1) Title blocks and firm names used in connection with the practice of architecture in this state shall not be misleading nor infer that unlicensed persons are architects, and only those registered to practice in Kentucky shall be so designated as architects.

(2) A firm name may be used without all members being registered if those architects who are licensed in Kentucky have the title "architect" applied only to them in subheadings or subtitles in defining the practice of the firm. Examples:

(a) SMITH, JONES, MILLER & MOORE Albert Smith, Architect (Where Smith and Jones are both architects in their own state but only Albert Smith is licensed in Kentucky and is fully responsible for work in this state); or

(b) SMITH, JONES, MILLER & MOORE, Inc. Architects and Engineers Albert Smith, Architect Carl Miller, Mech. Engr. Robert Jones, Architect John Moore, Struct. Engr.

(Where all are licensed in Kentucky in the professions indicated); or

(c) STATEWIDE STUDIOS, Inc. Roy Jones, Architect John Davis, Mech. Engr. Carl Smith, Architect Alan Moore, Manager

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(Where Jones and Smith are both licensed in Kentucky and the firm has other members they wish to include in their office title).

Section 3. Sample forms of the prescribed seal are incorporated by reference and may be obtained from the Kentucky Board of Architects, 155 East Main Street, Suite 300, Lexington, Kentucky 40507, Monday through Friday, 8 a.m. to 4 p.m.

STEPHANIE R MCCRERY, Board President

CORDELIA HARBUT, Executive Director

APPROVED BY AGENCY: August 7, 2020

FILED WITH LRC: August 10, 2020 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 27, 2020 at 2:00 PM Eastern Time via Zoom video conference, see more information and link below. Individuals interested in being heard at this hearing shall notify this agency in writing by October 20, 2020, 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 October 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: Cordelia Harbut, Executive Director, Kentucky Board of Architects, 155 E Main Street, Suite 300, Lexington, Kentucky 40507, phone (859) 246-2069, fax (859) 346-2431, email boa.irc@ky.gov

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Passcode: 190433

Find your local number: <https://us02web.zoom.us/j/82797946682>

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cordelia Harbut, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation describes the required seal approved by the board signifying to permitting authorities and the general public that the architectural documents have been prepared under the direct supervision of an architect.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to describe the required seal acceptable to the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administration is in conformity with KRS 323.210 that provides the functions and the authority of the board for promulgating all necessary administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation appraises interested parties of the required seal acceptable to the board.

(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:

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 2700 licensed Kentucky architects

(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: Each regulated entity registered to practice within the Commonwealth of Kentucky shall sign, date and imprint with his/her seal all documents prepared by or under their supervision, and shall secure and use for this purpose a required seal acceptable to the board.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no fees for complying with the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entity is identified to the permitting authorities and the general public that the architectural document have been prepared under the direct supervision of a licensed and qualified architect.

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

(a) Initially: There are no cost associated with this administrative regulation to the administrative body.

(b) On a continuing basis: There are no cost associated with this administrative regulation to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Board is a self-supporting agency. It is funded entirely through fees assessed for regulating its profession.

(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 is required to implement this 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 fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all.

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 impacts architects licensed with the Kentucky Board of Architects and the required architect's seal acceptable to the board.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 323.210 authorizes 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. This administrative regulation does not directly affect expenditures or revenues.

(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 with this administrative regulation 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? No revenue will be generated with this administrative regulation in subsequent years.

(c) How much will it cost to administer this program for the first year? The administrative regulation does not result in additional cost the first year.

(d) How much will it cost to administer this program for subsequent years? The administrative regulation does not result in additional cost 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 (+/-):
- Expenditures (+/-):
- Other Explanation:

**BOARDS AND COMMISSIONS
Kentucky Board of Architects
(New Administrative Regulation)**

201 KAR 19:270. Plans and specifications standards.

RELATES TO: KRS 323.020

STATUTORY AUTHORITY: KRS 323.210

NECESSITY, FUNCTION, AND CONFORMITY: To define minimum standards of documents prepared by architects.

Section 1. Standards Required.

(1) All plans and specifications and other documents prepared for use within the Commonwealth of Kentucky shall be of a standard sufficient to safeguard the public against misrepresentations and shall show and describe all essential parts of the design, details and materials necessary.

(2) Each project must meet the requirements of the city, county, state and federal agencies having jurisdiction, including, but not limited to, the following:

- (a) Department of Housing, Buildings and Construction.
- (b) City and County Building Departments.
- (c) County Health Departments, and the Department for Human Resources.

(d) Department of Education (For tax supported schools, grades 1 - 12).

(e) Bureau of Environmental Quality, Department for Natural Resources and Environmental Protection (if impoundment, diversion or pollution is involved).

(f) Division of Air Pollution, Department for Natural Resources and Environmental Protection.

STEPHANIE R MCCRERY, Board President
CORDELIA HARBUT, Executive Director

APPROVED BY AGENCY: August 7, 2020

FILED WITH LRC: August 10, 2020 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 27, 2020 at 2:00 PM Eastern Time via Zoom video conference, see more information and link below. Individuals interested in being heard at this hearing shall notify this agency in writing by October 20, 2020, 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 October 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: Cordelia Harbut, Executive Director, Kentucky Board of Architects, 155 E Main Street, Suite 300, Lexington, Kentucky 40507, phone (859) 246-2069, fax (859) 346-2431, email boa.irc@ky.gov.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cordelia Harbut

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation is to define the minimum standards of documents prepared by architects.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to safeguard the public against misrepresentations of plans, specifications and other documents prepared for use within the Commonwealth of Kentucky by defining the minimum standards of documents prepared by architects.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administration is in conformity with KRS 323.210 that provides the functions and the authority of the board for promulgating all necessary administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation apprises interested parties of the required plans and specifications standards.

(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:

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 2700 licensed Kentucky architects

(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

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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: Each regulated entity registered to practice within the Commonwealth of Kentucky shall adhere to the plans and specifications standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no fees for complying with the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities identified shall safeguard the public by showing and describing all essential parts of design, details and materials necessary as required by the government agencies and the permitting authorities.

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

(a) Initially: There are no cost associated with this administrative regulation to the administrative body.

(b) On a continuing basis: There are no cost associated with this administration regulation to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Board is a self-supporting agency. It is funded entirely through fees assessed for regulating its profession.

(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 is required to implement this 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 fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all.

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 impacts the minimum standards of documents prepared by architects licensed with the Kentucky Board of Architects.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 323.210 authorizes 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. This administrative regulation does not directly affect expenditures or revenues.

(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 with this administrative regulation 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? No revenue will be generated with this administrative regulation in subsequent years.

(c) How much will it cost to administer this program for the first year? The administrative regulation does not result in additional cost the first year.

(d) How much will it cost to administer this program for subsequent years? The administrative regulation does not result in additional cost 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 (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS
Board of Architects
(New Administrative Regulation)

201 KAR 19:275. Use of title "architect".

RELATES TO: KRS 323.010, 323.230

STATUTORY AUTHORITY: KRS 323.210

NECESSITY, FUNCTION, AND CONFORMITY: Relates to the title of "Architect."

Section 1. Individuals only are Licensed. Registration is of individuals only. No corporation, association or partnership may be registered as such. The word "architect" may be used to apply only to the names of individuals registered under the provisions of KRS Chapter 323.

STEPHANIE R MCCRERY, Board President

CORDELIA HARBUT, Executive Director

APPROVED BY AGENCY: August 7, 2020

FILED WITH LRC: August 10, 2020 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 27, 2020 at 2:00 PM Eastern Time via Zoom video conference, see more information and link below. Individuals interested in being heard at this hearing shall notify this agency in writing by October 20, 2020, 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 October 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: Cordelia Harbut, Executive Director, Kentucky Board of Architects, 155 E Main Street, Suite 300, Lexington, Kentucky 40507, phone (859) 246-2069, fax (859) 346-2431, email boa.irc@ky.gov.

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Find your local number: https://us02web.zoom.us/j/82797946682

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cordelia Harbut

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation is to define the use of the title architect.

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(b) The necessity of this administrative regulation: This administrative regulation is necessary to further define the title of "Architect".

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administration is in conformity with KRS 323.210 that provides the functions and the authority of the board for promulgating all necessary administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation apprises regulated entities on the use of the title "Architect".

(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:

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 2700 licensed Kentucky architects

(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: Each regulated entity registered to practice within the Commonwealth of Kentucky shall adhere to the use of the title architect.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no fees for complying with the administrative regulation.

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

The entities identified shall apply architect to their names.

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

(a) Initially: There are no cost associated with this administration regulation to the administrative body.

(b) On a continuing basis: There are no cost associated with this administration regulation to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Board is a self-supporting agency. It is funded entirely through fees assessed for regulating its profession.

(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 is required to implement this 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 fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied as the regulation is applicable to all.

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 impacts the use of the title "architect" as it relates to licensed architects with the Kentucky Board of Architects.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 323.210 authorizes 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. This administrative regulation does not directly affect expenditures or revenues.

(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 with this administrative regulation 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? No revenue will be generated with this administrative regulation in subsequent years.

(c) How much will it cost to administer this program for the first year? The administrative regulation does not result in additional cost the first year.

(d) How much will it cost to administer this program for subsequent years? The administrative regulation does not result in additional cost 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 (+/-):
Expenditures (+/-):
Other Explanation:

BOARDS AND COMMISSIONS
Kentucky Board of Architects
(New Administrative Regulation)

201 KAR 19:410. Accredited schools and colleges for certified interior designers.

RELATES TO: KRS 323.406(1), 323.408, 323.410
STATUTORY AUTHORITY: KRS 323.210(2), 323.406
NECESSITY, FUNCTION, AND CONFORMITY: KRS

323.406(1) authorizes the board to establish educational criteria for those persons seeking certification as a certified interior designer. This administrative regulation establishes the list of programs from which degrees and education meet the criteria for certification.

Section 1. Definitions.

- (1) "Board" is defined at KRS 323.010(1) and 323.400(1).
- (2) "CIDA" means the Council for Interior Design Certification which was formerly known as the Foundation for Interior Design Education Research (FIDER).
- (3) "NAAB" means the National Architectural Accrediting Board.

Section 2. (1) Schools and colleges of interior design that have professional degree programs accredited by CIDA or NAAB shall constitute the list of accredited programs.

(2) Education from a program of study on interior design other than a CITA or NAAB accredited degree program shall be obtained from a school accredited by a regional accrediting agency recognized by the U.S. Department of Education.

STEPHANIE R MCCRERY, Board President
CORDELIA HARBUT, Executive Director

APPROVED BY AGENCY: August 7, 2020
FILED WITH LRC: August 10, 2020 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 27, 2020 at 2:00 PM Eastern Time via Zoom video conference, see more information and link below. Individuals interested in being heard at this hearing shall notify this agency in writing by October 20, 2020, 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

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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 October 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: Cordelia Harbut, Executive Director, Kentucky Board of Architects, 155 E Main Street, Suite 300, Lexington, Kentucky 40507, phone (859) 246-2069, fax (859) 346-2431, email boa.irc@ky.gov.

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Passcode: 190433
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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cordelia Harbut

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the list of programs from which degrees and education meet the criteria for certification.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the list of programs from which degrees and education meet the criteria for certification.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 323.406(1) authorizes the board to establish educational criteria for those persons seeking certification as a certified interior designer.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes acceptable education programs from which degrees meet certification criteria.

(2) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Certified Interior Design applicants, approximately 10 annually.

(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 entity will take note of the listed programs from which degrees and education will meet the criteria for certification.

(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 direct cost to the entity in compliance with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities credentials shall be reviewed to determine their qualification to a certified interior designer in Kentucky.

(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: The Board is a self-supporting agency and receives no general fund tax appropriation. It is funded entirely through fees assessed for regulating its professionals.

(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 required.

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

There is no establishment or increase in fees pertaining to this regulation.

(9) TIERING: Is tiering applied? No. Tiering was not applied as the regulation is applicable to all.

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 impacts how the Kentucky Board of Architects establishes the list of programs from which degrees and education meet the criteria for Certified Interior Design certification.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 323.210(2), and 323.406 authorizes 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. This administrative regulation does not directly affect expenditures or revenues.

(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 with this administrative regulation 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? No revenue will be generated with this administrative regulation in subsequent years.

(c) How much will it cost to administer this program for the first year? The administrative regulation does not result in additional cost the first year.

(d) How much will it cost to administer this program for subsequent years? The administrative regulation does not result in additional cost 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 (+/-):

Expenditures (+/-):

Other Explanation:

**BOARDS AND COMMISSIONS
Kentucky Board of Architects
(New Administrative Regulation)**

201 KAR 19:415. Application for certification as an interior designer.

RELATES TO: KRS 323.400, 323.408(4), 323.410

STATUTORY AUTHORITY: KRS 323.210(2), 323.406

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.406 authorizes the board to promulgate administrative regulations necessary to implement KRS 323.400 to 323.416. This

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administrative regulation establishes the procedures for the filing and processing of an application for certification as an interior designer.

Section 1. Application for Certification. Each applicant shall:

- (1) Submit a Certified Interior Design Application Form, 1-03;
(2) Comply with the requirements of KRS 323.400 through 323.416 and the administrative regulations promulgated by the board; and
(3) Submit fees established in 201 KAR 19:440.

Section 2. Incorporation by Reference. (1) "Application for Interior Designer Certification", July 2019 Edition is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Architects, 155 East Main Street, Suite 300, Lexington, Kentucky 40507, Monday through Friday, 8 a.m. to 4 p.m.

STEPHANIE R MCCRERY, Board
CORDELIA HARBUT, Executive Director

APPROVED BY AGENCY: August 7, 2020

FILED WITH LRC: August 10, 2020 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 27, 2020 at 2:00 PM Eastern Time via Zoom video conference, see more information and link below. Individuals interested in being heard at this hearing shall notify this agency in writing by October 20, 2020, 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 October 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: Cordelia Harbut, Executive Director, Kentucky Board of Architects, 155 E Main Street, Suite 300, Lexington, Kentucky 40507, phone (859) 246-2069, fax (859) 346-2431, email boa.irc@ky.gov.

Join Zoom Meeting

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Meeting ID: 827 9794 6682

Passcode: 190433

Find your local number: https://us02web.zoom.us/j/82797946682

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cordelia Harbut

(1) Provide a brief summary of:

(a) What this administrative regulation does: The regulation establishes the procedures for the filing and processing of an application for certification as an interior designer.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to instruct individuals on the process to apply to become a Certified Interior Designer.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 323.406 authorizes the board to promulgate administrative regulations necessary to implement KRS 323.400 to 323.416.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the application process to become a Certified Interior Designer, along with materials incorporated by reference on the application process for certification.

(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:

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Interior designers, approximately 10 annually.

(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: Each applicant shall submit a Certified Interior Design Application Form, 1-03, comply with the requirements of KRS 323.400 through 323.416 and the administrative regulations promulgated by the board, submit fees established in 201 KAR 19:335.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fee for initial certification, including a certificate, shall be \$250.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities credentials shall be reviewed to determine their qualification for certification as a certified interior designer in Kentucky.

(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: The Board is a self-supporting agency and receives no general fund tax appropriation. It is funded entirely through fees assessed for regulating its professionals.

(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 is required to implement this 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 fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No tiering was not applied as the regulation is applicable to all.

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 impacts Interior Designers applying to become certified through outlining the procedures for the filing and processing of an

application for certification as an interior designer.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 323.210(2), and 323.406 authorizes 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. This administrative regulation does not directly affect expenditures or revenues.

(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 with this administrative regulation 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? No revenue will be generated with this administrative regulation in subsequent years.

(c) How much will it cost to administer this program for the first year? The administrative regulation does not result in additional cost the first year.

(d) How much will it cost to administer this program for subsequent years? The administrative regulation does not result in additional cost 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 (+/-):

Expenditures (+/-):

Other Explanation:

**BOARDS AND COMMISSIONS
Kentucky Board of Architects
(New Administrative Regulation)**

201 KAR 19:420. Qualifications for certification.

RELATES TO: KRS 323.400, 323.406(1), 323.408, 323.410(1), (3), (4)

STATUTORY AUTHORITY: KRS 323.210(2), 323.406(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.410(1)(c) requires the board issue a certificate as a certified interior designer to persons who meet the standards of education, experience, and testing established by the board. This administrative regulation establishes the requirements for obtaining certification as a certified interior designer.

Section 1. Definitions.

(1) "Board" is defined at KRS 323.010(1) and 323.400(1).

(2) "CIDA" means the Council for Interior Design Certification which was formerly known as the Foundation for Interior Design Education Research (FIDER).

(3) "NAAB" means the National Architectural Accrediting Board.

Section 2. Accredited Degrees.

(1) The board shall determine if an applicant's education and experience in the field of interior design are sufficient to establish eligibility for certification.

(2) The board shall certify an applicant who has obtained:

(a) A four (4) or five (5) year professional accredited degree;

(b) At least two (2) years of acceptable full-time employment in the performance of interior design services, in accordance with Section 3 of this administrative regulation; and

(c) A passing score on the NCIDQ examination.

Section 3. Degrees from Programs Not Accredited by CIDA or NAAB.

(1)(a) In lieu of the education and experience requirements of Section 1(2)(a) and (b) of this administrative regulation, the board

may deem an applicant eligible for certification if, prior to January 1, 2012, the applicant:

1. Has received a degree from a program not accredited by CIDA or NAAB; and

2. Otherwise meets the requirements of this section.

(b) An applicant seeking to qualify under this section shall obtain a passing score on the NCIDQ examination.

(2) To qualify under this section, the applicant shall be a graduate of a nonaccredited program of:

(a) Five (5) years or more which included at least 150 semester credits, of which ninety (90) or more are interior design related, or 225 quarter credits, of which 135 or more are interior design related, and who has completed at least two (2) years of acceptable interior design experience;

(b) Four (4) years or more which included at least 120 semester credits, of which sixty (60) or more are interior design related, or 180 quarter credits, of which ninety (90) or more are interior design related, and who has completed at least three (3) years of acceptable interior design experience;

(c) Three (3) years or more which included at least sixty (60) semester credits of interior design related coursework, or ninety (90) quarter credits of interior design related coursework, and who has completed at least four (4) years of acceptable interior design experience; or

(d) Two (2) years or more which included at least forty (40) semester credits of interior design related coursework, or sixty (60) quarter credits of interior design related coursework, and who has completed five (5) years of acceptable interior design experience.

(3) The experience required by subsection (2) of this section shall meet the criteria established in Section 3 of this administrative regulation.

Section 4. (1) Full-time employment shall include at least thirty-five (35) hours per week in the performance of interior design services.

(2) To be deemed acceptable, experience shall be obtained under the supervision of:

(a) An interior designer who has passed the NCIDQ examination;

(b) A licensed architect; or

(c) An interior designer who is licensed, certified, or registered by a state or provincial regulatory agency.

Section 5. The board shall certify any architect licensed in the Commonwealth of Kentucky upon application and payment of the fee prescribed in 201 KAR 19:440, Section 1(3).

STEPHANIE R MCCRERY, Board
CORDELIA HARBUT, Executive Director

APPROVED BY AGENCY: August 7, 2020

FILED WITH LRC: August 10, 2020 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 27, 2020 at 2:00 PM Eastern Time via Zoom video conference, see more information and link below. Individuals interested in being heard at this hearing shall notify this agency in writing by October 20, 2020, 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 October 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: Cordelia Harbut, Executive Director, Kentucky Board of Architects, 155 E Main Street, Suite 300, Lexington, Kentucky 40507, phone (859) 246-2069, fax (859) 346-2431, email boa.irc@ky.gov.

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Passcode: 190433
Find your local number: <https://us02web.zoom.us/u/kdvgrk3zt>

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cordelia Harbut

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for obtaining certification as a certified interior designer.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to satisfy the requirement for the board to promulgate administrative regulation to issue a certificate as a certified interior designer to persons who meet the standards of education, experience, and testing established by the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides specifics for the Certified Interior Design qualifications as required by KRS 323.410(1) (c).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides qualifications for becoming a Certified Interior Designer.

(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:

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky Board of Architect Board Member, 8 members, and Interior Designers, approximately 10 applicant candidates annually.

(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 board shall determine if an applicant's education and experience in the field of interior design are sufficient to establish eligibility for certification. A qualified applicant will have a professional accredited degree, at least two years of acceptable full-time employment in the performance of interior design services, and a passing score on the NCIDQ examination. If the applicant does not have an accredited degree, but does have a degree from a program not accredited and otherwise meets the experience and exam requirements the board may deem them eligible. A qualified

applicant may substitute experience for education. The board shall also certify any architect licensed in the Commonwealth of Kentucky upon application and payment of the fee.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no direct cost to either entity.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The certified interior designer applicants will become certified upon compliance of this administrative regulation.

(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: The Board is a self-supporting agency and receives no general fund tax appropriation. It is funded entirely through fees assessed for regulating its professionals.

(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 is required to implement this 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 fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No tiering was not applied as the regulation is applicable to all.

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 impacts Interior Designers applying to become certified by outlining the requirements for obtaining certification as a certified interior designer with Kentucky Board of Architect.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 323.210(2), and 323.406 authorizes 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. This administrative regulation does not directly affect expenditures or revenues.

(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 with this administrative regulation 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? No revenue will be generated with this administrative regulation in subsequent years.

(c) How much will it cost to administer this program for the first year? The administrative regulation does not result in additional cost the first year.

(d) How much will it cost to administer this program for subsequent years? The administrative regulation does not result in additional cost 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 (+/-):

Expenditures (+/-):

Other Explanation:

VOLUME 47, NUMBER 3– SEPTEMBER 1, 2020

BOARDS AND COMMISSIONS
Kentucky Board of Architects
(New Administrative Regulation)

201 KAR 19:425. Limited period of certification by prior experience.

RELATES TO: KRS 323.400, 323.410

STATUTORY AUTHORITY: KRS 323.210(2), 323.406(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.410(3) provides that for a period of two (2) years after July 15, 2002, the board may issue a certificate as a certified interior designer to persons who meet the alternative criteria identified in that statutory provision. This administrative regulation establishes the experience and education criteria for qualifying under KRS 323.410(3).

Section 1. (1) An applicant who seeks to qualify under the alternative criteria of KRS 323.410(3) shall meet the statutory requirements of KRS 323.410.

(2) The board shall evaluate experience as follows:

(a) 1600 hours of full-time employment equals one (1) year of experience.

(b) A minimum of thirty-five (35) hours per week is considered full-time employment.

(c) Experience shall be demonstrated in at least five (5) of the following nine (9) categories:

1. Analysis of a client's needs, goals, and life safety requirements for the interior space of a structure;
2. Integration of findings with knowledge of interior design;
3. Formulation of preliminary design concepts that are appropriate, functional, and aesthetic;
4. Development and presentation of final design recommendations through presentation media;
5. Preparation of working drawings and specifications for nonloadbearing interior construction, materials, finishes, space planning, furnishings, fixtures, and equipment;
6. Collaboration with professional services of other licensed practitioners in the technical areas of mechanical, electrical, and load-bearing design required for regulatory approval;
7. Preparation and administration of bids and contract documents as the client's agent;
8. Review and evaluation of design solutions during implementation and upon completion; and
9. Teaching full time in an interior design program accredited by the U.S. Department of Education.

(3) One (1) year of interior design education shall be documented by the successful completion of a minimum of either:

- (a) Twenty (20) semester hours of interior design related coursework; or
- (b) Thirty (30) quarter credits of interior design related coursework.

