



ADMINISTRATIVE REGISTER OF KENTUCKY

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, September 15, 2020.

MEETING NOTICES

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet on October 13, 2020, at 1:00 p.m. in room 171 Capitol Annex.

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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, October 13, 2020 at 1 p.m.
Annex Room 171**



1. CALL TO ORDER AND ROLL CALL

2. REGULATIONS FOR COMMITTEE REVIEW

AGRICULTURAL EXPERIMENT STATION

Fertilizer

- 012 KAR 004:075. Licenses and fertilizer product registration. (Deferred from September)
- 012 KAR 004:080. Plant nutrient guarantees and labeling. (Amended After Comments)
- 012 KAR 004:091. Repeal of 012 KAR 004:090, 004:120, and 004:160. (Deferred from September)
- 012 KAR 004:100. Slowly released nutrients; labeling. (Deferred from September)
- 012 KAR 004:110. Definitions for 012 KAR Chapter 004. (Deferred from September)
- 012 KAR 004:130. Investigational allowances. (Deferred from September)
- 012 KAR 004:140. Monetary penalties. (Deferred from September)
- 012 KAR 004:170. Maximum chlorine guarantees for tobacco fertilizers. (Deferred from September)

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Education Professional Standards Board

Administrative Certificates

- 016 KAR 003:090. Certifications for advanced educational leaders.

Alternative Routes to Certification

- 016 KAR 009:010. Professional certificate for exceptional work experience.

PERSONNEL CABINET

Organ Donor Leave

- 101 KAR 006:010 & E. Living organ donor leave. ("E" expires 04-11-2021)

FINANCE AND ADMINISTRATION CABINET

Teachers' Retirement System

- 102 KAR 001:340. Calculation of final average salary if there is a corresponding change in position or in length of employment during any of the final three (3) years prior to retirement.

BOARDS AND COMMISSIONS

Board of Pharmacy

- 201 KAR 002:050. Licenses and permits; fees. (Deferred from June)
- 201 KAR 002:106. Licensed or permitted facility closures. (Deferred from September)
- 201 KAR 002:225. Special limited pharmacy permit – medical gas.
- 201 KAR 002:240. Special limited pharmacy permit- Charitable. (Deferred from September)
- 201 KAR 002:311. Compounding for veterinary use. (Amended After Comments)

Board of Medical Licensure

- 201 KAR 009:016. Restrictions on use of amphetamine and amphetamine-like anorectic controlled substances.
- 201 KAR 009:200. National Practitioner Data Bank Reports.
- 201 KAR 009:210. Criminal background checks required for all new applicants.
- 201 KAR 009:230. Required registration in the KASPER system; legal requirements for prescribing controlled substances in the Commonwealth of Kentucky; enforcement.
- 201 KAR 009:240. Emergency orders and hearings; appeals and other proceedings.
- 201 KAR 009:260. Professional standards for prescribing, dispensing, and administering controlled substances.
- 201 KAR 009:360. Continuing education requirements for physician assistants.

Board of Chiropractic Examiners

- 201 KAR 021:041. Licensing, standards, fees. (Not Amended After Comments)
- 201 KAR 021:042. Standards, application and approval of continuing education. (Deferred from September)
- 201 KAR 021:095. Licensure, registration, and standards of persons performing peer review. (Deferred from September)

JUSTICE AND PUBLIC SAFETY CABINET

Department of Corrections

Office of the Secretary

- 501 KAR 006:120. Blackburn Correctional Complex. (Amended After Comments)

TRANSPORTATION CABINET

Department of Vehicle Regulation

Division of Drivers Licensing

Administration

- 601 KAR 002:231. Repeal of 601 KAR 002:030.

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601 KAR 002:232 & E. Kentucky Ignition Interlock Program. ("E" expires 03-27-2021)

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Board of Education

Department of Education

School Administration and Finance

702 KAR 003:270E. SEEK funding formula. ("E" expires 04-10-2021)

School Terms, Attendance, and Operation

702 KAR 007:125E. Pupil attendance. ("E" expires 04-10-2021)

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM

Kentucky Fire Commission

Commission on Fire Protection Personnel Standards and Education

739 KAR 002:040. Survivor benefits for death of a firefighter.

739 KAR 002:155. Alan "Chip" Terry Professional Development and Wellness Program.

LABOR CABINET

Department of Workers' Claims

803 KAR 025:089 & E. Workers; compensation medical fee schedule for physicians. ("E" expires 03-28-2021)

PUBLIC PROTECTION CABINET

Department of Alcoholic Beverage Control

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804 KAR 004:415. Direct shipper license.

Department of Insurance

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806 KAR 003:170. Annual audited financial reports.

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806 KAR 006:080. Reserve standards for individual health insurance policies.

806 KAR 006:100. Actuarial opinion and memorandum.

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806 KAR 007:090. Custodial accounts for investment securities of insurance companies.

Administration of Deposits

806 KAR 008:010. Valuation of assets on deposit.

Captive Insurers

806 KAR 049:020. Captive insurer application requirements.

806 KAR 049:030. Captive insurer reporting requirements.

Horse Racing Commission

Licensing

810 KAR 003:020. Licensing of racing participants.

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Department of Public Health

Division of Epidemiology and Health Planning

Vital Statistics

901 KAR 005:120. Abortion reporting.

Division of Women's Health

Maternal and Child Health

902 KAR 004:110. Abortion information.

Division of Administration and Financial Management

Local Health Departments

902 KAR 008:160 & E. Local health department operations requirements. ("E" expires 04-06-2021)

902 KAR 008:170 & E. Local health department financial management requirements. ("E" expires 04-06-2021)

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902 KAR 010:030. Registered environmental health specialists and sanitarians.

902 KAR 010:036. Repeal of 902 KAR 010:035.

Department for Public Health

Division of Public Health Protection and Safety

Milk and Milk Products

902 KAR 050:010. Definitions for milk and milk products.

902 KAR 050:031. Standards for producer eligibility for manufactured grade milk.

902 KAR 050:032. Standards for farm requirements for manufactured grade milk.

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902 KAR 050:033. Standards for enforcement procedures for manufactured grade milk.
902 KAR 050:040. Hauler requirements.

Radiology

902 KAR 100:012. Fee schedule.

Department for Behavioral Health, Developmental and Intellectual Disabilities

Division of Behavioral Health

Substance Abuse

908 KAR 001:381. Repeal of 908 KAR 001:380.

908 KAR 001:400. Licensing and standards for substance use and misuse prevention.

Department for Community Based Services

Division of Protection and Permanency

Child Welfare

922 KAR 001:330. Child protective services.

922 KAR 001:450 & E. Eligibility confirmation for tuition waiver. ("E" expires 04-06-2021)

922 KAR 001:520 & E. Supplements to per diem rates. ("E" expires 3-28-2021)

3. REGULATIONS REMOVED FROM OCTOBER'S AGENDA

BOARDS AND COMMISSIONS

Board of Pharmacy

201 KAR 002:105. Requirements for wholesalers, medical gas wholesalers, wholesale distributors, and virtual wholesale distributors. (Comments Received; SOC ext., due 10-15-2020)

201 KAR 002:320. Requirements or manufacturers and virtual manufacturers. (Comments Received; SOC ext., due 10-15-2020)

COMMUNITY AND TECHNICAL COLLEGE SYSTEM

Board of Emergency Medical Services

202 KAR 007:201. Emergency Medical Responders. (Comments Received; SOC ext., due 10-15-2020)

202 KAR 007:301. Emergency Medical Technician. (Comments Received; SOC ext., due 10-15-2020)

202 KAR 007:330. Advanced Emergency Medical Technician. (Comments Received; SOC ext., due 10-15-2020)

202 KAR 007:401. Paramedics. (Comments Received; SOC ext., due 10-15-2020)

202 KAR 007:601. Training, education and continuing education. (Deferred from September)

PUBLIC PROTECTION CABINET

Department of Charitable Gaming

820 KAR 001:050 & E. Raffles. ("E" expires 03-18-2021) (Comments Received; SOC ext., due 10-15-2020)

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Epidemiology

902 KAR 002:020 & E. Reportable disease surveillance. ("E" expires 04-11-2021) (Comments Received; SOC ext., due 10-15-2020)

~~902 KAR 002:190E. Covering the face in response to declared national or state public health emergency. ("E" expires 04-06-2021)~~
(Withdrawn by agency; 8-10-2020)

Division of Maternal and Child Health

Maternal and Child Health

902 KAR 004:030. Newborn screening program. (Not Amended After Comments)

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 died 09-15-2020, not filed by deadline)~~

~~902 KAR 020:440. Facilities specifications, operation and services; residential crisis stabilization units. (Comments Received; SOC died 09-15-2020, not filed by deadline)~~

Division of Public Health Protection and Safety

Food and Cosmetics

902 KAR 045:110. Permits and fees for retail food establishments, vending machine companies, and restricted food concessions. (Comments Received; SOC ext., due 10-15-2020)

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. (Comments Received; SOC ext., due 10-15-2020)

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 died 09-15-2020, not filed by deadline)~~

~~907 KAR 015:080. Coverage provisions and requirements regarding chemical dependency treatment center services. (Comments Received; SOC died 09-15-2020, not filed by deadline)~~

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
31 KAR 4:192E

This emergency administrative regulation is necessary given that the Kentucky Constitution requires free and fair elections, and specifically because the COVID-19 pandemic has created a state of emergency in the Commonwealth and poses a risk to the health and well-being of voters. See, Governor's Executive Orders 2020-215 and 2020-688. This emergency regulation will allow the Commonwealth to conduct general, special, and local option elections on November 3, 2020, in a manner that reduces the amount of exposure voters, poll workers, and administrators have to possible infection, thereby helping state and federal efforts to slow and stop the spread of the novel coronavirus. This emergency administrative regulation is promulgated pursuant to KRS 13A.190(a)(1) and (4), as well as to be consistent with the Voting Accessibility for the Elderly and Handicapped Act, 52 U.S.C. 20101 et seq. Pursuant to KRS 13A.190(1)(b)(1), this emergency regulation is temporary in nature and will expire as provided in this section. To take effect, it must be ratified by the Governor and Secretary of State through respective executive orders. This emergency administrative regulation will not be replaced by an ordinary administrative regulation.

ANDY BESHEAR, Governor
 JARED DEARING, Director

STATE BOARD OF ELECTIONS
(New Emergency Administrative Regulation)

31 KAR 4:192E. Procedures for November 3, 2020 Elections.

EFFECTIVE: August 28, 2020

RELATES TO: KRS Chapters 39A and 117

STATUTORY AUTHORITY: KRS 39A.100(1)(l)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 39A.100(1)(l) requires the State Board of Elections to establish procedures for election officials to follow when the Governor has declared a state of emergency and the Secretary of State has recommended to the Governor, and the Governor has agreed, that a different time, place, or manner for holding elections is necessary. This emergency administrative regulation outlines the procedures to be undertaken to effectively conduct the November 3, 2020 elections. The following temporary emergency regulations relate to the procedures by which a lawful, registered Kentucky voter may cast a ballot for the elections to be held November 3, 2020. This emergency administrative regulation governs the November 3, 2020 elections only. Neither it, nor any of its component parts, is intended to govern or influence the conduct of any other election. This emergency administrative regulation does not create legal authority or precedent for any election beyond the November 3, 2020 elections.

Section 1. All provisions outlined in this emergency administrative regulation shall apply to the Commonwealth's November 3, 2020 elections only. Any existing administrative regulation promulgated by the State Board of Elections that conflicts with any provision herein is suspended in pertinent part as applied to the November 3, 2020 elections. Any existing statute that directly conflicts with Governor's Executive Order 2020-688, inclusive of the Secretary of State's recommendations as incorporated therein, is deemed suspended in pertinent part, by the authority of the General Assembly consistent with Section 15 of the Kentucky Constitution, as applied to the November 3, 2020 elections. However, no regulation or statute is or shall be deemed as suspended, in whole or in part, unless it directly conflicts with Governor's Executive Order 2020-688, the Secretary of State's

recommendations as incorporated therein, or the provisions herein.

Section 2. Definitions. All terms used herein shall have the same definitions as currently stated in the Kentucky Revised Statutes and Kentucky Administrative Regulations unless given a definition here.

(1) The phrase "not able to appear at the polls on election day on account of age, disability or illness," as enacted at KRS 117.085(1)(a)(8) shall be interpreted to mean "of an age, or possessing of a health condition or vulnerability, or potentially in contact with a person of an age, or possessing a health condition or vulnerability, that the voter believes subjects the voter, or other person, to an unacceptable risk of harm from contracting or transmitting the novel coronavirus."

(2) "Disability or illness" as enacted at KRS 117.228(1)(c)(8)(e), shall mean to include "an inability to procure photographic proof of identification due to office closure, temporary work stoppage, or backlog of issuing authorities of such photographic proof of identification, as caused by the COVID-19 pandemic; or, possession of a health condition or vulnerability that the voter believes subjects the voter to unacceptable risk of harm from the novel coronavirus, including unacceptable risk of transmission of the virus from the voter to others."

(3) "Inability to obtain his or her birth certificate or other documents needed to show proof of identification," as enacted at KRS 117.228(1)(c)(8)(b) shall mean to include "the inability to provide a copy of proof of identification possessed by the voter."

(4) "Covered voter," as enacted at KRS 117A.010 shall mean to include "those within the disability community who wish to receive their ballot via electronic means in the same manner as utilized by military and overseas voters."

Section 3. In lieu of in-person absentee voting, described by KRS 117.085, County Clerks shall make in-person voting available to any registered voter of the county during generally available hours coinciding with regular business hours beginning on October 13, 2020. No absentee excuse or application otherwise required by KRS 117.077 or 117.085 shall be required for eligibility to vote early in-person. County Clerks shall make in-person voting available to any registered voter of the county on the three Saturdays before the November 3, 2020 election for a span of at least four (4) hours each Saturday. The location(s) for in-person voting shall be permitted to be outside of the County Clerk's office, so long as voting is conducted in a secured area. County Clerks, with assistance from the State Board of Elections and Secretary of State, shall publicize the location(s) where in-person voting shall occur. During the days of in-person voting, appropriate precautions shall be taken consistent with Centers for Disease Control guidance, and the State Board of Elections, with the assistance of the Governor, shall provide materials to assist in proper sanitization. County Clerks shall implement in-person voting procedures that limit direct contact between individuals, whether poll workers or voters. Such procedures shall promote a method of voting whereby poll workers do not come into contact with voters.

Section 4. County Clerks, taking into account population, geographical impediments, and consistent with the term of Section 5 herein, may reduce the number of sites for in-person voting on November 3, 2020 to the number of secured locations in which the Clerk reasonably believes can: (1) be fully staffed with election officials; and (2) facilitate voting in a manner consistent with Centers for Disease Control guidance, as well as, procedures that limit direct contact between individuals, whether poll workers or voters. Such procedures shall promote a method of voting whereby poll workers do not come into contact with voters. At any site used for voting on November 3, 2020, election officials shall be empowered to check-in any registered voter in the county,

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regardless of what precinct the voter is registered in, and counties shall have the flexibility to use the same election equipment across sites. The State Board of Elections, with the assistance of the Governor, shall provide materials to assist in proper sanitization.

Section 5. No later than September 30, 2020, counties shall present any plan to reduce the number of sites for in-person voting on November 3, 2020 to the State Board of Elections, the Office of the Governor, and the Office of the Secretary of State for approval, and no plan for reduction of November 3, 2020 voting locations shall be implemented without the consent of the State Board of Elections, the Office of the Governor, and the Office of the Secretary of State. Plans shall include: the address and type of facility for each voting location; the number and type of voting machine or machines to be used at the voting location; the number of poll workers required to fully staff the location. Counties shall be authorized to seek approval of an amended plan at any time before November 2, 2020, to add or reduce locations as demand necessitates.

Section 6. Each county shall establish at least one (1) site for in-person voting on November 3, 2020, which is capable of permitting any registered voter residing in the county to vote at that location. In each county's Section 5 Plan, each such site shall be noted as a "County-wide Voting Center." County Clerks, with assistance from the State Board of Elections and Secretary of State, shall publicize the address of this and all location(s) where in-person voting shall occur on November 3, 2020.

Section 7. The provisions of KRS 117.065(2), requiring that buildings, including schools, constructed, in whole or in part, with tax revenues be available as voting places without cost shall not be deemed to directly conflict with any executive order, administrative regulation, or statute.

Section 8. A voter may deliver an absentee ballot to the office of the County Clerk in the county where the voter is registered, or to a secure drop-off location if one is maintained by the County Clerk in the county where the voter is registered, rather than mailing the ballot via the United States Postal Service. To assist County Clerks in managing the flow of receipt of voter-delivered absentee ballots, the State Board of Elections shall purchase secure drop-boxes and provide them to County Clerks based on request and availability with each requesting county being guaranteed one drop-box at minimum. Any county choosing to use a receptacle for ballot drop-off other than the drop-boxes provided by the State Board of Elections during calendar year 2020, must formally seek the State Board of Elections' approval of the receptacle before any ballot shall be allowed to be deposited inside. Any county choosing to utilize a drop-off receptacle, including those provided by the State Board of Elections, shall inform the State Board of Elections of the number of receptacles being used, the type of each receptacle being used, and the location of each drop-off location. Any receptacle located outside a County Clerk's Office shall be placed in a well-lit, easily accessible location, be bolted down, and be under video surveillance at all times. Any drop-box located inside, shall be under direct supervision of the staff of the County Clerk at all times that it is accessible to the public. Each County Clerk utilizing one or more ballot drop-off receptacle shall empty each receptacle at least once each business day of the County Clerk's Office, and secure the absentee ballots therein in a manner consistent with KRS 117.086(6); however, County Clerks shall empty receptacles more frequently than daily, as needed, so as to reasonably accommodate the volume of voter-delivered absentee ballots.

Section 9. County Clerks shall be permitted to utilize as precinct election officials voters who are registered to vote other than as Democrats or Republicans, and all precinct election officials shall be permitted to work in shifts of less than twelve (12) hours. In the appointment of precinct election officials for November 3, 2020, County Clerks shall give preference to precinct election officials who have prior experience as same, whether in

prior elections or in early voting conducted pursuant to this regulation.

Section 10. The State Board of Elections shall ensure that each county is provided access to sufficient election equipment, subject to available funding.

Section 11. As soon as feasible, the State Board of Elections shall make available a secure online portal for the request of an absentee ballot by a registered voter. The requester shall provide personally identifiable information in order to request the absentee ballot. The secure online portal shall have the capacity to ensure verification of the identity of the voter, in a manner not inconsistent with Senate Bill 2, 2020 Regular Session of the Kentucky General Assembly, except as applied herein. Should a voter not have a driver's license record on file with the Kentucky Department of Transportation, the voter may confirm their identity by completing an oath of voter, not inconsistent with the language provided from the Secretary of State, found on the secure online portal. The secure online portal shall transmit the request to the County Clerk of the county in which the requester is registered to vote. The County Clerk shall be responsible for determining if a request is valid and may, at their discretion, fulfill a request believed valid by taking the information of a voter without internet access over the telephone or in person and directly inputting that information into the secure online portal. The County Clerk shall transmit a valid absentee ballot to the registered voter within seven (7) days of receipt or within seven (7) days of ballots being available, no sooner than September 15, 2020. The secure online portal shall close at 11:59 p.m. ET, on October 9, 2020. Notwithstanding the availability of this secure online portal, a registered voter shall still be entitled to request a mail-in absentee ballot using the method of request described in KRS 117.085 until October 9, 2020. From October 10, 2020, through November 3, 2020, only applications for an absentee ballot due to medical emergency, pursuant to KRS 117.077, shall be deemed as valid.

Section 12. Postage for all ballots sent by County Clerks to voters and for all ballots sent from voters to County Clerks shall be paid by the State. Intelligent Barcodes shall be utilized for tracking of all mail-in absentee ballots and shall serve in lieu of mail books for County Clerks.

Section 13. Prior to issuance of an absentee ballot to a voter, County Clerks shall highlight with a colored marker each signature blank an absentee-by-mail voter is required by law to sign. All absentee ballots shall be received by the County Clerk of the voter's county of registration by no later than 6:00 p.m., local time, on November 3, 2020, except that, any absentee ballot postmarked on or before November 3, 2020 shall be accepted upon receipt by a County Clerk until 6:00 p.m., local time, November 6, 2020.

Section 14. On or before September 14, 2020, each County Board of Elections shall appoint an absentee ballot processing committee with a minimum of four (4) members, all of whom must be registered voters of that county. Each committee shall have an equal number of registered Democrats and registered Republicans, but membership shall not be restricted to registered members of those parties. One political party shall not compose a majority of a committee unless the role of the committee is assumed by the local County Board of Elections. Each County Board of Elections shall establish, and present to the State Board of Elections for approval, a process for observation of absentee ballot processing and counting, to be conducted in a manner consistent with Centers for Disease Control guidance. The absentee ballot processing committee may meet every day, subject to the needs and requirements of ballot processing, beginning as early as September 21, 2020, to review the absentee ballots cast in the county, but no person shall publicize any tallies or counts of these ballots, or any partial election results, until 6:00 p.m. local time, on November 3, 2020. Once processed, absentee ballots must be stored in a manner consistent with current statutes

and practices.

Section 15. No absentee ballot may be processed and counted unless and until the absentee ballot processing committee verifies the signature on the absentee ballot envelope to match the voter's signature of record, to include the signature on the voter's driver's license or voter registration card. If a signature match cannot be made, or if the voter has committed another absentee ballot error that is subject to remediation, the County Board of Elections, absentee ballot processing committee, or the County Clerk shall make a reasonable effort to contact the voter using the contact information provided by the voter's absentee ballot application, and provide the voter with a timeframe and manner in which the voter may cure the discrepancy. All signature cures must be made by November 9, 2020.

Section 16. Counties shall undertake a good-faith effort to cure all absentee ballot irregularities, when possible, with attempts to cure absentee ballot irregularities starting with a letter generated by the State Board of Elections and mailed to the voter with appropriate instructions. In addition to the letter, counties may, but are not required to, also use email or telephone contact information, if such is provided by the voter, in an attempt to inform the voter of the irregularity.

Section 17. To determine voter intent for ballots imperfectly cast, County Boards of Elections shall take the following universal directives into consideration when reviewing ballot irregularities:

(1) Missing outside signature- DON'T REJECT automatically. If there is an inside signature there is at least one signature for review that will meet substantial compliance.

(2) Missing signature on flap- DON'T REJECT automatically. If there was an outside signature there is at least one signature for review that will meet substantial compliance.

(3) Missing outside signature- DO NOT REJECT automatically, but if the inside flap is missing the signature then REJECT IT.

(4) Signature on outside but missing inside flap: REJECT IT.

(5) If there is a signature that can be matched, but flap is missing: REJECT IT.

(6) Inner envelope not sealed but all the components are present and doesn't appear tampered with: ACCEPT IT.

(7) Detached flap: if it isn't attached but is either inside the white envelope or even inside the yellow envelope it will meet substantial compliance: ACCEPT IT.

(8) Ballot present but not inside the yellow envelope: ACCEPT IT.

(9) The Inner Envelope is missing and the ballot is just in the white envelope: REJECT IT.

(10) Returned or dropped off in just the inner envelope with flap attached and signature present: ACCEPT IT.

(11) Returned in an unofficial outside envelope, if inside envelope, flap and signature are present: ACCEPT IT; If no signature on flap: REJECT IT.

(12) A signature is present, but in wrong location: ACCEPT IT

Section 18. State funds shall procure, at minimum, an additional eight staff members for each county, with the eight largest counties by population receiving more staffing and funding proportionally. All meetings of any absentee ballot processing committees must be posted on the State Board of Elections website at least twenty-four (24) hours prior to the meeting; a schedule of meetings that is updated when changes are made to meeting dates shall satisfy this requirement as long as they are posted in advance of the meeting. At least seven (7) business days prior to November 3, 2020, each County Board of Elections must also post on the State Board of Elections' website: the members of an absentee ballot processing committee; any registered challengers; all plans submitted or approved pursuant to Section 5 of this regulation; and all polling locations with addresses and hours of operation. Any cancellation of a meeting by an absentee ballot processing committee, shall not require twenty-four (24) hour notice.

Section 19. The State Board of Elections and the Secretary of State shall jointly conduct an advertising campaign, subject to available funding, to inform voters of changes to election rules referenced herein and voters' options to vote.

Section 20. The Governor shall take such action as is necessary to provide funds sufficient to cover the increase in cost necessitated by implementation of these regulations, including but not limited to matching state funds against, and in order to secure, the maximum matching federal funds available for pandemic-related election costs.

Section 21. Voters required to submit an affirmation as described in KRS 117.228(1)(c) shall complete "Voter Affirmation Form" SBE 71, 08/2020. All final vote totals must be transmitted via "Certification, Official Count and Record of Election Totals" SBE 49, 08/2020 to the Secretary of State's Office no later than 6:00 p.m., local time, November 10, 2020.

Section 22. Counties shall publicly report results from ballots cast by voters in-person on Election Day, by voters during early voting, and all absentee ballots processed by 6:00 p.m., local time, November 3, 2020. Such reporting shall occur no later than 11:59 p.m. ET, November 3, 2020. A second reporting of all votes tallied shall be submitted by counties before 5:00 p.m. ET, November 6, 2020.

Section 23. If an absentee ballot is delivered by hand to a County Clerk's Office by 6:00 p.m., November 3, 2020 or by the United States Postal Service, bearing a postmark of November 3, 2020 or an earlier date, by 6:00 p.m., November 7, 2020., and is discovered to have been delivered to the wrong County Clerk's Office, it shall be sent by the receiving County Clerk to the correct County Clerk via overnight delivery by the United State Postal Service no later than November 9, 2020. County Clerks shall use the Postal Corporate Express Mail Account, which shall be no cost, and shall inform the Postal Clerk that they were instructed to use the Postal Corporate Express Mail Account under the direction of the Kentuckiana Political Mail Coordinator. Once a voter has requested a mail-in absentee ballot, the voter shall not vote in person unless the voter has failed to receive such requested ballot by October 28, 2020.

Section 24. If a voter has requested, but not received their absentee ballot by October 28, 2020, the voter may appear at a county polling location to vote in person. The election officer shall contact the County Clerk and County Board of Elections who shall determine the voter's eligibility and verify the ballot has not been returned and/or counted. The County Clerk or their designee shall cancel the voter's absentee ballot in the Voter Registration System. Only after the voter's application has been canceled in the Voter Registration System shall the voter be required to sign the supplemental roster, an oath of voter, and be informed that voting more than once in an election is a criminal offense. Each voter who is deemed ineligible to vote may vote a provisional ballot or request a hearing before the County Board of Elections.

Section 25. The deadline for a candidate to seek a recanvass for any special election held on November 3, 2020 shall be extended to 4:00 p.m. ET, on November 10, 2020.

Section 26. The provisions of KRS 117.085(10) shall remain except that the State Board of Elections shall be required to produce to any duly qualified candidate, political party or organization committee or officials thereof, or any committee that advocates or opposes an amendment or public question, for a one-time fee of \$3,500, the names of those voters who have: (1) completed an application for a mail-in absentee ballot; (2) turned in an absentee ballot; and (3) those that have voted in-person before November 3, 2020. Requests from the State Board of Elections for production of such information shall require accompanying payment at the time of first request. The payment of the one-time fee of \$3,500 shall require the State Board of Election to provide

updates of the information in a Microsoft Excel spreadsheet format twice weekly to the requestor from August 31, 2020 through November 2, 2020. The information provided by the State Board of Elections shall not be used for any commercial purpose.

Section 27. Should changes in conditions related to the COVID-19 pandemic or the effective administration of the November 3, 2020 election require additional policies or procedures, the State Board of Elections shall be authorized to promulgate further administrative regulations after a public meeting of the State Board of Elections, with contingent approval of both the Governor and the Secretary of State.

Section 28. Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Certification, Official Count and Record of Election Totals", SBE 49, 08/2020;

(b) "Voter Affirmation Form" SBE 71, 08/2020.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:40 p.m.

ANDY BESHEAR, Governor

JARED DEARING, Executive Director

APPROVED BY AGENCY: August 28, 2020

FILED WITH LRC: August 28, 2020 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this temporary emergency administrative regulation shall be held on November 30, 2020, at 10:00 a.m. ET, at the Office of the State Board of Elections. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. This 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 November 30, 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: Taylor Brown, 140 Walnut Street, Frankfort, Kentucky 40601, phone (502) 782-9499, email TaylorA.Brown@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: This emergency administrative regulation outlines the procedures to be undertaken to effectively conduct the November 3, 2020 elections.

(b) The necessity of this administrative regulation: This emergency administrative regulation is necessary given that the Kentucky Constitution requires free and fair elections, yet the COVID-19 pandemic has created a state of emergency in the Commonwealth and poses a risk to the health and well-being of voters.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 39A.100(1)(l) orders the State Board of Elections to establish procedures for election officials to follow when the Governor has declared a state of emergency and the Secretary of State has recommended to the Governor, and the Governor has agreed, that a different time, place, or manner for holding elections is necessary.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This emergency administrative regulation fulfills the mandates of KRS 39A.100(1)(l) and will provide the necessary framework for the Commonwealth's November 3, 2020 given the ongoing state of 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:

(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: 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 will affect all registered voters in the Commonwealth, along with county fiscal courts, and governmental entities related to the administration of electoral processes.

(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: It is anticipated that any regulated entities impacted by this emergency administrative regulation will have to take no action fundamentally divergent from those actions already established for the administration of electoral processes.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The State Board of Elections estimates that the implementation of this emergency administrative regulation will cost roughly \$5,240,000 at the state government level. County-level should not exceed those already anticipated by election needs under ordinary circumstances. There are no costs to the individual voters to return a mail-in absentee ballot.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with this new emergency administrative regulation will benefit the entirety of the Commonwealth in that it will allow for the conduction of elections that minimize the health-risk of all involved during the ongoing state of emergency related to the COVID-19 pandemic.

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

(a) Initially: The cost of the implementation of this emergency administrative regulation for the State Board of Elections will be minimal as most costs will be borne at the county level or subsidized pursuant to the federal Help America Vote Act (HAVA) and Coronavirus Aid, Relief, and Economic Security (CARES) Act.

(b) On a continuing basis: This will be a temporary emergency administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: A combination of federal, state, and local funds will be used in the implementation and enforcement of this emergency 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: The State Board of Elections believes that the implementation of this emergency administrative regulation can be achieved without an increase in fees or funding by the General Assembly.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are associated with this emergency administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not used in this emergency administrative regulation as a desired result of the promulgation of this emergency administrative regulation is a uniform procedure for the administration of the November 3, 2020 elections throughout all of the counties in the Commonwealth.

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? At the state level,

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the State Board of Elections and the Secretary of State's Office will be impacted by this emergency administrative regulation. At the local level, office of all County Clerks and all local Boards of Elections will be impacted by this emergency administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Statutes and regulations either requiring or authorizing this emergency administrative regulation include: KRS 13A.190, KRS 13A.190, and 52 U.S.C. 20101 *et seq.*

(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? It is not expected or intended that this emergency administrative regulation will 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? It is not expected or intended that this emergency administrative regulation will generate any revenue.

(c) How much will it cost to administer this program for the first year? The State Board of Elections estimates that the implementation of this emergency administrative regulation will cost roughly \$5,240,000 at the state-government level. County-level expenses should not exceed those already anticipated by election needs under ordinary circumstances. There are no costs to the individual voters to return a mail-in absentee ballot.

(d) How much will it cost to administer this program for subsequent years? This emergency administrative regulation is temporary and will not be in force following the administration of the November 3, 2020 elections.

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 101 KAR 2:210E

This emergency administrative regulation incorporates by reference the 2021 plan year handbook for the self-insured plan offered through the Public Employee Health Insurance Program, commonly known as the Kentucky Employees' Health Plan. KRS 18A.2254(1) requires the Personnel Cabinet to promulgate an administrative regulation that incorporates the plan year handbook by reference and to file the administrative regulation by September 15 of each year. This emergency administrative regulation is necessary to meet the filing deadline established by state law at KRS 18A.2254(1)(a)3. KRS 18A.2254(1)(a) requires the secretary of the Personnel Cabinet to annually promulgate an administrative regulation to incorporate by reference the plan year handbook. The handbook must contain, at a minimum, the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for each plan provided to public employees covered under the self-insured plan. The 2021 plan year handbook, or Benefits Selection Guide, contains the required and necessary information for public employees to make health insurance coverage decisions during open enrollment in October 2020. This administrative regulation incorporates by reference the 2021 Benefits Selection Guide that will be distributed by the Personnel Cabinet's Department of Employee Insurance to public employees covered under the self-insured plan. An ordinary administrative regulation is not sufficient due to the statutory filing deadlines and handbook distribution requirements. This emergency administrative regulation will be replaced by an

ordinary administrative regulation. The ordinary administrative regulation is not identical to this emergency administrative regulation. This emergency administrative regulation will be in effect for part of the current 2020 plan year. The existing language in the Benefits Selection Guide for the 2020 plan year should remain until such time as the ordinary administrative regulation incorporating the Benefits Selection Guide for plan year 2021 replaces this emergency administrative regulation.

ANDY BESHEAR, Governor

GERINA WHETHERS, Secretary, Personnel Cabinet

PERSONNEL CABINET Office of the Secretary (Emergency Amendment)

101 KAR 2:210E. 2020 and 2021 Plan Year Handbooks [Handbook] for the Public Employee Health Insurance Program.

EFFECTIVE: September 15, 2020

RELATES TO: KRS 18A.030, 18A.225, 18A.2254

STATUTORY AUTHORITY: KRS 18A.030(2)(b),
18A.2254(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.2254(1)(a)1 requires the secretary of the Personnel Cabinet to promulgate an administrative regulation to incorporate by reference the plan year handbook distributed by the Department of Employee Insurance to public employees covered under the self-insured plan and establishes the minimum requirements for the information included in the handbook. This administrative regulation incorporates by reference the plan year Benefits Selection Guide, which is the handbook distributed by the department to public employees for the 2020 and 2021 Plan Years[Year] as required by KRS 18A.2254(1)(a)1.