STEPHANIE R MCCRERY, Board
CORDELIA HARBUT, Executive Director

APPROVED BY AGENCY: August 7, 2020

FILED WITH LRC: August 10, 2020 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 27, 2020 at 2:00 PM Eastern Time via Zoom video conference, see more information and link below. Individuals interested in being heard at this hearing shall notify this agency in writing by October 20, 2020, 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 October 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: Cordelia Harbut, Executive Director, Kentucky Board of Architects, 155 E Main Street, Suite 300, Lexington, Kentucky 40507, phone (859) 246-2069, fax (859) 346-2431, email boa.irc@ky.gov.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cordelia Harbut

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the experience and education criteria for qualifying under KRS 323.410(3) which provides a limited period of qualification for applicants by prior experience.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to define the specific requirements of an alternative path to Interior Design Certification.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 323.406 authorizes the board to promulgate administrative regulations necessary to implement KRS 323.400 to 323.416.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the specific requirements of a temporary grandfathering clause to allow more individuals to become certified upon implementation of the Interior design title act.

(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:

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Interior Designer applicants, approximately 10 annually.

(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: Each applicant shall meet the statutory requirements of KRS 323.410, and meet the experience requirements listed in this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will not be any direct cost to the entity.

(c) As a result of compliance, what benefits will accrue to the

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entities identified in question (3): The entities credentials shall be reviewed to determine their qualification for certification as a certified interior designer in Kentucky.

(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: The Board is a self-supporting agency and receives no general fund tax appropriation. It is funded entirely through fees assessed for regulating its professionals.

(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 is required to implement this 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 fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No tiering was not applied as the regulation is applicable to all.

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 impacts Interior Designers applying to become certified with the Kentucky Board of Architect by outlining the experience and education criteria for qualifying under KRS 323.410(3) which outlines an alternative path to certification by prior experience.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 323.210(2), and 323.406(1), (3) authorizes 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. This administrative regulation does not directly affect expenditures or revenues.

(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 with this administrative regulation 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? No revenue will be generated with this administrative regulation in subsequent years.

(c) How much will it cost to administer this program for the first year? The administrative regulation does not result in additional cost the first year.

(d) How much will it cost to administer this program for subsequent years? The administrative regulation does not result in additional cost 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 (+/-):
Expenditures (+/-):
Other Explanation:

BOARDS AND COMMISSIONS
Kentucky Board of Architects
(New Administrative Regulation)

201 KAR 19:430. Certification by persons credentialed in other jurisdictions.

RELATES TO: KRS 323.400, 232.402, 323.408, 323.410

STATUTORY AUTHORITY: KRS 323.210(2), 323.406(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.410(4) requires the board to issue a certificate to a person credentialed as an interior designer under the laws of other jurisdictions. This administrative regulation establishes the requirements for obtaining certification under the conditions identified in KRS 323.410(4).

Section 1. An interior designer credentialed in another jurisdiction shall obtain certification in Kentucky before using the title "Certified Interior Designer", in this jurisdiction, in accordance with KRS 232.402.

Section 2. An applicant credentialed as an interior designer in another jurisdiction shall provide documentation demonstrating that the standards for certification in the jurisdiction of their original certification met the requirements of KRS 323.410(1) and 201 KAR 19:420 at the time of the certification.

STEPHANIE R MCCRERY, Board
CORDELIA HARBUT, Executive Director
APPROVED BY AGENCY: August 7, 2020
FILED WITH LRC: August 10, 2020 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 27, 2020 at 2:00 PM Eastern Time via Zoom video conference, see more information and link below. Individuals interested in being heard at this hearing shall notify this agency in writing by October 20, 2020, 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 October 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: Cordelia Harbut, Executive Director, Kentucky Board of Architects, 155 E Main Street, Suite 300, Lexington, Kentucky 40507, phone (859) 246-2069, fax (859) 346-2431, email boa.irc@ky.gov.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cordelia Harbut
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the requirements for obtaining certification under the conditions identified in KRS 323.410(4) as

reciprocity.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to define the specific requirements of an alternative path to Interior Design Certification.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 323.410(4) requires the board to issue a certificate to a person credentialed as an interior designer under the laws of other jurisdictions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the application process to become a Certified Interior Designer by reciprocity.

(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:

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Interior Designers, approximately 10 annually.

(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: Each applicant credentialed as an interior designer in another jurisdiction shall provide documentation demonstrating that the standards for certification in the jurisdiction of their original certification met the requirements of KRS 323.410(1) and 201 KAR 19:315 at the time of the certification.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fee for initial certification, including a certificate, shall be \$250.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities credentials shall be reviewed to determine their qualification for certification as a certified interior designer in Kentucky.

(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: The Board is a self-supporting agency and receives no general fund tax appropriation. It is funded entirely through fees assessed for regulating its professionals.

(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 is required to implement this 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 fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No tiering was not applied as the regulation is applicable to all.

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 impacts Interior Designers applying to the Kentucky Board of Architects to become certified by outlining requirements for obtaining certification under the conditions identified in KRS

323.410(4) which outlines an alternative path to certification by reciprocity.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 323.210(2), and 323.406(1) authorizes 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. This administrative regulation does not directly affect expenditures or revenues.

(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 with this administrative regulation 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? No revenue will be generated with this administrative regulation in subsequent years.

(c) How much will it cost to administer this program for the first year? The administrative regulation does not result in additional cost the first year.

(d) How much will it cost to administer this program for subsequent years? The administrative regulation does not result in additional cost 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 (+/-):

Expenditures (+/-):

Other Explanation:

**BOARDS AND COMMISSIONS
Kentucky Board of Architects
(New Administrative Regulation)**

201 KAR 19:435. Certification renewal.

RELATES TO: KRS 323.400, 323.406, 323.416

STATUTORY AUTHORITY: KRS 323.210(2), 323.406(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.406(3) authorizes the board to promulgate administrative regulations to establish a renewal process for certifications that have expired. KRS 323.416 requires the board to establish forms upon which applicants for renewal may demonstrate completion of the renewal requirements. This administrative regulation establishes the process for renewing a certification.

Section 1. Certification Renewal. (1)(a) A certificate holder shall renew a certificate before October 1 of each calendar year.

(b) A certificate issued between April 1 and September 30 shall not require renewal until October 1 of the following year.

(2) A certificate holder seeking renewal shall submit:

(a) A completed Certification Renewal Application Form, incorporated in 201 KAR 19:445, Section 7(1); and

(b) The appropriate renewal fee established in 201 KAR 19.440.

(3)(a) During a period of active military duty, a certified interior designer in military service may, upon written application to the board, be excused from paying the renewal fee until his or her active military service is terminated.

(b) The board shall issue a renewal certificate upon:

1. Notification of the applicant's return from active duty; and

2. Payment of the renewal fee for the then-current renewal cycle.

(4) The board shall revoke the certificate of a holder who has:

(a) Failed to pay the renewal fee on or before the 30th of November of the renewal period; and

(b) Not requested that his or her certification be placed on

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inactive status.

(5) A certified interior designer whose certificate has been revoked for failure to pay the renewal fee shall:

(a) Submit a completed application for reinstatement of certification;

(b) Pay the fees for all outstanding renewal periods occurring since the certificate was revoked, including the renewal period for which the certificate was revoked;

(c) Pay the reinstatement fees prescribed by 201 KAR 19:440, Section 1(6);

(d) Make a written statement of the reason he or she did not:

- 1. Place his or her certificate on inactive status; or
2. Pay the renewal fee within the time prescribed;

(e) Include a signed affidavit that the certificate holder has not been in violation of the requirements of KRS 323.400 through 323.416 or 201 KAR Chapter 19; and

(f) File an Interior Design Continuing Education Annual Report Form, incorporated in 201 KAR 19:440.

Section 2. Inactive Status.

(1) The board shall grant inactive status to a certificate holder who:

- (a) Requests inactive status; and
(b) Pays the fee required by 201 KAR 19:440, Section 1(7).

(2) While on inactive status, the certificate holder shall not use the title "Certified Interior Designer".

(3) A certificate holder on inactive status who seeks to become reactivated shall complete at least twelve (12) hours of continuing education, in compliance with 201 KAR 19:445 for each year the certificate has been inactive.

(4) A certificate holder who has been on inactive status for more than seven (7) consecutive years, and who seeks reactivation, shall pass the NCIDQ examination.

STEPHANIE R MCCRERY, Board
CORDELIA HARBUT, Executive Director

APPROVED BY AGENCY: August 7, 2020

FILED WITH LRC: August 10, 2020 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 27, 2020 at 2:00 PM Eastern Time via Zoom video conference, see more information and link below. Individuals interested in being heard at this hearing shall notify this agency in writing by October 20, 2020, 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 October 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: Cordelia Harbut, Executive Director, Kentucky Board of Architects, 155 E Main Street, Suite 300, Lexington, Kentucky 40507, phone (859) 246-2069, fax (859) 346-2431, email boa.irc@ky.gov.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cordelia Harbut

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the process for renewing a certification.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to renew certifications that have expired.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 323.406(3) authorizes the board to promulgate administrative regulations to establish a renewal process for certifications that have expired and KRS 323.416 requires the board to establish forms upon which applicants for renewal may demonstrate completion of the renewal requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides a procedure for Certified Interior Designers to maintain certification.

(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:

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Certified Interior Designers, approximately 240 annually.

(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 be required to pay a fee for annual certification and complete a form for renewal which demonstrates completion of the renewal requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fee for annual renewal of certification, shall be \$200.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities shall maintain certification for 1 year.

(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: The Board is a self-supporting agency and receives no general fund tax appropriation. It is funded entirely through fees assessed for regulating its professionals.

(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 is required to implement this regulation.

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

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This administrative regulation does not establish fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No tiering was not applied as the regulation is applicable to all.

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 impacts Kentucky Certified Interior Designers by outlining the process for renewing a certification.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 323.210(2), and 323.406(3) authorizes 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. This administrative regulation does not directly affect expenditures or revenues.

(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 with this administrative regulation 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? No revenue will be generated with this administrative regulation in subsequent years.

(c) How much will it cost to administer this program for the first year? The administrative regulation does not result in additional cost the first year.

(d) How much will it cost to administer this program for subsequent years? The administrative regulation does not result in additional cost 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 (+/-):
Expenditures (+/-):
Other Explanation:

BOARDS AND COMMISSIONS
Kentucky Board of Architects
(New Administrative Regulation)

201 KAR 19:440. Fees for certification of interior designers.

RELATES TO: KRS 323.400-323.416

STATUTORY AUTHORITY: KRS 323.210(2), 323.406(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.406(2) authorizes the board to promulgate administrative regulations to establish an initial certification fee and a renewal fee for certified interior designers. KRS 323.416(1) requires the board to establish forms upon which applicants for renewal may demonstrate completion of the renewal requirements. This administrative regulation establishes the fees related to certified interior designers.

Section 1. Fee Schedule.

(1) The initial certification application fee for a qualified person, not a licensed architect, shall be \$100.

(2) The fee for initial certification, including a certificate, shall be \$250.

(3) The fee for initial certification for a licensed architect, including a certificate, shall be \$150.

(4) The initial certification application fee for a person subject to 201 KAR 19:430 as an interior designer credentialed in another

jurisdiction, including a certificate, shall be \$400.

(5) The fee for certification renewal shall be \$200.

(6) The fee for application for reinstatement of certificate that has been revoked for failure to pay the renewal fee or that has been suspended by the board under KRS 323.412 shall be \$150 plus all renewal fees from date of revocation or suspension.

(7) The annual fee for inactive status shall be twenty-five (25) dollars.

(8) The fee to reactivate an inactive certificate shall be \$150.

(9) The fee for a duplicate certificate shall be twenty-five (25) dollars.

Section 2. (1) Each payment shall be by check made payable to "Kentucky State Treasurer".

(2) Fees shall not be refundable.

STEPHANIE R MCCRERY, Board
CORDELIA HARBUT, Executive Director

APPROVED BY AGENCY: August 7, 2020

FILED WITH LRC: August 10, 2020 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 27, 2020 at 2:00 PM Eastern Time via Zoom video conference, see more information and link below. Individuals interested in being heard at this hearing shall notify this agency in writing by October 20, 2020, 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 October 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: Cordelia Harbut, Executive Director, Kentucky Board of Architects, 155 E Main Street, Suite 300, Lexington, Kentucky 40507, phone (859) 246-2069, fax (859) 346-2431, email boa.irc@ky.gov.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cordelia Harbut

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the fees related to certified interior designers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to satisfy the requirement for

the board to promulgate administrative regulation establishing fees for services pertaining to Certified Interior Designers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 323.406(2) authorizes the board to promulgate administrative regulations to establish an initial certification fee and a renewal fee for certified interior designers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Board is a self-supporting agency. The fees will provide revenue for the broad to provide services and regulate the profession.

(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:

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Certified Interior Designer applicants, approximately 10 annually, and Certified Interior Designers.

(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 be required to pay selected fees for services provided.

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

1. The initial certification application fee for a qualified person, not a licensed architect, shall be \$100.

2. The fee for initial certification, including a certificate, shall be \$250.

3. The fee for initial certification for a licensed architect, including a certificate, shall be \$150.

4. The initial certification application fee for a person subject to 201 KAR 19:325 as an interior designer credentialed in another jurisdiction, including a certificate, shall be \$400.

5. The fee for certification renewal shall be \$200.

6. The fee for application for reinstatement of certificate that has been revoked for failure to pay the renewal fee or that has been suspended by the board under KRS 323.412 shall be \$150 plus all renewal fees from date of revocation or suspension.

7. The annual fee for inactive status shall be twenty-five (25) dollars.

8. The fee to reactivate an inactive certificate shall be \$150.

9. The fee for a duplicate certificate shall be twenty-five (25) dollars.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities shall receive the above named services for the fee paid.

(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: The Board is a self-supporting agency and receives no general fund tax appropriation. It is funded entirely through fees assessed for regulating its professionals.

(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 is required to implement this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes the above fees.

(9) TIERING: Is tiering applied? No tiering was not applied as the regulation is applicable to all.

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 impacts Kentucky Certified Interior Designers by outlining the fees related to certified interior designers.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 323.210(2), and 323.406(2) authorizes 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. This administrative regulation is expected to generate \$30,000 in revenue and \$28,000 in expenses to administer the program.

(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 is expected to generate approximately \$30,000 in revenue 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 is expected to generate approximately \$30,000 in subsequent years.

(c) How much will it cost to administer this program for the first year? This administrative regulation is expected to cost \$28,000 in expenses to administer the program.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation is expected to cost \$28,000 in expenses to administer the program.

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
Kentucky Board of Architects
(New Administrative Regulation)

201 KAR 19:445. Continuing education.

RELATES TO: KRS 323.400-323.416

STATUTORY AUTHORITY: KRS 323.210(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.416(1) requires certificate holders to meet continuing education requirements in order to renew certification. KRS 323.416(2) mandates certain topics to be covered. This administrative regulation establishes the requirements for continuing education.

Section 1. Definitions. (1) "Elective topic" means a topic that is related to interior design.

(2) "Professional development unit" or "PDU" means a:

(a) Unit equal to fifty (50) minutes clock time for classroom education; or

(b) Customary time of completion prescribed by a vendor, if the board finds the time to be reasonable.

(3) "Relevant topic" means an area focused on the health, safety, and welfare of the public.

(4) "Self-directed activity" means:

(a) An unstructured self-study visit to an interior design significant site;

(b) A service to the public which uses the certified interior designer's expertise as an interior designer; or

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(c) A business practice course related to new technology relevant to interior design, and, offered by a person qualified by education or experience.

(5) "Structured activity" means a relevant:

- (a) College or university sponsored course;
- (b) Seminar;
- (c) Tutorial;
- (d) Short course; or
- (e) Professional or technical organization sponsored:
 - 1. Program;
 - 2. Course;
 - 3. Self-study course; or
 - 4. Monograph.

Section 2. Exemptions. An interior designer certified in Kentucky shall, in order to obtain annual certification renewal:

(1) Comply with this administrative regulation unless exempt because he or she is:

- (a) A first-time certificate holder by examination or reciprocity;
- (b) A civilian who serves on active duty in the United States Armed Forces for a period of time exceeding ninety (90) consecutive days during the annual report period;
- (c) Certified from another jurisdiction that has a required continuing education program, if that jurisdiction accepts Kentucky requirements to satisfy its continuing education requirements and the certificate holder certifies that all requirements for current continuing education compliance and certification have been met in that jurisdiction;
- (d) Is also a licensed architect who has met the requirements of 201 KAR 19:087; or
- (e) Is on inactive status.
 - (2) A hardship case may be considered by the board.

Section 3. Requirements.

(1) A certified Kentucky interior designer shall:

- (a) Obtain a total of twelve (12) PDU's per year, as required by KRS 323.416(1); and
- (b) Report the PDU credits as a condition for certification renewal.
 - (2) The twelve (12) hours of continuing education shall be satisfied during the period beginning October 1 and ending September 30 of the following year.
 - (3) At least eight (8) PDU's shall consist of structured activities, addressing the following relevant topics:
 - (a) Codes, statutes, and administrative regulations related to the built environment;
 - (b) Environmental issues;
 - (c) Professional and ethical business practices;
 - (d) State certification law;
 - (e) Design proficiency;
 - (f) New technology, including construction:
 - 1. Material;
 - 2. Methods;
 - 3. Systems; or
 - 4. Concepts.
 - (g) Interface, other than normal day-to-day contact, with a member of another design discipline, including an:
 - 1. Architect;
 - 2. Planner;
 - 3. Consultant;
 - 4. Financier; or
 - 5. Consultant.
 - (h) Legal aspects, including:
 - 1. Contract documents;
 - 2. Insurance;
 - 3. Bonds; and
 - 4. Project administration.
 - (i) Specialization in:
 - 1. Preservation;
 - 2. Adaptive reuse; or
 - 3. A building type.
 - (j) Study or consultation opportunity.
 - (4) A maximum of four (4) PDU's may consist of self-directed

activities, addressing the following elective topics:

- (a) Business or practice efficiency;
- (b) Business development;
- (c) Personal skills;
- (d) New skills; or
- (e) General education.

Section 4. Reporting and Recordkeeping. (1) A certificate holder seeking certificate renewal shall submit to the board:

- (a) A Certification Renewal Application Form, including a list of PDUs completed; and
- (b) The renewal fee.
 - (2) An incomplete submission shall be returned to the certificate holder.
 - (3) The board shall review a random sample of annual reports, composed of up to ten (10) percent of the number of issued certificates, to ensure accuracy and compliance.
 - (4) The certificate holder shall:
 - (a) Retain proof of participation in continuing education activities;
 - (b) Retain a record for continuing education for a period of two (2) years from the date of submission of the annual report to the board; and
 - (c) Furnish copies or continuing education records on the request of the board for audit purposes.
 - (5) Proof of participation in continuing education activities shall include:

- (a) A log showing the:
 - 1. Activity claimed;
 - 2. Sponsoring organization;
 - 3. Location;
 - 4. Duration; and
 - 5. Date of activity;
- (b) An attendance certificate;
- (c) A signed attendance receipt;
- (d) A paid receipt;
- (e) A list of attendees signed by a person in charge of the activity; or
- (f) Similar documentation.
 - (6) If continuing education credit is disallowed, the certificate holder shall have 180 calendar days after notification to:
 - (a) Substantiate the original claim; or
 - (b) Earn other continuing education credit to meet the minimum requirements.

Section 5. Noncompliance and Sanctions. Failure to fulfill the continuing education requirements or file the required annual report, properly completed and signed, shall result in nonrenewal of the interior designer's certification.

Section 6. Incorporation by Reference. (1) "Certification Renewal Application Form, 2003" is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the offices of the Kentucky Board of Architects, 155 East Main Street, Suite 300, Lexington, Kentucky 40507, Monday through Friday, 8 a.m. to 4 p.m.

STEPHANIE R MCCRERY, Board
CORDELIA HARBUT, Executive Director

APPROVED BY AGENCY: August 7, 2020

FILED WITH LRC: August 10, 2020 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 27, 2020 at 2:00 PM Eastern Time via Zoom video conference, see more information and link below. Individuals interested in being heard at this hearing shall notify this agency in writing by October 20, 2020, 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

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hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through October 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: Cordelia Harbut, Executive Director, Kentucky Board of Architects, 155 E Main Street, Suite 300, Lexington, Kentucky 40507, phone (859) 246-2069, fax (859) 346-2431, email boa.irc@ky.gov.

Join Zoom Meeting

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Meeting ID: 827 9794 6682

Passcode: 0zWwa4

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Meeting ID: 827 9794 6682

Passcode: 190433

Find your local number: https://us02web.zoom.us/j/82797946682

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cordelia Harbut

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for continuing education.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to define the specific requirements for continuing education.

(c) How this administrative regulation conforms to the content of the authorizing statutes KRS 323.416(1) requires certificate holders to meet continuing education requirements in order to renew certification, and KRS 323.416(2) mandates certain topics to be covered.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures the Kentucky Certified Interior Designers are kept up to date and aware of recent and changing 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:

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Certified Interior Designers, approximately 240 annually.

(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: Each entity shall obtain 12 hours of continuing education during the period beginning October 1 and

ending September 30 of each calendar year. At least eight (8) shall be structured hours in Health, Safety, and Welfare, and up to four (4) may be unstructured self-directed activities in specific elective topics.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no direct cost to the entity however some 3rd parties do charge a fee for attendance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities shall be better informed and able to maintain a higher level of professionalism as a Kentucky Certified Interior Designer.

(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: The Board is a self-supporting agency and receives no general fund tax appropriation. It is funded entirely through fees assessed for regulating its professionals.

(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 is required to implement this 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 fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No tiering was not applied as the regulation is applicable to all.

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 impacts Kentucky Certified Interior Designers by outlining the requirements for continuing education.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 323.210(2) authorizes 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. This administrative regulation does not directly affect expenditures or revenues.

(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 with this administrative regulation 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? No revenue will be generated with this administrative regulation in subsequent years.

(c) How much will it cost to administer this program for the first year? The administrative regulation does not result in additional cost the first year.

(d) How much will it cost to administer this program for subsequent years? The administrative regulation does not result in additional cost 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 (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS
Kentucky Board of Architects
(New Administrative Regulation)

201 KAR 19:450. Signature of documents by certified interior designers; use of title.

RELATES TO: KRS 323.402, 323.406(4), 323.408(3), 323.414(1)

STATUTORY AUTHORITY: KRS 323.210(2), 323.406(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.402 prohibits persons who are not certified by the board from using the title "certified interior designer." KRS 323.406(4) authorizes the board to establish a process regarding the use of a certified interior designer's signature and certificate number, and KRS 323.408(3) requires the board to enforce their proper usage. This administrative regulation establishes the requirements for use of the certified interior designer's signature and certificate number.

Section 1. Certification shall be granted for individuals only. A corporation, association, or partnership shall not be certified as an interior designer.

Section 2. Office and Firm Names. (1) A title block or firm name used in connection with the title of "certified interior designer" in this state shall:

- (a) Not be misleading;
- (b) Not infer that an uncertified person is a "certified interior designer"; and
- (c) Designate as a "certified interior designer" only a person certified in Kentucky as an interior designer.