Section 1. The Department of Employee Insurance shall distribute or make available to the public employees covered under the self-insured plan the 2020 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide, which shall include the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to the public employees covered under the self-insured plan.

Section 2. (1) The Department of Employee Insurance shall distribute or make available to the public employees covered under the self-insured plan the 2021 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide, which shall include the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to the public employees covered under the self-insured plan.

(2) The 2021 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide shall govern the health plan benefits for public employees covered under the self-insured plan beginning January 1, 2021.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "2020 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide", 2020 edition; and

(b) "2021 Plan Year Kentucky Employees' Health Plan Benefits Selection Guide", 2021 edition [-is incorporated by reference].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

GERINA WHETHERS, Secretary

APPROVED BY AGENCY: September 10, 2020

FILED WITH LRC: September 15, 2020 at 10 a.m.

CONTACT PERSON: Sharron Burton, Deputy Commissioner,

Department of Employee Insurance, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224, email Sharron.Burton@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Sharron Burton

(1) Provide a brief summary of: (a) What this administrative regulation does: This administrative regulation incorporates by reference the 2021 plan year handbook containing information about the self-insured health insurance plans offered through the Public Employee Health Insurance Program. The handbook, commonly referred to as the Benefits Selection Guide, is distributed to all plan holders participating in the self-insured program. The Benefits Selection Guide contains the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for each plan available to public employees through the self-insured program in 2021.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the statutory mandate of KRS 18A.2254. More specifically, KRS 18A.2254(1)(a) requires the Personnel Cabinet to promulgate an administrative regulation that incorporates by reference the 2021 plan year handbook that will be distributed to the public employees covered by the Public Employee Health Insurance Program. The handbook must be filed with the Legislative Research Commission on or before September 15 each year.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with KRS 18A.2254(1), the statute that establishes the self-insured plan and mandates the promulgation of the administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation aids in the effectuation of the statute, KRS 18A.2254, by incorporating by reference the 2021 plan year handbook for the Public Employee Health Insurance Program in an administrative regulation. Further, this administrative regulation is the method by which the Personnel Cabinet will comply with KRS 18A.2254.

(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 an amendment. The existing administrative regulation incorporates by reference the 2020 plan year handbook, which constitutes a compilation of the premium rates and contributions, benefit options, eligibility rules, and enrollment information for participants of the Public Employee Health Insurance Program for plan year 2020. The amendment adds and incorporates by reference the 2021 plan year handbook, which contains the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for each plan available to public employees for plan year 2021.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to give notice regarding the premiums, employee contributions, employer contributions, benefits, co-pays, coinsurance, and deductibles for each plan available to public employees under the Public Employee Health Insurance Program for plan year 2021. This amendment is also necessary to comply with the statutory mandate in KRS 18A.2254 to annually update the regulation incorporating the plan year handbook.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 18A.2254, the statute authorizing the self-insured plan under the Public Employee Health Insurance Program. KRS 18A.2254 mandates that the plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year. This amendment incorporates the 2021 plan year handbook by reference in accordance with KRS 18A.2254.

(d) How the amendment will assist in the effective

administration of the statutes: This amendment conforms to the requirements of KRS 18A.2254, the statute authorizing the self-insured plan under the Public Employee Health Insurance Program. KRS 18A.2254 mandates that the plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year. This amendment incorporates the 2021 plan year handbook by reference in accordance with KRS 18A.2254.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects employees of state and select county and local government entities, including employees of the local school boards and districts. This administrative regulation also affects certain retirees as specified by KRS 18A.225. More specifically, and as defined by KRS 18A.225(1)(a), this administrative regulation affects approximately 181,827 employees and retirees eligible to participate in the Public Employee Health Insurance Program. In total, this administrative regulation affects 297,737 members in the self-insured plan including employees and retirees, qualifying beneficiaries, and dependents.

(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: Affected entities will not be required to take any additional action to comply with this administrative regulation that incorporates the 2021 plan year handbook. The 2021 Benefits Selection Guide will provide information to the public employees covered under the Public Employee Health Insurance Program about the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for the 2021 plan year.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation provides employer and employee premium contribution information for health plans available under the Public Employee Health Insurance Program for plan year 2021. There is no direct cost impact to employers participating in the Public Employee Health Insurance Program as a result of incorporating the 2021 plan year handbook into the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): For plan year 2021, participating employers (entities) and participating employees and retirees and their beneficiaries and dependents covered under the Public Employee Health Insurance Program will have access to comprehensive health insurance benefits under all plans offered through the self-insured program. For plan year 2021, employee contributions to health coverage premiums increased 3% across all plans, as compared to 2020 premiums. The employee contribution increase resulted in an average increase across all plans in the amount of \$6.02/month. The largest increase was \$20.46/month for the LivingWell PPO Family Plan. In addition to the employee contribution increase, prescription co-pays and the specialty co-pay for the LivingWell PPO plan increased by \$5.00. In 2021, the Public Employee Health Insurance Program will utilize the prescription drug Value Formulary with two-tiers of drugs focusing on generic and formulary brand drugs for all plans. Employer premium contribution amounts increased 3% across all plans, as compared to 2020 premiums.

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

(a) Initially: Costs of implementing this administrative regulation initially are believed to be minimal.

(b) On a continuing basis: Costs of implementing this administrative regulation on a continuing basis are believed to be minimal.

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

administrative regulation will be the Public Employee Health Insurance Trust Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This is an amendment. This administrative regulation will not require an increase in funding or fees.

(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 is not applied because this administrative regulation applies equally to all participants in the Public Employee Health Insurance 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? This administrative regulation will affect all employees of state and select county and local government entities, including employees of the local school boards and districts that participate in the Public Employee Health Insurance Program. As employers, this administrative regulation will affect state and select county and local government entities as well as local school boards and districts. This administrative regulation also affects retirees under the age of 65 who are eligible to participate in the Program by virtue of their participation in one of the state-administered retirement systems.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.225, 18A.2253, 18A.2254, 18A.2255, 18A.2259, 18A.226, 18A.227, 18A.2271, 18A.228, 18A.2286, 18A.2287; 26 U.S.C. 21, 105, 106, 125, 129, 152, and 213 (Internal Revenue Code); Prop. Treas. Reg. 1.125-1 through 7; the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (2010); and the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152.

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, school boards 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, school boards or school districts) for the first year? The administrative regulation will not generate any revenues.

(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 not generate any revenues.

(c) How much will it cost to administer this program for the first year? Costs of implementing this program are believed to be similar to previous plan years. However, the 2021 plan year handbook will be online and distributed electronically rather than in printed hard copy. This method of distribution is expected to be a savings for the Public Employee Health Insurance Program during the 2020 open enrollment season and throughout the 2021 plan year.

(d) How much will it cost to administer this program for subsequent years? The 2021 plan year handbook will be online and distributed electronically rather than in printed hard copy. This method of distribution is expected to be a savings for the Public Employee Health Insurance Program during the 2020 open enrollment season and throughout the 2021 plan year. Should the distribution of the plan year handbook continue to be made available online and distributed only by electronic means in the future, the Public Employee Health Insurance Program could recognize cost savings 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:

STATEMENT OF EMERGENCY 802 KAR 1:010E

This emergency administrative regulation is being promulgated pursuant to KRS 13A.190(1)(a)(1) in order to meet an imminent threat to the public health, safety, or welfare. This administrative regulation must be filed as soon as possible in order to comply with the provisions of Executive Order 2020-708, which abolished the Kentucky Claims Commission on September 1, 2020, and established the Office of Claims and Appeals and Board of Tax Appeals in the Public Protection Cabinet. As a result, the Public Protection Cabinet must immediately implement new procedures and regulations for filing appeals pursuant to the authority of this new office and board. An ordinary administrative regulation alone is not sufficient because the new office and board must be established immediately to seamlessly continue service to the taxpayers of the Commonwealth and not impede current appeals, or create an additional backlog of appeals. This emergency administrative regulation shall be replaced by an ordinary administrative regulation, which is being filed with the Regulations Compiler along with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor

KERRY B. HARVEY, Secretary

PUBLIC PROTECTION CABINET Office of the Secretary (Emergency Amendment)

802 KAR 1:010E. Tax appeal procedures.

EFFECTIVE: September 2, 2020

RELATES TO: KRS 12.027, Chapter 13B, 49.220, 49.230, 49.240, 49.250, EO 2020-708

STATUTORY AUTHORITY: KRS 49.020, 49.220(1)

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 2020-708 ("Order") requires that the Kentucky Claims Commission be abolished and the Office of Claims and Appeals be immediately established within the Public Protection Cabinet, and to include the Board of Tax Appeals. The Order also sets forth the powers and duties of the Board of Tax Appeals, and authorizes the Board to promulgate regulations necessary to immediately carry out the provisions and purposes of the Order and the Board's statutory authority. KRS 49.020(5) authorizes the Board [commission] to promulgate administrative regulations that are necessary to carry out the provisions and purposes of the Board's [commission's] statutory authority. KRS 49.220(1) authorizes the Board [commission], with exclusive jurisdiction, to hear and determine appeals from final rulings, orders, and determinations of any agency of state or county government affecting revenue and taxation. This administrative regulation establishes the procedures governing tax appeals.

Section 1. Definitions. (1) "Board" means the Board of Tax Appeals.

(2) "Office" means the Office of Claims and Appeals.

Section 2. Rules for Filing Tax Appeals with the Board. (1) Initiation of tax appeal. A party wishing to appeal a final ruling, order, or determination of any agency of state or county government affecting revenue or taxation shall file a petition with the Board for a formal hearing in accordance with KRS Chapter 13B.

(2) Timing. The initial petition of appeal shall be received by the Board within thirty (30) days of the date of mailing of the final

ruling, order, or determination of the agency of state or county government that is the subject of the appeal. If the determination is not mailed, then the initial petition shall be considered as received by the Board within (30) days of the date of issuance.

(a) An untimely appeal shall be dismissed.

(b) If the appeal is timely filed, but deficient, the Board, Office, or hearing officer shall notify the petitioner of deficiencies and allow fifteen (15) business days to amend the petition.

(3) Format and content. A petition of appeal shall be legibly written, typed, or printed and contain the following:

(a) A statement of all relevant issues of fact and law;

(b) A statement certifying that the information contained in the petition of appeal is true and correct to the best knowledge of the petitioner or counsel, if represented by an attorney;

(c) The signature of the petitioner or the signature of counsel, if represented by an attorney;

(d) The petitioner's mailing address, telephone number, and email address;

(e) If represented by an attorney, the petitioner's attorney's name, mailing address, telephone number, and email address; and

(f) A copy of the final ruling, order, or determination to be reviewed.

(4) Upon receiving a petition of appeal, the Board shall provide notice to:

(a) The appellee that an action has been filed;

(b) The petitioner that the petition of appeal has been received; and

(c) The petitioner's counsel, if represented by an attorney.

(5) Upon receiving a Petition of Appeal, the appellee or the appellee's attorney shall file an entry of appearance within thirty (30) days of the date of the notice of appeal provided by the Board. The entry of appearance shall contain the mailing address, telephone number, and email address of the appellee and the appellee's attorney, if applicable.

Section 3. Rules Applicable to All Filings. (1) Filings. All documents may be filed:

(a) In person or by private delivery to Board of Tax Appeals, 500 Mero Street, 2 SC1, Frankfort, Kentucky 40601;

(b) Mail to the address listed above; or

(c) Electronic mail to taxappeals@ky.gov if the document can be sent in one (1) electronic message.

(2) Service.

(a) Any party who files a pleading or motion with the Board or hearing officer shall notify all other parties to the appeal by serving upon each party a copy of the pleading or motion filed. A filed pleading or motion shall be accompanied by a certification stating:

(i) That a copy has been served on each party, or if the party is represented by counsel, on the party's counsel; and

(ii) The method of service used.

(b) Service upon a party shall be made by delivering a copy to the attorney or party, electronic mail, or by mailing it to the attorney or party at the last known address. Service is complete upon mailing, unless the serving party learns or has reason to know that it did not reach the person to be served. Service by electronic mail shall be considered complete when sent if properly addressed. Documents filed by electronic mail shall be considered received when sent if properly addressed.

Rules Applicable to All Filings. (1) Filings. All documents shall be filed by mail, electronic mail to taxappeals@ky.gov, or in person. Documents filed by electronic mail shall be considered received when sent if properly addressed.

(2) Service. Any party who files a document with the commission or hearing officer shall serve to all other parties to the appeal a copy of the document filed. A filed document shall be accompanied by a certification stating: (a) That a copy has been served on each party; and (b) The method of service used.

Section 2. Rules for Filing Tax Appeals with the Commission. (1) Initiation of tax appeal. A party wishing to appeal a final ruling, order, or determination of any agency of state or county government affecting revenue or taxation shall file a petition of appeal with the commission.

(2) Timing. The initial petition of appeal shall be received by

the commission within thirty (30) days of the date of mailing of the final ruling, order, or determination of the agency of state or county government that is the subject of the appeal.

(a) An untimely appeal shall be dismissed.

(b) If the appeal is timely filed, the commission or hearing officer shall notify the petitioner of deficiencies and allow fifteen (15) days to amend the petition.

(3) Format and content. A petition of appeal shall be legibly written, typed, or printed and contain the following:

(a) A statement of all relevant issues of fact and law;

(b) A statement certifying that the information contained in the petition of appeal is true and correct to the best knowledge of the petitioner or counsel, if represented by an attorney;

(c) The signature of the petitioner or counsel, if represented by an attorney;

(d) The petitioner's mailing address, telephone number, and email address;

(e) If represented by an attorney, the petitioner's attorney's name, mailing address, telephone number, and email address; and

(f) A copy of the final ruling, order, or determination to be reviewed.

(4) Upon receiving a petition of appeal, the commission shall provide notice to:

(a) The appellee that an action has been filed;

(b) The petitioner that the petition of appeal has been received; and

(c) The petitioner's counsel, if represented by an attorney.]

Section 4[3]. Representation in Proceedings before the Board [Commission]. (1) If the appeal is by an individual, the individual may proceed without an attorney or engage counsel to provide representation.

(2) An individual who is not an attorney shall not be permitted to represent any other individual or legal entity who is a party to an appeal.

(3) In accordance with Supreme Court Rule 3.020, if the appealing party is a corporation, joint venture, partnership, LLC, estate, or any entity other than an individual as identified in subsection (1) of this section, the entity shall be represented by an attorney on all matters before the board, including the filing of the appeal.

(4) An attorney licensed to practice in another state, but not the Commonwealth of Kentucky, shall be permitted to represent a party before the board if the attorney complies with Supreme Court Rule 3.030(2). [The appellee or the appellee's attorney shall file an entry of appearance within thirty (30) days of the date of the notice of appeal provided by the commission. The entry of appearance shall contain the mailing address, telephone number, and email address of the appellee and the appellee's attorney, if any. (2) An individual who is not an attorney shall not represent any other individual or an entity or other individual who is a party to an appeal.]

Section 5[4]. Discovery. (1) Discovery may be obtained without prior order of the Board [commission] or hearing officer. [pursuant to the] The Kentucky Rules of Civil Procedure (CR) governing depositions and discovery shall apply except to the extent the provisions of this section differ.

(2) In addition to the provisions of CR 26 addressing opinions and use of expert witnesses:

(a) a party shall disclose to the other party or parties the identity of any witness qualified as an expert by knowledge, skill, experiences, training, or education the party may use at the hearing to provide expert testimony at least ninety (90) days before the date set for the hearing, absent a stipulation between the parties or an order issued by the Board providing otherwise; or

(b) if the evidence is intended solely to contradict or rebut evidence on the same subject matter of a witness identified by another party, within thirty (30) days after the other party's disclosure.

(3)[(2)] The Board [commission] or hearing officer may deny, limit, or require discovery.

(4)[(3)] If a party fails to comply with an order regarding

discovery, the Board [commission] or hearing officer may order that the:

- (a) Matters that the requesting party was seeking to establish through discovery shall be taken as having been established for the purposes of the hearing;
- (b) Noncomplying party shall be prohibited from introducing related documents or testimony at the hearing;
- (c) Appeal be dismissed or relief be granted as requested by the opposing party;
- (d) Appeal be stayed until the order is obeyed; or
- (e) Noncomplying party, the advising attorney, or both pay the reasonable costs, including attorney's fees, caused by the failure to comply.

(5)[(4)] A response to discovery under subsection (1) of this section shall not be filed with the Board [commission] unless required by order of the Board or hearing officer.[or used as evidence.]

Section 6. Prehearing or Status Conference and Hearing Schedule. (1) In any appeal assigned to a Board member or hearing officer, the Board or hearing officer may schedule a prehearing or status conference. The prehearing or status conference may be conducted by telephone or other electronic means upon reasonable notice to all parties, which consists of prior notice of not less than five (5) days, unless otherwise agreed to by the parties.

(2) A prehearing or status conference may be used to set a hearing date, discuss jurisdictional matters, settlement possibilities, discovery, preparation of stipulations, clarification of issues, rulings on witnesses, taking of evidence, issuance of subpoenas, mediation, and other matters that will promote the orderly and prompt conduct of the hearing.

(3) If the Board member or hearing officer and parties cannot agree upon a hearing date, the Board member or hearing officer shall set the matter for hearing no later than six (6) months from the date of the conference.

(4) Upon conclusion of the prehearing or status conference, the Board member or hearing officer shall issue an order including all matters determined at the prehearing or status conference.

Section 7[5]. Prehearing Filings. (1) At least thirty (30) days prior to the hearing, a party shall file with the Board [commission] or hearing officer a:

- (a)[(1)] Prehearing summary that contains a:
 - 1.[(a)] Summary of the party's position on any issue of fact in dispute;
 - 2.[(b)] Summary of the party's position on any issue of law raised by the appeal; and
 - 3.[(c)] Written statement of facts to which the party agrees and any facts which [that] a party does not dispute;
 - (b)[(2)] List of the names, addresses, and phone numbers (if known) of all witnesses the party expects to call to testify as a witness at the hearing; [and]
 - (c)[(3)] Copy of all exhibits that the party intends to introduce at the hearing;
 - (d) Proposed findings of fact and conclusions of law; and
 - (e) Proposed final order if the appeal is heard by the board, or a proposed recommended order if the appeal is heard by a hearing officer.

(2) The prehearing filings required by this section shall satisfy the requirements under KRS 13B.090(3) establishing a party's right to inspect a list of witnesses and documentary or tangible evidence at least five (5) days prior to the hearing. The Board may issue a prehearing order modifying discovery procedures or deadlines, or mandating additional requirements for prehearing filings.

Section 8.[6]. Motion Practice. (1) Any party may file a motion. Any party affected by a motion or pleading may file a response to the motion or pleading within thirty (30) [fifteen-(15)] days from the date on which the motion or pleading was [originally] served.

(2) A moving party may file a reply to another party's response. The reply shall be filed within fifteen (15) days from the date the response was served. Other replies or responses shall not be filed,

unless prior approval is granted by the Board [commission] or hearing officer.

Section 9. Briefs. A party shall file with the Board or hearing officer any brief required by order of the Board or hearing officer. The Board or hearing officer may require a party to file a post-hearing brief or to supplement at any time a brief already filed to assist in adjudicating the hearing. A brief shall include the signature of the party, or the party's counsel.

Section 10[7]. Summary Disposition. (1) At any time after the commencement of an appeal [has begun], a party may move for a summary disposition of the whole or a part of the appeal by filing a motion that: [; in which event the procedure established in subsections (1)] through (4) of this section shall apply.

(1) The moving party shall file a motion that:
(a) Asserts that there are no disputed material facts as to one (1) or more of the issues before the Board [commission] or hearing officer;

(b) Includes a statement specifying which material facts are undisputed. Assertions of a material undisputed fact or facts may be submitted to the Board or hearing officer through affidavits or responses made by another party to any discovery request, including answers to interrogatories, admissions, and depositions. Facts stated in the petition of appeal, including exhibits attached to the petition, may be relied upon as undisputed material facts by the appellee; and[A material undisputed fact may be submitted to the commission or hearing officer through affidavits, discovery responses, or deposition testimony;]

(c) States that any issue before the Board [commission] or hearing officer for which summary disposition is sought is a matter of legal, and not factual, interpretation;[; and

(d) Attaches a copy of any legal authority that supports the moving party's position on any legal issue before the board [commission] or hearing officer;]

(2)(a) Within twenty (20) days after a party moves for summary disposition, any other party may file a response presenting the party's position on issues of law and fact, which shall include any affidavit, written response to discovery requests, deposition testimony, or statements in the Petition of Appeal, demonstrating the party's assertion that a material fact or facts are disputed.[shall:

- 1. Submit an An acknowledgment that there are no disputed material facts;
- 2. Submit a response stating that a material fact is in dispute, along with any affidavit, discovery response, or deposition testimony that shows the material fact in dispute. Facts stated in the petition of appeal and any document or exhibit attached thereto may be relied upon as undisputed material facts by the appellee; and
- 3. Attach all legal authorities that support the opposing party's position on any legal issue.]

(b) Failure of a nonmoving party to respond within twenty (20) days to the motion for summary disposition or to request additional time to respond to the motion may result in the Board [commission] or hearing officer finding there are no disputed factual issues to be considered in deciding the legal issues.

(3) If the nonmoving party files a response to the motion for summary disposition, the moving party shall have ten (10) days to file a reply to the response.

(4) The Board [commission] or hearing officer may grant a motion for summary disposition in whole or in part. If the Board [commission] or hearing officer grants a summary disposition as to one (1) or more issues, but not all issues, then the remaining issues shall be heard by the Board [commission] or hearing officer in accordance with this administrative regulation and KRS Chapter 13B.

Section 11[8]. Other. Except as otherwise stated in KRS Chapter 49 or this administrative regulation, the conduct of hearings shall be governed by the procedures established in KRS Chapter 13B.

KERRY B. HARVEY, Secretary

VOLUME 47, NUMBER 4– OCTOBER 1, 2020

APPROVED BY AGENCY: September 2, 2020

FILED WITH LRC: September 2, 2020 at 3 p.m.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Leah Cooper Boggs

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the tax appeal procedures for persons or entities wishing to dispute their tax liability.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with Governor's Executive Order 2020-708, which immediately abolishes the Kentucky Claims Commission and establishes the Board of Tax Appeals and Office of Claims and Appeals in the Public Protection Cabinet.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed regulatory language conforms with KRS 12.080 which authorizes the Secretary of the Public Protection Cabinet to prescribe general rules for the conduct of this administrative office as he deems necessary or expedient for the proper conduct of the work of the office not inconsistent with the general rules prescribed by the Governor; and KRS 49.020(5) which authorizes the promulgation of regulations to carry out the duties of the office.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed regulation removes references to the abolished Kentucky Claims Commission and inserts language regarding the new Board of Tax Appeals and Office of Claims and Appeals. It also provides more comprehensive guidelines to file an appeal.

(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: See (1)(d).

(b) The necessity of the amendment to this administrative regulation: See (1)(b)

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Public Protection Cabinet, the Board of Tax Appeals, the Office of Claims and Appeals, the state and county agencies charged with the administration of taxation, and any person or entity filing a claim or appeal with the Office of Claims and Appeals and the Board of Tax Appeals.

(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: None known, beyond updating documentation to reflect the new Office structure.

(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 expenditures because of this administrative regulation. Current staff will implement the provisions once promulgated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are currently 151 tax appeals pending before the Claims Commission, including 43 from 2018 and 103 from 2019. This backlog involves a significant sum, which negatively affects the State's ability to appropriate revenue, and raises concerns with respect to the procedural due process rights of taxpayers. Establishing a separate Board of Tax Appeals and providing greater guidance will provide greater efficiency and service to the citizens of the Commonwealth.

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

(a) Initially: None. Current staff and agency funds will provide implementation.

(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: Current agency budgetary funding will be 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 additional funding or increase in fees is needed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed language will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Public Protection Cabinet, Office of Claims and Appeals, and Board of Tax Appeals.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13B, 49.020, 49.220.

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 administrative regulation should not create any additional expenses or revenues for any state or local government agency after implementation. It is only updating references to the newly created Office of Claims and Appeals and Board of Tax Appeals, and establishing procedures to file appeals under the new office structure.

(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 revenues are expected to be generated by the provisions of this administrative regulation. This administrative regulation does not contain any fees or charges for filing an appeal with the Board of Tax Appeals.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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 802 KAR 2:010E

This emergency administrative regulation is being promulgated pursuant to KRS 13A.190(1)(a)(1) in order to meet an imminent threat to the public health, safety, or welfare. This administrative regulation must be filed as soon as possible in order to comply with the provisions of Executive Order 2020-708, which abolished the Kentucky Claims Commission on September 1, 2020, and established the Office of Claims and Appeals and the Board of Claims in the Public Protection Cabinet. As a result, the Public Protection Cabinet must immediately implement new procedures and

regulations for filing claims pursuant to the authority of this new office. An ordinary administrative regulation alone is not sufficient because the new office must be established to seamlessly continue service to individuals who have been injured by the negligence of the Commonwealth and not impede current claims, or create a backlog. This emergency administrative regulation shall be replaced by an ordinary administrative regulation, which is being filed with the Regulations Compiler along with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
KERRY B. HARVEY, Secretary

**PUBLIC PROTECTION CABINET
(Emergency Amendment)**

802 KAR 2:010. Negligence claims before the Board of Claims [Kentucky Claims Commission].

EFFECTIVE: September 2, 2020

RELATES TO: KRS 12.027, 49.020, 49.040, 49.090, 49.120, EO 2020-708

STATUTORY AUTHORITY: KRS 49.020(5)

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 2020-708 ("Order") requires that the Kentucky Claims Commission be abolished and that the Board of Claims, and the Office of Claims and Appeals be established. The Order also sets forth the powers and duties of the Board of Claims and the Office and authorizes the Board to promulgate emergency regulations necessary to carry out the provisions and purposes of the Order and the Board's statutory authority. KRS 49.020(5) authorizes the board [commission] to promulgate administrative regulations that are necessary to carry out the provisions and purposes of the board's statutory authority. KRS 49.220(1) authorizes the board [commission-], with exclusive jurisdiction to investigate, hear proof, and to compensate persons for damages sustained to either person or property as a proximate result of negligence on the part of the Commonwealth, any of its cabinets, departments, bureaus, or agencies, or any of its officers, agents, or employees while acting within the scope of their employment by the Commonwealth or any of its cabinets, departments, bureaus, or agencies. This administrative regulation establishes the [requirements and] procedures [for filing and adjudicating negligence] governing these claims [under the jurisdiction of the commission and the method of pleading and practice before the commission].

Section 1. Definition. (1) "Board" means the Board of Claims.

(2) "Office" means the Office of Claims and Appeals.

Section 2[4]. Filing Claims. Form and content. A claim shall be legibly written, typed, or printed and contain the following:

(1) The name, address, telephone number, and email address of the claimant;

(2) The amount of the claim; and

(3) A statement of the facts that:

(a) Shows that the claimant may be entitled to relief pursuant to KRS 49.010 through 49.180; and

(b) Enables the agency against which a claim is made to investigate the claim and prepare its defense; and

(4) Is signed by the claimant and counsel for claimant, if any. [

(1) A claim shall:

(a) Be legibly written, typed, or printed;

(b) Contain:

1. The name, address, telephone number, and email address of the claimant;

2. The amount of the claim; and

3. A statement of the facts that:

a. Shows that the claimant may be entitled to relief pursuant to KRS 49.010 through 49.180; and

b. Enables the respondent agency to investigate the claim and prepare its defense; and

Section 3. Rules Applicable to All Filings. (1) Filings. All documents may be filed:

(a) In person or by private delivery to the Board of Claims, 500 Mero Street, 2 SC1, Frankfort, Kentucky 40601;

(b) Mail to the address listed above; or

(c) Electronic mail to mailto:negligenceclaims@ky.gov, if the document can be sent in one (1) electronic message. [

(c) Be filed by mail, electronic mail at mailto:negligenceclaims@ky.gov, or delivered in person to the commission's office.]

(2) Service.

(a) Any party who files a pleading or motion with the Board or hearing officer shall notify all other parties to the claim by serving upon each party a copy of the pleading or motion filed. A filed pleading or motion shall be accompanied by a certification stating:

1. That a copy has been served on each party, or if the party is represented by counsel, on the party's counsel; and

2. The method of service used.

(b) Service upon a party shall be made by delivering a copy to the attorney or party, electronic mail, or by mailing it to the attorney or party at the last known address. Service is complete upon mailing, unless the serving party learns or has reason to know that it did not reach the person to be served. Service by electronic mail shall be considered complete when sent if properly addressed. Documents filed by electronic mail shall be considered received when sent if properly addressed.

(3) Extension of time. An extension of time to file a response, motion, other pleading, brief, proposed finding of fact, or conclusion of law shall be granted:

(a) On agreement of the parties; or

(b) Upon a showing of good cause.

Section 4. Representation in Proceedings Before the Board [Commission]. (1) If the claim is by an individual, the individual may proceed without an attorney or engage counsel to provide representation.

(2) An individual who is not an attorney shall not be permitted to represent any other individual or legal entity who is a party to the claim.

(3) In accordance with Supreme Court Rule 3.020, if the claimant is a corporation, joint venture, partnership, LLC, estate, or any entity other than an individual as identified in subsection (1), the entity shall be represented by an attorney on all matters before the board, including filing the claim.

(4) An attorney admitted to practice in another state, but not the Commonwealth of Kentucky, shall be permitted to represent a party before the board if the attorney complies with Supreme Court Rule 3.030(2).

(5) If an attorney is not identified in the claim form or is later retained to represent a claimant after the filing of the claim form, the attorney shall enter an appearance in the record within ten (10) days of being retained. [

(2) An attorney representing a claimant before the commission shall enter an appearance the time the complaint is filed or as soon thereafter as possible.

(3) Any orders related to the claim and copies shall be served on the opposing party and the hearing officer presiding over the claim.

(4) An individual who is not an attorney shall not represent any other individual or an entity party to a claim.]

Section 5[2]. Response to Claims. (1) Upon receipt of a completed claim, the Board [commission] shall submit a copy of each claim to the head of the agency against which the claim is filed, or the attorney representing the agency against which the claim is filed.

(2) The agency against which a claim has been filed shall respond [answer the claim or file a responsive motion in writing] to the Board [commission] and the claimant within thirty (30) days of receiving the claim. [

(5) The commission may grant an extension of time to file the answer or response to the claim upon:

(a) Agreement of the parties; or

~~(b) A showing of good cause demonstrating that the purpose of the request is not [just] to delay proceedings.]~~

~~(3) If the agency against which a claim is filed admits liability in its response, a final order shall be entered.]~~

~~(3) The commission shall consider the claim at its next regular or special meeting if:~~

~~(a) The response filed by the affected agency admits liability; or~~

~~(b) The respondent agency fails to respond to the commission concerning its investigation within thirty (30) days.~~

~~(4) If the agency denies negligence in a claim requiring a hearing pursuant to KRS 49.090(3), a hearing officer shall be assigned, and the commission shall notify the claimant and the head of the affected agency of the assignment.]~~

Section 6. Claims Not Requiring a Hearing Under KRS 49.090(3). (1) If the agency against which a claim is filed fails to respond within thirty (30) days, the board or a board member assigned by the chair shall do one of the following:

(a) Enter a show cause order;

(b) A recommended order of dismissal; or

(c) Deem the facts contained in the claim admitted and render an award.

(2) If the response filed by the agency denies negligence in a claim not requiring a hearing pursuant to KRS 49.090(3), the Board or Board member shall decide the claim and render a decision.

(3) Within fourteen (14) days of the decision, any party may request a full board review by written notice to the Board.

Section 7. Claims Requiring a Hearing Under KRS 49.090(3).

(1) If the agency fails to respond within thirty (30) days, the Board shall issue a show cause order or the matter shall be assigned to a hearing officer.

(2) If the response filed by the agency denies negligence in a claim requiring a hearing pursuant to KRS 49.090(3), a hearing officer shall be assigned, and notice of such assignment shall be provided to the parties.

Section 8[3]. Prehearing or Status Conference and Hearing Schedule. (1) The hearing officer shall schedule a [telephonic] prehearing or status conference, which may be conducted by telephone or other electronic means:

(a) Within thirty (30) days of the assignment of the claim; and

(b) Upon reasonable notice to all parties, which consists of prior notice of not less than five (5) days, unless agreed to otherwise by the parties.

(2) The hearing officer may convene the [telephonic] prehearing or status conference or order the affected state agency to convene the conference.

(3) A prehearing or status conference may be used to discuss jurisdictional matters, settlement possibilities, discovery, preparation of stipulations, clarification of issues, rulings on witnesses, taking of evidence, issuance of subpoenas, mediation, and other matters that will promote the orderly and prompt conduct of the hearing.

(4) The hearing officer and the parties shall set an agreed date for the hearing at the prehearing or status conference. If the hearing officer and parties cannot agree upon a hearing date, the hearing officer shall set the matter for hearing no later than six (6) months from the date of the conference, unless the parties have otherwise agreed to hold the claim in abeyance.

(5) Upon conclusion of the prehearing or status conference, the hearing officer shall issue an order including all matters determined at the prehearing or status conference.

(6) The hearing officer shall notify the Board [commission] of the date and time for the hearing. The Office[executive director, or his or her designee,] shall:

(a) Reserve a place within the proper venue to conduct the hearing;

(b) Select a court reporter to be present at the hearing to record the proceedings; and

(c) Notify the parties and the court reporter of the date, time, and place of the hearing.

Section 9. Motion Practice. (1) Any party may file a motion.

(2) Any party affected by a motion or pleading may file a response to the motion or pleading within thirty (30) days from the date on which the motion or pleading was served.

(3) A moving party may file a reply to another party's response. The reply shall be filed within fifteen (15) days from the date the response was served. Other replies or responses shall not be filed, unless prior approval is granted by the Board or hearing officer.

(4) If a response is not filed within thirty (30) days, the Board or hearing officer shall issue an order on the motion within sixty (60) days of the date the response was due.

Section 10. Discovery. (1) Discovery may be obtained without prior order of the Board or hearing officer. The Kentucky Rules of Civil Procedure (CR) governing depositions and discovery shall apply except to the extent the provisions of this Section 10 differ.

(2) In addition to the provisions of CR 26 addressing opinions and use of expert witnesses:

(a) A party shall disclose to the other party or parties the identity of any witness qualified as an expert by knowledge, skill, experiences, training, or education the party may use at the hearing to provide expert testimony at least ninety (90) days before the date set for the hearing, absent a stipulation between the parties or an order issued by the Board providing otherwise; or

(b) If the evidence is intended solely to contradict or rebut evidence on the same subject matter of a witness identified by another party, within thirty (30) days after the other party's disclosure.

(3) The Board or hearing officer may deny, limit, or require discovery.

(4) If a party fails to comply with an order regarding discovery, the Board or hearing officer may order that the:

(a) Matters that the requesting party was seeking to establish through discovery shall be taken as having been established for the purposes of the hearing;

(b) Noncomplying party shall be prohibited from introducing related documents or testimony at the hearing;

(c) The claim be dismissed or relief be granted as requested by the opposing party;

(d) The claim be stayed until the order is obeyed; or

(e) Noncomplying party, the advising attorney, or both pay the reasonable costs, including attorney's fees, caused by the failure to comply.

(5) A response to discovery under subsection (1) of this section shall not be filed with the Board unless required by order of the Board or hearing officer.

Section 11. Briefs. A party shall file with the Board or hearing officer any brief required by order of the Board or hearing officer. The Board or hearing officer may require a party to file a post-hearing brief or to supplement at any time a brief already filed to assist in adjudicating the hearing. A brief shall include the signature of the party, or the party's counsel.

Section 12. Summary Disposition. At any time after the commencement of the claim, a party may move for a summary disposition of the whole or a part of the claim by filing a motion that:

(1) Asserts that there are no disputed material facts as to one (1) or more of the issues before the Board or hearing officer;

(2) Includes a statement specifying which material facts are undisputed. Assertions of a material undisputed fact or facts may be submitted to the Board or hearing officer through affidavits or responses made by another party to any discovery request, including answers to interrogatories, admissions, and depositions. Facts stated in the claim, including exhibits, may be relied upon as undisputed material facts by the appellee; and

(3) States that any issue before the Board or hearing officer for which summary disposition is sought is a matter of legal, and not factual, interpretation.

(4) Within twenty (20) days after a party moves for summary disposition, any other party may file a response presenting the party's position on issues of law and fact, which shall include any affidavit, written response to discovery requests, deposition

testimony, or statements in the claim, demonstrating the party's assertion that a material fact or facts are disputed.

(5) If the nonmoving party files a response to the motion for summary disposition, the moving party shall have ten (10) days to file a reply to the response.

(6) The Board or hearing officer may grant a motion for summary disposition in whole or in part. If the Board or hearing officer grants a summary disposition as to one (1) or more issues, but not all issues, then the remaining issues shall be heard by the Board or hearing officer in accordance with this administrative regulation and KRS Chapter 13B.

Section 13[4]. Conduct of Hearing. Except as otherwise established in KRS Chapter 49 or this administrative regulation, the conduct of hearings shall be governed by the procedures established in KRS Chapter 13B.

Section 14. Board Decision. (1)(a) Each contested claim shall be submitted to the Board at its next meeting following the submission of the recommended order, except for Agreed Orders.

(b) The Board shall issue its final order in accordance with KRS 49.080.

(c) The stated deadlines within which the Board shall render a final order shall commence upon the last filing of any exceptions to the recommendation.

(2) The Board, or a majority of its members, shall render a decision on each contested claim requiring a hearing pursuant to KRS 49.090(3) and each request for a full board review of a claim decided by an individual member.

(3) In rendering the final order, the Board shall consider the record including the recommended order and any exceptions duly filed to the recommended order.

(4) The Board may accept the recommended order of the hearing officer and adopt it as the final order of the Board, or it may reject or modify, in whole or in part, the recommended order, or it may remand the matter, in whole or in part, to the hearing officer for further proceedings as appropriate.

(5) If the final order differs from the recommended order, it shall include separate statements of findings of fact and conclusions of law. The final order shall also include the date the Board rendered the order, the date it was served on the parties, and to whom it was served, and a statement advising the parties fully of available appeal rights.

(6) Unless waived by the party, a copy of the final order shall be transmitted to each party or to his attorney of record.

(7) The matter shall be deemed finally adjudicated if:

(a) In a claim under \$2,500, no full board review has been requested; or

(b) The claim has been the subject of full board review; or

(c) No judicial appeal has been filed.

Section 15. Payment of Awards. Within thirty (30) days after an order of the Board of Claims making an award has become final, the agency making payment of such award shall furnish to the Board of Claims a copy of any check reflecting such payments.

KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: September 2, 2020

FILED WITH LRC: September 2, 2020 at 3 p.m.

CONTACT PERSON: Leah Cooper Boggs, Executive Advisor,
500 Mero Street 218NC, phone +1 (502) 352-8095, fax +1 (502) 564-3969, email LBoggs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leah Cooper Boggs

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the procedures by which persons who have allegedly suffered damage caused by the negligence of the Commonwealth can file a claim against the Commonwealth.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with Governor's Executive Order 2020-708, which immediately abolishes the

Kentucky Claims Commission and establishes the Board of Claims and the Office of Claims and Appeals in the Public Protection Cabinet.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed regulatory language conforms with KRS 12.080, which authorizes the Governor to prescribe general rules for the conduct of departments; and KRS 49.020(5), which authorizes the promulgation of regulations to carry out the duties of the office.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed regulation removes references to the abolished Kentucky Claims Commission and inserts language regarding the new Board of Claims and Office of Claims and Appeals. It also provides more comprehensive guidelines to establish a claim.

(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: See (1)(d).

(b) The necessity of the amendment to this administrative regulation: See (1)(b)

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Public Protection Cabinet, the Office of Claims and Appeals, the Board of Claims, and any person or entity filing a claim with the Board of 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: None known, beyond updating documentation to reflect the new Office structure.

(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 expenditures because of this administrative regulation. Current staff will implement the provisions once promulgated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Currently, claims against the Commonwealth are determined by the Kentucky Claims Commission. The Kentucky Claims Commission has a backlog of tax appeal cases. By separating these functions and creating a Board of Tax Appeals, a Board of Claims, and a Crime Victims Compensation Board, the Board of Claims will be able to more efficiently process the claims against the Commonwealth of Kentucky and provide redress for those injured.

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

(a) Initially: None. Current staff and agency funds will provide implementation.

(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: Current agency budgetary funding will be 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 additional funding or increase in fees is needed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed language will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Public Protection Cabinet, Office of Claims and Appeals, and the Board of Claims.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13B, 49.020, 49.220.

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 administrative regulation should not create any additional expenses or revenues for any state or local government agency after implementation. It is only updating references to the newly created Office of Claims and Appeals and the Board of Claims, and establishing procedures to file claims under the new office structure.

(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 revenues are expected to be generated by the provisions of this administrative regulation. This administrative regulation does not contain any fees or charges for filing a claim with the Board of Claims.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? See 3.(c).

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
802 KAR 3:010E**

This emergency administrative regulation is being promulgated pursuant to KRS 13A.190(1)(a)(1) in order to meet an imminent threat to the public health, safety, or welfare. This administrative regulation must be filed as soon as possible in order to comply with the provisions of Executive Order 2020-708, which abolished the Kentucky Claims Commission on September 1, 2020, and established the Office of Claims and Appeals and the Crime Victims Compensation Board in the Public Protection Cabinet. As a result, the Public Protection Cabinet must immediately implement new procedures and regulations for filing claims pursuant to the authority of this new office. An ordinary administrative regulation alone is not sufficient because the new office must be established to seamlessly continue service to crime victims who have incurred costs because of the crime, not impede current claims, or create a backlog. This emergency administrative regulation shall be replaced by an ordinary administrative regulation, which is being filed with the Regulations Compiler along with this emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
KERRY B. HARVEY, Secretary

**PUBLIC PROTECTION CABINET
(Emergency Amendment)**

802 KAR 3:010. Crime victims compensation.

EFFECTIVE: September 2, 2020

RELATES TO: KRS 12.027, 49.260 - 49.490, 216B.015, 216B.400, EO 2020-708

STATUTORY AUTHORITY: KRS 49.020, 49.300(1)

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 2020-708 ("Order") requires that the Kentucky Claims Commission be abolished and the Office of Claims and Appeals be established to include the Crime Victim's Compensation Board. The Order also sets forth the powers and duties of the Crime Victims Compensation Board and authorizes the Board to promulgate regulations necessary to immediately carry out the provisions and purposes of the Order and the Board's statutory authority. KRS 49.300(1) authorizes the Crime Victims Compensation Board [commission] to promulgate administrative regulations that are necessary to carry out the provisions of KRS 49.270 through 49.490. This administrative regulation establishes procedures for crime victims to file claims for compensation.

Section 1. Definition. "Board" means the Crime Victims Compensation Board.

Section 2[4]. Filing Claims. (1) A claim shall be:

(a) Legibly written, typed, or printed on the Crime Victim Compensation Form;

(b) Signed by the claimant and the counsel representing the claimant, if any.

(2) A claim shall be filed by:

(a) In person or by private delivery to the Crime Victim's Compensation Board, 500 Mero Street, 2 SC1, Frankfort, Kentucky 40601;

(b) Mail to the address listed above; or

(c) Electronic mail to crimevictims@ky.gov, if the document can be sent in one (1) electronic message[; and

(e) Filed by mail, electronic mail to crimevictims@ky.gov, or delivered in person to the commission].

(3) [(2)] If applying for lost wages or loss of support, a claim shall be supplemented by:

(a) A notarized Employment Verification form; and

(b) If requested by the Board [commission] staff:

1. A Physician Statement form; or

2. A Mental Health Counselor's Report form.

Section 3[2]. Kentucky Medical Assistance Program. (1) The Board [commission] shall cross-reference every claim with those claims that appear in the Kentucky Medical Assistance Program (KMAP) database maintained by the Cabinet for Health and Family Services.

(2) If a crime victim is covered by Medicare or Medicaid, the Board's [commission's] staff will provide the Board [commission] a list of:

(a) All itemized medical charges for which that victim seeks compensation; and

(b) The victim's services covered by medical assistance as reported in KMAP.

(3) Upon making an award to a Medicaid-eligible crime victim, the Board [commission] shall not consider any medical bills submitted by or on behalf of the victim for any KMAP-covered services.

(4) If the Board [commission] makes an award to a victim who received medical assistance for a KMAP-covered service, the KMAP as final payor shall not be responsible for the payment of any portion of that claim awarded by the Board [commission].

Section 4. Attorney's Fees. If a claimant is represented by an attorney and the attorney so requests, the board, may, as a part of any award or by separate order subsequent to the award, allow a reasonable attorney's fee for the filing of a claim and any subsequent proceedings. Such fee shall not exceed fifteen (15) percent of the amount of the award, and shall be paid out of the award and not in addition to the award. No attorney representing a claimant shall contract for or receive as a fee any sum larger than fifteen (15) percent of the amount of the award. Any fee contract in violation of this provision shall be void.

Section 5[3]. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Crime Victim Compensation Form", August 2020 [February 2018];
- (b) "Employment Verification", August 2020 [February 2018];
- (c) "Physician Statement", August 2020 [February 2018]; and
- (d) "Mental Health Counselor's Report", August 2020 [February 2018].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Claims and Appeals [~~Kentucky Claims Commission~~], 500 Mero St 2SC1, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at <http://cvcb.ky.gov/Pages/default.aspx>.

KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: September 2, 2020

FILED WITH LRC: September 2, 2020 at 3 p.m.

CONTACT PERSON: Leah Cooper Boggs, Executive Advisor, 500 Mero Street 218NC, phone +1 (502) 352-8095, fax +1 (502) 564-3969, email LBoggs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leah Cooper Boggs

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the procedures for crime victims wishing to file a claim for compensation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with Governor's Executive Order 2020-708, which immediately abolishes the Kentucky Claims Commission and establishes Crime Victims Compensation Board and the Office of Claims and Appeals in the Public Protection Cabinet.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed regulatory language conforms with KRS 12.080 which authorizes the Governor to prescribe general rules for the conduct of departments; and KRS 49.020(5) which authorizes the promulgation of regulations to carry out the duties of the office.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed regulation removes references to the abolished Kentucky Claims Commission and inserts language regarding the Crime Victims Compensation Board and the new Office structure and 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: See (1)(d).

(b) The necessity of the amendment to this administrative regulation: See (1)(b)

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Public Protection Cabinet, the Office of Claims and Appeals, the Crime Victims Compensation Board, and any person or entity filing a claim with the Crime Victims Compensation Board and the Office of Claims and Appeals.

(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: None known, beyond updating documentation to reflect the new Office structure and the Crime Victims Compensation 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 expected expenditures because of this administrative regulation. Current staff will implement the provisions

once promulgated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Currently, crime victim claims are determined by the Kentucky Claims Commission. The Kentucky Claims Commission has a backlog of tax appeal cases. By separating the functions and creating the Crime Victims Compensation Board, claims of crime victims will be more efficiently processed.

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

(a) Initially: None. Current staff and agency funds will provide implementation.

(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: Current agency budgetary funding will be 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 additional funding or increase in fees is needed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed language will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Public Protection Cabinet, Office of Claims and Appeals, and the Crime Victims Compensation Board.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13B, 49.020, 49.220.

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 administrative regulation should not create any additional expenses or revenues for any state or local government agency after implementation. It is only updating references to the newly created Office of Claims and Appeals and the Crime Victims Compensation Board, and establishing procedures to file claims under the new office structure.

(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 revenues are expected to be generated by the provisions of this administrative regulation. This administrative regulation does not contain any fees or charges for filing a claim with the Crime Victims Compensation Board.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? See 3.(c).

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
902 KAR 2:220E**

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. Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) (the virus that causes COVID-19) is a highly infectious virus that is communicable to both students and school personnel. In order to minimize the spread of this virus in the school setting, the Cabinet for Health and Family Services is promulgating this emergency administrative regulation to:

1. Ensure parents, legal guardians, or other persons or agencies responsible for a student are aware of the requirement to notify the student's school of a diagnosed medical condition that may threaten the safety of the student or others in the school; and
2. Establish requirements for school notification to the department of the number of students and school personnel reporting a positive diagnosis of Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) (the virus that causes COVID-19).

In accordance with KRS 158.160, this emergency administrative regulation is needed for a local school district superintendent or private school official to make an informed decision regarding the exclusion of a student or school personnel who has reported a diagnosis of COVID-19, which has a reasonable probability for transmission in the school setting, and for a local board of education to determine the presence of a dangerous epidemic in the district. Accurate data must be available in real time. The data elements reported to the department will be posted publicly, which will allow a parent, legal guardian, or other person or agency responsible for a student to make an informed decision regarding safety and education of the student. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)1. and 4. to meet an imminent threat to public health and to protect human health. 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 FRIEDLANDER, Secretary

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

902 KAR 2:220E. School notification standards related to COVID-19.

EFFECTIVE: September 14, 2020

RELATES TO: KRS 158.160, 214.010, 214.020

STATUTORY AUTHORITY: KRS 158.160(1), 194A.050(1), 211.025, 211.180(1)(e), 214.020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.160(1) authorizes the Cabinet for Health and Family Services to promulgate an administrative regulation to define medical conditions that threaten the safety of students or others in a school setting. KRS 211.180(1)(e) authorizes the cabinet to formulate, promote, establish, and execute policies, plans, and comprehensive programs relating to all matters of public health, including the protection and improvement of the health of infants, preschool, and school-age children. This administrative regulation establishes the school notification standards for reporting students and school personnel diagnosed with Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) (the virus that causes COVID-19).

Section 1. Definitions. (1) "COVID-19 exposure" means a high-risk exposure as determined by the local health department having jurisdiction after consultation with the school, the exposed person, or the student's parent, legal guardian, or other person or agency responsible for the student.

(2) "Instructional style" means the primary method of learning

utilized by the school and includes in-person only, virtual only, or a hybrid of in-person and virtual.

(3) "Reported COVID-19 positive" means the school has received a report from:

- (a) A parent, legal guardian, or other person or agency responsible for a student attending the school that the student has tested positive for COVID-19; or
- (b) School personnel that have tested positive for COVID-19.

Section 2. School Notification Standards. (1) Each public or private elementary or secondary school shall provide notice to a parent, legal guardian, or other person or agency responsible for a student that, in accordance with KRS 158.160:

(a) The individual responsible for a student shall notify the student's school if the student has any medical condition that threatens the safety of the student or others in the school; and

(b) Notification shall be made within twenty-four (24) hours following the positive diagnosis of Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) (the virus that causes COVID-19) in the method determined by the school.

(2) Each public or private elementary or secondary school shall submit the information required by this subsection to the Kentucky Department for Public Health as required by subsections (3) and (4) of this section.

(a) No later than September 28, 2020, each school shall submit an initial data submission, which shall include for the preceding twenty-four (24) hours:

1. The total number of reported COVID-19 positive students;
2. The total number of reported COVID-19 positive school personnel;
3. The total number of students quarantined for COVID-19 exposure related to school activities;
4. The total number of school personnel quarantined for COVID-19 exposure related to school activities; and
5. The instructional style of the school on the date of data submission.

(b) Following the initial data submission, each public or private elementary or secondary school shall submit:

1. The total number of new reported COVID-19 positive students since the last data submission;
2. The total number of new reported COVID-19 positive school personnel since the last data submission;
3. The total number of new students quarantined for COVID-19 exposure related to school activities since the last data submission;
4. The total number of new school personnel quarantined for COVID-19 exposure related to school activities since the last data submission; and
5. The instructional style of the school on the date of data submission.

(3) Each school shall report the data elements required by subsection (2) of this section:

- (a) Each day the school is in session, Monday through Friday, even if the data element is zero; and
- (b) Regardless of instructional style utilized on the day of data submission.

(4) The report shall be submitted in two (2) steps as established in this subsection.

(a) The school reporting official shall use the electronic reporting system provided by the Kentucky Department for Public Health to submit the initial and daily information required by subsection (2) of this section.

(b) If a public or private elementary or secondary school reports a data element with a value greater than zero for new reported COVID-19 students or school personnel, the school reporting official shall contact the local health department having jurisdiction and provide the following for each new reported COVID-19 student or school personnel:

1. Name;
2. Address;
3. Date of birth;
4. Gender; and
- 5.a. If the information is for school personnel, the person's contact telephone number; or

b. If the information is for a student, the name and contact telephone number of the parent, legal guardian, or other person or agency responsible for the student.

(5) The local health department having jurisdiction shall provide public health guidance necessary to:

- (a) Minimize the spread of infection within the school; and
- (b) Promote the health, safety, and welfare of students and personnel.

STEVEN J. STACK, MD, MBA, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: September 14, 2020

FILED WITH LRC: September 14, 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: Julie Brooks or Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the school notification standards for reporting students diagnosed with Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) (the virus that causes COVID-19).

(b) The necessity of this administrative regulation: In order to provide clear guidance to the Kentucky Department of Education (KDE) and local schools on the return to in person instructional methods, the Kentucky Department for Public Health (KDPH) needs adequate and timely data on the spread of COVID-19 in the school setting. This data will be made available to the public on a daily basis.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 158.160(1) authorizes the Cabinet for Health and Family Services to define by administrative regulation medical conditions that threaten the safety of students or others in a school setting. KRS 211.180(1)(e) authorizes the cabinet to formulate, promote, establish, and execute policies, plans, and comprehensive programs relating to all matters of public health, including the protection and improvement of the health of infants, preschool, and school-age children.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide data on the spread of COVID-19 in the school setting, which will allow the KDPH and KDE to make informed decisions when changes in instructional style need to be implemented to protect the health of students and school personnel.

(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 administrative regulation impacts KDPH; KDE; local school boards; local health departments; and approximately 1,220 public and private elementary and secondary schools; and the children that enroll in or participate at these facilities.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: All public and private elementary and

secondary schools will need to submit the required data elements to KDPH on a daily basis, regardless of instructional style on the day of data submission. KDPH will make this daily report available to the general public, and may seek the support of the KDE to ensure all schools are participating in the data reporting.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): The costs associated with compliance is unknown. The reporting program will be provided to each school at no costs. Each school will need to have a staff person responsible for data submission.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, KDPH and KDE will be able to track the incidence of COVID-19 among schools and be able to provide guidance and support to schools.

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

(a) Initially: There is no initial costs associated with this administrative regulation.

(b) On a continuing basis: There is no increase in ongoing costs 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: Any funding necessary to implement this administrative regulation will be from 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 or funding is not necessary to implement the changes with 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 contain fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All schools will be required to report data on a daily basis.

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 KDPH; KDE; local school boards; local health departments; and approximately 1,220 public and private elementary and secondary schools.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 158.160(1), 194A.050(1), 211.025, 211.180(1)(e), and 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? There are no costs to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? There are no costs to administer this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**STATEMENT OF EMERGENCY
922 KAR 2:405E**

This emergency administrative regulation is necessary in order to ensure that licensed child care centers, certified family child care homes, and limited duration child care programs are operating under Centers for Disease Control and Prevention and public health guidelines to prevent the spread of the Novel Coronavirus Disease (COVID-19) as agencies remain open or reopen in the midst of the pandemic. This emergency administrative regulation also waives the fingerprint-based criminal record check required for adults working in child care institutions, as permitted by federal guidance issued pursuant to 42 U.S.C. 5141. Due to the public health emergency caused by the outbreak of COVID-19, it has been deemed unsafe to conduct in-person fingerprint-based checks. Name-based criminal background checks shall be required at this time and fingerprint-based checks shall be conducted once it is deemed safe to do so. This amendment is deemed to be an emergency pursuant to KRS 13A.190(1)(a)1. and 4., as the administrative regulation is necessary in order to address imminent threats to public health, safety, and welfare as child care agencies remain open or reopen in the midst of the COVID-19 pandemic and necessary in order to protect human health and welfare. The federal Children's Bureau has also deemed it unsafe to require fingerprint-based criminal record checks during the pandemic. This emergency administrative regulation will not be replaced by an ordinary administrative regulation as these additional health and safety standards are in direct response to the declared public health emergency caused by COVID-19 and are deemed to be temporary. Pursuant to KRS 13A.190(6)(f), this administrative regulation differs from the previously filed emergency administrative regulation governing the same subject matter, 922 KAR 2:400E, in the following manner:

- Regulating limited duration child care programs;
- Increasing the maximum group size of children twenty-four (24) months and older to fifteen (15) children;
- Allowing tours with potential clients to be provided after regular operating hours if no children are in the facility during the tour and the provider ensures all affected areas are cleaned after the conclusion of the tour;
- Making an exception to the limitation on electronic viewing and listening devices for school-age children completing assigned nontraditional instruction;
- Including Kentucky All STARS program information so that financial awards that providers receive for attaining a higher level of quality are not negatively impacted; and
- Waiving fingerprint-based background checks during the public health emergency per federal guidance.

ANDY BESHEAR, Governor
ERIC C. FRIEDLANDER, Secretary

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(New Emergency Administrative Regulation)**

922 KAR 2:405E. Enhanced requirements for certified and licensed child care and limited duration child care programs as a result of a declared state of emergency.

EFFECTIVE: September 1, 2020

RELATES TO: KRS 13A.190, 158.030, 199.011(4), 199.894, 199.896(2), 45 C.F.R. 98.43(a)(2)(i)

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2), 199.8982(1)(f), 214.020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.896(2)

and KRS 199.8982(1)(f) authorize the Cabinet for Health and Family Services to promulgate administrative regulations and standards for child care centers and family child care homes. KRS 214.020 requires the cabinet to take such action as deemed efficient in preventing the introduction or spread of infectious or contagious disease within the state. This administrative regulation establishes additional health and safety standards for certified family child care homes, licensed child care centers, and limited duration child care programs due to the COVID-19 pandemic and declared state of emergency to prevent the spread of disease in child caring homes and facilities. The Children's Bureau identified the requirement of fingerprint-based checks of national crime information databases as an administrative condition that may be modified pursuant to federal authority given that a state conduct all available name-based criminal background checks for applicants during the public health emergency and conduct fingerprint-based checks as soon as it is safe to do so.

Section 1. Definitions.

- (1) "Child" is defined by KRS 199.011(4).
- (2) "Child care" means care of a child in a center or home that regularly provides full or part-time care, day or night, and includes developmentally appropriate play and learning activities.
- (3) "Child care center" is defined by KRS 199.894(3).
- (4) "Child care provider" is defined by 45 C.F.R. 98.43(a)(2)(i).
- (5) "Director" means an individual:
 - (a) Who meets the education and training requirements as specified in 922 KAR 2:090, Section 10;
 - (b) Whose primary full-time job responsibilities are to ensure compliance with 922 KAR 2:090, 922 KAR 2:120, 922 KAR 2:280, and this administrative regulation; and
 - (c) Who is responsible for directing the program and managing the staff at a child care center.
- (6) "Family child care home" is defined by KRS 199.894(5).
- (7) "School-age" means a child who meets the age requirements of KRS 158.030 or who attends kindergarten, elementary, or secondary education.

Section 2. Reopening Protocol.

- (1) If a child care provider chooses to delay reopening after the pandemic closure, the provider shall communicate this to the Division of Regulated Child Care.
- (2) When a child care provider reopens:
 - (a) The director shall update the staff roster in the Kentucky National Background Check Program pursuant to 922 KAR 2:280 and the cabinet-designated database maintained pursuant to 922 KAR 2:240 to confirm all staffing records are current for inspection purposes; and
 - (b) If there is a new director, the program shall contact the Division of Regulated Child Care immediately to file director change paperwork in accordance with 922 KAR 2:090.

Section 3. Limited Duration Child Care Programs.

- (1) A limited duration child care program shall have a maximum group size of fifteen (15) children per group.
- (2) A limited duration child care program shall have the same staff-to-child ratio as required for licensed child care centers pursuant to 922 KAR 2:120.
- (3)(a) Except as provided by paragraph (b) of this subsection, a minimum of two (2) staff members shall be present in each room of a limited duration child care program.
- (b) If all staff in the program have a completed fingerprint-based background check via the Kentucky National Background Check Program in accordance with 922 KAR 2:280, one (1) staff member shall be present in each room, subject to the staff-to child ratios established in subsection (2) of this section.
- (4) Limited duration child care programs shall be monitored by the Division of Regulated Child Care.

Section 4. Social Distancing Requirements for Child Care Programs.

- (1)(a) Except as provided by paragraph (b) of this subsection, a child care center shall meet the maximum group size

requirements established in 922 KAR 2:120.

(b) The maximum group size shall be fifteen (15) children per group for children age twenty-four (24) months and older.

(2) A certified family child care home shall meet the maximum group size requirements established in 922 KAR 2:100.

(3) Each child shall remain in the same group throughout the day without interacting with another group.

(4) A certified family child care home and a licensed child care center shall maintain the staff-to-child ratios established in 922 KAR 2:100 and 922 KAR 2:120, respectively.

(5) A child care provider may use a temporary wall to divide classroom space in order to comply with the maximum group size required by subsection (1) of this section. A temporary wall:

(a) Shall be at least six (6) feet tall;

(b) Shall be stable;

(c) Shall not be classroom furniture rearranged to divide classroom space;

(d) Shall not divide classroom space in a manner that results in less than thirty-five (35) square feet of space per child;

(e) Shall not create a traffic pattern that would cause noncompliance with health and safety requirements during a medical state of emergency; and

(f) May create a classroom that does not have its own bathroom if the classroom still has access to a bathroom.

(6) Individuals approved to be inside the child care center or family child care home while children are in the facility shall include:

(a) Facility staff;

(b) A person with legal authority to enter the facility, including cabinet staff and first responders;

(c) A necessary utility worker;

(d) A professional providing medical or therapeutic services for children with special needs;

(e) A child enrolled in the facility;

(f) A parent or legal guardian of a child enrolled in the program; and

(g) A family member who lives in the home of a family child care home.

(7) A child care provider shall:

(a) Reduce the number of staff each classroom of children interacts with each day;

(b) Create a schedule in which the same staff work with the same children each day as able;

(c) Stagger playground time between classroom groups so as to separate one group of children from another;

(d) Allow school-age children to exceed the limitation on electronic viewing and listening devices established in 922 KAR 2:120 in order to complete assigned nontraditional instruction;

(e) Utilize a centralized drop-off and pick-up location to eliminate unnecessary traffic of parents and guardians to the classrooms;

(f) Require parents and guardians to exercise social distancing of no less than six (6) feet during drop-off and pick-up; and

(g) Modify traffic flow to minimize contact between children and staff to the greatest extent possible.

(8) A child care provider may:

(a) Use virtual classroom observations for practicum students;

(b) Use virtual tours for prospective families, with permission of the families whose children may appear in the video; and

(c) Offer tours to potential clients after regular operating hours if no children are in the facility during the tour and the provider ensures all affected areas are cleaned after the conclusion of the tour.

(9) A child care provider shall not:

(a) Provide access to visitors or students conducting classroom observations;

(b) Hold center-wide family events;

(c) Permit field trips;

(d) Allow high-contact sports on the playground;

(e) Utilize family style dining at this time. Staff members shall prepare plates and pass them out to individual children;

(f) Offer transportation to children upon reopening. When the public school system resumes classes, child care providers may

model their transportation policy from the Kentucky Department of Education's recommendation to the public school system; and

(g) Permit staff to congregate in common areas and shall require they observe social distancing policies whenever possible.

Section 5. Business Practices. To the greatest extent possible, a child care provider shall:

(1) Conduct business practices by telephone or internet;

(2) Use digital documents instead of paper documents;

(3) Communicate with parents and vendors by telephone and digital communication;

(4) Utilize digital billing and invoices; and

(5) Discourage employees from sharing phones, computers, and office supplies if duplicate materials are available.

Section 6. Cleaning and Sanitizing Requirements for Child Care Providers.

(1) A child care provider shall:

(a) Utilize the cleaning and sanitizing procedures outlined in the cabinet-approved orientation training that is required by 922 KAR 2:090 and 922 KAR 2:100;

(b) Create and post a cleaning and sanitizing plan specific to the individual child care center or family child care home and outline the additional cleaning and sanitizing requirements from the Centers for Disease Control and Prevention for child care during a pandemic;

(c) Eliminate "lost and found" bins; and

(d) Prohibit the use of communal water fountains.

(2) Toys children have placed in their mouths or that have been contaminated by other bodily fluids shall be set aside in a separate container for soiled toys until the toys are cleaned and sanitized by a person wearing gloves.

(3) Machine washable toys shall not be used.

(4) Groups of infants and toddlers shall not use shared toys unless the toys are cleaned and sanitized before being shared between children.

(5) Bedding (blankets, sheets, pillows, sleeping bags) shall be:

(a) Able to be washed;

(b) Separated and stored in individual labeled bins without touching another child's bedding; and

(c) Washed, at least at the end of each week.

(6) Children and staff shall:

(a) Meet the handwashing requirements established in 922 KAR 2:100, Section 13(4) and (5), in a certified family child care home and 922 KAR 2:120, Section 3(4) and (5), in a licensed child care center, respectively; and

(b) Wash their hands with liquid soap and warm running water or utilize hand sanitizer or hand-sanitizing wipes prior to center or home departure.

(7) The child care center or family child care home shall provide liquid soap, hand-sanitizer (as appropriate), handwashing programs, tissues, and wastebaskets in convenient locations.

Section 7. Screening and Illness Requirements.

(1) Children and adults shall be screened for fever and contagious symptoms upon entry into the child care center or family child care home each day and shall not be allowed to enter if displaying a contagious fever or symptom of COVID-19.

(2) A contagious fever shall be considered a fever of 100.4 degrees Fahrenheit or higher in accordance with recommendations from the Centers for Disease Control and Prevention.

(3) Staff who demonstrate symptoms of COVID-19 shall be tested for the illness.

(4) A child or adult who tests positive for COVID-19 shall follow the recommendations of the local health department on when to return to child care.

(5) A child care provider shall follow the recommendations of the local health department on whether the program shall temporarily close due to an outbreak of COVID-19.

(6) If a child demonstrates a fever or other contagious symptom, the child shall be removed from the classroom setting immediately and placed in a safe, low-traffic area until the parent or guardian arrives to pick up the child. The provider shall require the

parent or guardian to pick up the child within one hour of being contacted.

(7) A child care provider shall notify enrolled families and staff when a diagnosed case of COVID-19 is identified in the center or home, while still protecting the privacy of the individual who was diagnosed.

Section 8. Personal Protective Equipment (PPE) Requirements.

(1) Each adult, including parents and guardians at drop-off and pick-up, shall wear a face mask while inside a child care center or family child care home:

(a) Unless doing so would represent a serious risk to their health or safety and they are able to present a medical statement stating this;

(b) Except during planned staff breaks and lunch away from children in care and other staff; and

(c) Except for staff working with infant or toddler groups who choose to wear a face shield instead.

(2) A provider shall make masks available to parents, guardians, and other adults permitted into the facility.

(3) If an adult refuses to wear a mask, or face shield as permitted by subsection (1)(c) of this section, the facility may refuse the individual the right to enter the facility. A provider shall establish a policy as to whether a parent or guardian is allowed to enter the facility if an adult refuses to adhere to the facility's policies regarding the guidelines of the Centers for Disease Control and Prevention.

(4) A child who is five (5) years of age or younger shall not wear a face mask due to increased risk of suffocation and strangulation. School-age children may wear a face mask if temperament and developmental ability permits.

(5) Staff shall wear gloves when preparing meals and serving bottles. Gloves shall be changed between bottle feedings.

(6) A provider shall ensure that gloves are available to staff engaging in high-touch activities to the greatest extent practicable, if wearing gloves does not create additional health hazards for that activity.

(7) A provider shall have at least a one week supply of the required cleaning supplies and PPE on-site prior to reopening the child care center or family child care home. Child Care Aware staff members shall screen facilities to ensure supplies are on-site prior to opening.

Section 9. Training Requirements. (1) All child care staff, directors, owners, and operators shall complete a new, mandatory training on cleaning, sanitizing, health procedures, and mandatory reporting prior to the date of reopening. The new training shall be available on June 1, 2020, and shall be a free, online course.