(2) A firm name may be used without all members being certified if those certified interior designers who are certified in Kentucky have the title "certified interior designer" applied only to them in subheadings or subtitles in defining the services of the firm. Examples:

(a) Where Smith and Jones are both certified interior designers in their own state but only Albert Smith is certified in Kentucky and is fully responsible for work done in Kentucky:

SMITH, JONES, MILLER & MOORE Albert Smith, certified interior designer

(b) Where each member is certified or licensed in Kentucky in the profession indicated:

SMITH, JONES, MILLER & MOORE, Inc. Architects and Engineers and Certified Interior Designers
Albert Smith, Certified Interior Designer, Carl Miller, Mech. Engr.
Robert Jones, Architect John Moore, Struct. Engr.

(c) Where Jones and Smith are both certified in Kentucky and the firm has other members included in their office title:

STATEWIDE STUDIOS, Inc. Roy Jones, Certified Interior Designer, John Davis, Mech. Engr. Carl Smith, Certified Interior Designer, Alan Moore, Manager

Section 3. A certified interior designer who is certified by the Kentucky Board of Architects shall:

- (1) Sign and affix his or her certification number to all documents prepared:
 - (a) By him or her; or
 - (b) Under his or her supervision; and
- (2) Clearly identify himself or herself as a certified interior designer by including the title or its abbreviation on the document in association with his or her signature.

STEPHANIE R MCCRERY, Board
CORDELIA HARBUT, Executive Director

APPROVED BY AGENCY: August 7, 2020

FILED WITH LRC: August 10, 2020 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 27, 2020 at 2:00 PM Eastern Time via Zoom video conference, see more information and link below. Individuals interested in being heard at this hearing shall notify this agency in writing by October 20, 2020, 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 October 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: Cordelia Harbut, Executive Director, Kentucky Board of Architects, 155 E Main Street, Suite 300, Lexington, Kentucky 40507, phone (859) 246-2069, fax (859) 346-2431, email boa.irc@ky.gov.

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Find your local number: <https://us02web.zoom.us/j/82797946682?pwd=bTB5cW9nU0h0NXJlaDlpQzZod0NBZz09>

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cordelia Harbut

(1) Provide a brief summary of: (a) What this administrative regulation does: This administrative regulation establishes the requirements for continuing education.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to define the specific requirements for continuing education.

(c) How this administrative regulation conforms to the content of the authorizing statutes KRS 323.416(1) requires certificate holders to meet continuing education requirements in order to renew certification, and KRS 323.416(2) mandates certain topics to be covered.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures the Kentucky Certified Interior Designers are kept up to date and aware of recent and changing 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:

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Certified Interior Designers, approximately 240 annually.

(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: Each entity shall obtain 12 hours of continuing education during the period beginning October 1 and ending September 30 of each calendar year. At least eight (8) shall be structured hours in Health, Safety, and Welfare, and up to four (4) may be unstructured self-directed activities in specific elective topics.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no direct cost to the entity however some 3rd parties do charge a fee for attendance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities shall be better informed and able to maintain a higher level of professionalism as a Kentucky Certified Interior Designer.

(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: The Board is a self-supporting agency and receives no general fund tax appropriation. It is funded entirely through fees assessed for regulating its professionals.

(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 is required to implement this 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 fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No tiering was not applied as the regulation is applicable to all.

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 impacts Kentucky Certified Interior Designers by outlining the requirements for use of the certified interior designer's signature and certificate number.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 323.402, 323.406(4), and 323.408(3) authorizes 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. This administrative regulation does not directly affect expenditures or revenues.

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(c) How much will it cost to administer this program for the first year? The administrative regulation does not result in additional cost the first year.

(d) How much will it cost to administer this program for subsequent years? The administrative regulation does not result in additional cost 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 (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS Kentucky Board of Architects (New Administrative Regulation)

201 KAR 19:455. Unprofessional conduct.

RELATES TO: KRS 323.408(1), 323.412

STATUTORY AUTHORITY: KRS 323.210(2), 323.406

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.406(4) authorizes the board to promulgate administrative regulations to establish a process regarding the use of a certified interior designer's signature. KRS 323.408(1) requires the board to administer and enforce the laws governing certified interior designers. This administrative regulation establishes a code of professional conduct for certified interior designers.

Section 1. Unprofessional Conduct. The following acts by a certified interior designer shall be "unprofessional conduct":

(1) Accepting compensation for interior design services from an entity other than his or her client or employer, unless the client or employer has notice and has waived objection.

(2) Offering or making a payment or gift to a government official, whether elected or appointed, with the intent to influence official judgment in connection with a prospective or existing project.

(3) Offering or making a payment or gift, as an individual certified interior designer or as a participating member of a partnership or corporation, to an elected governmental official, candidate for governmental office, or the campaign of a candidate for governmental office, when the payment or gift is a violation of federal or state campaign finance law.

(4) Having a court judgment entered, as described at KRS 323.412.

(5) Offering or making a gift, except a gift of nominal value, including, for example, reasonable entertainment and hospitality, with the intent to influence the judgment of an existing or prospective client in connection with a project in which the certified interior designer has an interest.

(6) Having a financial interest in the manufacture, sale or installation of a component or process used in a project for which he or she is the certified interior designer, unless the client has been advised and has waived objection.

(7) Publicly endorsing a product, system, or service, or permitting the use of his or her name or photograph to imply endorsement of a product, system, or service not designed or developed by him or her.

(8) Claiming to be the author of a plan, print, building specification, or report, or affixing his or her name to a drawing, which has not been prepared by the certified interior designer or an employee under the supervision of the certified interior designer.

Section 2. Fraudulent or Dishonest Activity. In addition to the prohibitions in KRS 323.412, the following practices by a certified interior designer shall be deemed to be "fraudulent or dishonest behavior":

(1) Making untrue or deceitful statements or representations to the board.

(2) Bribing a person who may influence the selection of a certified interior designer.

(3) Willfully misleading or defrauding a person employing him or her as a certified interior designer.

(4) Willful violation of:

(a) A Kentucky or other state law relating to the title of certified interior designer; or

(b) An administrative regulation promulgated by the board.

(5) Using, or attempting to use, or working under, a certificate

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that has been suspended or revoked or which has not been renewed as required by law.

STEPHANIE R MCCRERY, Board
CORDELIA HARBUT, Executive Director

APPROVED BY AGENCY: August 7, 2020

FILED WITH LRC: August 10, 2020 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 27, 2020 at 2:00 PM Eastern Time via Zoom video conference, see more information and link below. Individuals interested in being heard at this hearing shall notify this agency in writing by October 20, 2020, 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 October 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: Cordelia Harbut, Executive Director, Kentucky Board of Architects, 155 E Main Street, Suite 300, Lexington, Kentucky 40507, phone (859) 246-2069, fax (859) 346-2431, email boa.irc@ky.gov.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cordelia Harbut

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a code of professional conduct for certified interior designers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to protect the public by apprising the regulated entities of professional conduct, violations and penalties.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 323.406(4) authorizes the board to promulgate administrative regulations to establish a process regarding the use of a certified interior designer's signature and KRS 323.408(1) requires the board to administer and enforce the laws governing certified interior designers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation appraises the regulated entities of the penalties for violating professional practice standards.

(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:

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Certified Interior Designers, approximately 240.

(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 regulated entities will be required to adhere to the professional conduct standards or face penalties for violations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no fees for complying with the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will not face penalties as a result of compliance.

(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: The Board is a self-supporting agency and receives no general fund tax appropriation. It is funded entirely through fees assessed for regulating its professionals.

(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 is required to implement this 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 fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No tiering was not applied as the regulation is applicable to all.

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 impacts Kentucky Certified Interior Designers by outlining a code of professional conduct for certified interior designers.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 323.402, and 323.406 authorizes 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. This administrative regulation does not directly affect expenditures or revenues.

(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 with this administrative regulation 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? No revenue will be generated with this administrative regulation in subsequent years.

(c) How much will it cost to administer this program for the first year? The administrative regulation does not result in additional cost the first year.

(d) How much will it cost to administer this program for subsequent years? The administrative regulation does not result in additional cost 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 (+/-):

Expenditures (+/-):

Other Explanation:

**DEPARTMENT OF AGRICULTURE
Office of the Consumer and Environmental Protection
(Repealer)**

302 KAR 50:013. Repeal of 302 KAR 50:020, 302 KAR 50:030, 302 KAR 50:055, and 302 KAR 50:090.

RELATES TO: KRS CHAPTER 260

STATUTORY AUTHORITY: KRS 260.850-869

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.850-869 collectively authorizes the Kentucky Department of agriculture to establish and determine the rules and administrative regulations for hemp in Kentucky. This administrative regulation repeals 302 KAR 50:020, 302 KAR 50:030, 302 KAR 50:055, and 302 KAR 50:090 because the KDA is replacing this material with other filings.

Section 1. The following administrative regulations hereby repealed:

(1) 302 KAR 50:020 Policies and procedures for hemp growers;

(2) 302 KAR 50:030 Policies and procedures for hemp processors and handlers;

(3) 302 KAR 50:055 Sampling and THC testing; post-testing actions; disposal of noncompliant harvests; and

(4) 302 KAR 50:090 Enforcement, corrective action plans, and mandatory reporting to state and federal agencies, department to retain growing site information for at least three (3) years.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: August 13, 2020

FILED WITH LRC: August 14, 2020 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2020 at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, 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 was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. 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 October 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: 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation repeals four regulations.

(b) The necessity of this administrative regulation: This regulation repeals four regulations that are no longer needed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 260.862 commands the KDA to establish administrative regulations for hemp. This regulation repeals four regulations that are no longer needed.

(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 making hemp rules clear in Kentucky.

(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 is a repealer filing.

(b) The necessity of the amendment to this administrative regulation: This is a repealer filing.

(c) How the amendment conforms to the content of the authorizing statutes: This is a repealer filing.

(d) How the amendment will assist in the effective administration of the statutes: This is a repealer filing.

(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, 970 growers, 12 Universities and 170 processors.

(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 instructions in the filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Likely no modification of current actions would be needed, so little to no costs would be incurred.

(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.

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

(a) Initially: Expenses for the entire hemp program for 2019 were approximately \$1,156,000.

(b) On a continuing basis: Market forces will determine participation levels for 2020 and beyond. Ongoing costs will be a function of grower numbers and location modifications.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The hemp program is funded by the fees set for in 302 KAR 50:060.

(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 increases in funding are required currently.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This filing does not contain fees. The hemp program is funded by the fees set for in 302 KAR 50:060.

(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, and any agency that might concern hemp 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 260.682

(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? Income for the entire hemp program for 2019 was approximately \$1,575,000.

(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? Even with a fixed fee structure, revenue is almost entirely determined by participation. Market forces will dictate revenue to a point the KDA cannot guess with any certainty.

(c) How much will it cost to administer this program for the first year? Expenses for the entire hemp program for 2019 were approximately \$1,156,000.

(d) How much will it cost to administer this program for subsequent years? The KDA expects this spending trendline to continue for the hemp program as a whole, but based on producer participation.

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

Revenues (+/-): \$1,575,000

Expenditures (+/-): \$1,156,000.

Other Explanation:

**DEPARTMENT OF AGRICULTURE
Office of the Consumer and Environmental Protection
(New Administrative Regulation)**

302 KAR 50:021. Policies and procedures for hemp growers.

RELATES TO: KRS Chapter 217B, 260.850-260.869, 7 U.S.C. 1639p

STATUTORY AUTHORITY: KRS 260.862, 7 U.S.C. 1639p

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.862(1)(a) authorizes the department to promulgate administrative regulations for a Hemp Licensing Program in the Commonwealth of Kentucky. KRS 260.862(1)(c) authorizes the department to license persons who wish to participate in a Hemp Licensing Program by cultivating, handling, processing, or marketing hemp. This administrative regulation establishes procedures and requirements for licensing persons who wish to grow or cultivate hemp as a participant in the department's Hemp Licensing Program.

Section 1. Definitions.

(1) "Agent" means a person who is employed by or working under contract for a license holder, and who does not have any ownership interest in the hemp.

(2) "Applicant" means a person, or a person who is authorized to sign for a business entity, who submits an application to participate in the Hemp Licensing Program.

(3) "Broker" means to engage or participate in the marketing of hemp by acting as an intermediary or negotiator between prospective buyers and sellers.

(4) "Cannabis" means the plant that, depending on its THC concentration level, is defined as either "hemp" or "marijuana." Cannabis is a genus of flowering plants in the family Cannabaceae of which Cannabis sativa is a species, and Cannabis indica and Cannabis ruderalis or subspecies thereof. Cannabis includes all parts of the plant, whether growing or not, including its seeds, resin, compounds, salts, derivatives, and extracts; and does not include a "publicly marketable hemp product," as defined by this administrative regulation.

(5) "CBD" means cannabidiol.

(6) "Commissioner" is defined by KRS 260.850(1).

(7) "Commonwealth" means the Commonwealth of Kentucky.

(8) "Conviction" means an adjudication or finding of guilt; it also includes a plea of guilty or nolo contendere. If a conviction is subsequently overturned on appeal, pardoned, or expunged, then it is not considered a conviction.

(9) "Corrective action plan" is a document set forth by the Department for a licensee to correct a negligent violation of, or non-compliance with, KRS 260.850-260.869 or an administrative regulation promulgated under the authority of those statutes.

(10) "Culpable mental state greater than negligence" means to act intentionally, knowingly, willfully, or with criminal negligence.

(11) "Decarboxylation" means the completion of the chemical reaction that converts the delta-9 THC-acid into delta-9-THC, the intoxicating component of cannabis. The decarboxylated value is also calculated using a conversion formula that sums delta-9-THC and eighty-seven and seven-tenths (87.7) percent of delta-9 THC-acid.

(12) "delta-9-THC" means delta-9-tetrahydrocannabinol concentration (the primary intoxicating component of cannabis). For compliance purposes, all delta-9-THC concentrations must be measured post-decarboxylation (result commonly referred to as total THC).

(13) "Department" or "KDA" is defined by KRS 260.850(3).

(14) "Geospatial location" means a location designated through a GPS or other global system of navigational satellites used to determine the precise ground position of a place or object.

(15) "GPS" means Global Positioning System.

(16) "Handling" is defined by KRS 260.850(4).

(17) "Hemp" or "industrial hemp" is defined by KRS 260.850(5).

(18) "Hemp Grower License" means a document issued by the department authorizing the person to grow, handle, market, and store hemp in the Commonwealth under the terms established in the document, KRS 260.850 through 260.863, and this administrative regulation.

(19) "Hemp Processor/Handler License" means a document issued by the department authorizing the person to process, handle, market, and store hemp in the Commonwealth under the terms established in the document, KRS 260.850 through 260.869, and 302 KAR 50:031.

(20) "Hemp product" or "industrial hemp product" is defined by KRS 260.850(6).

(21) "Key participant" means a person who has a direct or indirect financial interest in the entity producing hemp, such as an owner or a partner in a partnership. "Key participants" include, without limitation, an entity's chief executive officer, chief operating officer, and chief financial officer. "Key participants" do not include farm managers, field managers, or shift managers.

(22) "Law enforcement agency" means the Kentucky State Police, DEA, or other federal, state, or local law enforcement agency or drug suppression unit.

(23) "Licensed grower" means a person authorized in the Commonwealth by the department to grow, handle, store, and market hemp under the terms established in a hemp grower license, KRS 260.850 through 260.859, and this administrative regulation.

(24) "Licensed processor" means a person in the Commonwealth authorized by the department to process, handle, store, and market hemp under the terms established in a hemp processor/handler license KRS 260.850 through 260.859, and 302 KAR 50:031.

(25) "Location ID" means the unique identifier established by the applicant for each unique set of GPS coordinates where hemp will be grown, handled, stored, or processed, which can include a field name or building name.

(26) "Lot" means a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of hemp throughout.

(27) "Negligence" means failure to exercise the level of care that a reasonably prudent person would exercise in complying with an administrative regulation, rule, or instruction.

(28) "Nonviable seed" means a seed that has been crushed, dehulled, or otherwise rendered to have a zero percent germination rate.

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(29) "Person" means an individual or business entity.

(30) "Pesticide" means any substance or mixture of substances intended to:

(a) Prevent, destroy, control, repel, attract, or mitigate any pest;

(b) Be used as a plant regulator, defoliant, or desiccant; or

(c) Be used as a spray adjuvant, once they have been mixed with a U.S. Environmental Protection Agency registered product.

(31) "Post-harvest sample" means a sample taken from the harvested hemp from a particular lot's harvest in accordance with the procedures as established in 302 KAR 50:056. The entire lot's harvest is in the same form (for example, intact-plant, flowers, ground materials, etc.), homogenous, and not mixed with non-hemp materials or hemp from another lot.

(32) "Pre-harvest sample" means a composite, representative portion from living plants in a hemp lot collected in accordance with the procedures as established in 302 KAR 50:056.

(33) "Prohibited variety" means a variety or strain of cannabis excluded from the Kentucky Hemp Licensing Program.

(34) "Processing" is defined by KRS 260.850(9).

(35) "Program" means the department's Hemp Licensing Program.

(36) "Propagule" means a plant or plant part that can be utilized to grow a new plant.

(37) "Publicly marketable hemp product" means a hemp product that meets one (1) or more of the following descriptions:

(a) The product:

1. Does not include any living hemp plants, viable seeds, leaf materials, floral materials, or delta-9-THC content above zero and three-tenths (0.3) percent; and

2. Does include, without limitation, the following products: bare stalks, bast fiber, hurd fiber, nonviable roots, nonviable seeds, seed oils, and plant extracts (excluding products containing delta-9-THC above zero and three-tenths (0.3) percent);

(b) The product is CBD that was derived from hemp, as defined by this administrative regulation; or

(c) The product is CBD that is approved as a prescription medication by the United States Food and Drug Administration.

(38) "Secondary pre-harvest sample" means a pre-harvest sample that is taken:

(a) In a given plot after the first pre-harvest sample is taken; and

(b) On a different day than the initial pre-harvest sample.

(39) "Signing authority" means an officer or agent of the organization with written authorization to commit the legal entity to a binding agreement.

(40) "Strain" means a group of hemp with presumed common ancestry and identified physiological distinctions. A strain does not meet the uniformity, stability or distinction requirements to be considered a variety.

(41) "University" means an accredited institution of higher learning located in the Commonwealth.

(42) "Variety" means a subdivision of a species that is:

(a) Uniform, in the sense that the variations in essential and distinctive characteristics are describable;

(b) Stable, in the sense that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity if reproduced or reconstituted as required by the different categories of varieties; and

(c) Distinct, in the sense that the variety can be differentiated by one (1) or more identifiable morphological, physiological, other characteristics from all other publically known varieties, or other characteristics from all other publicly known varieties.

(43) "Variety of concern" means any variety of hemp that tests above 0.3000 percent delta9-THC in one (1) or more pre-harvest samples. A hemp variety designated as a "variety of concern" could be subject to restrictions and additional testing.

(44) "Volunteer cannabis plant" means any cannabis plant that:

(a) Grows of its own accord from seeds or roots in the years following an intentionally planted cannabis crop; and

(b) Is not intentionally planted.

Section 2. Grower License Application.

(1) Any person who wishes to grow hemp at any location in the Commonwealth shall submit to the department a completed Hemp Grower License Application, or annual license renewal, incorporated by reference as part of the Grower Licensing Application Packet in 302 KAR 50:080.

(2) Existing grower license holders shall annually complete the department's requirements for license renewal by March 15.

(3) A person who does not hold a license from the department shall not:

(a) grow, cultivate, handle, or process; or

(b) broker, store, or market hemp or other cannabis that does not fall within the definition of a "publicly marketable hemp product" at any location within the Commonwealth.

(4) A person under the age of eighteen (18) years of age shall not apply for or hold a grower license.

(5) Completed Hemp Grower License Applications must be received by the department by the end of the application period established in the application.

(6) Completed Hemp Grower License Application forms shall be delivered to KDA Hemp Licensing Program, 111 Corporate Drive, Frankfort, Kentucky 40601.

(7) The department shall deny any Hemp Grower License Application that fails to meet the deadline established in the application.

(8) Each applicant shall pay a grower application fee in the amount established in 302 KAR 50:060.

(9) Application fees shall not cover or include the cost of the criminal background checks required by KRS 260.862(2)(d) and Section 3 of this administrative regulation. Applicants and license holders shall pay criminal background check fees in the manner directed by the department.

(10) The department shall deny any Hemp Grower License Application that is received without the application fee established in 302 KAR 50:060.

(11) With the Hemp Grower License Application form the applicant shall submit, at a minimum:

(a) If the applicant is an individual, the individual's full name, residential address, telephone number, and email address (if available);

(b) If the applicant is a business entity, the following information:

(i) the entity's name, Employer Identification Number, business location address in Kentucky, and principal business location;

(ii) for the individual who will have signing authority on the entity's behalf, his or her full name, title within the entity, business address, telephone number, and email address (if available); and

(iii) for each key participant, his or her full name, title within the entity, business address, telephone number, and email address (if available);

(c) The proposed acreage or greenhouse or indoor square footage to be planted;

(d) Street address; location ID; and GPS coordinates for each field, greenhouse, building, or site where hemp will be grown, handled, or stored;

(e) Maps depicting each site where hemp will be grown, handled, or stored, with appropriate designations for field boundaries, and Location IDs corresponding to the GPS coordinates; and

(f) Agreement to all terms and conditions established in the hemp grower application.

(12) Any Grower License Application that is missing required information shall be subject to denial.

(13) The terms and conditions established in the hemp grower application shall include, at a minimum, the following requirements for licensed growers:

(a) Acknowledge that licensed growers shall comply with all administrative regulations in 302 KAR 50;

(b) Agree to pay a licensing fee in the amount established in 302 KAR 50:060;

(c) Acknowledge that licensed growers shall comply with instructions from representatives of the department and law enforcement agencies;

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(d) Consent to entry onto, and inspection of, all premises where hemp or other cannabis plants or materials are located, or licensed to be located, by representatives of the department and law enforcement agencies, with or without cause, with or without advance notice;

(e) Consent to forfeiture and destruction, without compensation, of:

1. Material found to have a measured delta-9-THC content in excess of zero and three-tenths (0.3) percent on a dry weight basis;

2. Plants located in an area that is not licensed by the department; and

3. Plants not accounted for in required reporting to the department;

(f) Agree to apply for licensing of all growing, handling, and storage locations, including GPS coordinates, and receive department approval for those locations prior to having hemp on those premises;

(g) Acknowledge that licensed growers shall submit a Site Modification Request Form, the appropriate fees based on the requested changes, and obtain prior written approval from a representative of the department before implementing any change to the licensed sites stated in the hemp grower license, and that growing site changes shall be subject to a site modification surcharge in the amount established in 302 KAR 50:060 for a new set of GPS coordinates;

(h) Acknowledge that anyone applying pesticides to hemp shall hold a pesticide license and apply pesticides in accordance with Section 18 of this administrative regulation;

(i) Acknowledge that the risk of financial or other loss shall be borne solely by the licensed grower;

(j) Acknowledge that licensed growers shall comply with restrictions established by the department limiting the movement of hemp plants and plant parts;

(k) Agree that any time hemp is in transit, a copy of the hemp grower license shall be available for inspection upon the request of a representative of the department or a law enforcement agency;

(l) Agree that, upon request from a representative of the department or a law enforcement agency, a licensed grower shall immediately produce a copy of his or her hemp grower license for inspection;

(m) Agree to submit Planting Reports, Harvest Reports, and other reports required by the department to which the grower has agreed, on or before the deadlines established in this administrative regulation;

(n) Agree to scout and monitor unlicensed fields for volunteer cannabis plants and to destroy those volunteer cannabis plants for three (3) years past the last date of planting reported to the department;

(o) Agree not to employ or rent land to cultivate hemp from any person who was terminated or denied admission to the Hemp Licensing Program for one (1) or both of the following reasons:

1. Failure to obtain an acceptable criminal background check; or

2. Failure to comply with an order from a representative of the department;

(p) Agree to abide by all land use restrictions for licensed growers set forth in Section 5 of these regulations.