(2) All new staff hired shall take the mandatory training on cleaning, sanitizing, health procedures, and mandatory reporting within ninety (90) days of their hire date.

(3) A child care provider shall not be penalized if staff did not complete the training hours required by 922 KAR 2:090 or 922 KAR 2:100 during the child care closure.

Section 10. Kentucky All STARS Program. (1) All STARS quality rating visits to be conducted pursuant to 922 KAR 2:270 shall be suspended during the public health emergency.

(2) A provider shall remain at the All STARS level that had been attained prior to the public health emergency.

(3) The expiration date of All STARS levels shall be extended by one (1) year.

(4) Providers shall receive applicable awards for their current STARS level.

Section 11. Safety and Background Check Requirements. (1) Staff with expired tuberculosis skin tests and newly hired staff shall be given an extension not to exceed 120 days after the date established for reopening to be tested.

(2) Annual visits from the Division of Regulated Child Care shall begin after child care centers and family child care homes reopen.

(3) New background checks for staff who were employed at the time of the child care closure on Friday, March 20, 2020, shall not be required due to the rapback feature of the Kentucky National Background Check Program.

(4) Staff with a completed fingerprint-based background check via the Kentucky National Background Check Program shall return to the classroom and may be left alone with children in accordance with 922 KAR 2:280.

(5) New staff shall:

(a) Undergo name-based background checks upon hiring;

(b) Not be left alone with children until the name-based background checks have been approved and returned; and

(c) Undergo fingerprint-based background checks pursuant to 922 KAR 2:280 once the checks are operational again.

(6) A provider shall ensure staff are informed that they may identify and communicate potential improvements or concerns in order to reduce potential risk of virus exposure in the workplace.

MARTA MIRANDA-STRAUB, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: August 31, 2020

FILED WITH LRC: September 1, 2020 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 23, 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 November 16, 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 November 30, 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, KY 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:

Kentucky Governor Andy Beshear announced on March 16, 2020, that all child care centers would close by the end of business on March 20, 2020, due to the declared state of emergency caused by the COVID-19 pandemic. On May 21, 2020, Governor Beshear announced that a portion of childcare centers will be allowed to reopen on June 8, 2020, with the rest being allowed to reopen on June 15, 2020, with certain health and safety requirements in place to prevent the spread of the Novel Coronavirus Disease (COVID-19) within facilities and homes. This administrative regulation contains requirements to ensure the health and safety of staff and families in child care centers, family child care homes, and limited duration child care programs who remain open or choose to reopen during the COVID-19 pandemic.

(b) The necessity of this administrative regulation: This emergency administrative regulation is necessary in order to ensure that licensed child care centers, certified family child care homes, and limited duration child care programs are operating under Centers for Disease Control and Prevention and public health guidelines to prevent the spread of COVID-19 as agencies remain open or reopen in the midst of the pandemic.

(c) How this administrative regulation conforms to the content

of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing health and safety standards for licensed child care centers and certified family child care homes. These additional health and safety standards are necessary to prevent the spread of the COVID-19 virus in child care facilities and homes.

(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 health and safety standards for child care centers, family child care homes, and limited duration child care programs.

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

(a) How the amendment will change this existing administrative regulation: This is a new, temporary administrative regulation.

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

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

(d) How the amendment will assist in the effective administration of the statutes: This is a new, temporary administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently, there are 11 limited duration child care programs, 1,835 licensed child care centers, and 231 certified family child care homes in Kentucky. The Department for Community Based Services, Division of Child Care, and the Office of the Inspector General, Division of Regulated Child Care, will be impacted as the child care regulating and monitoring agencies, respectively.

(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: Certified family child care homes, licensed child care centers, and limited duration child care programs will be required to meet the additional CDC and public health guidance contained in this administrative regulation to prevent the spread of the virus within child care facilities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to the Division of Child Care or the Division of Regulated Child Care. These requirements are consistent with Centers for Disease Control and Prevention (CDC) guidance at this time and many contents of this administrative regulation are consistent with other states. Federal Coronavirus Aid, Relief, and Economic Security (CARES) Act funding and Child Care and Development Funds have been distributed to cover the cost of fixed expenditures during the closure and to assist with the purchase of personal protective equipment and cleaning supplies needed for reopening.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities complying with the requirements of this administrative regulation will reduce the risk of spreading the COVID-19 virus within their facilities and homes and hopefully be able to eliminate or minimize spreading the virus and remain open.

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

(a) Initially: The amendment to this administrative regulation will not result in any new initial costs to the administrative body.

(b) On a continuing basis: The amendment to this administrative regulation will not result in any ongoing costs 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 Child Care and Development Fund Block Grant, state match and maintenance of effort for the block grant, and limited agency

funds support the implementation of this administrative regulation. Federal CARES Act funding was secured and has been distributed to child care providers to cover the cost of fixed expenditures during the closure and to assist with the purchase of personal protective equipment and cleaning supplies needed for reopening.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fees or funding required as a result of this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees, or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied as all licensed child care centers, certified family child care homes, and limited duration child care programs who choose to open or remain open during the COVID-19 pandemic will be regulated by this administrative regulation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

42 U.S.C. 9857-9858q

2. State compliance standards. KRS 194A.050(1), 199.896(2), 199.8982(1)(f), 214.020

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 9857-9858q contains requirements for the administrative body receiving Child Care and Development Block Grant funds and gives states the maximum flexibility in developing child care programs and policies that best suit the needs of children and parents within the state.

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 is more stringent than federal mandates as it contains temporary health and safety requirements for child care agencies reopening during the COVID-19 pandemic, consistent with CDC guidelines. The federal rule does give states flexibility in setting standards specific to state needs.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation contains different requirements than federal requirements due to the declared state of emergency and nature of the COVID-19 virus.

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 (Division of Child Care and Division of Regulated Child Care) is impacted by this administrative regulation. A local government or a school district reopening a licensed child care center, in whole or in part, will be impacted.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 U.S.C. 9857-9858q, KRS 194A.050(1), 199.896(2), 199.8982(1)(f), 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 will generate no revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no revenue.

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

year? There will be no additional costs to administer this program.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs 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:

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

AGRICULTURAL EXPERIMENT STATION (As Amended at ARRS, September 8, 2020)

12 KAR 1:120. Noxious weed seed.

RELATES TO: KRS 250.081(1)(c)3

STATUTORY AUTHORITY: KRS 250.081

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.081(1)(c)3 requires the director to ~~to~~ designate the kinds of weed seed to be considered noxious in Kentucky and to establish their maximum permitted rate of occurrence in agricultural seed. This administrative regulation establishes the kinds of those weed seed to be considered noxious in Kentucky and their maximum allowed rate of occurrence for the administration of the Kentucky Seed Law.

Section 1. Noxious Weed Seed. (1) The following kinds of weed seed ~~shall be~~ designated noxious in Kentucky and the maximum permitted rate of occurrence per pound of agricultural seed shall be as established in the table in this subsection.~~[follows:]~~

Name of Kind	Number of Seed Allowed Per Pound
Balloon vine (<i>Cardiospermum halicacabum</i>)	0
Purple moonflower (<i>Ipomoea turbinata</i>)	0
Canada thistle (<i>Cirsium arvense</i>)	0
Johnsongrass (<i>Sorghum halepense</i> and sorghum <i>alrum</i>) and perennial rhizomatous derivatives of these)	0
Quackgrass (<i>Agropyron repens</i>)	0
Annual bluegrass (<i>Poa annua</i>)	256
Buckhorn plantain (<i>Plantago lanceolata</i>)	304
Corncockle (<i>Agrostemma githago</i>)	192
Dodder (<i>Cuscuta</i> spp.)	192
Giant foxtail (<i>Setaria faberii</i>)	192
Oxeye daisy (<i>Chrysanthemum leucanthemum</i>)	256
Sorrel (<i>Rumex acetosella</i>)	256
Wild onion and wild garlic (<i>Allium</i> spp.)	96

(2) Other limitations.

(a) Seed ~~that~~ which contains in excess of a sum total of 480 noxious weed seed per pound (subject to the ~~above~~ limitations established in the table in subsection (1) of this section) ~~shall be~~ is prohibited from sale in Kentucky.

(b) There shall be no tolerance applied to prohibited noxious weed seed.

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AGRICULTURAL EXPERIMENT STATION (As Amended at ARRS, September 8, 2020)

12 KAR 1:125. Identification of seed not for sale.

RELATES TO: KRS 250.081(1)(c)4

STATUTORY AUTHORITY: KRS 250.081

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.081(1)(c)4 requires the director to ~~to~~ indicate a means for identifying seed in storage or in or consigned to a seed cleaning or processing plant, but not offered for sale in locations where some, but not all, seed is for sale. This administrative regulation

~~establishes the proper procedures for the identification of seed for sale.~~ is needed to facilitate fair and efficient inspection by enforcement officers.

Section 1. The procedures established in subsections (1) and (2) of this section~~[following procedure]~~ shall be used if some, but not all, seed in or consigned to a seed cleaning or processing establishment is planned for distribution.~~[:]~~

(1) All seed lots shall be maintained separately to prevent the accidental or mechanical mixing of different lots.

(2) All seed not intended for distribution shall be clearly identified with printed signs ~~that~~ which indicate the owner or the specific intended use of the seed.

Section 2. (1) All seed intended for distribution shall be plainly identified with a tag on each container~~[,]~~ or with a lot number stenciled or taped on each container.

(2) If the seed is in a box, frame, crib, wagon, or other enclosed space, that storage space shall be construed to be a container.

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AGRICULTURAL EXPERIMENT STATION (As Amended at ARRS, September 8, 2020)

12 KAR 1:130. Labeling of seed mixtures.

RELATES TO: KRS 250.041, 250.081(1)(c)9

STATUTORY AUTHORITY: KRS 250.081

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.081(1)(c)9 requires the director to secure the efficient enforcement of the provisions of KRS 250.021 ~~through~~ TO 250.111. This administrative regulation establishes ~~[To prescribe]~~ a uniform manner of avoiding contradictory information on printed seed bags and on tags attached to the printed bags in situations in which~~[where]~~ analysis after bagging reveals that a mixture of seed kinds is present rather than a single seed kind.

Section 1. Labeling Tall Fescue and Orchardgrass Seed Mixtures in Printed Bags. (1) Seed of mixtures sold in a bag printed with the words "Kentucky 31 Tall Fescue" on the front (broad) side shall have a seed tag attached that complies with KRS 250.041~~[applicable statutes]~~, and the words "and Orchardgrass Mixture" printed or applied by stencil on the front (broad) side of the bag in lettering that is at least one (1) inch high and located no more than three (3) inches from the "Kentucky 31 Tall Fescue" letters.

(2) Seed in a bag on which "Kentucky 31 Tall Fescue" is printed on the back (broad) side shall have the words "and Orchardgrass Mixture" printed on the back (broad) side of the bag and the words "and Orchardgrass Mixture" printed or applied by stencil on the bag in lettering that is at least one (1) inch high and located no more than three (3) inches from the "Kentucky 31 Tall Fescue" letters.

Section 2. The information on the bag of other kinds of mixtures in printed bags shall be the same as the information on the attached tag. If alteration of a printed bag is necessary to show that the seed is a mixture, the alteration shall be accomplished by use of stencil on the bag in lettering that is at least one (1) inch high and that is located no more than three (3) inches from the

original lettering.

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AGRICULTURAL EXPERIMENT STATION
(As Amended at ARRS, September 8, 2020)

12 KAR 1:140. Permits, reports, and fees for persons using own tags.

RELATES TO: KRS 250.021, 250.031, 250.041, 250.051, 250.061, 250.071, 250.081, 250.091, 250.101, 250.111

STATUTORY AUTHORITY: KRS 250.081

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.081(1)(c)7 requires the director of the Agricultural Experiment Station to establish~~[promulgate]~~ procedures for obtaining a permit to label, responsibilities of permit holders, method to be used in determining inspection fees, and the procedure for permit holders to make payment of fees for distributing agricultural seed. This administrative regulation establishes the procedures to obtain a permit to label agricultural seed, the responsibilities of permit holders, the method that shall be used to determine inspection fees, and the procedures for payment of fees for the distribution of agricultural seed~~[fulfills that statutory mandate]~~.

Section 1. Obtaining Permits. (1) Application for permits to label agricultural seed shall be made on Form RS-68-01~~[(6/13)]~~, Application for Permit for User to Provide Own Labels for Agricultural Seed and Mixtures of Agricultural Seed Sold in Kentucky.

(2) Application for permits to label vegetable seed, flower seed, or combination mulch, seed and fertilizer products shall be made on Form RS-68-02~~[(6/13)]~~, Application for Permit for User to Provide Own Labels for Vegetable Seed, Flower Seed, or Combination Mulch, Seed and Fertilizer Products Sold in Kentucky.

Section 2. Reporting Sales. (1) A person who has been granted a permit to label agricultural seed under Section 1 of this administrative regulation shall:

(a)1. Submit quarterly reports on Form RS-63-01 until January 1, 2017; or

2.] Submit semi-annual reports on Form RS-63-02, Seed Semi-annual Report~~(beginning January 1, 2017)~~; and

(b) Pay a labeling and inspection fee determined on the basis of quantity of seed sold and on the fee schedule established in Section 3 of this administrative regulation.[]

~~(2) Quarters shall be from January through March, April through June, July through September, and October through December. An added assessment of twenty-five (25) dollars or ten (10) percent of the unpaid fee, whichever is greater, shall be made for each seed quarterly report received more than forty-five (45) days after the quarter ends.]~~

~~(2)(a) [(3)]~~ Semi-annual shall be from January through June~~[(7)]~~ and July through December.

~~(b)~~ An added assessment of twenty-five (25) dollars or ten (10) percent of the unpaid fee, whichever is greater, shall be made for each seed semi-annual report received more than forty-five (45) days after the reporting period ends.

Section 3. Labeling and Inspection Fee. The labeling and inspection fee for agricultural seed permit holders shall be:

(1) For packages weighing one (1) pound and up to and including twenty-five (25) pounds: eight (8) cents per package;

(2) For packages or units of seed in excess of twenty-five (25) pounds in weight and up to and including 100 pounds: twelve (12) cents per package or unit.

(a) A unit of corn shall be 80,000 seeds.

(b) A unit of soybeans shall be 140,000 seeds; and

(3) For packages in excess of 100 pounds and seed distributed in bulk:

(a) Twenty-four (24) cents per 100 pounds; or

(b) Twelve (12) cents per unit.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Permit for User to Provide Own Labels for Agricultural Seed and Mixtures of Agricultural Seed Sold in Kentucky", RS-68-01, 6/13;

(b) "Application for Permit for User to Provide Own Labels for Vegetable Seed, Flower Seed, or Combination Mulch, Seed, and Fertilizer Products Sold in Kentucky", RS-68-02, 6/13;[]

~~(c) "Seed Quarterly Report", RS-63-01, 8/13;] and~~

~~(c) [(d)] "Seed Semi-Annual Report", RS-63-02, 8/16.~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Stephen McMurry, Fertilizer and Seed Program Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 218-2440, fax (859) 257-9478, smcmurry@uky.edu.

AGRICULTURAL EXPERIMENT STATION
(As Amended at ARRS, September 8, 2020)

12 KAR 1:155. Schedule of charges for samples submitted for testing.

RELATES TO: KRS 250.021 ~~–[to]~~ 250.111

STATUTORY AUTHORITY: KRS 250.081(1)(c)6

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.081(1)(c)6 requires the director of the Agricultural Experiment Station to promulgate administrative regulations establishing charges for tests of samples submitted to the Kentucky Agricultural Experiment Station Seed Laboratory for testing. This administrative regulation establishes a schedule of charges for service tests, analysis, and examination of seed samples in the Kentucky Agricultural Experiment Station Seed Laboratory.

Section 1. Definition. "Free test" means:

(1) A complete test consisting of a purity analysis, a noxious weed seed examination for Kentucky, and a germination test; or

(2) A test with a cost equivalent to a complete test.

Section 2. Except as provided by KRS 250.091, which authorizes one (1) free test per year, the service charges established in this section shall be assessed for samples submitted to the Kentucky Agricultural Experiment Station Seed Laboratory.

(1) Basic charges shall be as established in the table in this subsection~~[charge list:]~~

Kind of Seed	Complete Test	Purity and Noxious Weed Seed Test	Germination Only
Group 1 Corn and soybeans	\$18.00	\$9.00	\$11.00
Group 2 Small grains	\$14.00	\$7.00	\$9.00
Group 3 Tobacco	\$21.00	\$16.00	\$11.00
Group 4 Clovers, alfalfas, and lespedezas	\$18.00	\$9.00	\$11.00
Group 5 Lawn and forage grasses	\$20.00	\$14.00	\$12.00
Group 6 Native grasses, flowers, and forbs	\$40.00	\$30.00	\$30.00

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Group 7 Vegetables	\$18.00	\$13.00	\$12.00
Group 8 Ornamentals (trees, shrubs, and flowers) and herbs	\$30.00	\$18.00	\$20.00

(2) Nonresidents shall be assessed an additional charge of fifteen (15) dollars per sample.

(3) A complete test shall include a purity analysis, a noxious weed seed examination (for Kentucky only), and a germination test.

(4) A purity and noxious weed test shall include a purity analysis and a noxious weed seed examination (for only those seed designated as noxious in Kentucky).

(5) In ryegrass samples, a complete test shall be assessed a charge of twenty-five (25) dollars and shall include a fluorescence test, which distinguishes perennial ryegrass seed ~~from~~**[and]** annual ryegrass seed.

(6) Mixtures, difficult, or dirty samples ~~shall~~**[may]** be charged an additional forty (40) dollars per hour for extra separation time.

(7) Mixtures submitted for germination testing shall be charged a fifteen (15) dollar separation fee. Each component over five (5) percent of the total in mixtures shall be charged individually for germination testing.

(8) Rush service may be provided upon request at an additional charge of twenty-five (25) dollars per sample.

(9) Samples of coated, encrusted, pelleted, film-coated, or treated seed shall be charged an additional fifteen (15) dollars for hand washing and disposal of toxic substances.

(10) The schedule of charges for special tests shall be:

(a) Noxious weed seed examinations:

1. Kentucky only: ten (10) dollars;

2. Other states: fifteen (15) dollars per state; and

3. All states: fifty (50) dollars;

(b) Moisture test: eight (8) dollars;

(c) Seed count per pound: ten (10) dollars;

(d) Varietal identification:

1. Soybean hypocotyl color test: fifteen (15) dollars;

2. Phenol test of wheat: eighteen (18) dollars; and

3. Peroxidase test of soybean: eighteen (18) dollars;

(e) Vigor tests:

1. Accelerated aging: eighteen (18) dollars;

2. Cold test: eighteen (18) dollars; and

3. Conductivity: eighteen (18) dollars;

(f) Tetrazolium test:

1. Groups 1 and 2: eighteen (18) dollars;

2. Groups 4, 5, and 7: thirty (30) dollars; and

3. Groups 3, 6, and 8: forty (40) dollars;

(g) Seed or plant tall fescue endophyte~~;~~**[f.]** one (1) to 100 specimens: ~~\$125~~**[445]**;

(h) Biotechnology trait identification~~;~~**[f.]** herbicide bioassay: thirty (30) dollars; and

(i) Reexamination of a sample to secure information not requested initially, or any analysis or test to obtain information not specifically required by the Kentucky Seed Law, KRS 250.021 ~~through~~**[to]** 250.111 and 12 KAR Chapter 1, shall be assessed forty (40) dollars per hour for analytical time.

(11) Testing performed in compliance with International Seed Testing Association (ISTA) rules shall be charged fifteen (15) dollars in addition to test fees.

(12) Testing performed in compliance with Canadian Methods and Procedures (M & P) for Testing Seed shall be charged eighteen (18) dollars in addition to test fees.

(13) Charges for kinds not listed in this ~~section~~**[subsection]** shall be ~~commensurate~~**[in accord]** with charges made for other kinds of seed of similar size.

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AGRICULTURAL EXPERIMENT STATION (As Amended at ARRS, September 8, 2020)

12 KAR 1:160. Seed not required to be labeled by variety name.

RELATES TO: KRS 250.081(1)(c)9

STATUTORY AUTHORITY: KRS 250.081

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.081(1)(c)9 requires the director to secure the efficient enforcement of the provisions of KRS 250.021 ~~through~~**[to]** 250.111. This administrative regulation establishes ~~To designate~~ the kinds of seed for which labeling of variety name is not required. ~~[For all other kinds, the variety name is an essential part of the information on the label.]~~

Section 1. The following kinds of seed ~~shall not be required~~**[are omitted from the requirement for labeling]** to show the variety name and the statements "Variety Unknown", "Variety Not Stated, or "VNS":

(1) Bermudagrass (*Cynodon dactylon*)~~;~~**[f.]**

(2) Bluegrass, Canada (*Poa compressa*)~~;~~**[f.]**

(3) Bluegrass, Rough (*Poa trivialis*)~~;~~**[f.]**

(4) Bromegrass, Field (*Bromus arvensis*)~~;~~**[f.]**

(5) Buckwheat (*Fagopyrum esculentum*)~~;~~**[f.]**

(6) Canarygrass (*Phalaris canariensis*)~~;~~**[f.]**

(7) Clover, Alsike (*Trifolium hybridum*)~~;~~**[f.]**

(8) Fescue, Chewings (*Festuca rubra*, var *commutata*)~~;~~**[f.]**

(9) Fescue, Meadow (*Festuca elatior*)~~;~~**[f.]**

(10) Lespedeza, Korean (*Lespedeza stipulacea*)~~;~~**[f.]**

(11) Lespedeza, Striate (*Lespedeza striata*)~~;~~**[f.]**

(12) Lovegrass, Sand (*Eragrostis trichodes*)~~;~~**[f.]**

(13) Lovegrass, Weeping (*Eragrostis curvula*)~~;~~**[f.]**

(14) Millet, Browntop (*Panicum ramosum*)~~;~~**[f.]**

(15) Millet, Foxtail (*Setaria italica*)~~;~~**[f.]**

(16) Millet, Japanese (*Echinochloa crusgalli*)~~;~~**[f.]**

(17) Millet, Proso (*Panicum miliaceum*)~~;~~**[f.]**

(18) Rape (*Brassica* spp.)~~;~~**[f.]**

(a) Annual (*B. napus*, var *annua*)~~;~~**[f.]**

(b) Turnip, Annual or Bird (*B. campestris*)~~;~~**[f.]**

(c) Turnip, Biennial (*B. campestris*, var *autumnalis*)~~;~~**[f.]**

(19) Redtop (*Agrostis alba*)~~;~~**[f.]**

(20) Sweetclover, White (*Melilotus alba*)~~;~~**[f.]**

(21) Sweetclover, Yellow (*Melilotus officinalis*)~~;~~**[f.]**

(22) Vetch, Common (*Vicia sativa*)~~;~~**[and]****[f.]**

(23) Vetch, Hairy (*Vicia villosa*).

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AGRICULTURAL EXPERIMENT STATION (As Amended at ARRS, September 8, 2020)

12 KAR 1:170. Germination standards for flower seed.

RELATES TO: KRS 250.081(1)(c)9

STATUTORY AUTHORITY: KRS 250.081

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.081(1)(c)9 requires the director to secure the efficient enforcement of the provisions of KRS 250.021 ~~through~~**[to]** 250.111. This administrative regulation establishes ~~To prescribe~~ standards for flower seed and to list those kinds for which standard testing procedures are ~~established~~**[prescribed]**. ~~[The information required to be shown on the label is dependent upon whether or not standard testing procedures have been prescribed and whether or not a lot being labeled falls above or below the standard.]~~

Section 1. Flower Seed Standards. (1) The kinds of flower

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seed listed in the table established in this subsection shall be below are those for which standard testing procedures have been established/prescribed. Common names are listed first, followed by Latin names. The percentage listed opposite each kind is the germination standard for that kind. For the kinds marked with an asterisk, the percentage is the total of percentage germination and percentage hard seed. For other kinds, it is the percentage germination.

Kind	Germination %
Archillea (The Pearl) - Achillea ptarmica	50
African daisy - Dimorphotheca aurantiaca	55
African violet - Saintpaulia spp.	30
Ageratum - Ageratum mexicanum	60
Agrostemma (rose campion) - Agrostemma coronaria	65
Alyssum - Alyssum compactum, A. maritimum, A. procumbens, and A. saxatile	60
Amaranthus - Amaranthus spp.	65
Anagalis (Primpernel) - Anagalis arvensis, A. coerulia, and A. grandiflora	60
Anemone - Anemone coronaria, and A. pulsatilla	55
Angel's trumpet - Datura arborea	60
Arabis - Arabis alpina	60
Arctotis (African lilac daisy) - Arctotis grandis	45
Armeria - Armeria formosa	55
Asparagus, Fern - Asparagus plumosus	50
Asparagus, Sprenger - Asparagus sprengeri	55
Aster, China - Callistephus chinensis; except Pompon, Powderpuff, and Princess types	55
Aster, China - Callistephus chinensis; Pompon, Powderpuff, and Princess types	50
Aubretia - Aubretia deltoidea	45
Baby Smilax - Asparagus asparagoides	25
Balsam - Impatiens balsamina	70
Begonia - (Begonia fibrous rooted)	60
Begonia - (Begonia tuberous rooted)	50
Bells of Ireland - Molucella laevis	60
Brachycome (Swan River daisy) - Brachycome iberidifolia	60
Browallia - Browallia elata and B. speciosa	65
Bupthalam (Sunwheel) - Bupthalam salicifolium	60
Calceolaria - Calceolaria spp.	60
Calendula - Calendula officinalis	65
California poppy - Eschscholtzia californica	60
Calliopsis - Coreopsis bicolor, C. drummondii, and C. elegans	65
Campulana:	
Canterbury bells - Campanula medium	60
Cup and saucer bellflower - Campanula medium calycanthema	60
Carpathian bellflower - Campanula carpatia	50
Peach bellflower - Campanula persicifolia	50
Candytuft, Annual - Iberis amara, and I. umbellata	65
Candytuft, Perennial - Iberis gibraltarica, and I. sempervirens	55
*Castor bean - Ricinus communis	60
Cathedral bells - Cobaea scandens	65
Celosia - Celosia argentea	65
Centaurea: Basket flower - Centaurea americana, Cornflower - C. cyanus, Dusty miller - C. candidissima, Royal Centaurea - C. imperialis, Sweet sultan - C. moschata, and Velvet Centaurea - C. gymnocarpa	60
Cerastium (Snow-in-summer) - Cerastium biebersteini and C. tomentosum	65
Chinese forget-me-not - Cynoglossum amabile	55
Chrysanthemum, Annual - Chrysanthemum carinatum, C. coronarium, and C. segetum	40

Cineraria - Senecio cruentus	60
Clarkia - Clarkia elegans	65
Cleome - Cleome gigantea	65
Coleus - Coleus blumei	65
Columbine - Aquilegia spp.	50
Coral bells - Heuchera sanguinea	55
Coreopsis, Perennial - Coreopsis lanceolata	40
Corn, Ornamental - Zea mays	75
Cosmos:	
Sensation, Mammoth, and Crested types - Cosmos bipinnatus; and Klondyke type - C. sulphurea	65
Crossandra - Crossandra infundibuliformis	50
Dahlia - Dahlia spp.	55
Daylily - Hemerocallis spp.	45
Delphinium, Perennial: Belladonna and Bellamosum types; Cardinal larkspur - Delphinium cardinale; Chinensis types; and Pacific giant, Gold medal, and other hybrids of D. elatum	55
Dianthus:	
Carnation - Dianthus caryophyllus	60
China pinks - Dianthus chinensis, D. heddwigi, and D. heddensis	70
Grass pinks - Dianthus plumarius	60
Maiden pinks - Dianthus deltoides	60
Sweet William - Dianthus barbatus	70
Sweet Wivelsfield - Dianthus allwoodii	60
Didiscus (Blue lace flower) - Didiscus coerulea	65
Doronicum (Leopard's bane) - Doronicum caucasicum	60
Dracaena - Dracaena indivisa	55
Dragon tree - Dracaena draco	40
English daisy - Bellis perennis	55
Flax:	
Golden flax - Linum flavum, Flowering flax - L. grandiflorum, and Perennial flax - L. perenne	60
Flowering maple - Abutilon spp.	35
Foxglove - Digitalis spp.	60
Gaillardia, Annual - Gaillardia pulchella and G. picta	45
Gaillardia, Perennial - G. grandiflora	45
Gerbera (transvaal daisy) - Gerbera Jamesoni	60
Geum - Geum spp.	55
Gilia - Gilia spp.	65
Glossiosa daisy (rudbeckia) - Echinacea purpurea and Rudbeckia hirta	60
Gloxinia - Sinningia speciosa	40
Godetia - Godetia amoena and G. grandiflora	65
Gourds:	
Yellow flowered - Cucurbita pepo, White flowered - Lagenaria siceraria, and Dishcloth - Luffa cylindrica	70
Gypsophila:	
Annual baby's breath - Gypsophila elegans; and Perennial baby's breath - G. paniculata, G. pacifica, and G. repens	70
Helenium - Helenium autumnale	40
Helichrysum - Helichrysum monstrosum	60
Heliopsis - Heliopsis scabra	55
Heliotrope - Heliotropium spp.	35
Helipterum (Acroclinium) - Helipterum roseum	60
Hesperis (Sweet rocket) - Hesperis matronalis	65
*Hollyhock - Althea rosea	65
Hunnemannia (Mexican tulip poppy) - Hunnemannia fumariaefolia	60
*Hyacinth bean - Dolichos lablab	70
Impatiens - Impatiens holstii and I. sultani	55
*Ipomea:	
Cypress vine - Ipomea quamoclit; Moonflower -	75

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I. Noctiflora; and Morning glories, Cardinal climber, Hearts and Honey vine - Ipomea spp.	
Jerusalem-cross [Jurusulem—cross] (Maltese cross) - Lychnis chalcidonica	70
Job's tears - Coix lacrymajobi	70
Kochia - Kochia childsii	55
Larkspur, Annual - Delphinium ajacis	60
Lantana - Lantana camara, L. hybrida	35
Lilium (Regal lily) - Lilium regale	50
Linaria - Linaria spp.	65
Lobelia, Annual - Lobellia erinus	65
Lunaria, Annual-Lunaria annua	65
*Lupine - Lupinus spp.	65
Marigold - Tagetes spp.	65
Marvel of Peru - Mirabilis jalapa	60
Matricaria (Feverfew) - Matricaria spp.	60
Mignonette - Reseda odorata	55
Myosotis - Myosotis alpestris, M. oblongata, and M. palustris	50
Nasturtium - Tropaeolum spp.	60
Nemesia - Nemesia spp.	65
Nemophila - Nemophila insignis	70
Nemophila, Spotted - Nemophila maculata	60
Nicotiana - Nicotiana affinis, N. sanderae, and N. sylvestris	65
Nierembergia - Nierembergia spp.	55
Nigella - Nigella damascena	55
Pansy - Viola tricolor	60
Penstemon - Penstemon barbatus, P. grandiflorus, P. laevigatus, and P. pubescens	60
Petunia - Petunia spp.	45
Phacelia - Phacelia campanularia, P. minor, and P. tanacetifolia	65
Phlox, Annual - Phlox drummondii (all types and varieties)	55
Physalis - Physalis spp.	60
Platycodon (Balloon flower) - Platycodon grandiflorum	60
Plumbago, Cape - Plumbago capensis	50
Ponytail - Beaucarnea recurvata	40
Poppy:	
Shirley poppy - Papaver rhoeas, Iceland poppy - Papaver nudicaule, Oriental poppy - P. orientale, and Tulip poppy - P. glaucum	60
Portulaca - Portulaca grandiflora	55
Primula (primrose) - Primula spp.	50
Pyrethrum (painted daisy) - Pyrethrum coccineum	60
Salpiglossis - Salpiglossis gloxinaeflora and S. sinuata	60
Salvia:	
Scarlet sage - Salvia splendens, and Mealycup sage (Blue bedder) - Salvia farinacea	50
Saponaria - Saponaria ocymoides and S. vaccaria	60
Scabiosa, Annual - Scabiosa atropurpurea	50
Scabiosa, Perennial - Scabiosa caucasica	40
Schizanthus - Schizanthus spp.	60
*Sensitive plant (mimosa) - Mimosa pudica	65
Shasta daisy - Chrysanthemum maximum and C. leucanthemum	65
Silk oak - Grevillea robusta	25
Snapdragon - Antirrhinum spp.	55
Solanum - Solanum spp.	60
Statice - Statice sinuata and S. suworonii (flower heads)	50
Stocks:	
Common - Mathiola incana and Evening scented - Mathiola bicornis	65
Sunflower - Helianthus spp.	70

Sunrose - Helianthemum spp.	30
*Sweet pea, Annual and Perennial other than dwarf bush - Lathyrus odoratus and L. latifolius	75
*Sweet pea, Dwarf bush - Lathyrus odoratus	65
Tahoka daisy - Machaeranthera tanacetifolia	60
Thunbergia - Thunbergia alata	60
Torch flower - Tithonia speciosa	70
Torenia (Wishbone flower) - Torenia fournieri	70
Tritoma - Kniphofia spp.	65
Verbena, Annual - Verbena hybrida	35
Vinca - Vinca rosea	60
Viola - Viola cornuta	55
Virginian stocks - Malcolmia maritima	65
Wallflower - Cheiranthus allioni	65
Yucca (Adam's needle) - Yucca filamentosa	50
Zinna (except Linearis and Creeping) Zinnia angustifolia, Z. elegans, Z. grandiflora, Z. gracillima, Z. haegeana, Z. multiflora, and Z. pumila	65
Zinnia, Linearis and Creeping - Zinnia linearis and Sanvitalia procumbens	50
All other kinds	50

(2) A mixture of kinds of flower seed ***shall/will*** be considered to be below the standard if the germination of any kind or combination of kinds constituting twenty-five (25) percent or more of the mixture by number is below standard for the kind or kinds involved.