Section 3. Criminal Background Check.

(1) Each licensed grower or applicant, or key participant within an entity that is a grower or applicant, shall undergo and pay for an annual criminal background check as required by KRS 260.862(2)(d).

(2) A licensed grower or applicant, or key participant within an entity that is a grower or applicant, shall, following completion of the background check, ensure delivery of the report to the department with the licensing application or renewal.

(3) The department shall not accept a report from a criminal background check that occurred more than sixty (60) days prior to the date of the application.

(4) Failure to submit the background check with the application shall be grounds for license denial.

(5) Substitution of a signing authority shall require approval from the department and the submission of a current criminal background check on the substitute signing authority.

Section 4. Application for Hemp Grower License; Criteria and Procedure for Evaluation.

(1) The department shall apply the criteria established in paragraphs (a) through (l) of this subsection in evaluating an application for the grower license.

(a) In accordance with Section 2 of this administrative regulation, the applicant shall submit a complete application with all required components and attachments.

(b) For an applicant who has been a Hemp Licensing Program participant previously, the applicant shall comply with the responsibility to submit:

1. Field Planting Report and Greenhouse/Indoor Planting Report, incorporated by reference

in 302 KAR 50:080;

2. Harvest Report, incorporated by reference in 302 KAR 50:080;

3. Any other reports deemed necessary by the department to which the applicant has agreed.

(c) The applicant's growing sites, handling sites and storage sites shall be located in the Commonwealth of Kentucky.

(d) The applicant's primary residence shall be located in Commonwealth of Kentucky or within 50 miles of at least one of the applicant's Kentucky growing sites.

(e) The applicant shall affirm that the applicant resides at the primary residence listed on the Grower License Application form from May 1 to September 30.

(f) The criminal background check report indicates that, within ten (10) years from the date when the background check was issued, the applicant shall not have:

1. A felony conviction; or

2. A drug-related misdemeanor conviction or violation;

(g) No person who has been convicted of any felony or any drug-related misdemeanor or violation in the previous ten (10) years from the date of application shall be eligible to obtain a license; provided, however, that

1. A person who was growing hemp lawfully with a license, registration, or authorization under a pilot program authorized by Section 7606 of the Agricultural Act of 2014 (7 U.S.C. 5940) shall be eligible to obtain a license; and

2. A person who was lawfully growing hemp under the 2014 Farm Bill before December 20, 2018 and was convicted prior to December 20, 2018 shall be eligible to obtain a license.

(h) In the past, including those times when the applicant was not a participant in the department's Hemp Licensing Program, the applicant shall have demonstrated a willingness to comply with the department's rules, instructions from department staff, and instructions from representatives of Kentucky State Police and other law enforcement agencies.

(i) The applicant shall not be delinquent in making any required reports or payments to the department in connection with the applicant's participation in the Hemp Licensing Program or other programs within the department.

(j) The applicant shall not have any unpaid fees, fines or civil penalties owed to the department.

(k) The applicant shall not have and shall not make any false statements or representations to a representative of the department or a law enforcement agency. Any person who materially falsifies any information contained in an application shall be ineligible to obtain a license from the department.

(l) The applicant's proposed growing sites shall comply with the land use restrictions set forth in Section 5 of this administrative regulation. Denial of all proposed growing sites shall constitute grounds for denial of the application.

(2) The department shall conditionally approve an application for a hemp grower license if the application satisfies the criteria established in this administrative regulation.

(3) The department shall notify applicants by letter or email whether the application has been denied or conditionally approved. A person shall not be a participant in the Hemp Licensing Program

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until the applicant has received a hemp grower license from the department.

(4) Applicants shall pay licensing fees prior to receiving a hemp grower license.

(5) Applicants shall complete a mandatory orientation session at a location designated by the department. The department shall not allow any person to complete orientation in lieu of the applicant.

Section 5. Land Use Restrictions for Licensed Growers.

(1) A licensed grower shall not plant or grow any cannabis that is not hemp.

(2) A licensed grower shall not plant or grow hemp or other cannabis on any site not licensed.

(3) A licensed grower shall not grow hemp or other cannabis in or within 100 feet of any structure that is used for residential purposes without first obtaining written permission from the Department.

(4) A licensed grower shall not handle or store leaf or floral material from hemp or other cannabis in or adjacent to any structure that is used for residential purposes.

(5) Hemp shall be physically segregated from other crops unless prior approval is obtained in writing from the department.

(6) A licensed grower shall plant a minimum of 1,000 plants in each growing site unless prior approval is received in writing from the department.

(7) A licensed grower shall plant a minimum of one-quarter (0.25) acre in each outdoor growing site unless prior approval is received in writing from the department.

(8) Except as provided in subsection 5(9) of this administrative regulation, a licensed grower shall not grow hemp or other cannabis in any outdoor field that is located within 1,000 feet of a school or a public recreational area.

(9) Notwithstanding the prohibition in subsection 5(8) of this administrative regulation, hemp may be grown within 1,000 feet of a school, provided that:

(a) The applicant has been designated by a school district superintendent,

(b) The applicant is a vocational agriculture instructor, agriculture teacher, or other qualified person who is employed by a school district; and

(c) The school district's board has voted to approve the applicant's proposal.

(10) An applicant or licensed grower shall not include any property on his or her application or Site Modification Request, incorporated by reference in 302 KAR 50:080, to grow, cultivate, or store hemp that is not owned or completely controlled by the applicant or licensed grower, as evidenced by a written lease or other document that shall be provided to the department upon request.

(11) A licensed grower shall not grow, handle, or store hemp or other cannabis on property owned by, leased from, or previously submitted in a license application by any person who is ineligible or was terminated, or denied admission to the Hemp Licensing Program for one (1) or both of the following reasons:

(a) Failure to obtain an acceptable criminal background check; or

(b) Failure to comply with an order from a representative of the department.

(12) Licensed growers with plots of one (1) acre or less are required to post signage at the plot location. The signage shall include the following information:

(a) The statement, "Kentucky Department of Agriculture Hemp Licensing Program";

(b) License holder's name;

(c) License holder's license number; and

(d) The department's telephone number.

Section 6. Administrative Appeal from Denial of Application.

(1) An applicant wishing to appeal the department's denial or partial denial of an application shall submit a written request for a hearing postmarked within fifteen (15) days of the date of the department's notification letter or email.

(2) An appealing applicant shall mail a hearing request letter to KDA Hemp Licensing Program, 111 Corporate Drive, Frankfort, Kentucky 40601.

(3) Appeals shall be heard by a three (3) person administrative panel whose members shall be designated by the commissioner. The panel shall include at least one (1) person who is a department employee and at least one (1) person who is not a department employee and not involved or invested in any hemp projects in Kentucky.

(4) The members of the administrative panel shall not be required to accept or consider information or documents that were not compliant with application deadlines established in this administrative regulation.

(5) The members of the administrative panel shall apply the same standards established in this administrative regulation to determine if the department's action in denying the application was arbitrary or capricious.

(6) Hearings on appeals shall be open to the public and occur at a time and date and location designated by the commissioner.

(7) An appealing applicant shall appear in person at the assigned hearing time. Failure to appear on time shall constitute grounds for dismissal of the appeal.

(8) The three (3) members of the administrative panel shall rule on the appeal by a majority vote.

Section 7. Hemp Grower Licenses.

(1) An applicant shall not be a participant in the Hemp Licensing Program until the department has issued a hemp grower license following the applicant's completion of the department's mandatory orientation session and payment of licensing fees.

(2) The grower license application shall establish the terms and conditions governing participation in the Hemp Licensing Program.

(3) Failure to agree or comply with terms and conditions established in the hemp grower license application or this administrative regulation shall constitute grounds for appropriate departmental action, up to and including termination of the grower license and expulsion from the Hemp Licensing Program.

(4) A Hemp Grower License will remain in force as long as the license holder meets annual renewal requirements by March 15 of each year.

(5) A Hemp Grower License may be terminated by the license holder or the department upon thirty (30) days prior written notice.

(6) A Hemp Grower License authorizes the license holder to grow hemp; handle his or her own hemp, including such activities as drying, grinding, separating foliage from stem, storing and packaging; and market his or her own hemp. A Hemp Grower License does not authorize the grower to process hemp, handle other person's hemp, or market another person's hemp.

(7) The department shall issue grower's license numbers in accordance with this format: "21_0001" through "21_9999."

Section 8. Licensing Fees; Secondary Pre-Harvest Sample Fees.

(1) Licensing fee.

(a) The conditionally approved applicant or license holder shall pay a licensing fee prior to the issuance of a new license or an annual license renewal.

(b) The licensing fee for each growing address shall be in the amount established in 302 KAR 50:060.

(2) Secondary Pre-Harvest Sample fee.

(a) If a licensed grower fails to complete the harvest within fifteen (15) days after the department collects the pre-harvest sample, the licensed grower shall submit a new Harvest Report and may be required to pay a secondary pre-harvest sample fee.

(b) If four (4) or more samples are taken from the same address, then the licensed grower shall be required to pay a secondary pre-harvest sample fee for each sample taken from that address in excess of three (3).

(c) The secondary Pre-Harvest sample fee shall be paid to the department within fifteen (15) days of invoice by the department. The secondary pre-harvest sample fee shall be as established in 302 KAR 50:060.

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(d) The licensed grower shall pay the secondary pre-harvest sample fee within fifteen (15) days of invoice.

(e) The licensed grower shall not harvest the remaining crop until the department collects a secondary pre-harvest sample if one is required as established in paragraph (a) or (b) of this subsection.

Section 9. Site Modifications and Site Modification Surcharge Fees.

(1) A licensed grower who elects to grow hemp in a new growing location or store or handle at a site other than the sites specified by the GPS coordinates listed on the hemp grower license, shall submit a Site Modification Request, incorporated by reference in 302 KAR 50:080, and obtain written approval from a representative of the department, prior to planting or storing at the proposed location.

(2) Any request for a new growing location shall comply with the land use restrictions established in Section 5 of this administrative regulation.

(4) The department shall charge a site modification surcharge fee for each new Location ID, (specifically, a GPS coordinate for each new individual field or greenhouse or indoor structure) where hemp will be grown. The amount of the site modification surcharge fee shall be as established in 302 KAR 50:060.

(5) The department shall not approve a site modification request for a new growing location until the department has received the site modification surcharge fee.

(6) The department shall not assess a site modification surcharge for changes to storage only locations.

Section 10. Seed and Propagule Acquisition.

(1) A license holder intending to acquire seeds or propagules first shall determine whether or not the variety or strain intended for purchase is listed on the department's current Summary of Varieties List.

(a) If the variety or strain is listed on the Summary of Varieties List, no pre-approval from the department is required.

(b) If the variety or strain is not listed on the Summary of Varieties List, the license holder shall submit a New Hemp Variety or Strain Request Form along with a certificate of analysis for that strain or variety, showing that mature plants grown from that seed variety or strain have a floral material delta-9-THC (must be measured post-decarboxylation, also referred to as total THC) content of not more than 0.300% on a dry weight basis from an independent third-party laboratory.

(2) A license holder who develops a new hemp variety or strain shall submit the New Hemp Variety or Strain Request form, prior to its use in crop production.

(3) The department shall not approve a New Hemp Variety or Strain Request unless the licensed grower affirms in writing that the requested seed acquisition plan does not infringe on the intellectual property rights of any person and that the seed or propagule source is a current legal hemp operation.

(4) The department shall not approve a New Hemp Variety or Strain Request if a representative of the department has information supporting a belief that the variety or strain will produce plants with delta-9-THC (must be measured post-decarboxylation, also referred to as total THC) content of more than 0.300% on a dry weight basis.

(5) A license holder shall not buy, sell, possess, or transfer seeds or propagules of any variety or strain designated as a Prohibited Variety on the department's published Summary of Varieties list.

(6) Upon request from a representative of the department, a licensed grower or licensed processor shall provide a distribution list showing locations where and to whom the hemp seeds or propagules were distributed.

(7) Any person engaging in the distribution of hemp seeds shall adhere to the applicable Kentucky seed laws (KRS 250.010 to KRS 250.990) and administrative regulations (12 KAR 1:116 to 12 KAR 1:175).

(8) Any person who intends to move transplants or other living plants to a location outside Kentucky must obtain a Class A Nursery License from the Kentucky Office of the State

Entomologist.

Section 11. Seeds of Wild, Landrace, or Unknown Origin.

(1) A person shall not acquire or grow hemp or cannabis seeds or propagules of wild, landrace, or unknown origin without first obtaining written approval from a representative of the department.

(2) The department shall not permit hemp or cannabis seeds or propagules of wild, landrace, or unknown origin to be planted, cultivated, or replicated by any person without the department first arranging for replication and THC testing of mature plants grown from the seeds or propagules by the department or its designee.

(3) Any licensed grower or licensed processor found to have saved seed, propagules, or cuttings, or cultivated seeds, propagules, or cuttings from a cannabis plant of wild, landrace, or unknown origin, without advance written permission from the department shall be subject to suspension or revocation of his or her license and forfeiture without compensation of his or her materials.

Section 12. Planting Reports to USDA's Farm Service Agency (FSA).

(1) Prior to the submission of Planting Reports, a licensed grower shall report hemp crop acreage to USDA's Farm Service Agency (FSA) including, at a minimum, the following information:

(a) Street address and, to the extent practicable, geospatial location for each lot or greenhouse where hemp will be produced.

(b) Acreage (or square footage, in the case of a greenhouse or other indoor growing facility) dedicated to the growing of each variety or strain of hemp; and

(c) The grower's name and license number.

(2) The department shall collect and retain, for a period of at least three (3) calendar years, location ID information for every site or location where the department has approved hemp to be grown.

Section 13. Planting Reports for Outdoor Plantings.

(1) A licensed grower shall submit to the department a complete and current Field Planting Report, within fifteen (15) days after every planting, including complete replanting, of seeds or propagules in an outdoor location.

(2) Each Field Planting Report shall identify the:

(a) Correct variety or strain name;

(b) Address and Field location ID as listed on the hemp grower's license;

(c) Lot number provided by the USDA FSA Office; and

(d) Amount planted and the primary intended use of the harvest.

(3) A licensed grower who does not plant hemp in an approved outdoor site listed in the hemp grower license shall submit a Field Planting Report, on or before July 31, stating that hemp has not been planted and will not be planted at that site.

Section 14. Planting Reports for Indoor Plantings.

(1) A licensed grower shall submit to the department a complete and current Greenhouse/Indoor Planting Report within fifteen (15) days after establishing plants at an indoor location.

(2) Each Greenhouse/Indoor Planting Report shall identify the:

(a) Correct variety or strain name;

(b) Address and Greenhouse or indoor growing location ID as listed in the hemp grower license;

(c) Lot number provided by the USDA FSA Office; and

(d) Amount planted and the primary intended use of the harvest or of the hemp plants.

(3) In addition to the initial Greenhouse/Indoor Planting Report, a licensed grower with an approved greenhouse or indoor growing site shall submit quarterly reports for each location ID to the department. Greenhouse/Indoor Planting Reports shall be due no later than March 31, June 30, September 30, and December 31.

Section 15. Site Access for Representatives of the Department and Law Enforcement Agencies.

(1) The department shall provide information about approved growing, handling, and storage site locations to representatives of the Kentucky State Police, USDA, DEA, and other law enforcement

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agencies whose representatives request licensed site information, including GPS coordinates.

(2) Licensed growers shall have no reasonable expectation of privacy with respect to premises where hemp or other cannabis seeds, plants, or materials are located, and any premises listed in the hemp grower license.

(3) A licensed grower, whether present or not, shall permit a representative of the department or a law enforcement agency to enter into premises where hemp or other cannabis seeds, plants, or materials are located, and any premises listed in the hemp grower's license, with or without cause and with or without advanced notice.

Section 16. Pesticide Use.

(1) A licensed grower who uses a pesticide on hemp shall first be certified to apply pesticides by the department pursuant to KRS Chapter 217B.

(2) A licensed grower who is certified to apply pesticides by the department pursuant to KRS Chapter 217B shall not use, or be eligible to use, a Category 10 license to apply pesticides to hemp in violation of the product label.

(3) A licensed grower shall not use any pesticide in violation of the product label.

(4) A licensed grower who uses a pesticide on a site where hemp will be planted shall comply with the longest of any planting restriction interval on the product label prior to planting the hemp.

(5) The department may perform pesticide testing on a random basis or if representatives of the department have reason to believe that a pesticide may have been applied to hemp in violation of the product label.

(6) Hemp seeds, plants, and materials bearing pesticide residue in violation of the label shall be subject to forfeiture or destruction without compensation.

(7) The department shall publish a guidance document titled "Kentucky Hemp and Pesticides" on its Web site to provide guidance about pesticide use on hemp.

Section 17. Responsibility of a Licensed Grower Regarding Harvest of Hemp Plots.

(1) The department may inspect a Licensed Grower's premises, or collect samples of any hemp or other cannabis material, at any time.

(2) The grower shall not harvest hemp plants from a lot without the department first collecting samples from that lot.

(3) Fifteen (15) days prior to the anticipated harvest of hemp plants, the grower shall submit to the department a completed and current "Harvest Report" form identifying the intended date of harvest (or date of destruction, in the case of a failed crop).

(4) The department's receipt of a Harvest Report shall trigger a sample collection by a representative of the department in accordance with the procedures set forth in 302 KAR 50:055.

(5) During the department's scheduled sample collection, the grower or an authorized representative of the grower shall be present at the growing site.

(6) Representatives of the department shall be provided with complete and unrestricted access to all hemp and other cannabis plants, whether growing or harvested, and all land, buildings, and other structures used for the cultivation, handling, and storage of all hemp and other cannabis plants; and all locations listed in the hemp grower's license.

(7) The licensed grower shall harvest the crop not more than fifteen (15) days following the date of sample collection by the department, unless specifically authorized in writing by the department.

(8) If the licensed grower fails to complete a harvest within fifteen (15) days following the date of sample collection, then the licensed grower shall submit a new Harvest Report and may be required to pay a secondary pre-harvest sample fee in the amount established in 302 KAR 50:060.

(9) Floral materials shall not be moved outside the Commonwealth, nor moved beyond a processor, nor commingled, nor extracted, until the department releases the material in writing.

(10) Harvested materials from one (1) lot shall not be

commingled with other harvested lots without prior written permission from the department.

(11) A licensed grower who fails to submit a Harvest Report shall be subject to revocation of his or her license.

(12) A licensed grower who proceeds to harvest a crop without first obtaining authorization from the department shall be subject to revocation of his or her license.

Section 18. Collection of Samples; THC Testing; Post-Testing Actions.

(1) The department shall collect hemp samples for THC testing in accordance with the procedures set forth in 302 KAR 50:055.

(2) The designated laboratory shall receive, prepare, and release hemp samples in accordance with the procedures set forth in 302 KAR 50:055.

(3) The designated laboratory shall measure delta-9-THC concentration of each hemp sample (postdecarboxylation, often referred to as total THC) in accordance with the procedures set forth in 302 KAR 50:056.

(4) The department shall undertake post-testing actions in accordance with the procedures established in 302 KAR 50:056.

(5) All samples shall become the property of the department and shall not be returnable. Compensation shall not be owed by the department.

(6) If the designated laboratory is not able to provide THC testing services required by the department, the department may identify and contract with a third party lab to perform THC testing services.

(7) The department may collect samples of hemp or other cannabis material at any time.

Section 19. Restrictions on Sale or Transfer.

(1) A licensed grower shall not sell or transfer, or permit the sale or transfer, of living plants, viable seeds, leaf material, or floral material to any person in the Commonwealth who does not hold a license issued by the department.

(2) A licensed grower shall not sell or transfer, or permit the sale or transfer, of living plants, viable seeds, leaf material, or floral material to any person outside the Commonwealth who is not authorized to possess such materials under the laws of that jurisdiction.

(3) The department shall permit the sale or transfer of stripped stalks, fiber, dried roots, nonviable seeds, seed oils, floral and plant extracts (excluding THC in excess of zero and three-tenths (0.3) percent) and other marketable hemp products to members of the general public, both within and outside the Commonwealth, if the marketable hemp product's decarboxylated delta-9-THC level is not more than zero and three-tenths (0.3) percent.

(4) A licensed grower selling or transferring, or permitting the sale or transfer, of floral or plant extracts (including CBD), shall retain testing data or results for at least three (3) years demonstrating that the extract's delta-9-THC level is not more than zero and three-tenths (0.3) percent.

(5) A licensed grower shall not sell or transfer floral extracts containing a decarboxylated delta-9 THC concentration in excess of zero and three-tenths (0.3) percent.

(6) Licensed growers shall comply with the federal Food Drug and Cosmetic Act, 21 U.S.C. Chapter 9, and all other applicable local, state, and federal laws and regulations relating to product development, product manufacturing, consumer safety, and public health.

(7) A licensed grower shall not knowingly permit hemp to be sold to or used by any person in the Commonwealth, who is involved in the manufacture of an item named on the prohibited products list established in 302 KAR 50:070.

(8) A person shall not ship or transport, or allow to be shipped or transported, any hemp product with a decarboxylated delta-9-THC concentration in excess of zero and three-tenths (0.3) percent.

Section 20. Other Prohibited Activities.

(1) A licensed grower shall not allow another person, other than an agent of the licensed grower, to grow, handle, or store

hemp under their license in lieu of obtaining a separate hemp grower license.

(2) A license holder shall not make, manufacture or distribute in the Commonwealth any of the prohibited products listed in 302 KAR 50:070.

Section 21. Information Submitted to the Department Subject to Open Records Act.

(1) Except as established in subsection (2) of this section, information and documents generated or obtained by the department shall be subject to disclosure pursuant to the Kentucky Open Records Act, KRS 61.870 through 61.884.

(2) Personally identifiable information including physical address, mailing address, driver's license numbers, background checks, GPS coordinates, telephone numbers, and email addresses, shall be shielded from disclosure to the maximum extent permitted by law; provided, however, the department shall provide this information to law enforcement agencies and other regulatory agencies upon request.

Section 22. Violations Requiring Temporary License Suspension Procedures.

(1) The department shall notify a licensed grower in writing that the Hemp Grower License has been temporarily suspended if a representative of the department receives information supporting an allegation that a licensed grower has:

(a) plead guilty to, or is convicted of, any felony or drug-related misdemeanor or violation, in accordance with KRS 260.864.

(b) Engaged in conduct violating a provision of KRS 260.850 through 260.869, 302 KAR Chapter 50, or the hemp grower license with a culpable mental state greater than negligence;

(c) Made a false statement to a representative of the department or a law enforcement agency with a culpable mental state greater than negligence;

(d) Been found to be growing or in possession of cannabis with a measured delta-9-THC concentration above 0.3 percent with a culpable mental state greater than negligence; or

(e) Failed to comply with an order from a representative of the department or a law enforcement agency with a culpable mental state greater than negligence.

(2) The department shall schedule a license revocation hearing for a date as soon as practicable after the notification of temporary suspension, but in any event not later than sixty (60) days following the notification of temporary suspension.

(3) A person whose Hemp Grower License has been temporarily suspended shall not harvest, process, or remove cannabis from the premises where hemp or other cannabis was located at the time when the department issued its notice of temporary suspension, except as authorized in writing by a representative of the department.

(4) As soon as possible after the notification of temporary suspension, a representative of the department shall inspect the licensed grower's premises and perform an inventory of all cannabis, hemp, and hemp products that are in the licensed grower's possession.

Section 23. License Revocation Hearings and Consequences of Revocation.

(1) The department shall notify a person whose Hemp Grower License has been temporarily suspended of the date when the person's license revocation hearing will occur at a time and place designated by the commissioner.

(2) License revocation hearings shall be adjudicated by a three (3) person administrative panel in accordance with KRS 260.864.

(3) License revocation hearings shall be open to the public.

(4) A person whose Hemp Grower License has been temporarily suspended shall appear in person at the assigned hearing time. Failure to appear on time shall constitute a waiver of the person's right to present information and arguments against revoking the hemp grower license.

(5) A representative of the department shall be allowed an opportunity to present information and arguments for revoking the hemp grower license.

(6) A person whose hemp grower license has been temporarily suspended shall be allowed an opportunity to present information and arguments against revoking the hemp grower license.

(7) The three (3) members of the administrative panel shall rule on the question of revocation by a majority vote.

(8) If a majority of the three (3) members of the administrative panel find that it is more likely than not that a licensed grower has committed any of the acts listed in Section 23(1) of this administrative regulation, then the hemp grower license shall be revoked effective immediately.

(9) If a majority of the members of the administrative panel vote against revoking the hemp grower license, the department shall lift the temporary suspension within twenty-four (24) hours of the vote.

(10) If a majority of the members of the administrative panel vote in favor of revoking the hemp grower license, then a representative of the department or a law enforcement agency shall have authority to destroy or confiscate all cannabis, hemp, and hemp products that are in the person's possession.

(11) A person whose property is destroyed or confiscated by a representative of the department or a law enforcement agency shall be owed no compensation or indemnity for the value of the cannabis, hemp, or hemp products that were destroyed or confiscated.

(12) The department shall immediately report any person whose license has been revoked on the grounds that he or she violated a provision of KRS 260.850 through 260.869, 302 KAR Chapter 50, or violated the grower license with a culpable mental state greater than negligence, to an appropriate law enforcement agency.

(13) A person whose grower license has been revoked shall not be eligible for licensure for a period of five (5) years from the date of the most recent violation.

Section 24. Monetary Civil Penalties.

(1) If a representative of the department receives information supporting a finding that it is more likely than not that a person has engaged in conduct violating a provision of KRS 260.850 through 260.869, 302 KAR Chapter 50, or the hemp grower license application, then the department shall assess a monetary civil penalty not to exceed \$2,500 per violation.

(2) A person wishing to appeal the department's assessment of a monetary civil penalty shall submit a written request for a hearing within fifteen (15) days of the notification date.

(3) A person wishing to appeal the department's assessment of a monetary civil penalty shall mail a hearing request letter to KDA Hemp Licensing Program, 111 Corporate Drive, Frankfort, Kentucky 40601.

(4) Appeals shall be heard by a three (3) person administrative panel whose members shall be designated by the commissioner. The administrative panel shall include at least one (1) person who is a department employee and at least one (1) person who is not a department employee and not involved or invested in any Kentucky hemp projects.

(5) The members of the administrative panel shall determine if the department's action in assessing the monetary civil penalty was arbitrary or capricious.

(6) Hearings on the appeal shall be open to the public and occur at a time, date, and location designated by the commissioner.

(7) An appealing person shall appear in person at the assigned hearing time. Failure to appear on time shall constitute grounds for dismissal of the appeal.

(8) An appealing person shall be allowed an opportunity to present arguments for reversing the assessed monetary civil penalty.

(9) A representative of the department shall be allowed an opportunity to present arguments for affirming the assessed monetary civil penalty.

(10) The three (3) members of the administrative panel shall rule on the appeal by a majority vote.

(11) A majority of the three (3) members of the administrative panel may affirm the assessed monetary civil penalty, affirm and

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increase or decrease the assessed monetary civil penalty, or reverse the assessed monetary civil penalty.

(12) The department shall have the authority to pursue unpaid monetary civil penalties by filing a civil cause of action in the Franklin Circuit Court.

Section 25. Licensing for Representatives of Universities and Colleges.

(1) Except as provided in this section of this administrative regulation, faculty members, administrators, and staff members of an institution of higher education shall be subject to each of the sections of this administrative regulation.

(2) No institution of higher education shall permit or authorize its faculty, administration, or staff members, or any sponsored student, to be in possession of, or conduct academic research involving, living hemp plants, leaf material, floral material, or viable seeds of hemp without first completing and submitting a Hemp License Application.

(3) An authorized faculty, administrator, or staff member of an eligible institution of higher education who wishes to be in possession of, or conduct an academic research project involving, living hemp plants, leaf material, floral material, or viable seeds of hemp shall complete and submit a Hemp License Application.

(4) If a university applicant's research plan includes growing hemp, then a Hemp Grower License will be issued by the department.

(5) If a university applicant's research plan does not include growing hemp, then a Hemp Processor/Handler License will be issued by the department. An authorized faculty, administrator, or staff member of an eligible institution of higher education who wishes to be in possession of, or conduct an academic research project involving, leaf material or floral material from hemp shall complete and submit a Processor/Handler License Application.

(6) The department shall accept applications from an authorized faculty, administrator, or staff member of an eligible institution of higher education at any time of the year.

(7) The department shall not collect fees for licenses issued to a faculty member, administrator, or staff member of an institution of higher education if the project is for research only (that is, not intended for commerce).

(8) Sampling and testing of hemp grown under the authority of this section shall be conducted by the department if the harvested material is intended for commerce.

(9) As used in this section, "eligible institution of higher education" means an institution of higher education that is:

(a) Is accredited by, and in good standing with, a regional or national higher education accreditation agency;

(b) Confers academic degrees at the associate, bachelor, master, or doctoral level; and

(c) Has a principal campus or office that is located at a site within the Commonwealth of Kentucky.

Section 26. Record Keeping Requirements; Three (3) Year Retention Period.

(1) For at least three (3) years, license holders shall maintain and make available for inspection by the department during reasonable business hours:

(a) Records regarding acquisition of hemp plants;

(b) Records regarding production and handling of hemp plants;

(c) Records regarding storage of hemp plants; and

(d) Records regarding disposal of all cannabis plants that do not meet the definition of hemp.

(2) The department shall have access to any premises where hemp plants may be held during reasonable business hours.

(3) All reports and records required to be submitted to the department as part of participation in the program in this part which include confidential data or business information, including but not limited to information constituting a trade secret or disclosing a trade position, financial condition, or business operations of the particular licensee or their customers, shall be received by, and at all times kept in the custody and control of, one (1) or more employees of the department or their representatives. Confidential data or business information may be shared with applicable

federal, state, or local law enforcement agencies or their designees in compliance with applicable law.

Section 27. Corrective Action Plans for Negligent Violations.

(1) If the department determines that a grower committed a negligent violation of any provision within KRS Chapter 260.850 to 260.869, or any administrative regulation promulgated under the authority of those statutes, then the department shall devise and implement a corrective action plan for the grower.

(2) Corrective action plans will remain in place for at least two (2) years and include, at a minimum, the following:

(a) The date by which the grower shall correct each negligent violation;

(b) Steps to correct each negligent violation; and

(c) A description of the procedures to demonstrate compliance.

(3) A grower who commits a negligent violation shall not, as a result of that violation, be subject to any criminal enforcement action by any government.

(4) If a subsequent violation occurs while a corrective action plan is in place, a new corrective action plan must be submitted with a heightened level of quality control, staff training, and quantifiable action measures.

(5) A grower who commits three negligent violations within a five (5) year period shall have his or her license revoked and be ineligible to obtain a license for a period of five (5) years beginning on the date of the third violation. A violation that occurred prior to January 1, 2021 shall not count toward the three (3) violations referred to in this subsection.

Section 28. Mandatory Reports to Law Enforcement Agencies for Violations with a Culpable Mental State Greater than Negligence.

(1) In addition to being subject to the license suspension, license revocation, and monetary civil penalty procedures established in 302 KAR 50:021 and 302 KAR 50:031, a person who is found by the department to have violated any statute or administrative regulation governing that person's participation in the hemp program with a culpable mental state greater than negligence shall be subject to the reporting requirements established in this section.

(2) The department shall immediately report a person who is found by the department to have violated any statute or administrative regulation governing that person's participation in the hemp program with a culpable mental state greater than negligence to the following law enforcement agencies:

(a) The Attorney General of the United States;

(b) The Commissioner of the Kentucky State Police; and

(c) The Commander of the Kentucky State Police's Cannabis Suppression Branch.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: August 13, 2020

FILED WITH LRC: August 14, 2020 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2020 at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, 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 was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. 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 October 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: 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.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes rules for growing hemp in Kentucky.

(b) The necessity of this administrative regulation: This regulation establishes rules for growing hemp that are necessary for Kentucky hemp products to be generally seen as allowable for trade.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 260.862 commands the KDA to establish administrative regulations for hemp.

(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 making hemp growing rules very clear in Kentucky.

(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 is a new filing.

(b) The necessity of the amendment to this administrative regulation: This is a new filing.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new filing.

(d) How the amendment will assist in the effective administration of the statutes: This is a new filing.

(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, 970 growers, 12 Universities and 170 processors.

(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 instructions in the filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Likely no modification of current actions would be needed, so little to no costs would be incurred.

(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.

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

(a) Initially: Expenses for the entire hemp program for 2019 were approximately \$1,156,000.

(b) On a continuing basis: Market forces will determine participation levels for 2020 and beyond. Ongoing costs will be a function of grower numbers and location modifications.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The hemp program is funded by the fees set for in 302 KAR 50:060.

(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 increases in funding are required currently.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This filing does not contain fees. The hemp program is funded by the fees set for in 302 KAR 50:060.

(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, and any agency that might concern hemp 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 260.682

(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? Income for the entire hemp program for 2019 was approximately \$1,575,000.

(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? Even with a fixed fee structure, revenue is almost entirely determined by participation. Market forces will dictate revenue to a point the KDA cannot guess with any certainty.

(c) How much will it cost to administer this program for the first year? Expenses for the entire hemp program for 2019 were approximately \$1,156,000.

(d) How much will it cost to administer this program for subsequent years? The KDA expects this spending trendline to continue for the hemp program as a whole, but based on producer participation.

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

Revenues (+/-): \$1,575,000

Expenditures (+/-): \$1,156,000.

Other Explanation:

DEPARTMENT OF AGRICULTURE
Office of the Consumer and Environmental Protection
(New Administrative Regulation)

302 KAR 50:031. Policies and procedures for hemp processors and handlers.

RELATES TO: KRS 260.850-260.869, 7 U.S.C. 1739p

STATUTORY AUTHORITY: KRS 260.862; 7 U.S.C. 1739p

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.862(1)(a) authorizes the department to promulgate administrative regulations for a Hemp Licensing Program in the Commonwealth of Kentucky. KRS 260.862(1)(c) authorizes the department to license persons who wish to participate in a Hemp Licensing Program by cultivating, handling, processing, or marketing hemp. This administrative regulation establishes procedures and requirements for licensing persons who wish to process or handle hemp as a participant in the department's Hemp Licensing Program.

Section 1. Definitions.

(1) "Agent" means a person who is employed by or working under contract for a license holder, and who does not have any ownership interest in the hemp.

(2) "Applicant" means a person, or a person who is authorized to sign for a business entity, who submits an application to participate in the Hemp Licensing Program.

(3) "Brokering" means engaging or participating in the marketing of industrial hemp by acting as an intermediary or negotiator between prospective buyers and sellers

(4) "Cannabis" means the plant that, depending on its THC concentration level, is defined as either "hemp" or "marijuana." Cannabis is a genus of flowering plants in the family Cannabaceae of which Cannabis sativa is a species, and Cannabis indica and Cannabis ruderalis or subspecies thereof. Cannabis includes all parts of the plant, whether growing or not, including its seeds, resin, compounds, salts, derivatives, and extracts; and does not include a "publicly marketable hemp product," as defined by this

administrative regulation.

(5) "CBD" means cannabidiol.

(6) "Commissioner" is defined by KRS 260.850(1).

(7) "Commonwealth" means the Commonwealth of Kentucky.

(8) "Conviction" means an adjudication or finding of guilt; it also includes a plea of guilty or nolo contendere. If a conviction is subsequently overturned on appeal, pardoned, or expunged, then it is not considered a conviction.

(9) "Corrective action plan" is a document set forth by the Department for a licensee to correct a negligent violation of, or non-compliance with, KRS 260.850-260.869 or an administrative regulation promulgated under the authority of those statutes.

(10) "Culpable mental state greater than negligence" means to act intentionally, knowingly, willfully, or with criminal negligence.

(11) "Decarboxylation" means the completion of the chemical reaction that converts delta-9 THC-acid into delta-9-THC, the intoxicating component of cannabis. The decarboxylated value is also calculated using a conversion formula that sums delta-9-THC and eighty-seven and seven tenths (87.7) percent of delta-9 THC-acid.

(12) "delta-9-THC" means delta-9-tetrahydrocannabinol concentration (the primary intoxicating component of cannabis). For compliance purposes, all delta-9-THC concentrations must be measured post- decarboxylation (result commonly referred to as total THC).

(13) "Department" or "KDA" is defined by KRS 260.850.

(14) "GPS" means Global Positioning System.

(15) "Handling" is defined by KRS 260.850.

(16) "Hemp" or "industrial hemp" is defined by KRS 260.850.(16) "Hemp Grower License" means a document issued by the department authorizing the person to grow, handle, and store hemp in the Commonwealth under the terms established in the document, KRS 260.850 through 260.863, and this administrative regulation.

(17) "Hemp Processor/Handler License" means a document issued by the department authorizing the person to process, handle, market, and store hemp in the Commonwealth under the terms established in the document, KRS 260.850 through 260.869, and 302 KAR 50:030.

(18) "Hemp product" or "industrial hemp product" is defined by KRS 260.850.

(19) "Key participant" means a person who has a direct or indirect financial interest in the entity producing hemp, such as an owner or a partner in a partnership. "Key participants" include, without limitation, an entity's chief executive officer, chief operating officer, and chief financial officer." "Key participants" do not include facility managers or shift managers.

(20) "Law enforcement agency" means the Kentucky State Police, DEA, or other federal, state, or local law enforcement agency, or drug suppression unit.

(21) "Licensed grower" means a person authorized in the commonwealth by the department to grow, handle, store, and market hemp under the terms established in a hemp grower license, KRS 260.850 through 260.859, and 302 KAR 50:021.

(22) "Licensed processor" means a person in the Commonwealth authorized by the department to process, handle, store, and market hemp under the terms established in a hemp processor/handler license, KRS 260.850 through 260.859, and this administrative regulation.

(23) "Location ID" means the unique identifier established by the applicant for each unique set of GPS coordinates where hemp will be grown, handled, stored, or processed, which can include a field name or building name.

(24) "Negligence" means failure to exercise the level of care that a reasonably prudent person would exercise in complying with an administrative regulation, rule, or instruction.

(25) "Nonviable seed" means a seed that has been crushed, dehulled, or otherwise rendered to have a zero percent germination rate.

(26) "Person" means an individual or business entity.

(27) "Prohibited variety" means a variety or strain of cannabis excluded from the Kentucky Hemp Licensing Program.

(28) "Processing" is defined by KRS 260.850.

(29) "Program" means the department's Hemp Licensing Program.

(30) "Propagule" means a plant or plant part that can be utilized to grow a new plant.

(31) "Publicly marketable hemp product" means a hemp product that meets one (1) or more of the following descriptions:

(a) The product

(i) does not include any living hemp plants, viable seeds, leaf materials, floral materials, or delta-9-THC content above zero and three-tenths (0.3) percent; and

(ii) does include, without limitation, the following products: bare stalks, bast fiber, hurd fiber, nonviable roots, nonviable seeds, seed oils, and plant extracts (excluding products containing delta-9 THC above zero and three-tenths (0.3) percent);

(b) The product is CBD that was derived from hemp, as defined by this administrative regulation; or

(c) The product is CBD that is approved as a prescription medication by the United States Food and Drug Administration.

(32) "Signing authority" means an officer or agent of the organization with written authorization to commit the legal entity to a binding agreement.

(33) "Strain" means a group of hemp with presumed common ancestry and identified physiological distinctions. A strain does not meet the uniformity, stability or distinction requirements to be considered a variety.

(34) "Variety" means a subdivision of a species that is:

(a) Uniform, in the sense that the variations in essential and distinctive characteristics are describable;

(b) Stable, in the sense that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity if reproduced or reconstituted as required by the different categories of varieties; and

(c) Distinct, in the sense that the variety can be differentiated by one (1) or more identifiable morphological, physiological, other characteristics from all other publicly known varieties, or other characteristics from all other publicly known varieties.

(35) "Variety of concern" means any variety of hemp that tests above 0.3000 percent delta 9-THC in one (1) or more pre-harvest samples. A hemp variety designated as a "variety of concern" could be subject to restrictions and additional testing.

Section 2. Processor or Handler License Application.

(1) Any person who wishes to engage in the processing, handling, brokering, or marketing of hemp that does not fall within the definition of a "publicly marketable hemp product" at any location in the Commonwealth shall submit to the department a complete Processor/Handler License Application, or annual license renewal, incorporated by reference as part of the Processor/Handler License Application Packet in 302 KAR 50:080.

(2) Existing processor or handler license holders shall complete the department's requirements for license renewal by December 31.

(3) Any person who does not hold a grower license from the department shall not:
Grow, cultivate or handle living hemp plants or other cannabis.

(4) Any person who does not hold a processor/handler license from the department shall not process, handle, broker or market hemp or other cannabis that does not fall within the definition of a "publicly marketable hemp product" at any location within the commonwealth.

(5) A person under the age of eighteen (18) years of age shall not apply for or hold a processor or handler license.

(6) Application deadlines.

(a) Completed Processor/Handler License Application forms shall be postmarked or received by the department by the end of the application period established in the application.

(b) Completed Processor/Handler License Application forms shall be delivered to KDA Hemp Licensing Program, 111 Corporate Drive, Frankfort, Kentucky 40601.

(c) The department shall deny any Processor/Handler License Application that is not received by the deadline established in the application.

(7) The department shall require each applicant to pay a

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processor or handler application fee in the amount established in 302 KAR 50:060.

(8) Application fees shall not cover or include the cost of the criminal background checks required by KRS 260.862(2)(d) and Section 3 of this administrative regulation. Applicants and license holders shall pay criminal background check fees directly to the Kentucky State Police or other law enforcement agency designated in the manner directed by the department.

(9) The department shall deny any Processor/Handler License Application that is received without the application fee established in 302 KAR 50:060.

(10) With the Hemp Processor/Handler License Application form the applicant shall submit, at a minimum:

(a) If the applicant is an individual, the individual's full name, residential address, telephone number, and email address (if available); or

(b) If the applicant is a business entity, the following information:

1. The entity's name, Employer Identification Number, business location address in Kentucky, and principal business location; and

2. For the individual who will have signing authority on the entity's behalf, his or her full name, title within the entity, business address, telephone number, and email address (if available).

(c) Complete and accurate responses to each request for information on the application form;

(d) Maps and the street address, location ID, and GPS coordinates for each building or site where hemp will be processed, handled, or stored.

(11) Any Processor/Handler License Application that is missing required information shall be subject to denial.

Section 3. Criminal Background Check.

(1) Each licensed processor/handler or applicant shall undergo and pay for an annual criminal background check as required by KRS 260.862(2)(d).

(2) A licensed processor/handler or applicant, or key participant within an entity that is a processor/handler or applicant, shall, following completion of the background check, ensure delivery of the report to the department with the application or renewal.

(3) The department shall not accept a report from a criminal background check that occurred more than 60 days prior to the date of the application.

(4) Failure to submit the background check with the application shall be grounds for license denial.

(5) Substitution of a signing authority shall require approval from the department and the submission of a current criminal background check on the substitute signing authority.

Section 4. Application for Processor or Handler Licensing; Criteria and Procedure for Evaluation.

(1) The department shall apply the criteria established in paragraphs (a) through (l) of this subsection in evaluating applications for a processor/handler license:

(a) In accordance with Section 2 of this administrative regulation, the applicant shall submit a complete application with all required components and attachments.

(b) An applicant who has been a program participant previously, the applicant shall comply with the responsibility to submit any reports required by 302 KAR Chapter 50.

(c) All involved business entities shall be registered and in good standing with the Kentucky Secretary of State.

(d) The applicant's processing sites, handling sites, and storage sites, shall be located in the Commonwealth of Kentucky.

(e) The criminal background check report indicates that, within ten (10) years from the date when the background check was issued, the applicant shall not have:

1. A felony conviction; or

2. A drug-related misdemeanor conviction or violation.

(f) The applicant's planned activities shall remain compliant with state law and KDA policy.

(g) The applicant shall have adequate facilities, or plans to

acquire adequate facilities sufficiently soon enough, to complete the planned activities.

(h) In the past, including those times when the applicant was not a participant in the Hemp Licensing Program, the applicant shall have demonstrated a willingness to comply with the department's rules, instructions from department staff, and instructions from representatives of Kentucky State Police and other law enforcement agencies.

(i) The applicant shall not be delinquent in making any required reports or payments to the department in connection with the applicant's participation in the Hemp Licensing Program or other programs within the department.

(j) The applicant shall not have any unpaid fees, fines or civil penalties owed to the department.

(k) The applicant shall not have made and shall not make any false statements or representations to a representative of the department or a law enforcement agency.

(l) The applicant's proposed sites shall comply with the land use restrictions set forth in Section 5 of this administrative regulation. Denial of all proposed processing and handling sites shall constitute grounds for denial of the application.

(2) The department shall conditionally approve an application for a processor/handler license if the application satisfies the criteria established in this administrative regulation.

(3) The department shall notify applicants by letter or email whether the application has been denied or conditionally approved. A person shall not be a participant in the Hemp Licensing Program until the applicant has received a hemp processor/handler license from the department.

(4) Applicants shall pay licensing fees prior to receiving a processor/handler license.

(5) Applicants shall complete a mandatory orientation session at a location to be determined by the department. The department shall not allow any person to complete orientation in lieu of the applicant.

Section 5. Land Use Restrictions for Licensed Processors or Handlers.

(1) A licensed processor or handler shall not process or store leaf or floral material from hemp or other cannabis in or adjacent to any structure that is used for residential purposes without first obtaining written permission from the department.

(2) A licensed processor or handler shall not apply to process, handle, or store hemp on any property that is not owned or completely controlled by the applicant or licensed processor.

(3) A licensed processor or handler shall not process, handle, or store hemp on property owned by, leased from, or previously submitted in an application by any person who is ineligible or was terminated or denied admission to the Hemp Licensing Program for one (1) or both of the following reasons:

(a) Failure to obtain an acceptable criminal background check, or

(b) Failure to comply with an order from a representative of the department.

Section 6. Administrative Appeal from Denial of Application.

(1) An applicant wishing to appeal the department's denial or partial denial of an application shall submit a written request for a hearing postmarked within fifteen (15) days of the date of the department's notification letter or email.