CONTACT PERSON: Stephen McMurtry, Fertilizer and Seed Program Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 218-2440, fax (859) 257-9478, smcmurtry@uky.edu.

AGRICULTURAL EXPERIMENT STATION (As Amended at ARRS, September 8, 2020)

12 KAR 1:175. Seed certification in Kentucky.

RELATES TO: KRS 250.081(1)(c)1

STATUTORY AUTHORITY: KRS 250.081

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.081(1)(c)1 requires the director to establish seed certification standards. This administrative regulation establishes ~~[To prescribe]~~ the procedure for certifying seed for varietal purity in Kentucky. ***[Certification assures genetic identity and purity of superior plant varieties.]***

Section 1. Certification Procedure. (1) The procedures and standards established in the Kentucky Certified Seed Handbook shall be applied to all seed certified in Kentucky.

Section 2. [(2)] Incorporation by reference.

[(1)(a)] "Kentucky Certified Handbook 2020[Kentucky Seed Certification—Standards]," Kentucky Seed Improvement Association, 3250 Iron Works Pike, Unit 13, [P. O. Box 12008,] Lexington, Kentucky, 40511, 2020, [June 18, 1994,] is incorporated by reference.

[(2)(b)] This material [document] may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Regulatory Services, 103[404] Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Stephen McMurtry, Fertilizer and Seed Program Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 218-2440, fax (859) 257-9478, smcmurtry@uky.edu.

BOARDS AND COMMISSIONS
Board of Podiatry
(As Amended at ARRS, September 8, 2020)

201 KAR 25:011. Approved schools; licensure application; fees.

RELATES TO: KRS 218A.205, 311.420, 311.480

STATUTORY AUTHORITY: KRS 218A.202(2), 311.420(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.420 requires all persons engaging in the practice of podiatry in Kentucky to be licensed by the Board of Podiatry. KRS 311.420 provides that each applicant shall submit to an examination conducted by the board. KRS 218A.202(2) requires licensees that prescribe controlled substances to be registered with the Kentucky All-Schedule Prescription Electronic Reporting System (KASPER). KRS 218A.205 requires the board to place restrictions on licensees and applicants that have specific convictions or restrictions related to prescribing or dispensing controlled substances. This administrative regulation establishes the procedures to be followed in obtaining an application, the fees to be charged, and the procedures relating to the examination and issuance of a license to practice podiatry in this state.

Section 1. (1) The board approves the following schools or colleges of podiatry as having standards and requirements adequate to satisfy the educational requirement for taking the podiatry examination for licensure:

(a) Barry University School of Podiatric Medicine, Miami Shores, Florida;

(b) California School of Podiatric Medicine at Samuel Merritt University, Oakland, California;

(c) Des Moines University College of Podiatric Medicine and Surgery, Des Moines, Iowa;

(d) Kent State University College of Podiatric Medicine, Independence, Ohio;

(e) Midwestern University Arizona School of Podiatric Medicine, Glendale, Arizona;

(f) New York College of Podiatric Medicine, New York, New York;

(g) Dr. William M. Scholl College of Podiatric Medicine at the Rosalind Franklin University of Medicine and Science, Chicago, Illinois;

(h) Temple University School of Podiatric Medicine, Philadelphia, Pennsylvania; and

(i) Western University of Health Sciences College of Podiatric Medicine, Pomona, California.

(2) All other schools or colleges of podiatry shall have academic standards and requirements equivalent to the schools or colleges listed above as evaluated by the board in order to be approved by the board. Evaluation of the academic standards and requirements shall be made by the board after an applicant has filed an Application for Podiatry License with the board.

Section 2. (1) Every applicant, otherwise eligible to take the examination pursuant to the provisions of KRS 311.420, shall file a completed and notarized Application for Podiatry License with the board at its principal office at least forty (40) days prior to the date of the examination in order to be eligible to take the examination.

(2) The president of the board may permit a partially completed application to be filed if good cause is shown by the applicant. For the purposes of this subsection, good cause includes situations such as an applicant applying late, having to retake the board examination, or waiting for pending board examination results.

(3) The fee for the examination or reexamination shall be ~~[\$250]~~\$300 and shall be paid when the Application for Podiatry License is filed with the board. The fee shall be made payable to the Kentucky State Treasurer in United States currency by certified check, cashier's check, or postal money order and shall not be refundable.

(4) Any applicant who fails to attain a passing score as required by the board may apply to the board for reexamination.

(5) The applicant along with the application shall: (a) Have

three (3) letters of recommendation sent to the board verifying good moral character and not addicted to alcohol or drugs;

(b) Have verification of licensure sent directly from the state or states from which the applicant has or has ever held a license;

(c) Attach a dated photo taken within the past six (6) months;

(d) Have schools, colleges, or institutions send official transcripts directly to the board; and

(e) Have the Federal Bureau of Investigation background check results sent directly to the board.

Section 3. (1) Prior to approval for licensure, an applicant shall:

(a) Submit to a nation-wide criminal background investigation by means of fingerprint check by the Department of Kentucky State Police and the Federal Bureau of Investigation;

(b) Submit to a query to the National Practitioner Data Bank of the United States Department of Health and Human Services; and

(c) Report to the board, with the Application for Podiatry License, any conviction or disciplinary action on a license held by the applicant relating to prescribing or dispensing controlled substances.

Section 4. (1) Pursuant to KRS 218A.205(3)~~(f)~~(e), an applicant for licensure by the board:

(a) Convicted after July 20, 2012 of any felony offense relating to controlled substances shall be permanently banned from prescribing or dispensing a controlled substance by the board;

(b) Convicted after July 20, 2012 of any misdemeanor offense relating to prescribing or dispensing a controlled substance shall have his or her authority to prescribe controlled substances suspended for at least three (3) months, and shall be further restricted as determined by the board; or

(c) Who has had any disciplinary limitation placed on an application or license by a licensing board of another state that resulted from improper, inappropriate, or illegal prescribing or dispensing of controlled substances shall be subject to a restriction on the license that is at least as restrictive in time and scope as that placed on the license by the licensing board of the other state.

(2) In addition to the actions listed in subsection (1) of this section, the board may take any other action provided for in KRS 311.480 against a licensee or applicant that comes under the provisions of that subsection.

Section 5. Requirements for a person issued a license by the board. (1) A person who has been approved for a license from the board shall register with the Kentucky All-Schedule Prescription Electronic Reporting System (KASPER) administered by the Cabinet for Health and Family Services after issuance of the license and immediately submit proof of the registration to the board.

(2) A person who has received a license from the board shall not prescribe any controlled substance before he or she is registered with KASPER.

(3)(a) The board shall temporarily suspend a license pursuant to 201 KAR 25:051, Section ~~5(6)~~5(6), if a licensee:

1. Fails to register with KASPER after the approval for licensure by the board; or

2. Prescribes a controlled substance prior to registration with KASPER.

(b) In addition to the temporary suspension, the board may take additional disciplinary action against a license pursuant to KRS 311.480.

Section 6. Incorporation by Reference. (1) "Application for Podiatry License", September 2020~~February, 2014~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Podiatry, Department of Professional Licensing, 500 Mero Street~~[911 Leewood Drive]~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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VOLUME 47, NUMBER 4– OCTOBER 1, 2020

BOARDS AND COMMISSIONS Board of Podiatry (As Amended at ARRS, September 8, 2020)

201 KAR 25:021. Annual renewal of licenses, fees.

RELATES TO: KRS 218A.205, 311.450, 311.480

STATUTORY AUTHORITY: KRS 218A.202(2), 311.410(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.450

requires the board to send notices to all podiatrists licensed by the board to their last known address on or before June 1 of each year. KRS 218A.202(2) requires licensees that prescribe controlled substances to be registered with the Kentucky All-Schedule Prescription Electronic Reporting System (KASPER). KRS 218A.205 requires the board to place restrictions on licensees and applicants that have specific convictions or restrictions related to prescribing or dispensing controlled substances. This administrative regulation requires all licensed podiatrists to complete the annual renewal application and return it, along with the annual renewal fee, to the board. This administrative regulation further establishes an annual license renewal fee and a delinquent penalty fee.

Section 1. (1) The annual renewal fee in the amount of ~~[\$175]~~ \$200 shall be attached to the completed ~~[annual]~~ Application for Annual Kentucky Board of Podiatry Application for Annual License Renewal [Application] when the application is returned to the board by the podiatrist seeking licensure renewal.

(2) The annual renewal fee shall be made payable to the Kentucky State Treasurer in United States currency by certified check, cashier's check, postal money order, personal check, or credit card.

(3) All information requested on the annual renewal application form shall be furnished to the board when the completed annual renewal application form is returned to the board, together with a statement of compliance with the continuing education requirements in 201 KAR 25:031.

(4) Every renewal application shall include proof of current registration with the Kentucky All-Schedule Prescription Electronic Reporting System (KASPER) administered by the Cabinet for Health and Family Services.

Section 2. (1) Failure to complete the requirements for annual renewal of the license by July 1 of each year shall result in a delinquent penalty fee of \$200 in addition to the renewal fee.

(2) A licensee shall immediately report to the board any conviction or disciplinary action on a license held by the applicant relating to prescribing or dispensing controlled substances.

Section 3. (1) Pursuant to KRS 218A.205(3) ~~(f)(e)~~, a licensee:

(a) Convicted after July 20, 2012 of any felony offense relating to controlled substances shall be permanently banned from prescribing or dispensing a controlled substance by the board;

(b) Convicted after July 20, 2012 of any misdemeanor offense relating to prescribing or dispensing a controlled substance shall have his or her authority to prescribe controlled substances suspended for at least three (3) months, and shall be further restricted as determined by the board; or

(c) Who has had any disciplinary limitation placed on an application or license by a licensing board of another state that resulted from improper, inappropriate, or illegal prescribing or dispensing of controlled substances shall be subject to a restriction on the license that is at least as restrictive in time and scope as that placed on the license by the licensing board of the other state.

(2) In addition to the actions listed in subsection (1) of this section, the board may take additional disciplinary action against a licensee pursuant to KRS 311.480.

Section 4. Incorporation by Reference. (1) "Application for Annual [Kentucky Board of Podiatry] License Renewal [Application]", 9/2020(8/15), is incorporated by reference

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of

Podiatry, Department of Professional Licensing, [941—Leawood Drive] 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: David C. Trimble, Board Attorney, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 782-8823, fax +1 (502) 564-3969, email DavidC.Trimble@ky.gov.

BOARDS AND COMMISSIONS Kentucky Board of Podiatry (As Amended at ARRS, September 8, 2020)

201 KAR 25:031. Continuing education.

RELATES TO: KRS 218A.205, 311.450(2)

STATUTORY AUTHORITY: KRS 218A.205(3) ~~(i)(h)~~, 311.410(4), 311.450(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.450(2) requires the board to promulgate an administrative regulation to establish continuing education requirements for a podiatrist. KRS 218A.205(3) ~~(i)(h)~~ requires the board to mandate continuing education related to the use of the Kentucky All-Schedule Prescription Electronic Reporting System (KASPER). This administrative regulation establishes those continuing education requirements.

Section 1. (1) Each podiatrist licensed by the board shall annually complete twenty (20) hours of continuing education relating to the practice of podiatry.

(2) The twenty (20) hours shall include:

(a) At least fifteen (15) Category A continuing education hours; and

(b) Not more than five (5) Category B continuing education hours.

(3) A continuing education hour shall equal fifty (50) clock minutes of participating in continuing education instruction or presentation that meets the requirements of this administrative regulation for continuing education courses.

(4)(a) Beginning on July 1, 2012, and annually thereafter, each podiatrist licensed by the board shall complete at least one and one-half (1.5) hours of continuing education related to the use of the Kentucky All-Schedule Prescription Electronic Reporting System (KASPER), pain management, or addiction disorders.

(b) This requirement shall be included in the twenty (20) hours of continuing education required by this administrative regulation.

Section 2. Categories of Continuing Education Hours. (1) A Category A continuing education hour shall specifically relate to podiatric medicine, surgery, or science and shall:

(a) Be earned by attendance at:

1. A professional seminar, including the Kentucky Podiatric Medical Association's annual conference;

2. An accredited school of podiatry continuing education program; or

3. Another program approved by the board under Section 6 of this administrative regulation; and

(b) Be approved by the American Podiatric Medical Association/Council on Podiatric Medical Education (APMA/CPME), except if the course provider or the licensee that intends to take a course has requested and received board approval of the course under Section 6 of this administrative regulation prior to the course's presentation.

(2) A Category B continuing education hour may relate to non-podiatric medical issues or general practice issues and may be earned by attendance at or participation in:

(a) Home study courses;

(b) Hospital, clinic, or in-house staff lectures; or

(c) Local or regional medical society or medical association meetings.

Section 3. (1) A licensee shall keep a valid record of each continuing education program completed. The record shall:

- (a) Include a receipt or certification received for the program;
 - (b) Be kept for three (3) years;
 - (c) Be presented upon request by the board for audit. If selected by the board for audit, the licensee shall submit the requested proof of continuing education to the board within fifteen (15) days of the request; and
 - (d) For Category A programs, include proof of APMA/CPME certification or a written letter of approval from the board.
- (2) The period during which continuing education courses shall be completed shall be from July 1 of each year until June 30 of the following year.

Section 4. (1) On application, the board shall consider granting 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 of the licensee;
 - (b) Illness of the licensee or 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 person holding the license; and
 - (b) Accompanied by a document verifying the illness or disability signed by the:
 - 1. Licensee's personal physician; or
 - 2. Immediate family member's personal physician.
- (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 licensee shall reapply for the waiver or extension.

Section 5. Inactive Status. (1) A licensee may apply for inactive status by submitting a written letter to the board.

(2) A licensee granted inactive status shall be relieved of the obligation to meet the requirements for continuing education established in this administrative regulation.

(3) A person on inactive status may use the term "podiatrist" but the licensee shall not engage in the practice of podiatry. Any person who practices podiatry while on inactive status shall be deemed to be practicing podiatry without a license in violation of KRS 311.400.

(4) A licensee seeking relicensure from inactive to active status shall fulfill the requirements established in this subsection.

(a) If the licensee has been inactive for no more than five (5) consecutive years, the licensee shall:

- 1. Provide written notice to the board requesting reactivation to active status by filing a Kentucky Board of Podiatry License Renewal Application, as incorporated by reference in 201 KAR 25:021, and requesting in writing that the license be made active;
- 2. Have completed twenty (20) hours of Category A continuing education requirements within a period of six (6) months preceding the request for active status; and

3. Pay:

a. The renewal fee of ~~\$200~~~~[\$175]~~ established in 201 KAR 25:021, Section 1; and

b. A reactivation fee of ~~[\$200]~~ \$250.

(b) If a licensee has been in inactive status for more than five (5) consecutive years, the licensee shall:

- 1. File a completed Application for Podiatry License in accordance with 201 KAR 25:011, Section 2 and pay the required examination fee;
- 2. Be approved by the board to take the examination; and
- 3. Successfully complete a satisfactory examination before the board as provided by 201 KAR 25:012.

Section 6. Board Approval of Continuing Education. (1) A course provider or a licensee shall submit a written request to the board for approval of a continuing education course.

(2) A written request for board approval shall contain:

- (a) A brief summary of the continuing education;

- (b) The educational objectives of the continuing education;
- (c) The date, time, and place of the provision of the continuing education;
- (d) The name and credentials of the individual providing the continuing education; and
- (e) The name of the organization providing the continuing education, if applicable.

(3) In determining whether to approve continuing education, the board shall consider whether the continuing education:

- (a) Is designed to provide current developments, skills, procedures, or treatments related to the practice of podiatry;
- (b) Is developed and provided by an individual with knowledge and experience in the subject area; and
- (c) Contributes directly to the professional competence of a licensee.

CONTACT PERSON: David C. Trimble, Board Attorney, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 782-8823, fax +1 (502) 564-3969, email DavidC.Trimble@ky.gov.

BOARDS AND COMMISSIONS

Board of Licensure of Marriage and Family Therapists (As Amended at ARRS, September 8, 2020)

201 KAR 32:110. Telehealth.

RELATES TO: KRS 335.300, 335.305, 335.310, 335.320, 335.325, 335.332, 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 Web sites/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. Each[Any] licensed marriage and family therapist, or permitted marriage and family therapy associate practicing telehealth/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 permitted 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 permitted 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 permitted 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 permitted marriage and family therapy associate providing telehealth services in this state shall have an ongoing obligation to assess his or her[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 permitted 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 a permitted marriage and family therapy associate providing telehealth services in this state, and/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 permitted 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) of this Section[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 permitted 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 permitted 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 permitted 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 permitted 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 permitted 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 licensed marriage and family therapist's, or permitted marriage and family therapy associate's:

1. Training and credentials;
2. License or permit 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 the client is a minor, prior to providing telehealth services in this state the licensed marriage and family therapist, or permitted 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 permitted marriage and family therapy associate shall establish with the client:

(1) Acceptable ways to contact the licensed marriage and family therapist, or permitted marriage and family therapy associate 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 permitted 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.

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BOARDS AND COMMISSIONS
Board of Medical Imaging and Radiation Therapy
(As Amended at ARRS, September 8, 2020)

201 KAR 46:035. Practice standards, scopes of practice, and ethical standards.

RELATES TO: 311B.080

STATUTORY AUTHORITY: KRS 311B.050(2), 311B.080

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311B.050(2) requires the Kentucky Board of Medical Imaging and Radiation Therapy to promulgate administrative regulations to administer and enforce KRS Chapter 311B. KRS 311B.080 requires the board to recognize and enforce national practice standards, scopes of practice, and ethical standards. This administrative regulation establishes uniform standards for the licensure of individuals who perform medical imaging and radiation therapy for diagnostic and therapeutic purposes while under the supervision of a licensed practitioner of the healing arts.

Section 1. Applicability. A licensee shall only perform medical imaging or radiation therapy for diagnostic medical imaging or therapeutic purposes while under the direct or indirect supervision as specified by a licensee's practice standards, by a licensee's scope of practice, or in the ACR-AAPM Technical Standard for the Management of the Use of Radiation in Fluoroscopic Procedures as listed in Section 3 of this administrative regulation.

Section 2. If a licensee's practice standards, a licensee's scope of practice, or the ACR-AAPM Technical Standard for the Management of the Use of Radiation in Fluoroscopic Procedures fails to specify who may provide direct or indirect supervision, a licensee shall only perform medical imaging or radiation therapy for diagnostic medical imaging or therapeutic purposes while under the direct or indirect supervision of a licensed practitioner of the healing arts.

Section 3. Practice Standards. A licensee shall perform according to practice standards of the discipline for which the licensee holds a credential, as established by the American Society of Radiologic Technologists (ASRT), the American College of Radiology (ACR), the American Association of Physicists in Medicine (AAPM), and the Society of Nuclear Medicine and Molecular Imaging (SNMMI) and incorporated by reference. These standards include the:

- (1) **The ASRT[Radiography] Practice Standards for Medical Imaging and Radiation Therapy – Radiography;**
- (2) Nuclear Medicine Technologist Scope of Practice and Performance Standards;
- (3) Positron Emission Tomography (PET) Technologist Scope of Practice and Performance Standards;
- (4) Scope of Practice for the Nuclear Medicine Advanced Associate;
- (5) **The ASRT[Radiation Therapy] Practice Standards for Medical Imaging and Radiation Therapy – Radiation Therapy;**
- (6) **The ASRT[Bone Densitometry] Practice Standards for Medical Imaging and Radiation Therapy – Bone Densitometry;**
- (7) **The ASRT Practice Standards for Medical Imaging and Radiation Therapy – Cardiac Interventional and Vascular Interventional Technology [Practice Standards];**
- (8) **The ASRT[Computed Tomography] Practice Standards for Medical Imaging and Radiation Therapy – Computed Tomography;**
- (9) **The ASRT Practice Standards for Medical Imaging and Radiation Therapy – Limited X-ray Machine Operator [Practice Standards];**
- (10) **The ASRT[Mammography] Practice Standards for Medical Imaging and Radiation Therapy – Mammography;**
- (11) **The ASRT[Radiologist Assistant] Practice Standards for Medical Imaging and Radiation Therapy – Radiologist Assistant;**
- (12) ACR ASRT Joint-Policy Statement-Radiologist Assistant: Roles and Responsibilities;

(13) ACR-AAPM Technical Standard for Management of the Use of Radiation in Fluoroscopic Procedures;

(14) The American Registry of Radiologic Technologists' Code of Ethics; and

(15) The Nuclear Medicine Technology Certification Board's Code of Ethics; and

(16) The Practice Standards for Medical Imaging and Radiation Therapy, Glossary].

Section 4. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) **"The ASRT[Radiography] Practice Standards for Medical Imaging and Radiation Therapy – Radiography"**, revised June 23[25], 2019[2047];

(b) "Nuclear Medicine Technologist Scope of Practice and Performance Standards", June 2017[2046];

(c) "Positron Emission Tomography (PET) Technologist Scope of Practice and Performance Standards", revised January 26, 2013;

(d) "Scope of Practice for the Nuclear Medicine Advanced Associate", created 2009;

(e) **"The ASRT[Radiation Therapy] Practice Standards for Medical Imaging and Radiation Therapy – Radiation Therapy"**, revised June 23[25], 2019[2047];

(f) **"The ASRT[Bone Densitometry] Practice Standards for Medical Imaging and Radiation Therapy – Bone Densitometry"**, revised June 23[25], 2019[2047];

(g) **"The ASRT Practice Standards for Medical Imaging and Radiation Therapy – Cardiac Interventional and Vascular Interventional Technology [Practice Standards]"**, revised June 23[25], 2019[2047];

(h) **"The ASRT[Computed Tomography] Practice Standards for Medical Imaging and Radiation Therapy – Computed Tomography"**, revised June 23[25], 2019[2047];

(i) **"The ASRT Practice Standards for Medical Imaging and Radiation Therapy – Limited X-ray Machine Operator [Practice Standards]"**, revised June 23[25], 2019[2047];

(j) **"The ASRT[Mammography] Practice Standards for Medical Imaging and Radiation Therapy – Mammography"**, revised June 23[25], 2019[2047];

(k) **"The ASRT[Radiologist Assistant] Practice Standards for Medical Imaging and Radiation Therapy – Radiologist Assistant"**, revised June 23[25], 2019[2047];

(l) "ACR ASRT Joint Policy Statement-Radiologist Assistant: Roles and Responsibilities", May 2003;

(m) "ACR-AAPM Technical Standard for Management of the Use of Radiation in Fluoroscopic Procedures", revised 2018[2043] (Resolution 44);

(n) The American Registry of Radiologic Technologists' Code of Ethics, (September 1, 2019[November 45, 2047]); and

(o) The Nuclear Medicine Technology Certification Board's Code of Ethics, (November 15, 2017), and

(p) The Practice Standards for Medical Imaging and Radiation Therapy, Glossary, (June 25, 2017); and]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at:

(a) American Society of Radiologic Technologists, 15000 Central Ave. SE Albuquerque, NM 87123-3909, <https://www.asrt.org/main/standards-regulations/practice-standards/practice-standards>;

(b) Society for Nuclear Medicine and Molecular Imaging, 1850 Samuel Morse Drive Reston, Virginia 20190, <http://www.snmmi.org>;

(c) The American Registry of Radiologic Technologists' Code of Ethics, 125 Northland Drive, Saint Paul, Minnesota 55120, <https://www.arrt.org/docs/default-source/Governing-Documents/code-of-ethics.pdf?sfvrsn=10>;

(d) The Nuclear Medicine Technology Certification Board, 3558 Habersham at Northlake, Building I, Tucker, Georgia 30084, <https://www.nmtcb.org/policies/ethics.php>; or

(e) The Board of Medical Imaging and Radiation Therapy, 125 Holmes Street, Suite 320, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

CONTACT PERSON: Elizabeth Morgan, Executive Director,
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(502) 782-5687, fax +1 (502) 782-6495, email
elizabeth.morgan@ky.gov.

BOARDS AND COMMISSIONS
Board of Medical Imaging and Radiation Therapy
(As Amended at ARRS, September 8, 2020)

201 KAR 46:040. Medical imaging technologist, advanced imaging professional, radiographer, nuclear medicine technologist, and radiation therapist licenses.

RELATES TO: KRS 311B.020, 311B.050, 311B.100(2), 311B.110, 311B.120, 311B.180, 311B.190

STATUTORY AUTHORITY: KRS 311B.050, 311B.080, 311B.100(2), 311B.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311B.050 requires the Board of Medical Imaging and Radiation Therapy to promulgate administrative regulations to establish the procedures for the issuance and renewal of a license. KRS 311B.100(2) and KRS 311B.110(6) require the board to promulgate administrative regulations to establish the qualifications for an advanced imaging professional, a medical imaging technologist, a radiographer, a radiation therapist, and a nuclear medicine technologist. This administrative regulation establishes requirements for licensure, renewal, and reinstatement.

Section 1. Eligibility for an Advanced Imaging Professional, a Medical Imaging Technologist, a Radiographer, a Radiation Therapist, and a Nuclear Medicine Technologist License. A person shall not be eligible for a license pursuant to this administrative regulation for diagnostic imaging or therapeutic purposes unless the person has:

- (1) Satisfactorily passed the national examination administered by the American Registry of Radiologic Technologists or the Nuclear Medicine Technology Certification Board examination; [and]
- (2) Satisfactorily completed an accredited educational program; and
- (3) Maintained current active status of certification and registration with ARRT or NMTCB.

Section 2. Application for Initial License.

- (1) An applicant shall submit:
 - (a) A completed and signed application KBMIRT Form 1;
 - (b) A nonrefundable initial application and license fee as established by 201 KAR 46:020, Section 1, unless the fee is waived in accordance with KRS 311B.140;
 - (c) The results of a criminal background check completed within the past six (6) months in state of residence and employment and any other state of residence and employment within the past five (5) years;
 - (d) A copy of a government-issued photo ID;
 - (e) Documentation of active registration or certification with the ARRT or NMTCB; and
 - (f) Verification of graduation from an accredited educational program.

Section 3. Applicant from an Unaccredited Educational Program.

(1) If an applicant qualifies for licensure under KRS 311B.100(3), the applicant shall submit and satisfy the requirements of Section 2(1)(a) through (e) of this administrative regulation and shall submit proof:

- (a) [(4)] Of an active valid license or certificate from another jurisdiction's regulatory board to practice as an advanced imaging professional, medical imaging technologist, radiographer, radiation therapist, or nuclear medicine technologist and is in good standing;
- (b) [(2)] Of certification or licensure by a national organization recognized by the board;
- (c) [(3)] That the applicant has not been disciplined as an

advanced imaging professional, medical imaging technologist, radiographer, radiation therapist, or nuclear medicine technologist by any jurisdiction or national organization that has issued a license or certificate to the applicant;

(d) [(4)] Of a minimum of five (5) years of work experience as a certified or licensed advanced imaging professional, medical imaging technologist, radiographer, radiation therapist, or nuclear medicine technologist; and

(e) [(5)] That the applicant maintained continuing education requirements during the applicant's period of licensure or certification, which includes copies of any continuing education certificates received for attending from the sponsor.

(2) If an applicant qualifies for licensure under KRS 12.245, 12.354, or 12.357, the applicant shall submit and satisfy the requirements of Section 2(1)(a) through (e) of this administrative regulation, subsection (1)(a) through (c) of this Section, and shall submit form DD-214 or other proof of active or prior military service for the applicant or spouse of the applicant.

Section 4. The issued license shall identify the licensee as an advanced imaging professional, a medical imaging technologist, a radiographer, a radiation therapist, or a nuclear medicine technologist. The medical imaging technologist license shall also identify any ARRT or NMTCB disciplines awarded to the licensee.

Section 5. The license shall expire annually on the last day of the licensee's birth month. If a license is first issued to an individual less than six (6) months before the individual's birth month, the license issued to the individual shall not expire on that date, but instead it shall expire at the last day of the individual's birth month in the following calendar year.

Section 6. Renewal of License. To renew a license, the licensee shall submit:

- (1) KBMIRT Form 2;
- (2) Verification of current active status with the ARRT or NMTCB; and
- (3) The renewal license fee as established by 201 KAR 46:020, Section 2, unless the fee is waived in accordance with KRS 311B.140.

Section 7. Reinstatement of Lapsed License. (1) A licensee who has allowed the license to lapse up to twelve (12) months shall be eligible to be reinstated upon:

- (a) Submission of KBMIRT Form 2;
 - (b) Verification of current active status with the ARRT or NMTCB;
 - (c) Submission of documentation of twenty-four (24) hours of approved continuing education biennially; and
 - (d) [(e)] The payment of reinstatement and renewal fees as established by 201 KAR 46:020, Sections 2 and 7, unless the fees are waived in accordance with KRS 311B.140.
- (2) A licensee whose license has lapsed for more than twelve (12) months shall submit:
- (a) Verification of current active status with the ARRT or NMTCB;
 - (b) KBMIRT Form 1;
 - (c) Continuing education KBMIRT Form 8, as incorporated by reference in 201 KAR 46:060, that documents twenty-four (24) hours of approved continuing education;
 - (d) The payment of nonrefundable initial application and license fee and reinstatement fee as established by 201 KAR 46:020, Sections 1 and 7, unless the fees are waived in accordance with KRS 311B.140;
 - (e) The results of a criminal background check completed within the past six (6) months in state of residence and employment and any other state of residence and employment within the past five (5) years; and
 - (f) A copy of a government-issued photo ID.

Section 8. Reinstatement of Revoked License. An applicant seeking reinstatement after a license revocation shall follow the

same process as a new applicant as required under KRS 311B.100, 311B.110, and this administrative regulation.

Section 9. **Lapsed Credential. A licensee shall not allow a credential to lapse while the license is active. If a licensee's credential is suspended, revoked, or otherwise discontinued by a national organization, the licensee shall notify the board immediately. A licensee seeking reinstatement following a lapse in credential shall submit:**

(1) Verification of current active status with the ARRT or NMTCB; and

(2) Payment of reinstatement fee as established by 201 KAR 46:020, Section 7.

Section 10. Temporary License. The board may, upon completion of Form KBMIRT 3, as incorporated by reference in 201 KAR 46:045, and payment of the fee established in 201 KAR 46:020, Section 3, issue a temporary license to an applicant who has successfully completed an approved course of study in radiography, nuclear medicine technology, radiation therapy, or an advanced imaging profession and meets the other requirements of 201 KAR 46:045 other than having taken the required examination. A temporary license shall be effective for up to one (1) year only and shall not be renewable. Upon certification, a temporary license may be converted to a permanent license as described in 201 KAR 46:045, Section 2. A temporary license shall expire upon issuance of a permanent license.

Section **11.[10.]** Continuing Education Audit Process. (1) The board shall select a sample of licensees to audit for continuing education compliance.

(2) The board shall send each licensee selected for audit a notification of audit.

(3) Each licensee shall maintain his or her personal files such as certificates or records of credit from approved continuing education programs from the current biennium and immediate prior biennium.

(4) A licensee selected for audit shall provide the board with a copy of his or her certificate or records of completion.

(5) Failure to comply with an audit may result in nonrenewal, suspension, or revocation of license.

Section **12.[11.]** Contrast Procedures. Only individuals holding a license pursuant to this administrative regulation shall perform diagnostic imaging or radiation therapy procedures regulated by KRS Chapter 311B at facilities where contrast studies are performed.

Section **13.[12.]** CT Training for Nuclear Medicine Technologists and Radiation Therapists. Individuals who are licensed in the primary discipline of nuclear medicine or radiation therapy, are certified by the ARRT or NMTCB, and are seeking post-primary certification in computed tomography (CT) may work under the direct supervision of a licensed and certified CT technologist to gain clinical competency. An individual who wishes to complete clinical training in CT shall submit a Provisional License Application, as incorporated by reference in 201 KAR 46:050, which shall expire twenty-four (24) months from the date of issuance.

Section **14.[13.]** PET Training for Radiographers and Radiation Therapists. Individuals who are licensed in the primary discipline of radiography or radiation therapy, are certified by the ARRT, and are seeking post-primary certification in positron emission tomography (PET) may work under the direct supervision of a licensed and certified PET technologist with the permission of an authorized user to gain clinical competency. An individual who wishes to complete clinical training in PET shall submit a Provisional License Application, as incorporated by reference in 201 KAR 46:050, which shall expire twenty-four (24) months from the date of issuance.

Section **15.[14.]** Applications for licensure shall be filed with the Board of Medical Imaging and Radiation Therapy, 125 Holmes

Street, Suite 320, Frankfort, Kentucky 40601.

Section **16.[15.]** Incorporation by Reference. (1) The following material is incorporated by reference:

(a) KBMIRT Form 1, "License Application-Medical Imaging or Radiation Therapy", **August[March] 2020[2019]**; and

(b) KBMIRT Form 2, "License Renewal Application-Medical Imaging or Radiation Therapy", **August[March] 2020[2019]**.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Medical Imaging and Radiation Therapy, 125 Holmes Street, Suite 320, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

CONTACT PERSON: Elizabeth Morgan, Executive Director, 125 Holmes St, Suite 320, Frankfort, Kentucky 40601, phone +1 (502) 782-5687, fax +1 (502) 782-6495, email elizabeth.morgan@ky.gov.

BOARDS AND COMMISSIONS

Board of Medical Imaging and Radiation Therapy (As Amended at ARRS, September 8, 2020)

201 KAR 46:081. Limited X-Ray machine operator.

RELATES TO: KRS 311B.020, 311B.150, 311B.100(2), 311B.110, 311B.120, 311B.180, 311B.190

STATUTORY AUTHORITY: KRS 311B.050, 311B.100(2), 311B.110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311B.050 requires the Board of Medical Imaging and Radiation Therapy to promulgate administrative regulations to establish the procedures for the issuance and renewal of a license. KRS 311B.100(2) and KRS 311B.110(6) require the board to promulgate administrative regulations to establish the qualifications for a limited x-ray machine operator. This administrative regulation establishes the requirements for the licensure of a limited x-ray machine operator.

Section 1. Applicability. **[(1)]** This administrative regulation shall apply to individuals who perform limited diagnostic radiography while under the direct supervision or indirect supervision of a licensed practitioner of the healing arts. **[**

(2) Limited diagnostic radiography shall include routine chest and thorax, cranium, extremity, podiatric, vertebral column radiography, and bone densitometry procedures.]

Section 2. Limited Licensee Employment Prohibition. An individual who holds a limited license shall not be employed as an operator of a source of radiation at a facility where contrast studies, fluoroscopy, mammography, computed tomography, magnetic resonance imaging, bedside radiography, nuclear medicine, positron emission tomography, or radiation therapy procedures are performed.

Section 3. Pathway to the Limited X-ray Machine Operator License.

(1) An applicant shall complete an approved postsecondary educational program that meets the American Society of Radiologic Technologists (ASRT) Limited X-Ray Machine Operator Curriculum requirements. An individual shall complete a formal education program for limited x-ray machine operators approved by the board.

(2) If an applicant qualifies for licensure under KRS 12.245, 12.354, or 12.357, the applicant shall submit and satisfy the requirements of Section 5(1) through (6) of this administrative regulation, and shall submit form DD-214 or other proof of active or prior military service for the applicant or spouse of the applicant.

Section 4. Application for Temporary Limited X-ray Machine Operator License.

(1) An applicant who has completed a formal educational program shall submit:

(a) A completed and signed application Form KBMIRT Form 5;
(b) A nonrefundable, non-transferrable temporary limited x-ray machine operator application and license fee as mandated in 201 KAR 46:020, Section 5, unless the fee is waived in accordance with KRS 311B.140;

(c) The satisfactory results of a criminal background check completed within the past six (6) months in state of residence and employment and any other state of residence and employment within the past five (5) years; and

(d) A copy of a government-issued photo ID.

(2) The temporary limited x-ray machine operator license shall be effective for up to one (1) year from date of program completion and shall not be renewable.

(3) Upon completion of the limited x-ray machine operator training program, individuals shall:

(a) Apply for the limited scope radiography exam; and

(b) Submit the nonrefundable, non-transferrable limited x-ray machine operator examination fee as mandated in 201 KAR 46:020, Section 9.

(4) ~~An individual shall~~~~if a temporary licensee has not~~ successfully ~~pass~~~~passed~~ the American Registry of Radiologic Technologists (ARRT) administered limited scope radiography exam within one (1) calendar year of program completion and prior to the expiration date of the temporary license, except in the case of instances such as, disability, major illness, accident, or if an active duty member of the Armed Forces of the United States~~[prior to the expiration date of the temporary license, the licensee shall cease to perform radiographic procedures. The licensee remains eligible to sit for the exam, however, the individual shall not perform radiographic procedures. Upon successful completion of the exam, the individual shall submit:~~

(a) A limited x-ray machine operator license application using KBMIRT Form 4; and

(b) An initial application and license fee as mandated in 201 KAR 46:020, Section 4].

(5) If a temporary licensee has successfully passed the ARRT administered limited scope radiography exam prior to the expiration date of the temporary license, the licensee shall be issued a limited x-ray machine operator license which shall expire on the last day of the licensee's birth month. If the limited x-ray machine operator license is first issued to an individual less than six (6) months before the individual's birth month, the license issued to the individual shall not expire on that date, but instead it shall expire at the last day of the individual's birth month in the following calendar year.

Section 5. Application for Initial Limited X-ray Machine Operator License. An Applicant shall submit:

(1) A completed and signed application, KBMIRT Form 4;

(2) A nonrefundable initial application and license fee as established in 201 KAR 46:020, Section 1, unless the fee is waived in accordance with KRS 311B.140;

(3) The results of a criminal background check completed within the past six (6) months in the state of residence and employment, and any other state of residence and employment within the past five (5) years;

(4) A copy of government-issued photo ID;

(5) Documentation of passing results of the ARRT administered limited scope radiography exam within one (1) calendar year of program completion, except in the case of instances such as, disability, major illness, accident, or if an active duty member of the Armed Forces of the United States; and

(6) Verification of graduation from a formal education program for limited x-ray machine operators approved by the board.

Section 6. The issued license shall identify the licensee as a limited x-ray machine operator. The license shall also identify the category as general, bone densitometry, or podiatry.

Section ~~7.6.~~ Curricular Standards for Formal Educational Program. This administrative regulation applies to institutions offering a postsecondary program for limited x-ray machine operators. (1) Programs for general limited x-ray machine operators shall:

(a) [(4)] Meet the curricular standards established by the American Society of Radiologic Technologists (ASRT);

(b) [(2)] Include a minimum of 240 classroom hours of didactic instruction and 360 clinical hours of education which shall include supervised practice and demonstration of clinical competency;

(c) [(3)] Supply data requested for a complete evaluation of its administration, organization, faculty, physical facilities, student policies, and curriculum;

(d) [(4)] Provide a structured curriculum with clearly written course descriptions, lesson plans, and objectives;

(e) [(5)] Provide an adequate faculty, which shall be qualified through academic preparation or experience to teach the subjects assigned;

(f) [(6)] Have a program director who is a licensed radiographer with a minimum of three (3) years of clinical or teaching experience or a combination of clinical and teaching experience;

(g) [(7)] Provide a licensee-to-student ratio consistent with professional educational guidelines in the appropriate field of practice;

(h) [(8)] Provide appropriate facilities, sufficient volume, and a variety of diagnostic exams to properly conduct the educational program;

(i) [(9)] Prohibit students from applying radiation to human beings for diagnostic purposes until they have obtained practical experience and have had their performance evaluated as satisfactory by the program faculty;

(j) [(10)] Provide direct or indirect supervision by a licensed practitioner of the healing arts or a licensee as required by the student's level of competency;

(k) [(11)] Prohibit students from administering radiation to a human being unless under direct or indirect supervision as required by the student's level of competency;

(l) [(12)] Maintain records of each student's attendance, grades, clinical competency, and subjects completed;

(m) [(13)] Designate a radiation safety officer; and

(n) [(14)] Permit site inspections by the board's representative.

(2) Programs for limited podiatry x-ray machine operators shall:

(a) Consist of instruction that reflects current modules of the Examination Content Specifications - Limited Scope of Practice in Radiography published by the ARRT. The curriculum shall include items such as:

1. Safety, including radiation physics; radiation protection, including personnel protection; radiation exposure, monitoring, and radiation units; biological effects of radiation; low-dose technique and minimizing patient exposure; applicable federal and state radiation regulations;

2. Image Production, including principle of the radiographic equipment; image acquisition and technical evaluation; equipment operation and quality assurance; developing and using technique charts; and

3. Patient Care, including patient interactions and management; and

(b) Consist of at least six (6) months of clinical experience of foot and ankle limited x-ray procedures while under the direct supervision of a licensed practitioner of the healing arts, a licensed radiologic technologist, or a licensed limited x-ray machine operator.

(3) Programs for limited bone densitometry x-ray machine operators shall:

(a) Consist of instruction that reflects current content categories of the Examination Content Specifications - Bone Densitometry Equipment Operator published by the ARRT. The curriculum shall include items such as:

1. Patient Care, including osteoporosis, bone physiology, bone health and patient education, and patient preparation;

2. Safety, including fundamental principles, biological

effects of radiation, units of measurement, and radiation protection; and

3. Image Production, including fundamentals of x-ray production, quality control, measuring and determining quality in bone mineral density; and

(b) Consist of at least six (6) months of bone densitometry clinical experience under the direct supervision of a licensed practitioner of the healing arts, a licensed radiologic technologist, or a licensed limited x-ray machine operator.

Section 8.[7.] Approved Radiographic Procedures for the Limited X-ray Machine Operator. An individual who holds a limited license is limited to performing the procedures authorized for his or her license as described in subsections (1), (2), and (3) of this section.

(1) An individual holding a general limited x-ray machine operator license shall perform only the following:

(a) Radiography of the thorax, lungs and ribs;

(b) Radiography of the abdomen;

(c) Radiography of the skull and facial structures;

(d)[(e)] Radiography of the upper and lower extremities;

(e) Radiography of[~~], including~~] the pectoral girdle, ~~[and the]~~ hips, and pelvis; and

(f)[(e)] Radiography of the cervical, thoracic, and lumbar spines.

(2) An individual holding a limited podiatry x-ray machine operator license shall perform radiographic procedures on the foot and ankle only.

(3) An individual holding a limited bone densitometry x-ray machine operator license shall perform bone densitometry radiographic procedures only.

(4) A limited x-ray machine operator shall comply with the Limited X-ray Machine Operator Practice Standards as incorporated by reference in 201 KAR 46:035, Section 4.

Section 9.[8.] Continuing Education Requirements. Licensees shall complete and document twelve (12) hours of continuing education biennially as required by 201 KAR 46:060. A minimum of six (6) hours shall be related to radiation safety or medical imaging.

Section 10.[9.] Continuing Education Audit Process.

(1) The board shall select a sample of twenty-five (25) percent of limited x-ray machine operator licensees to audit for continuing education compliance annually.

(2) The board shall send each licensee selected for audit a notification of audit.

(3) Each licensee shall maintain his or her personal files such as certificates or records of credit from approved continuing education programs from the current biennium and immediate prior biennium.

(4) A licensee selected for audit shall complete KBMIRT Form 8, as incorporated by reference in 201 KAR 46:060, and provide the board with a copy of his or her certificates or records of completion.

(5) Failure to comply with an audit may result in nonrenewal, suspension or revocation of license.

Section 11.[10.] Renewal of License. A licensee shall renew annually prior to the expiration of his or her current license, which is the last day of the licensee's birth month, by:

(1) Completing KBMIRT Form 6; and

(2) Submitting the Renewal License Fee in accordance with 201 KAR 46:020, Section 2, unless the fee is waived in accordance with KRS 311B.140.

Section 12.[11.] Reinstatement of Lapsed License. A licensee who has allowed the license to lapse for up to twelve (12) months is eligible to be reinstated upon submission of KBMIRT Form 6, documentation of twelve (12) hours of continuing education, and the payment of reinstatement and renewal fees pursuant to 201 KAR 46:020, Sections 2 and 7, unless the fees are waived in accordance with KRS 311B.140. A licensee whose license has lapsed for more than twelve (12) months shall:

(1) Successfully pass the ARRT limited scope radiography examination;

(2) Submit a completed and signed application KBMIRT Form 4;

(3) Submit a nonrefundable initial application and license fee and reinstatement fee as mandated in 201 KAR 46:020, Sections 1 and 7, unless the fees are waived in accordance with KRS 311B.140;

(4) Submit satisfactory results of a criminal background check completed within the past six (6) months in state of residence and employment and any other state of residence and employment within the past five (5) years; and

(5) Submit a copy of a government-issued photo ID.

Section 13.[12.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) KBMIRT Form 4, "Limited X-ray Machine Operator License Application", August[March] 2020[03/2019];

(b) KBMIRT Form 5, "Temporary Limited X-ray Machine Operator [Temporary] License Application", August[March] 2020[03/2019];

(c) KBMIRT Form 6, "Limited X-ray Machine Operator Renewal Application", August[March] 2020[09/2018];

(d) "Examination Content Specifications - Limited Scope of Practice in Radiography", January 2018; and

(e) "Examination Content Specifications - Bone Densitometry Equipment Operator", January 2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Medical Imaging and Radiation Therapy, 125 Holmes Street, Suite 320[42 Fountain Place], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Elizabeth Morgan, Executive Director, 125 Holmes St, Suite 320, Frankfort, Kentucky 40601, phone +1 (502) 782-5687, fax +1 (502) 782-6495, email elizabeth.morgan@ky.gov.

BOARDS AND COMMISSIONS

Board of Medical Imaging and Radiation Therapy (As Amended at ARRS, September 8, 2020)

201 KAR 46:100. Medical Imaging and Radiation Therapy Scholarship and Continuing Education Fund.

RELATES TO: KRS 311B.050, 311B.130

STATUTORY AUTHORITY: KRS 311B.050, 311B.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311B.050 requires the Board of Medical Imaging and Radiation Therapy to promulgate administrative regulations to administer and enforce KRS Chapter 311B and designate funds for scholarships, program development, or continued education. KRS 311B.130 appropriates that moneys collected shall be used for the payment of operational expenses incurred in fulfilling the board's duties as described in KRS Chapter 311B and administrative regulation. This administrative regulation implements the Kentucky Medical Imaging and Radiation Therapy Scholarship and Continuing Education Fund and establishes the requirements relating to the program.

Section 1. Application:

(1) To be eligible for the scholarship, an applicant shall submit:

(a) A completed and signed application, KBMIRT Form 10;

(b) A current resume or curriculum vitae;

(c) Three (3) letters of recommendation;

(d) Official transcripts from highest level of education achieved; and

(e) A written statement describing applicant's professional goals, not to exceed [two hundred fifty (250)] words.

(2) In addition to items listed in subsection[Section] 1(1)(a) through (e) of this Section, an individual seeking scholarship for a non-degree program, such as structured education or limited x-ray machine operator program, shall also submit a document

describing the financial obligations required of the program.

(3) Applications shall be accepted from January 1 through April 1 annually.

Section 2. Criteria for Awards.

(1) The board shall consider the following criteria in evaluating an application:

- (a) Resident of Kentucky or employed in Kentucky;
- (b) Potential for academic success as determined by the high school, vocational school, college, or university grade point average for whichever institution the applicant most recently attended;
- (c) Previous healthcare experience, either paid or volunteer, for each year in which service is validated; and
- (d) Written statement of professional goals.

(2) The applicant shall be considered ineligible for award if the application is:

- (a) Postmarked after April 1;
- (b) Deemed incomplete; or
- (c) Submitted for a medical imaging modality not recognized by the board.

Section 3. Procedure for Disbursement of Awards.

(1) The board shall be notified by the board's fiscal officer as to the current fund balance prior to making an award. The amount of award shall be determined by the board and shall not exceed \$1500 annually per recipient.

(2) Disbursement of funds shall be made directly to the recipient.

(3) Each educational institution in which a student receiving a medical imaging, radiation therapy, or limited x-ray machine operator scholarship award is enrolled shall certify to the board no later than thirty (30) days from the beginning of each semester on KBMIRT Form 11, that the recipient:

- (a) Has enrolled; and
- (b) Is in good standing in the medical imaging, radiation therapy, or limited x-ray machine operator program.

(4) For a recipient receiving award for continued education, the recipient shall provide:

- (a) A confirmation of enrollment into structured education course; and
- (b) An approval letter from clinical site.

Section 4. Disbursement Contract and Promissory Note. Prior to disbursement of initial funds, the recipient shall sign a notarized KBMIRT Form 12 and KBMIRT Form 13.

Section 5. Repayment and Deferral.

(1) A recipient shall immediately become liable to the board to pay the sum of all scholarships received and the accrued interest on the scholarships if the recipient fails to complete the:

- (a) Medical imaging, radiation therapy, or limited x-ray machine operator program in which the individual is enrolled within the time specified by the program;
- (b) Structured education course or clinical requirements required to qualify for the post-primary certification within the time specified by the ARRT or NMTCB; or
- (c) Required employment as specified in the contract, KBMIRT Form 12.

(2) Written notification of demand for repayment shall be sent by the board to the scholarship recipient's last known address and shall be effective upon mailing.

(a) The board may agree to accept repayment in installments in accordance with a schedule established by the board.

(b) Payments shall first be applied to interest and then to principal on the earliest unpaid contracts.

(3) Repayment may be deferred in the case of instances such as disability, major illness, for accident, or if an active duty member of the Armed Forces of the United States that prevents a recipient from completing a program or being employed as a medical imaging technologist, radiation therapist, or limited x-ray machine operator in Kentucky. Request for deferment requires completion of KBMIRT Form 14 and a physician's statement,

or form DD-214, or other proof of active military status.

(4) A student enrolled in a program may defer repayment if the student fails to achieve successful academic progression. Request for deferment requires completion of KBMIRT Form 14 and a certified official transcript.

Section 6. Verification.

(1) Verification of employment as a medical imaging technologist, radiation therapist, or limited x-ray machine operator in Kentucky pursuant to the contract, KBMIRT Form 12 shall be submitted to the board when the recipient's employment commitment begins and when it is completed. A termination of employment prior to completion shall be reported to the board within thirty (30) days by the employer and the recipient.

(2) A recipient shall notify the board of a change of name or address or enrollment status in school immediately and within thirty (30) days of change.

Section 7. Incorporation~~[Incorporated]~~ by Reference. (1) The following material is~~is forms are~~ incorporated by reference:

(a) KBMIRT Form 10, "Scholarship Application - Medical Imaging and Radiation Therapy Scholarship and Continuing Education Fund [Application]", March 2020;

(b) KBMIRT Form 11, "Scholarship Application - Verification of Student Status", March 2020;

(c) KBMIRT Form 12, "Medical Imaging and Radiation Therapy Scholarship and Continuing Education Fund Contract", March 2020;

(d) KBMIRT Form 13, "Medical Imaging and Radiation Therapy Scholarship and Continuing Education Fund Promissory Note", March 2020; and

(e) KBMIRT Form 14, "Medical Imaging and Radiation Therapy Scholarship and Continuing Education Fund Request for [Deferment/Deferral]", August~~[March]~~ 2020.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Medical Imaging and Radiation Therapy, 125 Holmes Street, Suite 320, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

CONTACT PERSON: Elizabeth Morgan, Executive Director, 125 Holmes St, Suite 320, Frankfort, Kentucky 40601, phone +1 (502) 782-5687, fax +1 (502) 782-6495, email elizabeth.morgan@ky.gov.

DEPARTMENT OF AGRICULTURE Office of Agricultural Marketing (As Amended at ARRS, September 8, 2020)

302 KAR 60:010. Produce safety.

RELATES TO: KRS Chapter 260, 21 C.F.R. Part 112

STATUTORY AUTHORITY: KRS 260.020(3), 260.030(1)(d), 260.766, 260.769(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.769(1) authorizes the [Commissioner of Kentucky] Department of Agriculture to promulgate administrative regulations for the efficient administration and enforcement of Kentucky's Produce Safety Rule for covered produce and covered farms. This administrative regulation establishes a uniform code for the growing, harvesting, packing, and holding of produce for human consumption.

Section 1. Definitions. (1) "Adulterated" means covered produce in any growing, harvesting, packing, or holding area that has been subject to conditions whereby it could~~may~~ have become contaminated with filth or microorganisms of public health significance, or whereby it could~~may~~ have been rendered injurious to health.

(2) "Certificate of compliance" means a certificate issued by the department for covered farms that are inventoried and subject to~~under~~ regulatory inspection by the department.

(3) "Certificate of exemption" means a certificate of exempt

status issued by the department pursuant to Section 5 of this administrative regulation for:

(a) Farms growing only produce that is rarely consumed raw,
(b) Farms growing only produce for personal consumption or produced for consumption on the farm,

(c) Produce that receives commercial processing that adequately reduces the presence of microorganisms of public health significance, or

(d) Farms where, during the previous ~~three (3) year~~**[3-year]** period, a farmers' average of all produce sales was \$25,000 or less (on a rolling basis), adjusted for inflation using 2011 as the baseline year for calculating the adjustment.

(4) "Certificate of qualified exemption" means a certificate of exempt status issued by the department pursuant to Section 4 of this administrative regulation.

(5) "Covered farm" ~~is defined by KRS 260.765(2)~~**[means a farm that is subject to the provisions of 21 C.F.R. Part 112, KRS 260, and this Administrative Regulation]**.

(6) "Covered produce" is defined by KRS 260.765(1).

(7) "Department" ~~is defined by KRS 260.765(3)~~**[means Kentucky Department of Agriculture]**.

(8) "Egregious condition" means a practice, condition, or situation that is reasonably likely to lead to:

(a) Serious adverse health consequences or death from the consumption of or exposure to covered produce; or

(b) An imminent public health hazard if corrective action is not taken immediately.

(9) "Farm" is defined in 21 C.F.R. Part 112 and includes both a Primary Production Farm and a Secondary Activities Farm.

(10) "Farmer" is defined as the owner, operator, or agent in charge of a covered farm that is subject to some or all of the requirements in 21 C.F.R. 112, KRS Chapter 260, and this administrative regulation.

(11) "Inspection" means an official regulatory visit conducted by the department for the purpose verifying compliance with 21 C.F.R. Part 112, KRS Chapter 260 and this administrative regulation.

(12) ~~"Microorganisms[microbial pathogens]"~~ means ~~microbial pathogens[microorganisms]~~ of public health significance~~[""]~~.

(13) "No Action Indicated" or "NAI" means a farm inspection classification that indicates the farm is in substantial compliance, with no violating conditions or only minor violations noted at the time of inspection.

(14) "Official Action Indicated" or "OAI" means a farm inspection classification that indicates one **(1)** or more egregious violations materially related to food safety have been cited, or that an uncorrected VAI condition on a previous inspection has been cited.

(15) "Qualified exempt farm" means a farm that has met the eligibility requirements of KRS Chapter 260 for qualified exemption and has been issued a certificate of qualified exemption from the department.

(16) "Stop Use Order" ~~means~~**[is defined as]** an order issued by the department declaring the cessation of a covered activity; use of a utensil, piece of equipment, or machinery~~;~~**[or]** water distribution device; or room or area used for the production, handling, or storage of covered produce.

(17) "Voluntary Action Indicated" or "VAI" means a farm inspection classification that indicates a farm is generally in compliance, with only minor violations cited, ~~which;~~**[however the violations cited]** are not significant enough to pose an imminent health hazard.

Section 2. Right to Scheduled On-site Verification Visits. The department reserves the right to schedule, at any reasonable time, an on-site visit to verify ~~if~~**[whether]** a farm is exempt, covered, or eligible for a qualified exemption.

Section 3. Produce Farm Survey. All covered farms~~;~~**[and]** farms eligible for exemption shall be required to ~~annually~~ complete an Informational Survey~~[provided by the department annually]~~.

Section 4. Qualified Exemption. (1) A covered farm that meets the requirements for a qualified exemption ~~[as outlined in KRS 260]~~ may apply for qualified exempt status with the department by submitting an Application for Qualified Exemption~~;~~**[available from the Department]**.

(2) Upon the department's review of the Application for Qualified Exemption, a farm verified as having met the requirements for exemption status shall be issued a certificate of qualified exemption.

(3) A certificate of qualified exemption shall be non-transferrable.

(4) A certificate of qualified exemption shall only be issued:

(a) In the name of the applicant; and

(b) For the FSA location or locations identified in the application.

(5) Unless otherwise withdrawn, the certificate of qualified exemption shall be valid for up to three (3) years.

(6) Qualified exemption status ~~shall be valid~~**[is good]** for the balance of the calendar year of issuance regardless of date, and ~~for~~ the two **(2)** calendar years ending December 31 thereafter. Renewals for an additional three **(3)** year period shall be upon submission of an Application for Qualified Exemption and accompanied by verification of the successful completion of an FDA-approved training course by the farmer.

(7) Failure to submit an updated Application for Qualified Exemption to the Department by the expiration date noted on the certificate of exemption shall result in forfeiture of the qualified exemption and the presumption by the Department that the farm ~~shall be~~**[is]** subject to all requirements of the KRS Chapter 260**[Produce Safety Rule]**.

(8) All qualified exempt farms shall be required to complete a yearly evaluation of qualified exemption status. Once a farm's qualified exempt status changes to covered status, the farmer shall immediately notify the department.

(9) The department ~~shall only~~**[may]** withdraw a qualified exemption as ~~established~~**[set forth]** under 21C.F.R. Part 112, Subpart R or this administrative regulation. Withdrawal shall be by written notice to the farm.

(10) If a farm's qualified exemption is withdrawn by the department, the farm shall be considered "covered" and ~~shall~~**[will]** be subject to all requirements of 21 C.F.R. Part 112, KRS Chapter 260, or this administrative regulation.

(11) Any applicant whose application for qualified exemption has been denied or withdrawn by the department may appeal the action as ~~established~~**[provided for]** in Section ~~11~~**[12]** of this administrative regulation.

(12) Any person whose qualified exemption has been withdrawn by the department may submit a written request for reinstatement of the qualified exemption.

(13) Within ten (10) days following receipt of a written request for reinstatement, including a statement signed by the farmer that, in ~~the farmer's~~**[their]** opinion, the condition causing the withdrawal of qualified exemption has been corrected, the department shall make an inspection, and if the inspection reveals that the condition causing the withdrawal has been corrected, the qualified exemption shall be reinstated.

Section 5. Certificate of Exemption: (1) A farm that meets the requirements for an exemption, as ~~established~~**[outlined]** in KRS Chapter 260 may apply for a certificate of exempt status with the department by submitting an Application for Qualified Exemption~~;~~**[available from the Department]**.

(2) One **(1) or more** of the ~~[following]~~ requirements ~~established in paragraphs (a) through (d) of this subsection~~ ~~shall~~**[must]** be met for a Certificate of Exemption~~;~~**[]**

(a) The farm ~~shall only grow~~**[ONLY grows]** produce that is rarely consumed raw, specifically ~~including~~**[the produce on the following exhaustive list]**: asparagus, black beans, great Northern beans, kidney beans, lima beans, navy beans, pinto beans, beets, garden (roots and tops) beets, sugar beets, cashews, sour cherries, chickpeas, cocoa beans, coffee beans, collards, sweet corn, cranberries, dates, dill (seeds and weed), eggplants, figs, ginger, hazelnuts, horseradish, lentils, okra,

peanuts, pecans, peppermint, potatoes, pumpkins, mature southern field peas (such as black-eyed peas, cowpeas, crowder peas, purple hull peas, sea island peas, silver peas, and speckled peas), winter squash, sweet potatoes, and water chestnuts as established/outlined in 21 C.F.R. Part 112.2.~~;~~

(b) Produce grown shall/is used only be used for personal consumption or produced for consumption on the farm as outlined in 21 C.F.R. Part 112.2.~~;~~

(c) Produce grown shall receive/receives commercial processing that adequately reduces the presence of microorganisms of public health significance as established/outlined in 21 C.F.R. Part 112.2.~~;~~ or

(d) During the previous three (3) year/3-year period, a farmer's average of all produce sales was \$25,000 or less (on a rolling basis) adjusted for inflation using 2011 as the baseline year for calculating the adjustment as established/outlined in 21 C.F.R. Part 112.4.

(3) Upon the department's review of the Application for Qualified Exemption, a farm verified as having met the requirements for exemption status shall be issued a Certificate of Exemption.

(4) A Certificate of Exemption shall be non-transferrable.

(5) A Certificate of Exemption shall only be issued:

(a) In the name of the applicant; and

(b) For the FSA location or locations identified in the application.

(6) Unless otherwise withdrawn, the Certificate of Exemption shall be valid for as long as the farm remains in exempt status.

(7) All exempt farms shall be required to complete a yearly evaluation of exemption status. If/Once a farm's exempt status changes to covered status, the farmer shall immediately notify the department.

Section 6. Inspection Frequency, Notices, Records. (1) Risk prioritization. The department shall assign a risk prioritization level to each farm based on the following factors:

(a) Commodities handled.~~;~~

(b) Farm acreage.~~;~~

(c) Annual produce sales.~~;~~

(d) Farmer attendance at a Produce Safety Alliance or FDA-approved grower training.~~;~~

(e) Compliance history.~~;~~

(f) Participation in an on-farm readiness review.~~;~~

(g) Agricultural water source.~~;~~

(h) Presence of a farm food safety plan.~~;~~

(i) GAP certification or recent participation in other food safety programs.~~;~~

(j) Adjacent land use.~~;~~

(k) Likelihood of wildlife or animal intrusion.~~;~~ and

(l) Geographical location of the farm.

(2) Priority designation. Inspection frequencies shall be assigned as follows:

(a) Priority 1 farms shall receive a minimum of one (1) inspection per year.

(b) Priority 2 farms shall receive a minimum of one (1) inspection every two (2) years.

(c) Priority 3 farms shall receive a minimum of one (1) inspection every three (3) years.

(3) Regardless of a farm's priority designation, the department shall make as many additional inspections and re-inspections as are necessary for the enforcement of this administrative regulation.

(4) Inspection records. The department representative inspecting a covered farm shall record the findings on the Produce Farm Inspection Observations Report~~;~~ and shall provide a copy of the inspection report to the farmer.

(5) Issuances of notices. If an inspection reveals a violation of this administrative regulation, the department shall notify the farmer. In the notification, the department shall establish:

(a) The specific violations found; and

(b) A specific and reasonable period of time for the correction based on the nature of the violations found pursuant to this paragraph. The report of inspection shall state:

1. Failure to comply with a notice from the department, or with a time limit for correction of a violation, shall result in regulatory

action up to and including civil penalties, as established/provided in KRS Chapter 260, and

2. An opportunity for appeal from an adverse notice or inspection finding shall be provided if a written request is filed with the department within ten (10) days following service of notice.

(6) Service of notice. A notice provided for under this section shall be properly served if a copy of the Produce Farm Inspection Observations Report or other notice has been delivered personally to the farmer, or the notice has been sent by registered or certified mail, return receipt requested, to the last known address of farmer.

Section 7. Violations and Corrective Action Plans. (1) If a farm has committed a violation of 21 C.F.R. Part 112, KRS Chapter 260, or this administrative regulation, an opportunity to correct the violation shall be provided in accordance with the following classifications:

(a) NAI - No changes in the inspection frequency shall be/are warranted under this classification;

(b) VAI - A follow-up inspection shall be/is warranted within a period of time not to exceed the date of the next routine inspection to determine if the violation causing this classification has been corrected; or

(c) OAI - A follow-up inspection shall be conducted within a period of time not to exceed thirty (30) days to determine if the violation causing the classification has been corrected. A farm shall/may also be classified as OAI if it continually fails to correct a violation previously classified under a VAI designation or if an egregious violation is noted during an inspection.

(2) Upon completion of the inspection, a recommended classification of NAI, VAI, or OAI and the timeframe for correction of the violation shall be specified on the Produce Farm Inspection Observations Report.

(3) A farm that receives an inspection classification of VAI or OAI shall submit a plan of corrective action to the department as follows:

(a) VAI: Within thirty (30) days following the inspection; and/;

(b) OAI: Within ten (10) days following the inspection.

(4) Failure to submit a plan of corrective action to the department within the [specified] time frame established in subsection (3) of this section shall/may result in the initiation of enforcement provisions pursuant to KRS Chapter 260 and Section 10 of this administrative regulation.

(5) If, during the next inspection, the violation noted on the previous inspection has not been corrected within the timeframe established in subsection (3) of this section/specified by the Department, the department shall/may:

(a) Extend the timeframe for corrective action if the department determines that progress towards compliance has been made;

(b) Issue a warning letter;

(c) Initiate enforcement provisions pursuant to Sections 8 and 10 of this administrative regulation; or

(d) Initiate enforcement provisions pursuant to KRS Chapter 260.

Section 8. Stop Use. (1) If/Whenever a duly authorized agent of the department finds, or has probable cause to believe, that a covered activity or the continued use of a utensil, piece of equipment or machinery, water distribution device, or room or area used for the production, handling or storage of covered produce could/may result in adulterated product, the department shall issue a Stop Use Order to the farmer.

(a) The reason for the Stop Use Order shall be documented on the Notice to Stop Use.

(b) The Notice to Stop Use shall notify all persons to discontinue a covered activity or use of a utensil, piece of equipment or machinery, water distribution device, or room or area used for the production, handling, or storage of covered produce until conditions causing the Stop Use Order have been corrected and permission for use is given by a duly authorized agent of the department.

(2) A/It shall be unlawful for any person shall not, without department permission, to utilize a piece of equipment, room, or area used for the production, handling, or storage of covered

produce for which a Stop Use Order has been issued ~~[without such permission]~~.

(3) If the department has evidence that a farmer has violated the provisions contained in this section, enforcement provisions ~~shall[may]~~ be initiated pursuant to KRS Chapter 260 and Section 10 of this administrative regulation.

Section 9. Egregious Conditions, Examination, and Detention of Foods. (1) The department shall have the authority to examine and collect water, produce, and environmental samples as often as necessary for the enforcement of this administrative regulation.

(2) A farmer shall take immediate steps to correct any egregious condition.

(3) ~~If[Whenever]~~ a duly authorized agent of the department finds or has probable cause to believe that covered produce in any growing, harvesting, packing, or holding area has been subject to conditions whereby ~~the covered produce could[fit-may]~~ have become contaminated with filth or microorganisms of public health significance, or whereby ~~the covered produce could[fit-may]~~ have been rendered injurious to health ~~as established by[within the meaning of]~~ KRS Chapter 260, the department shall issue a Stop Movement Order to the farmer.

(a) The reason for the order shall be documented on the Stop Movement Order.

(b) The Stop Movement Order shall give notice that ~~the covered[such]~~ produce is, or is suspected of, being contaminated or injurious to health and notifying all persons not to remove or dispose of ~~the produce[such article]~~ by sale or otherwise until permission for removal, disposal, or diversion is given by ~~an[such]~~ agent ~~of the department~~ or the court.

(4) The department shall issue a Notice of Voluntary Destruction to a farmer who elects to voluntarily destroy covered produce for which a Stop Movement Order has been issued.

(5) ~~If[Provided that]~~ covered produce for which a Stop Movement Order has been issued can be safely diverted by the farmer for alternative uses that do not pose a risk to human or animal health, the department, ~~if requested, shall[may]~~ issue a Notice of Diversion/Change Order to the farmer.

(6) In all other instances, the department shall ~~comply with/follow the provisions set forth in]~~ KRS Chapter 260 regarding the disposition of produce for which a Stop Movement Order was issued.

(7) If the department has evidence that a farmer has failed to act to correct an egregious condition, enforcement provisions ~~shall[may]~~ be initiated pursuant to KRS Chapter 260 and Section 10 of this administrative regulation.

Section 10. Enforcement Provisions. (1) If the department has substantial reason to believe that a covered farm has failed to act to correct an egregious condition; if a farm owner, operator, or agent in charge has interfered with the department in the performance of its duties after its agents have duly and officially identified themselves; or if a farm has failed to comply with an OAI inspection notice within the timeframe granted, the department shall:

(a) Issue a stop work order for that portion or portions of the covered farm affected by the egregious condition;

(b) Issue a stop movement order; or

(c) Seek civil or criminal penalties under KRS Chapter 260.