(2) An appealing applicant shall mail a hearing request letter to KDA Hemp Licensing Program, 111 Corporate Drive, Frankfort, Kentucky 40601.

(3) Appeals shall be heard by a three (3) person administrative panel whose members shall be designated by the commissioner. The panel shall include at least one (1) person who is a department employee and at least one (1) person who is not a department employee and not involved or invested in any hemp projects in Kentucky.

(4) The members of the administrative panel shall not be required to accept or consider information or documents that were not compliant with application deadlines established in this administrative regulation.

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(5) The members of the administrative panel shall apply the same standards set forth in this regulation to determine if the department's action in denying the application was arbitrary or capricious.

(6) Hearings on appeals shall be open to the public and occur at a time and date and location designated by the commissioner.

(7) An appealing applicant shall appear in person at the assigned hearing time. Failure to appear on time shall constitute grounds for dismissal of the appeal.

(9) The three (3) members of the administrative panel shall rule on the appeal by a majority vote.

Section 7. Hemp Processor or Handler Licenses.

(1) An applicant shall not be a participant in the Hemp Licensing Program until the department has issued a processor/handler license following the applicant's completion of the department's mandatory orientation session and payment of licensing fees.

(2) The processor/handler license application shall establish the terms and conditions governing participation in the Hemp Licensing Program.

(3) Failure to agree or comply with terms and conditions established in the processor/handler license application or this administrative regulation shall constitute grounds for appropriate departmental action, up to and including termination of the license and expulsion from the Hemp Licensing Program.

(4) Annual renewal of a processor/handler license shall require the license holder to:

(a) Submit to the department an annual criminal background check for the signing authority of record;

(b) Complete a mandatory, annual program orientation session hosted by the department;

(c) Pay annual fees in the amount established in 302 KAR 50:060;

(d) Update all licensed addresses, location IDs, and GPS coordinates with the department; and

(e) Agree to comply with the policies set forth in 302 KAR Chapter 50.

(5) A processor/handler license will remain in force as long as the license holder meets the annual renewal requirements by December 31 of each year.

(6) A processor/handler license may be terminated by the license holder or the department upon thirty (30) days prior written notice.

(7) The department shall issue processor/handler's license numbers in accordance with this format: "P_0001" through "P_9999."

Section 8. Processor or Handler Licensing Fee.

(1) The licensing fee for processing harvested hemp fiber shall be the amount established in 302 KAR 50:060.

(2) The licensing fee for processing harvested hemp grain shall be the amount established in 302 KAR 50:060.

(3) The licensing fee for processing hemp floral material (for example, CBD extraction) shall be the amount established in 302 KAR 50:060.

(4) A licensed processor or handler that processes more than one (1) harvest component (for example, fiber, grain, and floral material) shall pay the licensing fee that is required for each harvested component that is applicable.

(5) A handler that does not engage in processing (for example, a seed cleaner, laboratory or dryer) shall be subject to a licensing fee in the amount established in 302 KAR 50:060.

(6) The licensed processor or handler fee shall be paid annually in full prior to the issuance or renewal of the processor/handler license.

Section 9. Seed and Propagule Acquisition.

(1) A license holder intending to acquire seeds or propagules first shall determine whether or not the variety or strain intended for purchase is listed on the department's current Summary of Varieties List.

(a) If the variety or strain is listed on the Summary of Varieties List, no pre-approval from the department is required.

(b) If the variety or strain is not listed on the Summary of Varieties List, the license holder shall submit a New Hemp Variety or Strain Request Form along with a certificate of analysis for that strain or variety, showing that mature plants grown from that seed variety or strain have a floral material delta-9-THC (must be measured post-decarboxylation, also referred to as total THC) content of not more than 0.300% on a dry weight basis from an independent third-party laboratory.

(2) A license holder who develops a new hemp variety or strain shall submit the New Hemp Variety or Strain Request form, prior to its use in crop production.

(3) The department shall not approve a New Hemp Variety or Strain Request unless the licensed grower affirms in writing that the requested seed acquisition plan shall not infringe on the intellectual property rights of any person, and the seed or propagule source is a current legal hemp operation.

(4) The department shall not approve a New Hemp Variety or Strain Request if a representative of the department has information supporting a belief that the variety or strain will produce plants with delta-9-THC (must be measured post-decarboxylation, also referred to as total THC) content of more than 0.300% on a dry weight basis.

(5) A license holder shall not buy, sell, possess, or transfer seeds or propagules of any variety or strain designated as a prohibited variety on the department's published summary of varieties list.

(6) Upon request from a representative of the department, a licensed grower or licensed processor shall provide a distribution list showing locations where and to whom the hemp seeds or propagules were distributed.

(7) Any person engaging in the distribution of hemp seeds shall adhere to all applicable Kentucky seed laws (KRS 250.010 to KRS 250.990) and regulations (12 KAR 1:116 to 12 KAR 1:175).

(8) Any person who intends to move transplants or other living plants to a location outside Kentucky must obtain a Class A Nursery License from the Kentucky Office of the State Entomologist.

Section 10. Seeds of Wild, Landrace, or Unknown Origin.

(1) A person shall not acquire or grow hemp or cannabis seeds or propagules of wild, landrace, or unknown origin without first obtaining written approval from a representative of the department.

(2) The department shall not permit hemp or cannabis seeds or propagules of wild, landrace, or unknown origin to be planted, cultivated, or replicated by any person without the department first arranging for replication and THC testing of mature plants grown from the seeds or propagules by the department or its designee.

(3) Any licensed grower or licensed processor or handler found to have saved seed, propagules, or cuttings, or cultivated seeds, propagules, or cuttings from a cannabis plant of wild, landrace, or unknown origin, without permission from the department shall be subject to suspension or revocation of their license and forfeiture without compensation of their materials.

Section 11. Site Access for Representatives of the Department and Law Enforcement Agencies.

(1) The department shall provide information about approved growing, handling, processing, and storage site locations to representatives of the Kentucky State Police, DEA, and other law enforcement agencies whose representatives request licensed site location information, including GPS coordinates.

(2) Licensed processors or handlers shall have no reasonable expectation of privacy with respect to premises where hemp or other cannabis seeds, plants, or materials are located and any premises listed in the processor or handler license.

(3) A licensed processor or handler, whether present or not, shall permit a representative of the department or a law enforcement agency to enter into premises where hemp or other cannabis seeds, plants, or materials are located and any premises listed in the processor or handler license, with or without cause, and with or without advance notice.

Section 12. Collection and Retention of Cannabis Samples.

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(1) The department shall have the authority to collect, test, and retain samples of hemp or other cannabis, and substances derived from hemp or cannabis in the possession of a licensed processor or handler.

(2) All samples collected by the department shall become the property of the department and shall be nonreturnable. Compensation shall not be owed by the department.

(3) The material to be collected for sampling shall be determined by the department inspector.

Section 13. Restrictions on Sale or Transfer.

(1) A licensed processor or handler shall not sell or transfer, or permit the sale or transfer, of living plants, viable seeds, leaf material, or floral material to any person in the Commonwealth who does not hold a license issued by the department.

(2) A licensed processor or handler shall not sell or transfer, or permit the sale or transfer, of living plants, viable seeds, leaf material, or floral material to any person outside the Commonwealth who is not authorized to possess such materials under the laws of that jurisdiction.

(3) The department shall permit the sale or transfer of stripped stalks, fiber, dried roots, nonviable seeds, seed oils, cannabinoid extracts (excluding THC in excess of zero and three-tenths (0.3) percent), and other marketable hemp products to members of the general public, both within and outside the Commonwealth, if the marketable hemp product's decarboxylated delta-9-THC level is not more than zero and three-tenths (0.3) percent.

(4) A licensed processor or handler selling or transferring, or permitting the sale or transfer, of floral or plant extracts (including CBD), shall conduct and retain testing data reflecting the decarboxylated delta-9 THC level for at least three (3) years.

(5) A licensed processor or handler shall not sell or transfer floral extracts containing a decarboxylated delta-9 THC concentration in excess of zero and three-tenths (0.3) percent except that pursuant to KRS 260.8635, a licensed processor, or a person acting as a representative of a licensed processor, may move or transport hemp extract material having a delta-9 tetrahydrocannabinol concentration in excess of three-tenths of one percent (0.3%) from one (1) licensed processing location in the Commonwealth to another licensed processing location in the Commonwealth, provided that:

(a) The hemp extract material shall move directly from one (1) licensed processing location to another; and

(b) The licensed processor shall provide written notice to the department of the planned movement at least twenty-four (24) hours in advance by submitting to the department a completed Hemp Concentrate Transport Notification Form.

(6) A licensed processor or handler shall comply with the federal Food Drug and Cosmetic Act, 21 U.S.C. Chapter 9, and all other applicable local, state, and federal laws and regulations relating to product development, product manufacturing, consumer safety, and public health.

(7) Any person making human-consumable products, or substances that will be used to make human-consumable products, shall be Good Manufacturing Practices-compliant and permitted by the Department of Public Health within the Cabinet for Health and Family Services.

(8) Any person packaging a product prior to sale shall comply with the Uniform Packaging and Labeling Regulations as prescribed in 302 KAR 75:130.

(9) A licensed processor or handler shall not knowingly permit hemp to be sold to or used by any person in the Commonwealth who is involved in the manufacture of an item named on the prohibited products list established in 302 KAR 50:070.

(10) A person shall not ship or transport, or allow to be shipped or transported, any hemp product with a decarboxylated delta-9-THC concentration in excess of zero and three-tenths (0.3) percent.

Section 14. Other Requirements.

(1) A licensed processor or handler shall not process or store hemp on any site not listed in the processor/handler license.

(2) A person shall not convert a substance that was extracted or derived from hemp or other cannabis into a Schedule I

controlled substance.

(3) A license holder shall not make, manufacture, or distribute any of the prohibited products listed in 302 KAR 50:070.

(4) A person shall not possess living hemp or other cannabis plants without a hemp grower license.

(5) A licensed processor or handler shall not allow another person, other than an agent of the licensed processor or handler, to process, handler or store hemp under their license in lieu of obtaining a separate hemp processor/handler license.

(6) Processors using hazardous materials or flammable solvents (for example, ethanol) shall comply with the requirements of the State Fire Marshal.

(7) Any person owning or operating an analytical laboratory offering third-party testing services shall report post-decarboxylated delta-9 THC on a 100% dry weight basis.

(8) Any person owning or operating an analytical laboratory offering third-party testing services shall participate in the University of Kentucky's Hemp Proficiency Testing Program.

Section 15. Information Submitted to Department Subject to Open Records Act.

(1) Except as provided in subsection (2) of this section, information and documents generated or obtained by the department shall be subject to disclosure pursuant to the Kentucky Open Records Act, KRS 61.870 through 61.884.

(2) Personally identifiable information including physical address, mailing address, driver's license numbers, background checks, GPS coordinates, telephone numbers, and email addresses shall be shielded from disclosure to the maximum extent permitted by law; provided, however, the department shall provide this information to law enforcement agencies and other regulatory agencies upon request.

Section 16. Violations Requiring Temporary License Suspension Procedures.

(1) The department shall notify a licensed processor/handler in writing that the Processor/Handler License has been temporarily suspended if a representative of the department receives information supporting an allegation that a licensed processor/handler has:

(a) Plead guilty to, or is convicted of, any felony or drug-related misdemeanor or violation in accordance with KRS 260.864.

(b) Engaged in conduct violating a provision of KRS 260.850 through 260.869, 302 KAR Chapter 50, or the processor/handler license with a culpable mental state greater than negligence;

(c) Made a false statement to a representative of the department or a law enforcement agency with a culpable mental state greater than negligence;

(d) Been found to be in possession of cannabis with a measured delta-9-THC concentration above 0.3 percent with a culpable mental state greater than negligence;

(e) Been found to be growing hemp or cannabis without a hemp grower license with a culpable mental state greater than negligence; or

(f) Failed to comply with an order from a representative of the department or a law enforcement agency with a culpable mental state greater than negligence.

(2) The department shall schedule a license revocation hearing for a date as soon as practicable after the notification of temporary suspension, but in any event not later than sixty (60) days following the notification of temporary suspension.

(3) A person whose processor/handler license has been temporarily suspended shall not process, or remove cannabis from the premises where hemp or other cannabis was located at the time when the department issued its notice of temporary suspension, except as authorized in writing by a representative of the department.

(4) As soon as possible after the notification of temporary suspension, a representative of the department shall inspect the licensed processor/handler's premises and perform an inventory of all cannabis, hemp, and hemp substances that are in the licensed processor/handler's possession.

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Section 17. License Revocation Hearings and Consequences of Revocation.

(1) The department shall notify a person whose processor/handler license has been temporarily suspended of the date when the person's license revocation hearing will occur at a time and place designated by the commissioner.

(2) License revocation hearings shall be adjudicated by a three

(3) person administrative panel in accordance with KRS 260.864.

(3) License revocation hearings shall be open to the public.

(4) A person whose processor/handler license has been temporarily suspended shall appear in person at the assigned hearing time. Failure to appear on time shall constitute a waiver of the person's right to present information and arguments against revoking the processor/handler license.

(5) A representative of the department shall be allowed an opportunity to present information and arguments for revoking the processor/handler license.

(6) A person whose processor/handler license has been temporarily suspended shall be allowed an opportunity to present information and arguments against revoking the processor/handler license.

(7) The three (3) members of the administrative panel shall rule on the question of revocation by a majority vote.

(8) If a majority of the three (3) members of the administrative panel find that it is more likely than not that a licensed processor or handler has committed any of the acts listed in Section 17(1) of this administrative regulation then the processor/handler license shall be revoked effective immediately.

(9) If a majority of the members of the administrative panel vote against revoking the processor/handler license, the department shall lift the temporary suspension within twenty-four (24) hours of the vote.

(10) If a majority of the members of the administrative panel vote in favor of revoking the processor/handler license, then a representative of the department or a law enforcement agency shall have authority to destroy or confiscate all cannabis, hemp, and hemp substances that are in the person's possession.

(11) A person whose property is destroyed or confiscated by a representative of the department or a law enforcement agency shall be owed no compensation or indemnity for the value of the cannabis, hemp, or hemp products that were destroyed or confiscated.

(12) The department shall immediately report any person whose license has been revoked on the grounds that he or she violated a provision of KRS 260.850 through 260.869, 302 KAR Chapter 50, or the processor/handler license with a culpable mental state greater than negligence, to an appropriate law enforcement agency.

(13) A person whose processor/handler license has been revoked shall not be eligible for licensure for a period of five (5) years from the date of the most recent violation.

Section 18. Monetary Civil Penalties.

(1) If a representative of the department receives information supporting a finding that it is more likely than not that a person has engaged in conduct violating a provision of KRS 260.850 through 260.869, 302 KAR Chapter 50 or the processor or handler license application, then the department shall assess a monetary civil penalty not to exceed \$2,500 per violation.

(2) A person wishing to appeal the department's assessment of a monetary civil penalty shall submit a written request for a hearing within fifteen (15) days of the notification date.

(3) A person wishing to appeal the department's assessment of a monetary civil penalty shall mail a hearing request letter to KDA Hemp Licensing Program, 111 Corporate Drive, Frankfort, Kentucky 40601.

(4) Appeals shall be heard by a three (3) person administrative panel whose members shall be designated by the commissioner. The administrative panel shall include at least one (1) person who is a department employee and at least one (1) person who is not a department employee and not involved or invested in any Kentucky hemp projects.

(5) The members of the administrative panel shall determine if

the department's action in assessing the monetary civil penalty was arbitrary or capricious.

(6) Hearings on the appeal shall be open to the public and occur at a time, date, and location designated by the commissioner.

(7) An appealing person shall appear in person at the assigned hearing time. Failure to appear on time shall constitute grounds for dismissal of the appeal.

(8) An appealing person shall be allowed an opportunity to present arguments for reversing the assessed monetary civil penalty.

(9) A representative of the department shall be allowed an opportunity to present arguments for affirming the assessed monetary civil penalty.

(10) The three (3) members of the administrative panel shall rule on the appeal by a majority vote.

(11) A majority of the three (3) members of the administrative panel may affirm the assessed monetary civil penalty, affirm and increase or decrease the assessed monetary civil penalty, or reverse the assessed monetary civil penalty.

(12) The department shall have the authority to pursue unpaid monetary civil penalties by filing a civil cause of action in the Franklin Circuit Court.

Section 19. Licensing for Representatives of Universities and Colleges.

(1) Except as provided in this Section of this administrative regulation, faculty members, administrators, and staff members of an institution of higher education shall be subject to each of the sections of this administrative regulation.

(2) No institution of higher education shall permit or authorize its faculty, administration, or staff members, or any sponsored student, to be in possession of, or conduct academic research involving living hemp plants, leaf material, floral material, or viable seeds of hemp without first completing and submitting a Hemp License Application.

(3) An authorized faculty, administrator, or staff member of an eligible institution of higher education who wishes to be in possession of, or conduct an academic research project involving living hemp plants, leaf material, floral material, or viable seeds of hemp shall complete and submit a Hemp License Application.

(4) If a university applicant's research plan includes growing hemp, then a Hemp Grower License will be issued.

(5) If a university applicant's research plan does not include growing hemp, then a Hemp Processor/Handler License will be issued.

(6) The department shall accept applications from an authorized faculty, administrator, or staff member of an eligible institution of higher education at any time of the year.

(7) The department shall not collect fees for licenses issued to a faculty member, administrator, or staff member of an institution of higher education if the project is for research only (that is, not intended for commerce).

(8) Sampling and testing of hemp processed or handled under the authority of this section shall be conducted by the department if the harvested material is intended for commerce.

(9) As used in this section, "eligible institution of higher education" means an institution of higher education that is:

(a) Is accredited by, and in good standing with, a regional or national higher education accreditation agency;

(b) Confers academic degrees at the associate, bachelor, master, or doctoral level; and

(c) Has a principal campus or office that is located at a site within the Commonwealth of Kentucky.

Section 20. Corrective Action Plans for Negligent Violations.

(1) If the department determines that a processor or handler committed a negligent violation of any provision within KRS Chapter 260.850 to 260.869, or any administrative regulation promulgated under the authority of those statutes, then the department shall devise and implement a corrective action plan for the processor or handler.

(2) Corrective action plans will remain in place for at least two

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(2) years and include, at a minimum, the following:

(a) The date by which the processor or handler shall correct each negligent violation;

(b) Steps to correct each negligent violation; and

(c) A description of the procedures to demonstrate compliance.

(3) A processor or handler who commits a negligent violation shall not, as a result of that violation, be subject to any criminal enforcement action by any government.

(4) If a subsequent violation occurs while a corrective action plan is in place, a new corrective action plan must be submitted with a heightened level of quality control, staff training, and quantifiable action measures.

(5) A processor or handler who commits three (3) negligent violations within a five (5) year period shall have his or her license revoked and be ineligible to obtain a license for a period of five (5) years beginning on the date of the third violation. A violation that occurred prior to January 1, 2021 shall not count toward the three (3) violations referred to in this subsection.

Section 21. Mandatory Reports to Law Enforcement Agencies for Violations with a Culpable Mental State Greater than Negligence.

(1) In addition to being subject to the license suspension, license revocation, and monetary civil penalty procedures established in 302 KAR 50:021 and 302 KAR 50:031, a person who is found by the department to have violated any statute or administrative regulation governing that person's participation in the hemp program with a culpable mental state greater than negligence shall be subject to the reporting requirements established in this section.

(2) The department shall immediately report a person who is found by the department to have violated any statute or administrative regulation governing that person's participation in the hemp program with a culpable mental state greater than negligence to the commander of the Kentucky State Police's Cannabis Suppression Branch.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: August 13, 2020

FILED WITH LRC: August 14, 2020 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2020 at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, 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 was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. 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 October 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: 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes rules for processing hemp in Kentucky.

(b) The necessity of this administrative regulation: This regulation establishes rules for processing hemp that are necessary for Kentucky hemp products to be generally seen as allowable for trade.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 260.862 commands the KDA to establish administrative regulations for hemp.

(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 making hemp processing rules very clear in Kentucky.

(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 is a new filing.

(b) The necessity of the amendment to this administrative regulation: This is a new filing.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new filing.

(d) How the amendment will assist in the effective administration of the statutes: This is a new filing.

(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, 970 growers, 12 Universities and 170 processors.

(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 instructions in the filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Likely no modification of current actions would be needed, so little to no costs would be incurred.

(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.

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

(a) Initially: Expenses for the entire hemp program for 2019 were approximately \$1,156,000.

(b) On a continuing basis: Market forces will determine participation levels for 2020 and beyond. Ongoing costs will be a function of grower numbers and location modifications.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The hemp program is funded by the fees set for in 302 KAR 50:060.

(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 increases in funding are required currently.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This filing does not contain fees. The hemp program is funded by the fees set for in 302 KAR 50:060.

(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, and any agency that might concern hemp 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 260.682

(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? Income for the entire hemp program for 2019 was approximately

\$1,575,000.

(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? Even with a fixed fee structure, revenue is almost entire determined by participation. Market forces will dictate revenue to a point the KDA cannot guess with any certainty.

(c) How much will it cost to administer this program for the first year? Expenses for the entire hemp program for 2019 were approximately \$1,156,000.

(d) How much will it cost to administer this program for subsequent years? The KDA expects this spending trendline to continue for the hemp program as a whole, but based on producer participation.

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

Revenues (+/-): \$1,575,000
Expenditures (+/-): \$1,156,000.
Other Explanation:

**DEPARTMENT OF AGRICULTURE
Office of the Consumer and Environmental Protection
(New Administrative Regulation)**

302 KAR 50:045. Department’s reports to USDA; records retention for three (3) years.

RELATES TO: KRS Chapter 217B, 260.850-260.869, 7 U.S.C. 1739p

STATUTORY AUTHORITY: KRS 260.862, 7 U.S.C. 1739p
NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.862(1)(a) authorizes the department to promulgate administrative regulations for a Hemp Licensing Program in the Commonwealth of Kentucky. KRS 260.862(1)(c) authorizes the department to license persons who wish to participate in a Hemp Licensing Program by cultivating, handling, processing, or marketing hemp. This administrative regulation defines certain departmental reporting and record-retention duties.

Section 1. Definitions.

- (1) "Department" or "KDA" is defined by KRS 260.850.
- (2) "GPS" means Global Positioning System.
- (3) "Hemp" or "industrial hemp" is defined by KRS 260.850.
- (4) "Location ID" means the unique identifier established by the applicant for each unique set of GPS coordinates where hemp will be grown, handled, stored, or processed, which can include a field name or building name.

Section 2. Record Keeping Requirements; Three (3) Year Retention Period. For at least three (3) years, license holders shall retain and make available for inspection by the department (or USDA inspectors, auditors, or their representatives) during reasonable business hours:

- (1) Records regarding acquisition of hemp plants;
- (2) Records regarding production and handling of hemp plants;
- (3) Records regarding storage of hemp plants; and
- (4) Records regarding disposal of all cannabis plants that do not meet the definition of hemp.

Section 3. Monthly Producer Reports. On or before the first day of each month, the department shall submit a Monthly Producer Report to USDA providing the contact information, and current status, of each license that has been issued by the department. If the first day of the month falls on a weekend or a holiday, then the department shall submit its Monthly Producer Report on or before the first business day following the first day of the month. The department shall submit its Monthly Producer Report in a digital format that is compatible with USDA’s information sharing system whenever possible, or on USDA Form AMS-23. The department’s Monthly Producer Reports shall include the following information.