(2) In all other instances of violation of this administrative regulation, the department shall serve the registered farm with a written notice specifying the violation and afford the holder of the registration an opportunity to correct.

(3) Notices provided for under this administrative regulation shall be deemed to have been properly served if:

(a) A copy of the inspection report or other notice has been delivered personally to the registration holder or the farm person-in-charge, or

(b) The notice has been sent by registered or certified mail, return receipt.

(4) Failure to comply with any provision of this administrative regulation, 21 C.F.R. Part 112, or KRS Chapter 260 ~~shall subject the farmer to[may result in]~~ civil penalties pursuant to KRS 260.990.

Section 11. Appeals. All appeals of KDA determinations shall be ~~[done]~~ in accordance with KRS Chapter 13B.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Informational Survey", 06/2020;

(b) "Application for Qualified Exemption", 06/2020;

(c) "Produce Farm Inspection Observations", 06/2020;

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 782-0284, fax (502) 564-2133, email clint.quarles@ky.gov.

**JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
Sex Offender Risk Assessment Advisory Board
(As Amended at ARRS, September 8, 2020)**

501 KAR 6:220. Treatment for sex offenders.

RELATES TO: KRS 17.500, 17.550-17.576, 17.991, 197.010
STATUTORY AUTHORITY: KRS 17.564

NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.564 authorizes the Sex Offender Risk Assessment Advisory Board to promulgate administrative regulations to establish the minimum requirements for treatment of sex offenders. This administrative regulation establishes minimum treatment requirements [requirements] for providers.

Section 1. Definitions. (1) "Adjunctive therapy" means additional interventions or programs that enhance gains made in evidence based treatment sessions, directly target criminogenic risk factors, and may include interventions that are considered promising as well as evidence based.

(2) "Approved provider" is defined by[is] KRS 17.550(3).

(3)[(2)] "Board" is defined by[is] KRS 17.550(1).

(4) "Criminogenic needs" means factors that if[when] targeted in treatment, can reduce sexual re-offending. [

(3) "Community standards of care" means the standards of care generally accepted by sex offender treatment professionals within the Commonwealth of Kentucky and taking into account the general standards of care for the mental health profession for which the approved provider is licensed or certified.]

(5)[(4)] "Department" is defined by[is] KRS 197.010(3).

(6) "Dynamic risk factors" means factors that:

(a) If targeted and changed during treatment, can result in a reduction in sexual re-offending; and

(b) Research has proven to reduce sexual recidivism.

(7) "Evidence based standards of care" means standards and practices that:

(a) Are based on the best available clinical scientific research or evidence for treatment of sex offenders;

(b) ~~[that]~~ Take into account the offender's current clinical state and circumstances that may influence treatment gain; and

(c) Are generally accepted.

(8) "Non-criminogenic needs" means[are] factors that if targeted can assist with removing obstacles to effectively targeting criminogenic factors, for example, self-esteem, fear of punishment.

(9) "Responsivity factors" means factors that impact an offender's ability to begin, engage in, and complete treatment and can interfere with the ability of the offender to respond to treatment.

(10) "Risk" means the risk of sexual reoffending.

(11) "Risk assessment tool" means a validated instrument designed to measure risk of sexually reoffending.

(12) "Session" means at least forty-five (45) minutes for an individual session or ninety (90) minutes for a group session.

(13) "Static factors" means factors that do not change but

predict future sexual re-offending.

(14) "Stages of change" means the change process occurs gradually over time and includes levels or stages as follows:

(a) ["Precontemplation, in which" means] the individual does not intend to make a change in the behavior;

(b) ["Contemplation, in which" means] the individual has an awareness of the problem and may consider the pluses and minuses of change;]

(c) ["Preparation, in which" means] the individual intends to take action within one (1) month and may make small behavioral changes;

(d) ["Action, in which" means] the individual modifies the problem behavior for one (1) to six (6) months; and]

(e) ["Maintenance, in which" means] the behavior change extends from six (6) months and the individual works to prevent relapse.]

(5) "Treatment services" is defined in KRS 197.420(2)(b).]

Section 2. General Procedures for Treatment of All Sex Offenders. (1) Treatment shall conform to evidence based [community] standards of care, and shall include:

(a) A diagnosis from one (1) of the manuals below, using the edition that is in effect at the time of diagnosis:

1. Diagnostic and Statistical Manual (DSM); or

2. International Statistical Classification of Diseases and Related Health Problems (ICD); and

(b) A written treatment plan based on a comprehensive, psycho-sexual evaluation consistent with the risk-~~f~~need-~~and~~responsivity (RNR) principles or RNR model of assessment and treatment. The plan~~[- which]~~ shall include:

1. Goals and objectives consistent with the individual client's risk level considering:

a. Static factors;

b. Dynamic risk factors;

c. Criminogenic and non-criminogenic needs;

d. Responsivity factors; and

e. Stage of change; and

2. Systems and modalities of treatment and the rationale therefor.

(2) Treatment shall be conducted using a cognitive behavioral approach including individual or group sessions[in a psychotherapy format].

(3) Treatment may utilize psychoeducational and other adjunctive therapy components if indicated.

(4) Prior to providing treatment, an approved provider shall:

(a) Obtain written informed consent for treatment from the offender;

(b) Contact the offender's supervising probation and parole officer to discuss the offender and obtain offender information;

(c) Obtain or make a good faith effort to obtain the offender's mental health records; and

(d) Submit a general treatment curriculum to the board that includes the required elements in Sections 2 and 3[Section 3(4)] of this administrative regulation. If the approved provider intends to treat an offender who has already completed a sex offender treatment program, then the approved provider shall also submit a treatment curriculum that includes the required elements in Section 4[(2)] of this administrative regulation. If an approved provider [proposes] changes the [in his] submitted treatment curriculum, the approved provider shall submit a treatment curriculum with the changes to the board [for approval].

(5) An approved provider shall:

(a) Provide psychological services, [or] pharmacotherapy services, [or] testing, or adjunctive therapy as needed or make the appropriate referral and act as liaison for the provision[provisions][provision] of services;

(b) Provide treatment consistent with current professional literature that[which] minimizes the risk of reoffending and emphasizes community safety;

(c) Maintain an individual record, which shall include documentation of the offender's attendance and evaluative progress notes;

(d) Obtain a release of information signed by the sex offender,

which allows the approved provider to release information to probation and parole personnel responsible for the sex offender's supervision and the Sex Offender Risk Assessment Advisory Board;]

(e) Notify the offender's supervising probation and parole officer in writing if the offender fails to attend a treatment session or fails to make a good faith effort to participate in the treatment;

(f) Provide the Required Monthly Progress Report to the supervising probation and parole officer each month;

(g) Cooperate fully with the probation and parole supervision team responsible for a sex offender under the approved provider's treatment;

(h) Prepare a treatment summary at discharge from treatment; and

(i) Provide written notice of the sex-offender's discharge from treatment and the reasons[reason] for discharge to the supervising probation and parole officer within ten (10) days of discharge.

Section 3. Procedures for Treatment of Sex Offenders Who Have Not Completed a Sex Offender Treatment Program. If a sex offender has not completed a sex offender treatment program, an approved provider shall:

(1) Use a treatment curriculum which, at a minimum, shall include:

(a) Integrated treatment services as [may be] necessary to meet the sex offender specific and mental health needs of the individual offender including;

1. Sex offender specific treatment:

a. The cycle of sexual abuse;

b. Human sexuality;

c. Deviant arousal and its reduction;

d. Cognitive restructuring;

e. Relapse prevention;

f. Partner and family interactions and support, if applicable;

g. Victim empathy awareness; and

h. Relationship skills; and

2. Mental health treatment:

a. Substance abuse;

b. Mental health including personality disorder;

c. Domestic violence;

d. Anger management;

e. Mood problems including depression and anxiety;

f. Trauma;

g. Psychotropic medication; and

h. Pornography addiction;

(b) Treatment dosage based on risk level;

(c) An emphasis on motivating the offender to move through the stages of change and towards acceptance of responsibility [by the offender] for present and past sexual offending behavior; and

(d)[(e)] Gender and culture specific programming;]

(d) Education of the offender in:

1. The cycle of sexual abuse;

2. Human sexuality;

3. Deviant arousal and its reduction;

4. Cognitive restructuring;

5. Relapse prevention;

6. Partner and family interactions and support, if applicable;

7. Victim empathy awareness; and

8. Relationship skills; and]

(2) For a low risk offender, provide between sixty (60) to 100 hours of face-to-face, evidence based, cognitive behavioral treatment sessions with at least thirty (30) hours in the first year. If denial or other risk-need-responsivity factors are present in a low risk offender, treatment hours may be increased to focus on treatment readiness or other responsivity factors identified by the treatment provider;

(3) For a medium risk offender, between 160 to 200 hours of face-to-face, evidence based, cognitive behavioral treatment sessions with at least eighty (80) hours in the first year. If denial or other risk-need-responsivity factors are present in the medium risk offender, treatment hours may be increased to focus on treatment readiness or other responsivity factors identified by the treatment provider; and

(4) For a high risk offender, provide between 400 to 540 hours of face-to-face evidence based, cognitive behavioral treatment sessions with at least 200 hours in the first year. If denial or other risk-need-responsivity factors are present in the high risk offender, treatment hours may be increased to focus on treatment readiness or other responsivity factors are present in the high risk offender, treatment hours may be increased to focus on treatment readiness or other responsivity factors identified by the treatment provider. [Provide a minimum of eighty (80) face to face sessions of at least forty-five (45) minutes for an individual session or ninety (90) minutes for a group session for at least twenty-four (24) months with a minimum of forty (40) face-to-face sessions conducted during the first twelve (12) months.]

Section 4. Procedures For Treatment of Sex Offenders Who Have Completed a Sex Offender Treatment Program. (1) If a sex offender has completed a sex offender treatment program, an approved provider shall:

(a) Obtain documentation from the sex offender treatment program showing completion of the program;

(b) Assess and document whether the offender can demonstrate acceptable levels of skills and knowledge of treatment areas listed in Section 3(1)(a) 1(4)(d) of this administrative regulation;

(c) Assess the offender's current risk level using risk assessment tools;

(d) Based on the offender's level of risk and need, determine which of the following is required:

1. A full treatment program;

2. A partial treatment program to address sex offender specific treatment concerning missing skills or knowledge; or

3. Maintenance sessions including supportive counseling; and

(e) Implement a treatment program that meets the following:

1. A full treatment program shall follow the requirements in Section 3 of this administrative regulation;

2. A maintenance program shall include:

a. For a low risk offender, forty-five (45) to sixty (60) hours of supportive counseling sessions focused on re-entry issues for a minimum of twelve (12) months and thereafter as needed, including booster sessions, unless the approved provider determines that this level of treatment may be detrimental to the offender based on current scientific treatment studies;

b. For a moderate risk offender offender:

(i) Provide a maintenance relapse prevention program with sessions two (2) times per month for the first year after release and then as needed, including booster sessions; and

(ii) Provide or refer for adjunctive therapies as needed; or

c. For a high risk offender:

(i) Provide a maintenance program with sessions one (1) time per week for the first year after release and thereafter as needed, including booster sessions; and

(ii) Provide or refer for adjunctive therapies as needed; or

3. For a partial treatment program the approved provider shall:

a. Determine the additional hours above the minimum hours required for a maintenance program needed to address the missing skills or knowledge and include those additional hours of treatment with the required hours for a maintenance program, and

b. (f) For a partial treatment program, Document in the treatment file how the approved provider determined the skills and knowledge in required areas were met in prior treatment. [Require an offender to repeat the areas in Section 3(1)(d) of this administrative regulation in which he has not demonstrated competence; and

(d) Provide a minimum of fifty (50) face-to-face sessions of at least forty-five (45) minutes for an individual session or ninety (90) minutes for a group session for at least eighteen (18) months with a minimum of forty (40) face-to-face sessions conducted during the first twelve (12) months;]

(2) Based on the determination of whether a full, partial, or maintenance program is required, [If the offender has completed a sex offender treatment program,] the approved provider shall use a treatment curriculum which, at a minimum, shall target and include:

(a) Treatment dosage based on current risk level [Dynamic-risk factors assessment];

(b) Treatment readiness and stage of change [Basic ownership, which means a component for offender responsibility for sexual offending behavior];

(c) Relapse prevention;

(d) Development of treatment partner relationship, including partner alert sessions;

(e) Collaborative development of a practical living skills plan;

(f)(g) Existing sex offender specific treatment needs identified in subsection (1)(b) of this section integrated with the mental health needs as stated in Section 3(1)(a)(2) of this administrative regulation; and

(g)(f) Commitment to follow-up with adjunct therapies where needed, including the following: Substance abuse; Domestic violence; Anger management; and Psychotropic medications; and (h)(g) A plan for family and children reintegration options, if appropriate, and the victim approves.

(3) Reintegration.

(a) Reintegration with a victim shall not be considered [comply with treatment requirements] unless it is approved by the approved provider and the probation and parole officer.

(b) If the offender victimized a child, reintegration with other children shall not be considered [comply with treatment requirements] unless approved by the approved provider and the probation and parole officer.

(c) The approved provider and probation and parole officer shall address at a minimum the following when considering reintegration of an offender with a child victim or other children:

1. Assessment of quality of parental relationship;

2. Assessment of victim's progress if participating in treatment;

3. Assessment of age and sex of child victims and offender potential for cross-over;

4[2]. Assessment of how the offender accessed prior child victims and similarities to situations and persons with whom he is currently considering to reside;

5[3]. Assessment of adult partner's knowledge and insight into offender's dynamics; and

6[4]. A written, gradual reintegration process plan.

Section 5. Incorporation by Reference. (1) The Sex Offender Risk Assessment Advisory Board form "Required Monthly Progress Report", 2020[4/12/05], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be obtained from the Department of Corrections Web site in the sex offender treatment area at <https://corrections.ky.gov/Divisions/healthservices/Pages/sotp.aspx>.

This is to certify that the Sex Offender Risk Assessment Advisory Board approved this administrative regulation prior to its filing by the Department of Corrections with the Legislative Research Commission as required by KRS 13A.120(3) and 13A.220(6)(a) as reflected by the signature below.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, September 8, 2020)

701 KAR 8:020. Evaluation of charter school authorizers.

RELATES TO: KRS 158.070, 158.649, 160.1590, 160.1591, 160.1592, 160.1593, 160.1594, 160.1595, 160.1596, 160.1597,

160.1598, 160.1599, 161.141

STATUTORY AUTHORITY: KRS 160.1596

NECESSITY, FUNCTION, AND CONFORMITY: KRS 160.1596 requires the Kentucky Board of Education to promulgate an administrative regulation to establish the process to be used to evaluate the performance of a charter school authorizer, based upon the requirements of KRS 160.1590 to 160.1599 and 161.141, and the actions to be taken in response to failures in performance. This administrative regulation establishes requirements for the competence, performance, and evaluation process for charter school authorizers.

Section 1. Definitions. (1) "Academically behind" means at risk of academic failure.

(2) "Achievement gap" is defined by KRS 160.1590(2) and KRS 158.649(1).

(3) "Adult student" means a student who is eighteen (18) years or older who is still eligible for enrollment and attendance at a school program pursuant to KRS 158.030 and 158.100.

(4) "Applicant" is defined by KRS 160.1590(3).

(5) "Areas of exceptionality" means categories of disabilities of students with special needs.

(6) "At risk" means at risk of academic failure.

(7) "At risk of academic failure" means:

(a) Attendance at a school identified pursuant to KRS 160.346(2) for targeted support and improvement~~[or intervention]~~;

(b) Attendance at a school identified pursuant to KRS 160.346(3) for comprehensive support and improvement;

(c) Current achievement two (2) or more grade levels below the student's age group;

(d) Demonstration of poor academic skills, such as failure of two (2) or more subjects in two (2) of the past four (4) school years;

(e) Consistent absence or tardy and absence twenty-five (25) or more unexcused ~~["]student attendance days[, "as defined by KRS 158.070,]~~ in the last two (2) school years and an overall grade average below a C;

(f) Suspension (in-school suspension or home suspension) two (2) or more times during the past school year and an overall grade average below a C;

(g) Family history of dropping out or lack of family support for the student in the completion of school;

(h) Little or no participation in school cocurricular or extracurricular programs;

(i) Below grade level in reading or math skills;

(j) Indication of being socially isolated; or

(k) An applicant's definition for this term in the applicant's authorizer approved charter application, pursuant to KRS 160.1594(2).

(8) "Authorizer" or "public charter school authorizer" is defined by KRS 160.1590(13).

(9) "Authorizer's board of directors" means:

(a) The board of education for the local school district for an ~~["]authorizer["] defined by KRS 160.1590(13)(a); and~~

(b) The boards of education that have collaborated to set up a regional public charter school for an ~~["]authorizer["] defined by KRS 160.1590(13)(b).~~

(10) "Bilingual students" means students who are fluent in English and a foreign language, which can include American Sign Language.

(11) "Charter" means charter contract.

(12) "Charter application" is defined by KRS 160.1590(4).

(13) "Charter contract" or "contract" is defined by KRS 160.1590(5).

(14) "Charter school" means a public charter school.

(15) "Charter school board of directors" is defined by KRS 160.1590(6).

(16) "Cocurricular programs" means school programs that have activities that are unequivocally instructional in nature, directly related to the instructional program, and scheduled to minimize absences from classroom instruction.

(17) "Comprehensive learning experiences" or "Expanded learning opportunities" means daily, rigorous learning experiences that build on a student's talents, challenge the student's skills and

understandings, and develop the student's ability to reason, problem solve, collaborate, and communicate to prepare the student for success in postsecondary.

(18) "Conversion public charter school" or "conversion charter school" is defined in KRS 160.1590(7).

(19) "Days" means calendar days calculated pursuant to KRS 446.030.

(20) "Education service provider" is defined by KRS 160.1590(8).

(21) "Emancipated youth" means a student under the age of eighteen (18) who is or has been married or has by court order or otherwise been freed from the care, custody, and control of the student's parents.

(22) "Enrollment preference" means the priority of the student application from students pursuant to KRS 160.1591(5).

(23) "Extracurricular programs" means voluntary programs that are offered by a school but are not part of the required school program.

(24) "Fiscal year" is defined by KRS 160.450.

(25) "Foreign entity" is defined by KRS 14A.1-070(10).

(26) "Gifted" means a gifted and talented student as defined by KRS 157.200(1)(n).

(27) "Governing board of the authorizer" means the authorizer's board of directors.

(28) "Governing body of the authorizer" means the authorizer's board of directors.

(29) "Grade" or "Grade Level" means a single elementary, middle, or high school grade of school.

(30) "Knowingly" means that a person knew that in authorizing, ordering, or carrying out an act or omission that the act or omission constituted a violation of a statute or administrative regulation.

(31) "Local school district" is defined by KRS 160.1590(10).

(32) "Parent" is defined by KRS 160.1590(11).

(33) "Persistently low-achieving public schools" or "Persistently low-achieving noncharter public schools" means noncharter schools identified for comprehensive support and improvement pursuant to KRS 160.346.

(34) "Person with custody or charge" means any adult, pursuant to KRS 159.010, who falls within the definition for ~~["]interested person or entity["] as defined by KRS 387.010(2) for an interested person or entity and with whom the student resides.~~

(35) "Primary enrollment preference" means any enrollment preference other than a secondary enrollment preference.

(36) "Public charter school" is defined by KRS 160.1590(12).

(37) "Regional achievement academy" is defined by KRS 160.1590(15).

(38) "Regional achievement zone" is defined by KRS 160.1590(16).

(39) "School level" or "Level" or "Educational level" means the configuration of grade levels that form elementary, middle, and high schools.

(40) "Secondary enrollment preference" means the priority of a resident student application for enrollment in a public charter school, after acceptance of all the student applications with primary enrollment preference, if the public charter school's capacity has not been exceeded.

(41) "Start-up public charter school" is defined by KRS 160.1590(17).

(42) "Student" is defined by KRS 160.1590(19) and includes any person who is entitled to enrollment and attendance at a school program as provided in KRS 158.030 and 158.100.

(43) "Student attendance day" is defined by KRS 158.070(1)(e).

(44) "Students with special needs" or "Special needs students" means:

(a) Exceptional children and youth students, as defined in KRS 157.200, who are eligible pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. secs. 1400 et seq. for an individual education plan, as described in KRS 157.196, or an individual education program, as described in KRS 158.281; or

(b) Students who are eligible for services under Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. sec. 794, to prevent substantial limitation of one (1) or more major life activities.

(45) "Substantial hardship" means a significant, unique, and demonstrable economic, technological, legal, or other impact on a local school district that impairs the district's ability to continue to successfully meet the requirements of educational programs or services for the district's students.

(46) "Superintendent" means the local school district employee tasked with the duties established in KRS 160.370.

(47) "Traditionally underperforming" means at risk of academic failure.

(48) "Unilateral imposition of conditions" means the authorizer has placed or attempted to place conditions or requirements that are not required by KRS 160.1590 to 160.1599, 161.141, or 701 KAR Chapter 8:

(a) On the applicant in the authorizer's formal action approving the charter application; or

(b) On the charter school in the charter contract or an amendment.

(49) "Unilaterally imposed conditions" or "Unilateral conditions" or "Conditions unilaterally imposed" means conditions or requirements not required by KRS 160.1590 to 160.1599, 161.141, or 701 KAR Chapter 8 that the authorizer places or attempts to place:

(a) On the applicant in the authorizer's formal action approving the charter application; or

(b) On the charter school in the charter contract or an amendment.

(50) "Year", "academic year", or "school year" means school year as established in KRS 158.050.

Section 2. Policies and Procedures. (1) Pursuant to KRS 160.1594, an authorizer shall create policies and procedures governing the authorizer's performance of its duties under KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8 and shall include in its policies and procedures:

(a) The authorizer's strategic vision for chartering, including a clear statement of any preference for a charter application that demonstrates the intent, capacity, and capability to provide comprehensive learning experiences or expanded learning opportunities to students identified in KRS 160.1594(2) or KRS 160.1592(19);

(b) Identification of any charter application preferences of the authorizer pursuant to KRS 160.1594(2);

(c) Information on the authorizer's performance contracting requirements, including:

1. Academic, financial, and operational measures, and the performance frameworks, that the authorizer has developed for public charter school oversight and evaluation and with which the authorizer shall evaluate the charter school's performance under the charter contract, in accordance with KRS 160.1594 and 701 KAR Chapter 8; and

2. Requirements for executing a contract with a charter school board of directors that articulates:

a. The rights and responsibilities of each party regarding school autonomy;

b. Funding;

c. Administration and oversight;

d. Outcomes;

e. Measures for evaluating success or failure;

f. Performance consequences; and

g. Other material terms;

(d) The evidence the authorizer shall require, the evaluation the authorizer shall conduct using the performance framework, and other aspects of the authorizer's ongoing monitoring of the charter school including:

1. Ensuring a charter school's legally entitled autonomy;

2. Protecting student's civil, disability, safety, and educational rights;

3. Informing intervention, revocation, and renewal decisions; and

4. Providing annual reports as required by KRS 160.1597(5);

(e) The requirements for reporting to the public;

(f) The authorizer's authority to intervene in charter schools, **[when-and]** if necessary;

(g) Guidelines concerning the format and content essential for an applicant to demonstrate the capacities necessary to establish and operate a public charter school, pursuant to KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8;

(h) The timeline for submission, review, decision, and appeal for a charter application, and a request for renewal. An authorizer described in KRS 160.1590(13)(c) and (d) shall consult with the superintendent of the resident local school district if planning this timeline;

(i) A template of the assurances an authorizer shall require in a charter contract;

(j) The following evidence sufficiency requirements for the charter application:

1. The charter school board of directors' ability to meet the financial solvency and sustainability demands of their proposed budget;

2. Competent and timely charter school start-up and operation;

3. Foreseen and unforeseen closure; and

4. All debts and obligations during each fiscal year of the charter contract and during the entire contract term;

(k) The financial transparency requirements that shall apply to a charter school, including specific provisions regarding publication on the authorizer's website and the charter school's Web site;

(l) The charter school closure protocol and requirements;

(m) A description of the authorizer's organizational capacity, including its commitment of human and financial resources necessary to conduct authorizing duties effectively and efficiently;

(n) The authorizer's requirements for solicitation and evaluation of a charter application, including its implementation of a comprehensive application process that includes use of the Kentucky Charter School Application and Addendum, and rigorous criteria, and approval of only a charter application that demonstrates a strong capacity to establish and operate a charter school;

(o) The authorizer's charter renewal and revocation processes and rigorous criteria, including its design and implementation of a transparent and rigorous process that uses comprehensive academic, financial, and operational performance data to make merit-based renewal and revocation decisions; and

(p) The requirements of KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8 for an applicant, a board of directors, an education service provider, a charter school, and their employees.

Section 3. Standards of Authorizer Performance Generally. (1) Prior to authorizing a charter school, an authorizer as established in KRS 160.1590(13)(c) and (d) shall file the Notice of Intent with the Kentucky Board of Education.

(2) An authorizer shall restrict the expenditure of funds received as a result of charter authorization and oversight to the purpose of fulfilling authorizing obligations pursuant to KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

(3) Pursuant to KRS 160.1596(5)(e), an authorizer shall include in its report and place in a publicly accessible location on its website information on the following:

(a) The oversight and any services provided by the authorizer to the public charter schools under the authority of the authorizer;

(b) The authorizing functions provided by the authorizer to the public charter schools under its jurisdiction, including the operating costs and expenses of the authorizer as detailed in annual audited financial statements that conform to generally accepted accounting principles;

(c) All use of charter authorizing revenue including expenditures, contracts, and revenues, in the format required by the commissioner of education; and

(d) The reports that an authorizer is required to make pursuant to KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

(4) ~~The authorizer, or its designee for charter authorizing, shall participate in annual in-service training as follows:]~~

(a) Pursuant to KRS 160.1594 and except as specified in Section 3(4)(b) of this administrative regulation, prior to evaluating a charter application, each [Each] authorizer or member of the authorizer's board of directors or governing board [of—the authorizer] shall complete[;

~~1. Twelve (12)] six (6) hours of [annual] training, as approved by the Commissioner of Education, [for an authorizer or member with zero to eight (8) years of experience as an authorizer and eight (8) hours for an authorizer or a member with more than eight (8) years of experience as an authorizer; or~~

~~2. Competency-based annual in-service training;~~

~~(b) In-service training toward the board of education member training requirements of KRS 160.180 may also count toward this requirement, to the extent the requirements of both are met by the content of the training, and the training for this requirement] that shall include the following topics pertinent to [of] authorizer responsibility and charter school formation and operation:~~

- ~~1. Financial governance and transparency;~~
- ~~2. Conflict of interest;~~
- ~~3. Charter application;~~
- ~~4. Charter school contracting;~~
- ~~5. Charter school monitoring;~~
- ~~6. Charter school renewal, nonrenewal, and revocation;~~
- ~~7. Charter school closure;~~
- ~~8. Ethics;~~
- ~~9. Curriculum and instruction;~~
- ~~10. Educational services provided for special needs, at risk, English learner, gifted, and other special population students; and~~
- ~~11. Physical restraint and seclusion of students; and~~

~~(b) [(c) The training shall be approved by the commissioner of education.] An authorizer or member of the authorizer's board of directors or governing board that completed all training requirements pursuant to Section 3(4)(a) of this administrative regulation in the immediately preceding twelve (12) months prior to receipt of a charter school application shall be exempt from completing training pursuant to Section 3(4)(a) of this administrative regulation prior to evaluating that charter school application.~~

~~(5) An authorizer shall submit to the department a written assurance of a charter school's compliance with the pre-operating requirements in this administrative regulation and in the charter contract before the opening of the charter school.~~

~~(6) An authorizer shall require the sharing of best practices between the charter school and the resident local school district.~~

Section 4. Standards of Authorizer Performance Concerning Charter Applications. (1) Pursuant to KRS 160.1591 and 160.1594(1)(e)2., and to the extent not prohibited by federal law, an authorizer shall not approve a charter application that is:

(a) From an applicant that is or includes:

1. A for-profit organization, or its designee;

2. An organization, or its designee, that is organized for religious purposes, within the meaning of 501(c)(3) of the Internal Revenue Code of 1986, as amended, and qualifying for tax-exempt status pursuant to 501(c)(3) of the Internal Revenue Code of 1986, as amended; or

3. A business entity, or its designee, that is not authorized to do business and in good standing in the Commonwealth of Kentucky, pursuant to KRS Chapter 14A; or

(b) That has in the proposed board of directors:

1. A for-profit organization, or its designee;

2. An organization, or its designee, that is organized for religious purposes, within the meaning of 501(c)(3) of the Internal Revenue Code of 1986, as amended, and qualifying for tax-exempt status pursuant to 501(c)(3) of the Internal Revenue Code of 1986, as amended; or

3. A business entity, or its designee, that is not authorized to do business and in good standing in the Commonwealth of Kentucky, pursuant to KRS Chapter 14A.

(2) An authorizer shall require a charter application to be submitted on the Kentucky Charter School Application and Addendum and may require additional information from the applicant.

(3) An authorizer shall publish a copy of a submitted charter application on its website within three (3) days of submission by the applicant to the authorizer.

(4) An authorizer shall provide a copy of a submitted charter application to the resident local school district superintendents and

to any other authorizer of charter schools in that local school district within three (3) days of submission by the applicant to the authorizer.

(5) An authorizer established in KRS 160.1590(13)(a) or (b) shall provide a copy of a submitted charter application for a regional achievement academy within a regional achievement zone to the superintendents of the other local school districts of the regional achievement zone within three (3) days of submission by the applicant to the authorizer.

(6) An authorizer shall allow a resident local school district superintendent to file a letter with supporting evidence objecting to the approval of the charter application on the basis of the substantial hardship that may result for the students of the resident local school district who do not attend the charter school. An authorizer shall publish a copy of the letter and supporting evidence from the resident local school district superintendent on the authorizer's website within three (3) days of submission by the superintendent to the authorizer and the authorizer shall review this evidence prior to approving a charter application.

(7) An authorizer shall allow a resident local school district superintendent to file a letter of support for a charter application and shall publish a copy of the resident local school district superintendent letter on the authorizer's website within three (3) days of submission by the superintendent to the authorizer.

(8) An authorizer shall require a resident local school district superintendent to provide information and evidence regarding the academic performance of the students identified in the charter application as the targeted student body or community. An authorizer shall publish a copy of this information on the authorizer's website within three (3) days of submission by the superintendent to the authorizer, to the extent not prohibited by confidentiality laws.

(9) An authorizer shall comply with the following requirements in reviewing the charter application:

(a) Request and secure a certificate of existence from the Secretary of State, pursuant to KRS 14A.2-130, for any business entity or its designee included in the applicant or in the proposed charter school board of directors; and

(b) If the applicant or the board of directors includes a foreign entity, request and secure a certificate of authorization for the foreign entity from the Secretary of State, pursuant to KRS 14A.2-140.

~~(10) [The department shall develop a charter application scoring rubric that an authorizer may utilize in reviewing a charter application.]~~

~~(11)] An authorizer shall require an applicant or proposed board of directors for a charter school to include in the charter application:~~

(a) Performance information, financial information, and closure information for any charter school under the applicant or board of directors;

(b) Details and documentation of the outreach the applicant or proposed board of directors has had with the students or community that is the focus of the charter application; and

(c) Details of whether the charter application replicates or substantially replicates:

1. A charter application that the applicant, the proposed board of directors, or another entity previously withdrew from consideration and the reasons the charter application was withdrawn;

2. A charter application that was rejected by an authorizer and the reasons the charter application was rejected; or

3. A charter school that was previously closed and the reasons for the closure.

~~(11) [(12)]~~ An authorizer shall provide on the authorizer's website the names of all persons, and their roles, who are involved in the review of charter applications. Review of charter applications shall be conducted pursuant to the requirements of the Open Meetings Act, KRS 61.800 et seq.

~~(12) [(13)]~~ An authorizer shall not approve a charter application that does not meet the requirements of KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

~~(13) [(14)]~~ Within five (5) days of the authorizer's approval, the

authorizer shall submit an approved charter application to the commissioner of education for review and approval in accordance with Section 5(11) of this administrative regulation.

Section 5. Standards of Authorizer Performance Concerning Charter Contracts. (1) Prior to negotiating a charter contract with a board of directors, an authorizer shall verify the charter school board of directors' registration as a non-profit business entity with the Kentucky Secretary of State pursuant to KRS Chapter 14A.

(2) An authorizer shall negotiate and enter a charter contract with a charter school board of directors in compliance with KRS 160.1590(5) and (6); 160.1591(2); 160.1592(3), (7), (8), (9), (10), (11), and (20); 160.1593(3); 160.1594(1); 160.1596(1); 160.1597(1), (2), and (6); and 160.1598(1), (5), (6), and (7).

(3) An authorizer shall include pre-opening requirements or conditions in the charter contract as follows:

(a) An authorizer shall establish mutually agreed upon pre-opening requirements or conditions to:

1. Monitor the start-up progress of a newly approved public charter school;

2. Ensure that the charter school is prepared to open timely and smoothly on the date agreed; and

3. Ensure that the charter school meets all benchmarks related to facilities, health, safety, insurance, school personnel, enrollment, curriculum and instruction, operations and fiscal management, governance, and other legal requirements for the charter school opening; and

(b) Failure by the charter school to comply with the pre-opening requirements or conditions may result in the immediate revocation of the charter contract and:

1. May result in the delay in the opening of the charter school by up to one (1) year if the authorizer does not determine that the charter school is more likely than not to close during the school year; or

2. Shall result in the delay in the opening of the charter school by up to one (1) year if the authorizer does determine that the charter school is more likely than not to close during the school year.