- (1) For each new grower who is an individual, the Monthly

Producer Report shall include the full name of the individual, the license number, the business address, the telephone number, and the email address (if available); and the status of each grower’s license, the period covered by the report, and an indication that there were no changes during the current reporting cycle, if applicable.

(2) For each new grower that is an entity, the Monthly Producer Report shall include the full name of the entity, the license number, the principal business location address, and the full name, title, and email address (if available) for each employee for whom the entity is required to submit a criminal history record report; and the status of each grower’s license, the period covered by the report, and an indication that there were no changes during the current reporting cycle, if applicable.

(3) For each grower that was included in a previous report, and whose reported information has changed, the Monthly Producer Report shall include the previously reported information and the new information; and the status of each grower’s license, the period covered by the report, and an indication that there were no changes during the current reporting cycle, if applicable.

Section 4. Monthly Disposal Reports. On or before the first day of each month, the department shall submit a Monthly Disposal Report to USDA providing notice to USDA of any occurrence of non-conforming plants or plant material. If the first day of the month falls on a weekend or a holiday, then the department shall submit its Monthly Disposal Report on or before the first business day following the first day of the month. The department shall submit its Monthly Producer Report in a digital format that is compatible with USDA’s information sharing system whenever possible or on USDA Form AMS-24. The department’s Monthly Disposal Reports shall include the following information:

- (1) The grower’s name, address, and license number;
- (2) The Location ID number and GPS coordinates for the lot that was subject to disposal;
- (3) The date of the disposal,
- (4) The name of the KDA employee who supervised the disposal; and
- (5) The total acreage.

Section 5. Annual Reports. On or before December 15 of each year, the department shall submit an Annual Report to USDA. The department shall submit its Annual Report in a digital format that is compatible with USDA’s information sharing system whenever possible or on USDA Form AMS-25. The department’s Annual Reports shall include the following information:

- (1) the total acreage planted;
- (2) the total acreage disposed; and
- (3) the total harvested acreage.

Section 6. Laboratory Test Results Reports. The department shall ensure that the designated testing laboratory’s Laboratory Test Results Reports are submitted to USDA in a digital format that is compatible with USDA’s information sharing system whenever possible or on USDA Form AMS-22. The Laboratory Test Results Reports shall include the following information:

- (1) The grower’s license number, name, and business address;
- (2) The Location ID number for the lot from which the sample was collected;
- (3) The laboratory’s name and DEA registration number;
- (4) The date of the test and date of the report;
- (5) Whether the test was a retest; and
- (6) The test result.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: August 13, 2020

FILED WITH LRC: August 14, 2020 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2020 at 1:00 p.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, 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 was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. 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 October 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: 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.

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 establishes record retention and report requirements for the program.

(b) The necessity of this administrative regulation: This regulation establishes record retention and report requirements for the program that are needed for USDA state plan approval.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 260.862 commands the KDA to establish administrative regulations for hemp.

(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 making hemp record retention and report requirements rules very clear in Kentucky.

(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 is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This 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, 970 growers, 12 Universities and 170 processors.

(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 instructions in the filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Likely no modification of current actions would be needed, so little to no costs would be incurred. Producers are keeping records currently.

(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.

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

(a) Initially: Expenses for the entire hemp program for 2019 were approximately \$1,156,000.

(b) On a continuing basis: Market forces will determine participation levels for 2020 and beyond. Ongoing costs will be a function of grower numbers and location modifications.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The hemp program is funded by the fees set for in 302 KAR

50:060.

(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 increases in funding are required currently.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This filing does not contain fees. The hemp program is funded by the fees set for in 302 KAR 50:060.

(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, and any agency that might concern hemp 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 260.682

(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? Income for the entire hemp program for 2019 was approximately \$1,575,000.

(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? Even with a fixed fee structure, revenue is almost entirely determined by participation. Market forces will dictate revenue to a point the KDA cannot guess with any certainty.

(c) How much will it cost to administer this program for the first year? Expenses for the entire hemp program for 2019 were approximately \$1,156,000.

(d) How much will it cost to administer this program for subsequent years? The KDA expects this spending trendline to continue for the hemp program as a whole, but based on producer participation.

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

Revenues (+/-): \$1,575,000
Expenditures (+/-): \$1,156,000.
Other Explanation:

DEPARTMENT OF AGRICULTURE
Office of the Consumer and Environmental Protection
(New Administrative Regulation)

302 KAR 50:056. Sampling and THC testing; post-testing actions; disposal of noncompliant harvests.

RELATES TO: KRS Chapter 217B, 260.850-260.869, 7 U.S.C. 1739p

STATUTORY AUTHORITY: KRS 260.862, 7 U.S.C. 1739p
NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.862(1)(a) authorizes the department to promulgate administrative regulations for a Hemp Licensing Program in the Commonwealth of Kentucky. KRS 260.862(1)(c) authorizes the department to license persons who wish to participate in a Hemp Licensing Program by cultivating, handling, processing, or marketing hemp. This administrative regulation establishes procedures and requirements for sampling and THC testing, and establishes procedures for the movement or disposal of hemp following the completion of THC testing.

Section 1. Definitions.

(1) "Acceptable Hemp THC Level" means the sum of the statewide Measurement of Uncertainty plus the 0.300% limit set forth in federal law and state law.

(2) "Cannabis" means the plant that, depending on its THC concentration level, is defined as either "hemp" or "marijuana." Cannabis is a genus of flowering plants in the family Cannabaceae of which Cannabis sativa is a species, and Cannabis indica and Cannabis ruderalis or subspecies thereof. Cannabis includes all parts of the plant, whether growing or not, including its seeds, resin, compounds, salts, derivatives, and extracts; and does not include a "publicly marketable hemp product," as defined by this administrative regulation.

(3) "CBD" means cannabidiol.

(4) "Decarboxylated" means the completion of the chemical reaction that converts delta-9 THC-acid into delta-9-THC, the intoxicating component of cannabis. The decarboxylated value is also calculated using a conversion formula that sums delta-9-THC and eighty-seven and seven tenths (87.7) percent of delta-9 THC-acid.

(5) "delta-9-THC" means delta-9-tetrahydrocannabinol concentration (the primary intoxicating component of cannabis). For compliance purposes, all delta-9-THC concentrations must be measured post-decarboxylation or by another method which shall include both delta-9-THC and delta-9-THCA (also known as total THC).

(6) "Department" or "KDA" is defined by KRS 260.850(3).

(7) "Hemp" or "industrial hemp" is defined by KRS 260.850(5).

(8) "Inspector" means an employee or other representative of the department sent to collect samples and perform inspections.

(9) "Lot" means a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of hemp throughout.

(10) "Measurement of Uncertainty" means the parameter, associated with the result of a measurement that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to the measurement. The statewide Measurement of Uncertainty shall be the greater of the Measurements of Uncertainty computed by the designated laboratories testing samples for the Department.

(11) "MSU BVC" means the Breathitt Veterinary Center at the Murray State University in Hopkinsville.

(12) "Person" means an individual or business entity.

(13) "Post-harvest sample" means a sample taken from the harvested hemp from a particular lot's harvest in accordance with the procedures as established in 302 KAR 50:055. The entire lot's harvest is in the same form (for example, intact-plant, flowers, ground materials, etc.), homogenous, and not mixed with non-hemp materials or hemp from another lot.

(14) "Pre-harvest sample" means a composite, representative portion from living plants in a hemp lot collected in accordance with the procedures as established in 302 KAR 50:055.

(15) "Program" means the department's Hemp Licensing Program.

(16) "Propagule" means a plant or plant part that can be utilized to grow a new plant.

(17) "UK DRS" means the Division of Regulatory Services at the University of Kentucky College of Agriculture, Food, and Environment in Lexington.

Section 2. Procedures for Inspection and Sample-Collection Visits.

(1) No hemp plant shall be harvested from any lot before a department inspector completes an inspection and sample-collection visit.

(2) The licensed grower shall submit to the department a completed Harvest Report form at least fifteen (15) days prior to the grower's expected harvest date.

(3) Upon receiving a completed Harvest Report form, the department shall contact the licensed grower to schedule an inspection and sample-collection visit for a specific time on a date that is not later than the grower's expected harvest date.

(4) The licensed grower, or the grower's authorized

representative, shall be present during the inspection and sample-collection visit.

(5) During the inspection and sample-collection visit, the licensed grower shall provide to the inspector complete and unrestricted access to all hemp and other cannabis plants, whether growing or harvested; all land, buildings, and other structures used for the cultivation and storage of hemp and other cannabis plants; and all locations listed in the Hemp Grower License.

(6) During the inspection and sample-collection visit, the inspector shall perform a visual inspection of each location listed in the Hemp Grower License in order to verify the GPS coordinates and look for evidence that hemp plants or other cannabis plants were harvested without authorization prior to the inspector's inspection and sample-collection visit or any other suspicious circumstance.

(7) The licensed grower shall complete the harvest of the crop from a lot not more than fifteen (15) days following the date of the inspection and sample-collection visit, unless specifically authorized in writing by the department; provided, however, that such authorization shall not exceed an additional five (5) days and shall not be granted by the department without its determination that the cause for delay was inclement weather or another circumstance beyond the licensed grower's control.

(8) If the licensed grower fails to complete the harvest of the crop from a lot within fifteen (15) days following the date of sample collection, then the licensed grower shall submit a new Harvest Report and may be required to pay a secondary pre-harvest sample fee established in 302 KAR 50:060.

(9) Floral material shall not be moved outside the Commonwealth, nor moved beyond a processor, nor commingled, nor extracted, nor converted into a consumer-ready product, nor enter commerce, until the department releases the material in writing.

Section 3. Procedure for Collecting Samples.

(1) The inspector shall use the following equipment and supplies:

- (a) An "Inspection and Sample Collection" Form;
- (b) Alcohol wipes;
- (c) Pruning shears;
- (d) Paper sample-collection bags;
- (e) A permanent marker;
- (f) Security tape or a stapler;
- (g) A GPS unit, or a device with GPS-capable technology; and
- (h) Nitrile disposable gloves.

(2) The inspector shall take cuttings from five (5) plants in each lot to make up a composite sample for that lot. The number of plants selected to form a composite sample was calculated using the Codex Alimentarius Recommended Methods of Sampling for the Determination of Pesticide Residues for Compliance with MRLS CAC/GL 33-1999. In 2019, Kentucky's hemp testing program showed that 43% of the pre-harvest samples were above 0.30% THC; therefore "1" is equal to 0.43. For a confidence level of 95%, the minimum plant number required is 3; a lot from a thousand-acre field would require 5.3 plants.

(3) The inspector shall select the individual plants to be sampled from each lot by selecting at random at least five (5) plants that appear to be representative of the composition of the lot, and avoiding selecting plants that are close to the perimeter of the lot.

(4) From each individual plant selected for sampling, the inspector shall cut the highest twenty (20) centimeters from the plant's primary stem of female flower. The inspector shall not remove seed, stem, or other material from the sample that is cut from the plant.

(5) The inspector shall place the cuttings from the lot into a paper sample-collection bag, shut the bag by folding over its top, and secure the fold with security tape or a stapler.

(6) Using a permanent marker, the inspector shall write on the sealed paper sample collection bag the Sample ID consistent with the following format:

- (a) The last four digits of the Grower License number,
- (b) The date, in MMDDYY format; and

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- (c) A two (2) digit sample number assigned by the inspector.
- (d) Example: For Grower License 21_1234, with a sample collected on October 15, 2020, from the third lot sampled by the inspector on that date, the Sample ID is 1234-101520-03.
- (7) The inspector shall complete the "Inspection and Sample Collection Form" by entering the following information:
 - (a) The licensed grower's name and contact information;
 - (b) The address where the lot is located;
 - (c) The Grower License number;
 - (d) The inspector's name;
 - (e) The date of the inspection and sample collection visit; and
 - (f) For each sample collected, the Location ID, the Sample ID, the hemp variety or strain name, and a description of the crop.
- (8) Following the completion of the inspection and sample-collection visit, the inspector shall deliver the sealed sample-collection bag to the department's designated drying facility.
- (9) The department shall not unseal sample-collection bags during the drying process.

Section 4. Procedure for THC Testing.

- (1) THC testing shall be completed by a testing lab designated by the department.
- (2) Upon receipt of a sealed sample-collection bag from the department, the laboratory shall receive, prepare, and release hemp samples in accordance with the UK DRS SOP# HM-LB-001 (Procedures for Receiving, Preparing and Releasing Hemp Samples); or MSU BVC SOP # TOX WIN 0042 (Hemp Receiving) and MSU BVC SOP # TOX WIN 0043 (Hemp Storage and Destruction), as applicable.
- (3) Hemp material not used by the laboratory for delta-9-THC testing shall be stored as a retained sample.
- (4) The laboratory shall measure delta-9-THC content, including both delta-9-THC and delta-9-THCA, on a dry weight basis in accordance with the UK DRS SOP# HMP-LB-002 (Procedures for Measuring Delta 9 THC Content in Industrial Hemp by Gas Chromatography with Flame Ionization Detection) or MSU BVC SOP # TOX WIN 0069 (Hemp Potency), as applicable.
- (5) No person shall be permitted to add to, amend, or in any way alter the composition of the retained sample.

Section 5. Post-testing Actions.

- (1) Not later than sixty (60) after the date of the inspection and sample-collection visit, the department shall notify the licensed grower of the results of the THC test results and the grower's eligibility to move the harvested materials into commerce.
- (2) For the purpose of determining whether a test result is compliant with the definition of hemp (0.3000% delta-9 THC on a dry-weight basis) set forth in federal law and state law, the department shall evaluate it against the Acceptable Hemp THC Level that is applicable for the current year (that is, 0.300% plus the statewide Measurement of Uncertainty).
- (3) A sample from a lot with a measured THC concentration not exceeding the Acceptable Hemp THC Level shall be deemed compliant (i.e., conforming to the legal definition of hemp).
- (4) A sample from a lot with a measured THC concentration exceeding the Acceptable Hemp THC Level shall be deemed non-compliant.
- (5) Within seven (7) days of receiving notice of a measured THC concentration that exceeds the Acceptable Hemp THC Level but is less than 1.000%, the Licensed Grower must consent to the destruction of all leaf material and floral material, or he or she may request a post-harvest re-test in accordance with the procedures set forth in Section 6 of this administrative regulation.
- (6) The retest fee shall be paid in an amount established in 302 KAR 50:060.
- (7) Samples with a measured THC concentration of 1.000% or greater shall not be eligible for a post-harvest retest and shall be destroyed.
- (8) The sample for a retest shall be collected on a date determined by the department.

Section 6. Procedure for Collecting Samples for Post-harvest

Retests.

- (1) The inspector shall use the following equipment and supplies:
 - (a) An "Inspection and Sample Collection" Form;
 - (b) Alcohol wipes;
 - (c) Pruning shears;
 - (d) Paper sample-collection bags for wet samples;
 - (e) Plastic sample-collection bags for dry samples;
 - (f) A permanent marker;
 - (g) Security tape or a stapler;
 - (h) A GPS unit, or a device with GPS-capable technology; and
 - (i) Nitrile disposable gloves.
- (2) The material selected for Post-Harvest Sampling from this lot will be determined by the inspector, not the grower.
- (3) The inspector shall perform a visual inspection to verify that the harvested material is in a homogenous state (for example, in an intact-plant state or in a ground-up state, or in another state). If the harvested material is not in a homogenous state, then the inspector shall notify the Hemp Program Manager and convey any instructions the Hemp Program Manager may designate to undertake additional post-harvest processing activities to bring the entire harvest into a homogenous state. If the license holder refuses or fails to undertake such designated activities, he or she shall be deemed to have waived any right to request a post-harvest retest and the material shall be designated for disposal.
- (4) Floral harvested material selected for Post-Harvest Sampling shall be taken in the state (for example, in an intact-plant state or in a ground-up state, or in another state) in which the license holder plans to sell or send the material to a processor, in accordance with the following instructions.
 - (a) For intact-plant post-harvest samples:
 - 1. Ensure that the entire harvest is accounted for and in the same form (i.e., intact plants).
 - 2. Clip the top 20 cm of hemp plant, primary stem, including female floral material, without removing seed, stem, or other material.
 - 3. Take cuttings from at least five (5) hemp plants within the harvest's storage/drying area at the discretion of the inspector.
 - 4. Place the complete sample in a paper bag.
 - 5. Seal the paper bag by folding over top once and stapling to keep closed.
 - (b) For ground plant or ground floral material Post-Harvest Samples:
 - 1. Ensure that the entire harvest is accounted for and in the same form (i.e., all harvested material whether whole plant or floral material only must be ground with no intact plants or whole flowers remaining from that harvest).
 - 2. Sample material from bag or container without removing seed, stem, or other material.
 - 3. Sample from a minimum of five (5) locations within the containers from at least one cup of material from the lot.
 - 4. Place the complete sample in a plastic sample container.
 - 5. Seal the plastic sample container.
 - (c) For Post-Harvest Samples in other forms (e.g., trimmed floral material, or floral material and stems):
 - 1. Ensure that the entire harvest is accounted for and in the same form (i.e., all harvested material whether whole plant or floral material only must be ground with no intact plants or whole flowers remaining from that harvest).
 - 2. Sample material from bag or container without removing seed, stem, or other material.
 - 3. Sample from a minimum of five (5) locations within the containers, collecting from at least one cup of material from the lot.
 - 4. Place the complete sample in a plastic sample container.
 - 5. Seal the plastic sample container.
 - (5) The inspector shall place the cuttings or composite sample from the lot into a sample collection bag, and secure the bag with security tape or staples.
 - (6) Using a permanent marker, the inspector shall write on the sealed sample-collection bag the Sample ID consistent with the following format:
 - (a) The last four (4) digits of the Grower License number,
 - (b) The date, in MMDDYY format; and

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- (c) A two (2) digit sample number assigned by the inspector.
- (d) Example: For Grower License 21_1234, with a sample collected on October 15, 2020, from the third lot sampled by the inspector on that date, the Sample ID would be 1234-101520-03.
- (7) The inspector shall complete the "Inspection and Sample Collection Form" by entering the following information:
 - (a) The licensed grower's name and contact information;
 - (b) The address where the lot was grown and where it is currently located;
 - (c) The Grower License number;
 - (d) The inspector's name;
 - (e) The date of the inspection and sample collection visit; and
 - (f) For each sample collected, the Location ID, the Sample ID, the hemp variety or strain name, and a description of the crop.
- (8) Following the completion of the inspection and sample-collection visit, the inspector shall deliver the sealed sample-collection bag to the department's designated drying facility.
- (9) The department shall not unseal sample-collection bags during the drying process.
- (10) The procedure for THC testing used by UK DRS shall be the same for post-harvest retests as those set forth in Section 4 of this administrative regulation.
- (11) A lot having a post-harvest sample with a measured THC concentration exceeding the Acceptable Hemp THC Level shall be deemed non-compliant and designated for disposal.

Section 7. Disposal of Non-compliant Harvested Materials.

- (1) If a lot is designated for mandatory disposal, then the department shall ensure that all leaf material and floral material from that lot is disposed of using one (1) of the procedures set forth in this Section of this administrative regulation. The costs of disposal, if any are incurred by the department, shall be charged to the license holder.
- (2) Disposal by on-site destruction with department supervision. Without removing the harvested material from the license holder's premises (or other licensed premises where the harvested material is located), a department employee shall personally observe the harvested material's destruction (i.e., the act of rendering it into a useless and non-retrievable state) using one (1) of these methods:
 - (a) By grinding it up and incorporating it into the soil; or
 - (b) By controlled incineration.
- (3) Disposal by on-farm transfer to a person who is registered or authorized by the department to accept controlled substances for the purposes of destruction. At the premises of the license holder (or other licensed premises where the harvested material is located), a department employee shall load, or observe the loading, of the harvested material until the transfer is complete.
- (4) Disposal by vehicle transport to a department-approved location.
 - (a) Prior to the transport: At the premises of the license holder (or other licensed premises where the harvested material is located), a department employee shall load, or observe the loading, of the harvested material until the material is completely secured on or in the vehicle.
 - (b) During the transport: A department employee shall accompany the harvested material as it moves in a vehicle directly to a department-approved location. The vehicle shall constantly move towards its final destination without unnecessary stops, stops for reasons unrelated to the transport task, or stops of an extended duration.
 - (c) After the transport: Upon arrival at the department-approved location, a department employee shall unload, or observe the unloading, of the harvested material until the material is completely removed from the vehicle.
 - (d) Following the material's removal from the vehicle, a department employee shall personally observe the harvested material's destruction (i.e., the act of rendering it into a useless and non-retrievable state) using one (1) of these methods:
 - 1. By grinding it up and incorporating it into the soil; or
 - 2. By controlled incineration.

Section 8. Incorporation by Reference. (1) The following

material is incorporated by reference:

- (a) "UK DRS SOP# HMP-LB-002 (Procedures for Measuring Delta 9 THC Content in Industrial Hemp by Gas Chromatography with Flame Ionization Detection)", 2020;
 - (b) "UK DRS SOP# HM-LB-001 (Procedures for Receiving, Preparing and Releasing Hemp Samples)", 2020;
 - (c) "MSU BVC SOP # TOX WIN 0042 (Hemp Receiving)", 2020;
 - (d) "MSU BVC SOP # TOX WIN 0043 (Hemp Storage and Destruction)", 2020; and
 - (e) "MSU BVC SOP # TOX WIN 0069 (Hemp Potency)", 2020.
- (2) These materials may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Office of Agricultural Marketing, 105 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. These materials may also be obtained at www.kyagr.com.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: August 13, 2020

FILED WITH LRC: August 14, 2020 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 23, 2020 at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, 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 was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. 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 October 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: 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This regulation establishes sample and testing rules for hemp activities in Kentucky.
 - (b) The necessity of this administrative regulation: This regulation establishes sample and testing rules for hemp activities in Kentucky, to ensure statutory compliance.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 260.862 commands the KDA to establish administrative regulations for hemp.
 - (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 making hemp sample and testing rules very clear in Kentucky.
- (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 is a new administrative regulation.
 - (b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.
 - (c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.
 - (d) How the amendment will assist in the effective administration of the statutes: This 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, 970 growers, 12 Universities and 170 processors.

(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 instructions in the filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Likely no modification of current actions would be needed, so little to no costs would be incurred.

(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.

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

(a) Initially: Expenses for the entire hemp program for 2019 were approximately \$1,156,000.

(b) On a continuing basis: Market forces will determine participation levels for 2020 and beyond. Ongoing costs will be a function of grower numbers and location modifications.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The hemp program is funded by the fees set for in 302 KAR 50:060.

(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 increases in funding are required currently.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This filing does not contain fees. The hemp program is funded by the fees set for in 302 KAR 50:060.

(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, and any agency that might concern hemp 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 260.682

(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? Income for the entire hemp program for 2019 was approximately \$1,575,000.

(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? Even with a fixed fee structure, revenue is almost entire determined by participation. Market forces will dictate revenue to a point the KDA cannot guess with any certainty.

(c) How much will it cost to administer this program for the first year? Expenses for the entire hemp program for 2019 were approximately \$1,156,000.

(d) How much will it cost to administer this program for subsequent years? The KDA expects this spending trendline to continue for the hemp program as a whole, but based on producer participation.

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

Revenues (+/-): \$1,575,000

Expenditures (+/-): \$1,156,000

Other Explanation:

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(New Administrative Regulation)

704 KAR 8:090. Required Kentucky Academic Standards for Technology.

RELATES TO: KRS 156.070, 156.160, 158.645, 158.6451, 160.290, 156.850, 704 KAR 3:305

STATUTORY AUTHORITY: 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board of Education to establish courses of study for the different grades and kinds of common schools, with the courses of study to comply with the expected goals, outcomes, and assessment strategies developed under KRS 158.645 and 158.6451. KRS 156.070(1) requires the Kentucky Board of Education to manage and control the common schools and all programs operated in the schools. KRS 160.290 authorizes local boards of education to provide for courses and other services for students consistent with the administrative regulations of the Kentucky Board of Education. KRS 156.850 requires compliance with federal provisions and acts relating to vocational education. This administrative regulation incorporates by reference the Kentucky Academic Standards for Technology, which contain the general courses of study and academic content standards of technology, for use in Kentucky's common schools.

Section 1. Before graduating from a Kentucky public high school, a student shall meet the minimum content requirements established in the Kentucky Academic Standards for Technology.

Section 2. Incorporation by Reference. (1) The "Kentucky Academic Standards for Technology", August 2020, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, 5th floor, 300 Sower Boulevard, 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).

KEVIN C. BROWN, Interim Commissioner
LU YOUNG, Chair

APPROVED BY AGENCY: August 12, 2020

FILED WITH LRC: August 13, 2020 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on October 22, 2020 at 10am in the State Board Room, 5th Floor, 300 Sower Blvd., Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five (5) working days prior to this 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 October 31, 2020.

CONTACT PERSON: Todd G. Allen, Interim 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd G. Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the minimum content standards for technology for use in Kentucky's common schools

(b) The necessity of this administrative regulation: KRS 156.160 requires the Kentucky Board of Education to establish courses of study for the different grades and kinds of common schools, with the courses of study to comply with the expected outcomes for students and school established in KRS 158.6451

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 158.6453 requires the revision of academic content standards. KRS 156.070(1) requires the Kentucky Board of Education to manage and control the common schools and all programs operated in the schools. KRS 160.290 authorizes local boards of education to provide for courses and other services for students consistent with the administrative regulations of the Kentucky Board of Education. 704 KAR 3:305, Section 3 (1) establishes the minimum high school graduation requirements necessary for entitlement to a public high school diploma, which among other requirements, endorses a student's demonstrated performance-based competency in technology.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation incorporates by reference the Kentucky Academic Standards for Technology, which contain the general courses of study and academic content standards for use in Kentucky's common schools pursuant to KRS 158.6451.

(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: N/A – This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: N/A – This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: N/A – This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: N/A – This 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: Those affected by this regulation include all public schools, school districts, school councils and the Kentucky Department of Education as it will provide support to this administrative regulations.

(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 standards outlined in 704 KAR 8:090 are the revised standards for technology. As this regulation includes the minimum content requirements for graduation related to technology, all public schools, school districts and school-based decision making councils are required to follow the standards outlined in the document incorporated by reference in 704 KAR 8:090. Curriculum and content decisions are made at the local level and will be expected to be aligned to these outlined standards.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Implementation of this administrative regulation may present a number of cost variables, which include curriculum development and/or vendor fees for program development and implementation, as well as professional learning for appropriate staff. While there are many free resources that exist for supplemental instruction, many districts may choose to purchase supplemental resources that are developed externally. The cost of these resources may vary, depending upon the vendor/product chosen.

Kentucky Department of Education: In the revisionary process of technology standards required by statute, the Department spent approximately \$15,000 as of the date of filing in the development of the standards, in addition to staff time. Additional staff time will be needed as the regulation moves through the legislative and implementation processes.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The compliance of public schools, school districts and school councils will ensure that each student will have met the minimum content requirements for technology. Graduation rates are used as part of each school's accountability model and are reported on each school's report card.

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

(a) Initially: The Kentucky Department of Education spent approximately \$15,000 in administrative costs for the development of the technology standards that are incorporated by reference in 704 KAR 8:090 to be compliant with KRS 158.6453 and other corresponding statutes, as well as staff time to oversee its administration.

(b) On a continuing basis: Additional staff time will be needed as the regulation moves through the legislative and implementation process.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State funds have been utilized.

(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 funding will be 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 fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was no appropriate for this administrative regulation because the administrative regulations applies equally to all schools and local education agencies.

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? Local education agencies and the Kentucky Department of Education.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 158.6453 required the Kentucky Department of Education (KDE) to implement a comprehensive process for the review of academic standards and assessment. KRS 156.070(1) requires the Kentucky Board of Education to manage and control the common schools and all programs operated in the schools. KRS160.290 authorizes local boards of education to provide for courses and other services for students consistent with the administrative regulations of the Kentucky Board of Education. 704 KAR 3:305, Section 3 (1) establishes the minimum high school graduation requirements necessary for entitlement to a public high school diploma, which among other requirements, endorses a student's demonstrated performance-based competency in technology. This regulation fulfills the requirements of these mentioned statutes.

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. This administrative regulation will not have any impact on expenditures or revenues.

(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? Schools and Districts: Implementation of this administrative regulation may present a number of cost variables, which include curriculum development and/or vendor fees for program development and implementation, as well as professional learning for appropriate staff. While there are many free resources that exist for supplemental instruction, many districts may choose to purchase supplemental resources that are developed externally. The cost of these resources may vary, depending upon the vendor/product chosen.

Kentucky Department of Education: In the revisionary process of technology standards required by statute, the Department spent approximately \$15,000 as of the date of filing in the development of the standards, in addition to staff time. Additional staff time will be needed as the regulation moves through the legislative and implementation processes. Minimal staff time by Kentucky Department of Education will be required to implement this amendment.

(d) How much will it cost to administer this program for subsequent years? Minimal staff time at the Kentucky Department of Education will be required on an annual basis after the initial implementation of 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 (+/-): N/A
Expenditures (+/-): N/A
Other Explanation: N/A

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Repealer)

902 KAR 50:071. Repeal of 902 KAR 50:070.

RELATES TO: KRS 13A.310, 217C.050, 217C.060

STATUTORY AUTHORITY: KRS 217C.040

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217C.040 requires the secretary of the cabinet to adopt rules and regulations regulating the labeling, standards of identity, the sale of milk and milk products, and such other matters relating to milk and milk products as may be necessary to protect the public health. This administrative regulation repeals 902 KAR 50:070, standards of identity for milk and milk products as those requirements are incorporated into another administrative regulation.

Section 1. 902 KAR 50:070, Standards of identity for milk and milk products, is hereby repealed.

STEVEN J. STACK, MD, MBA, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: August 7, 2020

FILED WITH LRC: August 11, 2020 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 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 October 19, 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 October 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; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Julie Brooks or Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: In accordance with KRS 13A.310(3)(a), this administrative regulation repeals 902 KAR 50:070.

(b) The necessity of this administrative regulation: The federal standards for identifying and labeling milk and milk products have been incorporated into 902 KAR 50:080. This administrative regulation is necessary to repeal those standards as a stand-alone administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 13A.310 by repealing an obsolete administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The repeal of this administrative regulation along with the amendment to 902 KAR 50:080 ensures the standards of identity and labeling, including the expiration date of milk and milk products, are contained in one administrative regulation.

(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 is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This 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 repeal of 902 KAR 50:070 affects all dairy producers and dairy processing plants. There are approximately 470 permitted dairy producers and fifty-three (53) permitted dairy processing plants.

(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: Dairy producers and dairy processing plants are currently implementing the federal standards for identifying and labeling of Grade A milk and milk products. The repeal of 902 KAR 50:070 will have no impact on these individuals as the standards of identity and labeling have been incorporated into 902 KAR 50:080.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): There are no costs associated with the compliance of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Dairy producers and dairy plant processors are currently following the federal standards for identifying and labeling milk and milk products. By repealing 902 KAR 50:070 and incorporating those standards into 902 KAR 50:080, producers and processing plant operators will only have to consult one (1) administrative regulation to ensure compliance.

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

(a) Initially: There are no costs to the administrative body associated with this administrative regulation.

(b) On a continuing basis: There are no costs to the administrative body associated with this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Milk Safety Branch operates with approximately \$1 million from the General Fund. There are no costs associated with 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 increase in fees or funding is associated with this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. No fees are associated with this administrative regulation.

(9) TIERING: Is tiering applied? No. Tiering is not applicable as this administrative regulation repeals 902 KAR 50:070.

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 repeal of 902 KAR 50:070 impacts the Milk Safety Branch in the Division of Public Health Protection and Safety.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 217C.040.

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 of the administrative regulation.

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 does not generate 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 does not generate revenue.

(c) How much will it cost to administer this program for the first year? There are no costs to the administrative body associated with this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There are no costs to the administrative body associated with 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:

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of August 11, 2020

Call to Order and Roll Call

The August meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, August 11 at 1 p.m. In Room 171 of the Capitol Annex. Representative Hale, Co-Chair, called the meeting to order, the roll call was taken. The minutes from the July 2020 meeting were approved.

Present were:

Members: Senators Alice Forgy Kerr and Reginald Thomas. Representatives David Hale, Deanna Frazier, Marylou Marzian, and Tommy Turner.

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

Guests: Travis Mayo, Office of the Governor; Travis Powell, Council on Postsecondary Education; Dennis Shepherd, Department of Veteran Affairs; Kevin Winstead, Board of Licensure for Long-Term Care Administrators; Morgan Ransdell, Board of Nursing; Benjamin Long, Jacob Walbourn, Office of the Secretary; Bob Swisher, Dale Hamblin, Department of Workers Claims; Lisa Lee, Jonathan Scott, Department for Medicaid Services; Laura Begin, Department for Community Based Services.

The Administrative Regulation Review Subcommittee met on Tuesday, August 11, 2020, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

GOVERNOR'S OFFICE: Legal Actions

10 KAR 1:011 & E. Defense of employees. Travis Mayo, chief deputy general counsel, represented the Governor's Office.

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 through 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

COUNCIL ON POSTSECONDARY EDUCATION: Nonpublic Colleges

13 KAR 1:050. Licensed out-of-state college's eligibility for Kentucky tuition grant. 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, 4, 6, 7, and 9 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

GOVERNOR'S OFFICE: Department of Veterans' Affairs: Tuition Waiver Program

17 KAR 1:030. Nurse Loan Repayment Program. Mark Bowman, executive director, and Dennis Shepherd, general counsel, represented the department.

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 2, 3, and 5 through 7 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 2 to include requirements that were established through the material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

BOARDS AND COMMISSIONS: Board of Licensure for Long-Term Care Administrators

201 KAR 6:100. Per Diem compensation of board members. Kevin Winstead, general counsel, represented the board.

Board of Nursing

201 KAR 20:065. Professional standards for prescribing Buprenorphine-Mono Product or Buprenorphine-Combined-with-Naloxone by APRNs for medication assisted treatment for opioid use disorder. Morgan Ransdell, general counsel, represented the board.

In response to questions by Co-Chair Hale, Mr. Ransdell stated that APRN prescribing standards for the use of Buprenorphine-Mono Product and Buprenorphine-Combined-with-Naloxone by patients with opioid abuse disorder were as

established by the Substance Abuse and Mental Health Services Administration (SAMHSA). APRNs were also required to be DEA registered (Data 2000 Waiver). DEA registration was not renewed annually; however, individual long-term patients continuing to be treated with Buprenorphine-Mono Product or Buprenorphine-Combined-with-Naloxone were required to be consulted no less than every ninety (90) days and annually.

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

201 KAR 20:110. Licensure by endorsement.

201 KAR 20:411. Sexual Assault Nurse Examiner Program standards and credential requirements.

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

PUBLIC PROTECTION CABINET: Team Kentucky Fund

800 KAR 1:010E. Team Kentucky Fund. Benjamin Long, general counsel, and Jacob Walbourn, deputy general counsel, represented the cabinet.

In response to a question by Representative Marzian, Mr. Walbourn stated that this administrative regulation represented the coronavirus (Covid 19) relief emergency fund. As of the morning of August 11, 2020, the fund had raised \$3,526,767.

In response to questions by Co-Chair Hale, Mr. Walbourn stated that this administrative regulation established four (4) criteria for receiving relief from the fund, including: Kentucky residency; employment as of March 6, 2020; coronavirus (Covid 19)-related unemployment or salary reduction of at least fifty (50) percent of gross salary; and household income at or below 400 percent of federal poverty guidelines. The fund included a mechanism to provide relief to qualified nonprofit organizations that assisted with housing or food insecurity. Thus far, individual applicants had received relief from the fund, but there had not been relief for any qualified nonprofit organizations yet. The relief was not distributed monetarily. The fund's partner, Community Action Kentucky, distributed vouchers from the fund for housing, food, and related daily living needs. Approximately \$720,000 had been distributed through the program since its inception.

LABOR CABINET: Department of Workers' Claims

803 KAR 25:010. Procedure for adjustments of claims. Dale Hamblin, Jr., assistant general counsel, and Bob Swisher, commissioner, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, 7, and 12 to comply with the drafting and formatting requirements of KRS Chapter 13A.

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Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 25:070. Charges for attorneys.

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

803 KAR 25:075. Attorney fee discount.

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

803 KAR 25:096. Selection of physicians, treatment plans and statements for medical services.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 6, and 8 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: Department for Medicaid Services: Division of Policy and Operations: Medicaid Services: Payment and Services

907 KAR 3:300 & E. Enhanced and suspended Medicaid services and requirements if there is a declared national or state emergency. Lisa Lee, commissioner, and Jonathan Scott, regulatory and legislative advisor, represented the division.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 2 and 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Community Based Services: Division of Protection and Permanency: Child Welfare

922 KAR 1:490E. Background checks for foster and adoptive parents, caretaker relatives, kinship caregivers, fictive kin, and reporting requirements. Laura Begin, regulation coordinator, and Mary Carpenter, assistant director, represented the division.

The following administrative regulations were deferred or removed from the August 11, 2020, subcommittee agenda:

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 2:050. Licenses and permits; fees.

201 KAR 2:311. Compounding for veterinary use.

Board of Nursing

201 KAR 20:225E. Reinstatement of license.

201 KAR 20:320. Standards for curriculum of prelicensure registered nurse and practical nurse programs.

201 KAR 20:470E. Dialysis technician credentialing requirements and training program standards.

Real Estate Appraisers

201 KAR 30:130. Education provider, instructor, and course.

Board of Licensure of Marriage and Family Therapists

201 KAR 32:110 & E. Telehealth.

Board of Medical Imaging and Radiation Therapy

201 KAR 46:010. Definitions for 201 KAR Chapter 046.

201 KAR 46:035. Practice standards, scopes of practice, and ethical standards.

201 KAR 46:040. Medical imaging technologist, advanced imaging professional, radiographer, nuclear medicine technologist, and radiation therapist licenses.

201 KAR 46:050. Provisional training license for medical imaging technologists, radiographers, nuclear medicine technologists, and radiation therapists.

201 KAR 46:060. Continuing education requirements.

201 KAR 46:070. Violations and enforcement.

201 KAR 46:081. Limited X-Ray machine operator.

201 KAR 46:100. Medical Imaging and Radiation Therapy Scholarship and Continuing Education Fund.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

501 KAR 6:120. Blackburn Correctional Complex.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Department for Libraries and Archives: Division of Library Services: Libraries

725 KAR 2:060. Certification of public librarians.

725 KAR 2:070. Certification renewal of public librarians.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: Division of Certificate of Need: State Health Plan

900 KAR 5:020. State Health Plan for facilities and services.

Division of Health Care: Health Services and Facilities

902 KAR 20:160. Chemical dependency treatment services and facility specifications.

902 KAR 20:440. Facilities specifications, operation and services; residential crisis stabilization units.

Department for Public Health: Division of Maternal and Child Health: Kentucky Early Intervention System

902 KAR 30:010E. Enhanced early intervention services in response to declared national or state public health emergency.

Department for Medicaid Services: Division of Policy and Operations: Medicaid Services

907 KAR 1:604 & E. Recipient cost-sharing. Lisa Lee, commissioner, and Jonathan Scott, regulatory and legislative advisor, represented the division.

In response to a question by Co-Chair Hale, Ms. Lee stated that the division agreed to defer consideration of this administrative regulation to the September subcommittee meeting. A motion was made and seconded to defer. Without objection, and with agreement of the agency, this administrative regulation was deferred.

Division of Policy and Operations: Behavioral Health

907 KAR 15:070. Coverage provisions and requirements regarding services provided by residential crisis stabilization units.

907 KAR 15:080. Coverage provisions and requirements regarding chemical dependency treatment center services.

Department for Community Based Services: Division of Protection and Permanency: Rape Crisis Centers

922 KAR 8:010. Standards for rape crisis centers.

The subcommittee adjourned at 1:35 p.m. The next meeting of the subcommittee is tentatively scheduled for September 8, 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.

**INTERIM JOINT COMMITTEE ON LOCAL GOVERNMENT
Meeting of July 28, 2020**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Local Government for its meeting of July 28, 2020, having been referred to the Committee on June 3, 2020, pursuant to KRS 13A.290(6):

815 KAR 020:191

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the July 28, 2020 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON HEALTH, WELFARE, AND
FAMILY SERVICES
Meeting of July 29, 2020**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health, Welfare, and Family Services for its meeting of July 29, 2020, having been referred to the Committee on May 6, 2020; June 3, 2020; and July 1, 2020, pursuant to KRS 13A.290(6):

May 6, 2020
920 KAR 1:070

June 3, 2020
201 KAR 009:270
201 KAR 020:600
201 KAR 020:610
201 KAR 020:620
201 KAR 020:630
201 KAR 020:640
201 KAR 020:650
201 KAR 020:660
201 KAR 020:670
201 KAR 020:680

201 KAR 020:690
902 KAR 002:065
922 KAR 002:090
922 KAR 002:100

July 1, 2020
201 KAR 002:175
201 KAR 002:230
201 KAR 008:550
201 KAR 008:590
201 KAR 020:057
201 KAR 020:162
201 KAR 020:230
201 KAR 020:370
201 KAR 020:410
202 KAR 007:555
895 KAR 001:002 & E
900 KAR 006:075 & E
902 KAR 020:036
921 KAR 002:015 & E

The following effective administrative regulations were placed on the agenda of the Interim Joint Committee on Health, Welfare, and Family Services for its meeting of July 29, 2020, pursuant to KRS 13A.290(1)(b)3.:

201 KAR 002:095
201 KAR 002:170
922 KAR 002:190E
922 KAR 002:400E

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

922 KAR 2:400E

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

201 KAR 020:650
201 KAR 020:670

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

201 KAR 9:270

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the July 29, 2020 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

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**INTERIM JOINT COMMITTEE ON LICENSING, OCCUPATIONS,
AND ADMINISTRATIVE REGULATIONS
Meeting of July 30, 2020**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Licensing, Occupations, & Administrative Regulations for its meeting of July 30, 2020, having been referred to the Committee on May 13, 2020, pursuant to KRS 13A.290(6):

201 KAR 012:030
201 KAR 012:060
201 KAR 012:082
201 KAR 012:100
201 KAR 012:140
201 KAR 012:260
810 KAR 001:001
810 KAR 002:001
810 KAR 005:001
810 KAR 005:070
810 KAR 007:040
811 KAR 001:250

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

201 KAR 12:030

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

810 KAR 004:030
810 KAR 005:060

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the July 30, 2020 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON JUDICIARY
Meeting of August 20, 2020**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Judiciary for its meeting of August 20, 2020, having been referred to the Committee on July 1, 2020, pursuant to KRS 13A.290(6):

030 KAR 008:005

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the August 20, 2020 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the July 28, 2020 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON LICENSING, OCCUPATIONS,
AND ADMINISTRATIVE REGULATIONS
Meeting of August 25, 2020**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Licensing, Occupations, & Administrative Regulations for its meeting of August 25, 2020, having been referred to the Committee on July 1, 2020 and August 5, 2020, pursuant to KRS 13A.290(6):

July 1, 2020
810 KAR 004:030
810 KAR 005:060

August 5, 2020
810 KAR 002:090
810 KAR 008:010
810 KAR 008:020
810 KAR 008:030
810 KAR 008:070

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the August 25, 2020 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

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**INTERIM JOINT COMMITTEE ON HEALTH, WELFARE, AND
FAMILY SERVICES
Meeting of August 26, 2020**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health, Welfare, and Family Services for its meeting of August 26, 2020, having been referred to the Committee on June 3, 2020 and August 5, 2020, pursuant to KRS 13A.290(6):

June 3, 2020
201 KAR 009:270

August 5, 2020
921 KAR 003:025
921 KAR 003:025E

The following administrative regulations were deferred pursuant to KRS 13A.300:

921 KAR 003:025
921 KAR 003:025E

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the August 26, 2020 meeting, which are 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 47th year of the *Administrative Register of Kentucky*, from July 2020 through June 2021.

Locator Index - Effective Dates

C - 2

Lists all administrative regulations published or continuing through the KRS Chapter 13A review process 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 with a "45 Ky.R." or "46 Ky.R." notation are regulations that were originally published in previous years' issues of the Administrative Register of Kentucky but had not yet gone into effect when the last Register year ended.

KRS Index

C - 9

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

C - 14

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

C - 15

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

C - 16

A general index of administrative regulations published during this Register year, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Administrative regulations published in previous Register years may appear in this index if a regulation had not completed the KRS Chapter 13A review process by the beginning of *Register* year 47. The "Register number" or "Ky.R. number" is listed the first time a regulation is published during that Register year. Once the regulation has been published in another *Register* year, the new Ky.R. number will appear next to the page number entry. To view versions of regulations published in 45 Ky.R. or 46 Ky.R., please visit our online [Administrative Registers of Kentucky](#).

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.

921 KAR 003:025E	46 Ky.R.	2784	4-15-2020
Replaced	47 Ky.R.	332	8-26-2020
921 KAR 003:035E	47 Ky.R.	510	7-29-2020
921 KAR 004:116E	47 Ky.R.	22	5-28-2020
922 KAR 001:450	47 Ky.R.	279	7-10-2020
922 KAR 001:520	47 Ky.R.	281	7-1-2020
922 KAR 001:490E	46 Ky.R.	2875	5-12-2020
922 KAR 002:400E	47 Ky.R.	27	6-8-2020
922 KAR 006:010E	47 Ky.R.	30	5-21-2020

ORDINARY ADMINISTRATIVE REGULATIONS

EMERGENCY ADMINISTRATIVE REGULATIONS
(Notes: 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.)

009 KAR 001:040E	47 Ky.R.	8	6-9-2020
010 KAR 001:011E	46 Ky.R.	2863	4-22-2020
030 KAR 008:005E	46 Ky.R.	2206	1-3-2020
Replaced	47 Ky.R.	35	8-20-2020
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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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335.310	201 KAR 032:110		921 KAR 004:116
335.320	201 KAR 032:035		922 KAR 001:330
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CERTIFICATION LETTER SUMMARIES - KRS 13A.3104(5)

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" or "eff." 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
017 KAR 003:020	08-07-2020	Remain As Is
201 KAR 037:010	08-07-2020	Remain As Is

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The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments made during the 47th year of the *Administrative Register of Kentucky*. 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). 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 *Register*. NOTE: Technical amendments may be available online for a short period of time before finalized versions of the technically amended regulations are available. To view regulations on the Legislative Research Commission Web site go to <https://apps.legislature.ky.gov/law/kar/titles.htm>.

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815 KAR 004:025	05-29-2020		
815 KAR 007:070	05-29-2020		
815 KAR 008:010	05-29-2020		
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