(4) An authorizer shall include in the charter contract with the charter school board of directors provisions for charter school financial solvency and sustainability, including:

(a) A requirement that no member of the charter school board of directors, no education service provider, and no charter school employee shall knowingly recommend and no member of the charter school board of directors shall knowingly vote for an expenditure in excess of the charter school's income and revenue of any fiscal year, as shown by the budget adopted by the charter school board of directors and approved by the authorizer;

(b) A requirement that a member of the charter school board of directors, an education service provider, or a charter school employee who knowingly expends or authorizes the expenditure of charter school funds or who knowingly authorizes or executes any employment, purchase, or contract, in violation of this section, shall be jointly and severally liable in person and upon any official fidelity bond given to the authorizer to the extent of any payments on the void claim; and

(c) A requirement that, if at any time during any fiscal year of the charter school's existence, a member of the charter school board of directors, an education service provider, or a charter school employee knows or reasonably should know that the charter school has or will become unable to pay in full its projected expenses as they fall due, the charter school shall immediately so advise the department and the authorizer, and shall provide the department and the authorizer with all financial information relating to revenues and expenses of the charter school necessary for the department and the authorizer to determine the extent and cause of any potential operating deficit. If the member of the charter school board of directors, the education service provider, or the charter school employee fails to provide the notice to the department and the authorizer required by this subsection or fails to cooperate with the department and the authorizer in the production of financial information pursuant to this subsection:

1. The authorizer shall determine if grounds exist to revoke the

charter contract; and

2. The knowingly acting member of the charter school board of directors, the education service provider, or the charter school employee may be subject to the liability established in paragraph (4)(b) of this section.

(5) An authorizer shall include in the charter contract the specific, exclusive reasons and timelines for closure initiated by the charter school board of directors[,] and the closure protocol and policies and procedures applicable to closure of the charter school.

(6) An authorizer shall require in the charter contract the closure requirements of KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

(7) An authorizer shall require in the charter contract that the charter school shall not prohibit a student from attending and shall not unenroll or withdraw a student unless the charter school has complied with KRS 158.150.

(8) An authorizer shall require in the charter contract that the charter school board of directors maintain separate accountings of all funds received and disbursed by each charter school under the charter school board of directors.

(9) An authorizer shall require in the charter contract that any contract the charter school board of directors enters with an education service provider has to be approved by the authorizer prior to execution and that any contract the charter school board of directors enters with an education service provider shall comply with the following:

(a) Clearly establish the primacy of the charter contract over the contract between the charter board of directors and the education service provider;

(b) Clearly identify the charter school board of directors as the party ultimately responsible for the success or failure of the charter school, and clearly define the education service provider as a vendor of services;

(c) Prohibit the education service provider from selecting, approving, employing, compensating, or serving as members of the charter school board of directors;

(d) Require the charter school board of directors to directly select, retain, and compensate the charter school's legal counsel, finance staff, audit firm, and school leader;

(e) Provide for payments to the charter school to be made to an account controlled by the charter school board of directors, not the education service provider;

(f) Require all instructional materials, furnishings, and equipment purchased or developed with charter school funds be the property of the charter school, not the education service provider;

(g) Identify and describe the roles and responsibilities of the charter school board of directors and the education service provider, including all services to be provided under the contract between the charter school board of directors and the education service provider;

(h) Identify and describe the performance measures and consequences by which the charter school board of directors shall hold the education service provider accountable for performance, aligned with the performance measures in the charter contract;

(i) Identify and describe with specificity all compensation to be paid to the education service provider, including all fees, bonuses, and the conditions, consideration, and restrictions on the [such] compensation;

(j) Identify and describe the terms of any facility agreement that may be part of the relationship between the charter school board of directors and the education service provider;

(k) Identify and describe financial reporting requirements and provisions for the charter school board of directors' financial oversight of the education service provider and the charter school;

(l) Identify and describe all other financial terms of the contract, including disclosure and documentation of all loans or investments by the education service provider to the charter school board of directors, and provision for the disposition of assets upon closure in accordance with KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8;

(m) Include assurances that the charter school board of directors, at all times, shall maintain independent fiduciary

oversight and authority over the charter school budget and ultimate responsibility for the charter school's performance;

(n) Include provisions for contract termination without penalties for the charter school and without costs beyond the pro-rated value of the services provided by the education service provider;

(o) Assure:

1. That the charter school board of directors shall be structurally independent from the education service provider and shall set and approve charter school policies;

2. That the terms of the contract between the charter school board of directors and the education service provider are reached through arm's-length negotiations in which the charter school board of directors is represented by legal counsel that does not also represent the education service provider; and

(p) Identify and describe the respective responsibilities of the charter school board of directors and the education service provider in the event of school closure.

(10) An authorizer shall prohibit a charter school board of directors, in the charter contract, from delegating the charter school board of directors' responsibilities in subsection (9) of this section to the education service provider.

(11) An authorizer shall not enter a charter contract for start-up, conversion, or renewal of a charter school, or agree to any charter contract amendment, unless the charter contract or amendment is approved by the commissioner of education as follows:

(a) An authorizer shall provide the commissioner of education a copy of a proposed charter contract or proposed amendment;

(b) Within fifteen (15) days of receipt of the proposed charter contract or amendment from the authorizer, pursuant to KRS 160.1594(9), the commissioner of education shall provide to an authorizer and the charter school board of directors approval of the contract or:

1. The reasons for a denial and any suggestions for remedy of these reasons; and

2. Notice of the opportunity for resubmission of the remedied contract or amendment to the commissioner of education; and

(c) Any failure to meet the commissioner of education's requirements for approval shall render the charter contract or its amendment void.

Section 6. Standards of Authorizer Performance Concerning Charter School Monitoring. (1) An authorizer[;] that determines a charter school board of directors has governance over more than one (1) charter school and has failed to meet the requirements of KRS 160.1592, shall commence an investigation to determine if the charter school board of directors is in compliance with the charter contracts for every other charter school under the authorizer's jurisdiction.

(2) An authorizer shall monitor the performance of the charter contract by a charter school board of directors, and any educational service provider. If the authorizer believes there is an issue with any aspect of performance of the charter contract, or compliance with any of the requirements of KRS 160.1590 to 160.1599, 161.141, or 701 KAR Chapter 8, the authorizer shall commence an investigation.

(3) An authorizer that verifies an issue with any aspect of performance of the charter contract, or compliance with any of the requirements of KRS 160.1590 to 160.1599, 161.141, or 701 KAR Chapter 8, shall notify the commissioner of education and may request assistance from the commissioner of education in addressing and remedying the issue.

(4) An authorizer that verifies an issue with any aspect of the performance of the charter contract, or compliance with any of the requirements of KRS 160.1590 to 160.1599, 161.141, or 701 KAR Chapter 8, shall notify the charter school of the issue and take necessary action, including unilateral imposition of conditions on the charter school, revocation, or nonrenewal of the charter contract, to resolve the issue and to provide notice of the issue and the resolution to the charter school's adult students, emancipated youth students, parents, persons with custody or charge, and the department.

(5) An authorizer shall at least monthly review the financial

budget reports of the charter school and take the following action:

(a) If the budget projections indicate that the charter school's annual operating expenses may at any time during the school year cause the annual operating revenues to fall below two (2) percent of the total projected annual operating revenues included in the school's approved budget, the charter school shall provide specific notice of this to the authorizer and the authorizer shall:

1. Require the charter school to implement a cash management plan approved by the authorizer;

2. Commence a more in-depth review, and an audit if necessary, of the charter school's financial budget reports, expenditures, and revenues;

3. Request financial management assistance for the charter school from the department; and

4. Restrict the charter school's expenditures and require the authorizer's approval prior to expenditure of charter school funds for the remainder of the school year; and

(b) If the charter school defaults on a financial obligation or if the authorizer otherwise suspects the charter school may close prior to the end of the school year or the charter contract term, the authorizer shall:

1. Consult with the commissioner of education;

2. Communicate with the charter school board of directors to determine the need for charter contract revocation;

3. Commence actions under paragraph (a) of this subsection [above];

4. Review the closure protocol;

5. Review the charter contract termination provisions;

6. Communicate with the charter school board of directors regarding the closure protocol and contract provisions for termination; and

7. Notify students and resident local school districts, as soon as necessary to ensure all students and resident local school districts are provided adequate time to prepare for the student transitions and to provide free and appropriate public education to any returning students.

(6) An authorizer shall revoke the charter contract and determine the timeline for closure if the authorizer determines the charter school:

(a) Is financially insolvent;

(b) Is financially unsustainable for the remainder of the school year or the charter contract term; or

(c) Has violated or threatened the health and safety of the students of the public charter school, pursuant to KRS 160.1598(7).

(7) The department shall develop a charter contract performance framework that an authorizer may utilize in developing a charter contract performance framework. In addition to the requirements of KRS 160.1596, the authorizer's charter contract performance framework shall include academic, financial, and organizational performance frameworks, and targets in the following areas:

(a) Student assessment and accountability;

(b) Student graduation rates;

(c) Student promotion rates;

(d) Student attendance rates;

(e) Student admission and enrollment in postsecondary institutions; and

(f) Other outcomes.

Section 7. Standards of Authorizer Performance Concerning Charter Approval, Revocation, Renewal, and Nonrenewal. (1) An authorizer shall not approve a charter application, contract with, or renew a contract with a charter school board of directors for a charter school that:

(a) Does not operate:

1. A breakfast and lunch program under the Child Nutrition Act of 1966, 42 U.S.C. 1773, as amended (CNA), and a lunch program under the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 et seq. (NSLA); or

2. A breakfast and lunch program with provision of meals at no cost to students who qualify for free meals under the CNA and NSLA and with the provision of meals at a reduced cost to students

who qualify for reduced price meals under the CNA and NSLA; or

(b) Does not provide initial and continuing evidence and assurances of the charter school's financial solvency and financial sustainability, as demonstrated initially by the financial plan in the charter application, to cover the expenses of start-up or conversion, operation, and any foreseen or unforeseen closure of the charter school during the fiscal year or during the contract term.

(2) An authorizer shall require for approval of a charter application, for contracting with a charter board of directors, for performance of a charter contract, and for renewal of a charter contract, the following:

(a) Inclusion of at least two (2) local school district resident parents or persons with custody or charge of local school district resident students who will attend the charter school in a charter school board of directors;

(b) Exercise by a charter school board of directors of their authority in KRS 160.1592(3)(p)4 and 5 only as allowed for a local board of education in KRS 160.540;

(c) Participation of all members of a charter school board of directors in annual training, approved by the commissioner of education, on topics of charter school governance and operation including financial governance and transparency; conflict of interest; curriculum and instruction; educational services provided for special needs, at risk, English learner, gifted, and other special population students; physical restraint and seclusion of students; and ethics. Fulfillment of this requirement shall occur through:

1. Twelve (12) hours of annual training for a new charter school board member or a member with zero to eight (8) years of experience as a charter school board member and eight (8) hours for a charter school board member with more than eight (8) years of experience as a charter school board member; or

2. Competency-based annual training;

(d) Attendance by the authorizer, or its designee for authorizing, or at least one (1) member of the authorizer's board of directors at any due process hearing conducted pursuant to KRS 158.150 to suspend or expel a charter school student. A charter school board of directors, with the consent of the parent, person with custody or charge, adult student, or emancipated youth student, and as otherwise allowed by confidentiality laws, may invite the resident local district superintendent to attend the due process hearing and to provide information to the charter school board of directors as to the educational services the resident local school district would provide the student:

1. If the student is expelled from the charter school; and

2. If the charter school board of directors determines, on the record and supported by clear and convincing evidence, that the charter school cannot provide or assure that educational services are provided to the student in an appropriate alternative program or setting because the expelled student posed a threat to the safety of other students or school staff and could not be placed into a state-funded agency program;

(e) Provision, to the authorizer by the charter school board of directors and any education service provider, of information and copies of all records of use of the Individual with Disabilities Education Act dispute resolution procedures, 702 KAR 1:340, regarding a student attending a charter school or the services provided by a charter school;

(f) Provision, to the authorizer by the charter school board of directors and any education service provider, of information and copies of all records of use of physical restraint or seclusion of charter school students;

(g) Provision, to the authorizer by the charter school board of directors and any education service provider, of information and copies of all records of allegations received or substantiation of violation of any health, safety, civil rights, and disability rights of students, staff, or parents or persons with custody or charge;

(h) Pursuant to KRS 160.1592(14), adherence by the charter school board of directors, and any education service provider, to the requirements of KRS 160.330 and 702 KAR 3:220 for the waiver of fees for students eligible for free or reduced price lunch;

(i) Provision, to the authorizer and to the public by the charter school board of directors and any education service provider, updates on the charter school's performance of the charter

contract, according to the charter contract and performance framework;

(j) Restriction on expenditure of charter school resources and funds for school purposes only;

(k) Prohibition on the expenditure of charter school resources and funds in excess of the fair market value of the product, service, or consideration received;

(l) Prohibition on the disposal of charter school resources for less than the fair market value of the resource disposed;

(m) Restriction on the addition or moving of any location of the charter school without the written consent of the authorizer and amendment of the charter contract; and

(n) Provision, to the authorizer by the charter school board of directors and any education service provider, of student enrollment and attendance records and data at least monthly during the school year.

(3) An authorizer shall revoke, effective at the end of the school year, a charter contract for any of the reasons in KRS 160.1598(6).

(4) An authorizer shall require continuous enrollment at a charter school of at least eighty (80) percent of the charter contract minimum student enrollment requirements and shall monitor and take action as follows if that minimum is not met:

(a) The charter school shall provide reports to the authorizer on student enrollment and attendance at least twice a month; and

(b) Failure of the charter school to maintain this continuous, minimum student enrollment shall result in an immediate review by the authorizer of:

1. The charter school's operations;

2. The charter school's financial solvency;

3. The charter school's financial sustainability through the end of the school year and the end of the charter contract term;

4. The potential for closure;

5. Violation of the charter contract; and

6. The need for imposition of unilateral conditions, amendment, nonrenewal, or revocation of the charter contract, or immediate revocation of the charter contract pursuant to KRS 160.1598(7).

(5) An authorizer shall not approve a charter application for a start-up public charter school or conversion charter school if the applicant or proposed member of the board of directors has been previously found to have knowingly violated the requirements for interscholastic athletic activity sanctioned by the Kentucky Board of Education or its designated agency, and the authorizer shall ensure compliance with this requirement as follows:

(a) The authorizer shall consult with the Kentucky Board of Education's designated agency to ensure compliance with this requirement;

(b) The Kentucky Board of Education's designated agency may provide copies of its relevant written reports described in 702 KAR 7:065 Section 3(17) to the authorizer; and

(c) If the authorizer does determine a member of the applicant or the proposed board of directors has previously been found to have knowingly violated the requirements for interscholastic athletic activity sanctioned by the Kentucky Board of Education or its designated agency, the authorizer may only approve a charter application, contract with, or renew a charter for a start-up public charter school or conversion charter school that does not sponsor interscholastic athletic activities, unless the charter school's sponsorship of interscholastic athletic activities is approved by the Kentucky Board of Education.

(6) An authorizer shall remove a member of a board of directors that has been convicted of a crime described in KRS 61.040 and remove any or all of the members of the board of directors of the public charter school in connection with ensuring a smooth and orderly closure when the member or members threaten the health, safety, civil rights, or disability rights of the students or the community pursuant to KRS 160.1598(11).

(7) An authorizer shall revoke or nonrenew a charter school contract if the commissioner of education has determined a member of the board of directors, or an education service provider at the direction of a member of the board of directors, or an employee at the direction of a member of the board of directors, has knowingly violated 703 KAR 5:080, Administration Code for

Kentucky's Assessment Program or KRS 160.1592(3)(g), for a student assessment included in:

- (a) The performance framework of the charter contract; or
- (b) The state accountability system.

(8) For issues in a charter school's performance that do not require immediate action by the authorizer, as stated in KRS 160.1590 to 160.1599, and 701 KAR Chapter 8, or otherwise to protect the health, safety, civil rights, disability rights, and well-being of students and the community, an authorizer may utilize a progressive system of monitoring consequences including notices of deficiencies or conditions unilaterally imposed on the charter school prior to revocation or nonrenewal. An authorizer shall share publicly a notice of deficiency or a condition unilaterally imposed on the charter school as well as the underlying charter school performance issue and shall provide a copy to the commissioner of education and to the Kentucky Board of Education.

(9) An authorizer shall comply with the following prior to approving a charter application for a charter school or renewing a charter school contract:

- (a) Holding in the resident local school district a public hearing to allow for public comment on the charter application; and
- (b) Allowing public comment to be submitted in writing prior to the hearing, or oral or written public comment at the hearing and allowing comment at the public hearing by a resident superintendent who has filed an objection to the charter application.

Section 8. Standards of Authorizer Performance Concerning Charter Closure. (1) An authorizer's charter school closure protocol shall include the following:

(a) Provision, to the authorizer by the charter school, of contact information and resident local school district information for all parents, persons with custody or charge, adult students, and emancipated youth students;

(b) Notification to all parents, persons with custody or charge, adult students, and emancipated youth students of:

- 1. The closure decision;
- 2. The closure process;
- 3. Information on student instruction and reassignment;
- 4. Information on courses, levels, and credits completed by the student;

5. Information on the process for obtaining a copy of the student's education records; and

6. Contact information for additional information;

(c) Notification to the resident local school districts and the department of:

- 1. The closure decision;
- 2. The closure date;
- 3. The closure process;
- 4. Availability and timeline for appeals and their intersection with the closure protocol;

5. A copy of the notification provided to charter school parents, persons with custody or charge, adult students, and emancipated youth students;

6. Information on student instruction and reassignment; and

7. Contact information for additional information;

(d) Budget review and revision to limit expenditures to only those in the approved budget required for fulfilling the obligations through closure;

(e) Communication of the budget information to parents, persons with custody or charge, adult students, emancipated youth students, resident local school districts, the department, and the Kentucky Board of Education;

(f) Meeting of the authorizer with the charter school board of directors and charter school employees to notify and coordinate:

- 1. The closure;
- 2. The closure process;
- 3. The closure timeline and dates;
- 4. Information on student instruction and reassignment;
- 5. Employment, payroll, and benefits information;
- 6. Transfer of federal and state funds and assets according to the federal and state requirements; and
- 7. Contact information for additional information;

(g) Additional and final notification to parents and resident local school districts, including:

1. Information on the existence and role of any appeal of the closure;

2. Identifying the last student attendance day;

3. Detailing end of the year activities and transition activities for students; and

4. Providing information and assistance for reassignment of students;

(h) Procedures and requirements for establishment of transition teams, development of closure plan, and assignment of roles for closure;

(i) Procedures and requirement for scheduling closure meetings with the transition team, parents, persons with custody or charge, adult students, emancipated youth students, resident local school districts, the department, and employees;

(j) Procedures and requirements for a final report from the charter school board of directors to the authorizer and the department detailing completion of the closure plan;

(k) Maintenance of the charter school facilities;

(l) Identification and notification of all creditors and debtors of the board of directors and the Teachers' Retirement System and the County Employees Retirement System;

(m) Notification of federal, state, local, and private grantors;

(n) Termination of any contract with an education service provider;

(o) Accounting, inventory, and protection of assets;

(p) Notification of employee benefit providers;

(q) Notification of all contractors and termination of all contracts;

(r) Transfer of student and personnel records;

(s) Notification of the IRS;

(t) Issuance of final grades to students;

(u) Dissolution of the charter school;

(v) Maintenance of records; and

(w) Completion of an independent final audit within six (6) months of the closure of the charter school that may function as the annual audit, and that includes at least:

1. An accounting of all financial assets, including cash and accounts receivable and an inventory of property, equipment, and other items of material value;

2. An accounting of the liabilities, including accounts payable and any reduction in apportionments as a result of audit findings or other investigations, loans or grants, and unpaid staff compensation; and

3. An assessment of the disposition of any restricted funds received by or due to the charter school.

(2) An authorizer's charter school closure protocol shall include the following regarding distribution of assets upon closure:

(a) The assets of the charter school, if sufficient to satisfy all the outstanding debts of the charter school, shall be distributed in the following order:

1. To satisfy outstanding payroll obligations for employees of the public charter school;

2. To creditors of the charter school; and

3. To the resident local school districts, in direct proportion to the percentage of the charter school student body that will be returning to each resident local school district after closure;

(b) If the assets of the public charter school are insufficient to satisfy all debts of the charter school, the prioritization of the distribution of assets may be determined by a court of law; and

(c) A charter school board of directors shall distribute its assets within six (6) months of closure of the charter school, unless granted an extension by the authorizer or ordered otherwise by a court of law.

(3) The commissioner of education, upon request by the authorizer, may appoint an independent third-party, paid from the charter school's funds, to manage the closure with assistance from the department. The commissioner of education may remove an appointed independent third-party for cause and appoint a replacement.

(4) The department shall develop a charter closure protocol guide that an authorizer may utilize in developing the closure

protocol.

Section 9. Investigation of an Authorizer. (1) The Kentucky Board of Education shall conduct a special review of an authorizer as follows:

(a) If there is persistently unsatisfactory performance of the portfolio of the public charter schools of the authorizer;

(b) If there is a pattern of well-founded complaints about the authorizer or its public charter schools; or

(c) If the Kentucky Board of Education finds other objective circumstances warranting investigation.

(2) The Kentucky Board of Education shall request investigation by the commissioner of education.

(3) In reviewing and evaluating the performance of an authorizer, the Kentucky Board of Education shall apply nationally recognized standards for quality in charter authorizing, in addition to the standards of performance included in KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

(4) If at any time the Kentucky Board of Education determines that an authorizer is not in compliance with an existing charter contract or the requirements for an authorizer, the Kentucky Board of Education shall either:

(a) Notify the authorizer in writing of any identified problem and the authorizer shall have a reasonable opportunity to respond and remedy the problem; or

(b) If deemed necessary, take action against the authorizer under Section 10.

Section 10. Consequences. (1) The Kentucky Board of Education may, in addition to its authority over authorizers and their action on a charter application, renewal, nonrenewal, revocation, charter amendment, or unilateral imposition of conditions on a charter school pursuant to KRS 160.1595(1), place an authorizer on probation and require the following during probation of an authorizer:

(a) Additional training for the authorizer;

(b) Meeting with the commissioner of education to provide status reports and solicit feedback on charter school performance during a charter contract;

(c) Written and in-person status reports to the Kentucky Board of Education on the authorizer's monitoring of charter schools and other authorizing activity;

(d) Approval by the commissioner of education on the authorizer's monitoring activities, imposition of unilateral conditions, and revocation decisions;

(e) Approval of the Kentucky Board of Education for any renewal, nonrenewal, revocation, charter amendment, or unilateral imposition of conditions on a charter contract; and

(f) Any other consequences the Kentucky Board of Education deems necessary to ensure compliance with KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

(2) The Kentucky Board of Education shall establish the length and extent of the probation of the authorizer's authority and reporting requirements for the authorizer to report on the progress of the charter schools authorized by the authorizer.

(3) The Kentucky Board of Education shall state in its order probating the authority of the authorizer:

(a) The extent of the probation of the authorizer's authority;

(b) The length of the probation of the authorizer's authority;

(c) The grounds under KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8 for the probation of the authorizer's authority; and

(d) The anticipated changes that would have to occur for the Kentucky Board of Education to consider ending the probation of the authorizer's authority under KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

(4) The Kentucky Board of Education may entertain a request by the authorizer for termination of the probation if the authorizer submits, at least forty-five (45) days prior to the Kentucky Board of Education's regular meeting, the following:

(a) The authorizer's request for ending the probation; and

(b) The authorizer's evidence of:

1. Its efforts to correct the grounds for the probation of its authorizing authority;

2. The changes required in the Kentucky Board of Education's order; and

3. Its plan to ensure future compliance with the requirements of KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

Section 11. ~~[Statewide Evaluation of Public Charter School Authorizers. (1) Beginning with the conclusion of the 2018-2019 fiscal year, the department shall provide an annual report on the state's public charter school authorizers and their charter schools to the Governor, the Interim Joint Committee on Education, the secretary of the Education and Workforce Development Cabinet, and the public that includes information from the annual reports submitted by every authorizer as well as any additional relevant data compiled by the department.~~

~~(2) The annual report shall include:~~

~~(a) For all public charter schools in the state, by individual charter school, and by authorizer, and disaggregated by level, school level, or educational level; race; free and reduced-price lunch eligibility status; and status as a student with special needs:~~

~~1. The academic performance;~~

~~2. The number of students enrolled, withdrawn, suspended, and expelled;~~

~~3. Financial audit results;~~

~~4. Financial solvency and sustainability for the fiscal year and the contract term;~~

~~5. Closure information; and~~

~~6. For charter schools with education service providers, information on the contracts and relationships between charter schools and education service providers and any financial risk, lack of accountability, and program performance risk resulting from the contracts and relationships between charter schools and education service providers;~~

~~(b) A comparison of the performance and growth of public charter school students with the performance and growth of comparable groups of students in noncharter public schools;~~

~~(c) A detailed update on the authorizing process;~~

~~(d) Recommendations for adjustments to public charter school governance and oversight; and~~

~~(e) The department's assessment of the successes, challenges, and areas for improvement in meeting the purposes of KRS 160.1591, including the department's recommendations as to any suggested changes in state law or policy necessary to strengthen the state's public charter schools.~~

Section 12.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Charter School Application and Addendum", February 2018[is incorporated by reference.]; and

(b) "Notice of Intent", February 2018.

(2) ["Notice of Intent", February 2018, is incorporated by reference.] This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Education, Office of Legal[Legislative and Communication] Services, [5th floor, 300 Building,] 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

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.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, September 8, 2020)

702 KAR 1:180. School security risk assessment tool.

RELATES TO: KRS 156.160, 158.4410, 158.4412, 158.442, 158.443, 158.444

STATUTORY AUTHORITY: KRS 156.029, 156.070, 156.160, 158.442, 158.443, 158.444

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.029(7) establishes [states] that the primary function of the Kentucky Board of Education (KBE) is to adopt administrative regulations governing [“the educational programs, services, and activities[”] within the KBE’s jurisdiction that the Kentucky Department of Education (department) administers and operates, and KRS 156.160 requires the KBE to [“]promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance.[”] In accordance with KRS 158.442, which establishes the Center for School Safety (KCSS), the KCSS is required to [“]advise the Kentucky Board of Education on administrative policies and administrative regulations relating to school safety and security.[“] Further, KRS 158.443(9)(b) requires that the board of directors for the KCSS [“]approve a school security risk assessment tool and updates as necessary in accordance with KRS 158.4410 to be incorporated by reference within an administrative regulation promulgated in accordance with KRS Chapter 13A.[”] KRS 158.444 requires the Kentucky Board of Education to promulgate administrative regulations related to school safety, student discipline, and related matters. [Accordingly, This administrative regulation incorporates by reference the school security risk assessment tool approved by the KCSS board of directors.

Section 1. Verification[Incorporation by Reference]. (1) As required by KRS 158.4410, each local district superintendent shall annually verify that all schools within the district have completed the Internal School Security Risk Assessment Tool approved by the KCSS board of directors and incorporated by reference within this administrative regulation pursuant to KRS 158.443.

Section 2. Incorporated by Reference. (1) “Internal School Security Risk Assessment Tool”, June 2020, is incorporated by reference.

(2) [The following material is incorporated by reference: “Internal School Security Risk Assessment Tool,” June 2020.

(3) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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.

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department for Libraries and Archives
Division of Library Services
(As Amended at ARRS, September 8, 2020)**

725 KAR 2:060. Certification of public librarians.

RELATES TO: KRS 171.250, 171.260, 171.270

STATUTORY AUTHORITY: KRS 171.250(1[2]), 171.260, 171.270

NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.260 requires certification of public librarians and other full-time employees. KRS 171.250(1[2]) requires the board to promulgate administrative regulations in order to establish the requirements for the certification of public librarians. This administrative regulation establishes the requirements for certification of public librarians.

Section 1. Definitions. (1) “ALA” means the American Library Association.

(2) “Asynchronous training” means training that allows students to access content or learn outside the classroom at their convenience or independent of the instructor.

(3)[(2)] “Board” means the Kentucky State Board for the Certification of Librarians.

(4) “Educational contact hours” means a measurement

used for an educational activity that applies extended, in-depth study in the field of library and information science or any job-related field.

(5)[(4)](3) “Full-time” means working [more than] 100 hours or more per month.

(6)[(5)] “Job-related field of study” means an area other than library science that is directly related to the applicant’s job duties.

(7)[(6)](4) “Library [information] services” means duties performed by library employees that require special skills and knowledge to be performed properly.

(8)[(7)](5) “Library work experience” means employment in a library that includes administration, collection development, technical services, public services, or support for public service areas, and excludes secretarial, custodial, groundskeeping, security, food service, [driver,] and messenger duties.

(9)[(8)] “Part-time” means working less than 100 hours per month.

Section 2. Required Certification by Public Library Position. (1) A full-time or part-time library director serving a population of more than 15,000 shall hold or obtain a Professional I or II certificate.

(2) A full-time or part-time library director serving a population of 15,000 or less shall hold or obtain at least the [paraprofessional] Professional III or IV certificate.

(3) A full-time or part-time [An] assistant director, [bookmobile librarian,] branch head, [or] department head, manager, supervisor, or bookmobile librarian, as determined by the library director or designee, shall hold or obtain at least the Paraprofessional I certificate.

(4) Any other full-time position providing library [information] services, as determined by the library director or designee [assigned by local library personnel] using the Approved Guidelines for Determination of Paraprofessional Level of Certification, shall hold or obtain the Paraprofessional II or Paraprofessional III [library experience] certificate.

Section 3. Types of Certificates. (1) A Professional I Certificate [I] shall be:

(a) Awarded if the applicant has obtained a master’s degree in library science from an [a] ALA accredited school; and
(b) Valid for five (5) years.

(2) A Professional II Certificate [II] shall be:

(a) Awarded if the applicant has obtained:
1. A master’s degree in library science from a library school that has not been ALA accredited; or
2. A master’s degree with at least fifteen (15) graduate hours in library science; and
(b) Valid for five (5) years.

(3) A Professional III Certificate [III] shall be:

(a) Awarded if the applicant has obtained [the following requirements before July 1, 2011]:

1. A bachelor’s degree with at least twenty-one (21) graduate or undergraduate college credit hours in library science; or
2. A master’s degree with at least fifteen (15) [twelve (12)] graduate or undergraduate college credit hours in library science; and
(b) Valid for five (5) years.

(4) A Professional IV Certificate [IV] shall be:

(a) Awarded if the applicant has obtained: [passed the library certification examination before July 1, 1980; and]

1. A bachelor’s degree with at least nine (9) graduate or undergraduate college credit hours in library science and six (6) graduate or undergraduate college credit hours in a job-related field of study; or

2. A master’s degree with six (6) graduate or undergraduate college credit hours in library science and three (3) graduate or undergraduate college credit hours in a job-related field of study; and
(b) Valid for five (5) years.

(5) A Paraprofessional I Certificate shall be:

(a) Awarded if the applicant has completed or obtained:
1.a. [Sixty (60) hours of college training, including at least twelve (12) hours in library science; and

b. Two (2) years of full-time work experience;
2.a.] A high school diploma or high school equivalency diploma[GED];
b. 360 total job-related educational contact hours, including 144 educational contact hours in library science and seventy-two (72) educational contact hours in Human Resources or Management [At least fifteen (15) hours in library science]; and
c. 4,000 hours of library work experience[Five (5) years of full-time library work experience];
3. A bachelor's degree with at least twelve (12) hours in library science; or
4. A master's degree with at least six (6) hours in library science]; and
(b) Valid for five (5) years.
(6) A Paraprofessional II [library experience] Certificate shall be:
(a) Awarded if the applicant has completed or obtained:
1.a. A high school diploma or high school equivalency diploma[GED]; [and]
2.a. Twelve (12) hours of library science];
b. 288 job-related educational contact hours[Nine (9) hours of library science and three (3) hours in a related field of study]; and
c. 4,000 hours of library work experience[Six (6) hours in library science and ten (10) years of full-time library work experience]; or
d. A bachelor's degree and six (6) hours in library science]; and
(b) Valid for five (5) years.
(7) A Paraprofessional III Certificate shall be:
(a) Awarded if the applicant has completed or obtained:
1.a. A high school diploma or high school equivalency diploma[GED]; [and]
b. 144 job-related educational contact hours; and
c. 2,000 hours of library work experience; and
(b.) Valid for five (5) years.
(8)[7] A Professional or[, Paraprofessional [or library experience] Certificate shall be renewed according to 725 KAR 2:070.
(9)[8] A Temporary Certificate shall be valid for five (5) years and shall be issued to a person who:
(a) Holds or is promoted to a job requiring certification as provided in Section 2 of this administrative regulation; or
(b) Does not meet the requirements of Section 2 of this administrative regulation]; and
(c) Is promoted to a job requiring a higher level of certification as provided in Section 2 of this administrative regulation].

Section 4. Sources of Education for Initial Certification. (1) The board shall accept academic credit from college credit courses offered by an institution of higher education, which is accredited by its respective regional association.

(2) The board shall accept library and information science academic credits from college credit courses offered by:

(a) Graduate schools accredited by the Committee on Accreditation of the American Library Association and these college credit courses shall be approved for all types of certificates;

(b) Colleges whose library and information science departments are accredited by their respective regional associations and these college credit courses shall be approved for all types of certificates;

(c) Accredited colleges that offer individual library and information science courses and these college credit courses shall be approved for Professional III and IV[, and Paraprofessional I, II, and III[, and Library Experience] certificates; or

(d) Community and technical colleges that offer library or information science courses and these courses shall be approved for Professional III and IV[, and Paraprofessional I, II, and III[and Library Experience] certificates.][7].]

(3)[(e)] The board shall also accept asynchronous training courses with a minimum of ten (10) educational contact hours in length provided by an institution or organization that meets the requirements of the Approved Guidelines for Asynchronous Training Courses.

(4)[(3)]As an alternative source of education for the

Professional III, IV, and Paraprofessional [or the library experience certificate] certificates, the board shall accept completion of a library institute, which [a library institute] shall be an in-depth program of library and information science developed according to the Approved Guidelines for Library Institutes.

(a) The program shall be submitted to the board for approval sixty (60) days in advance of implementation.

(b) One (1) institute shall substitute for a three (3) hour college credit[level] library and information science course and shall only be substituted once for initial certification.

Section 5. Application for public library certification shall be made to the board by submitting a completed Application for Certification of Librarianship.

Section 6. A fee of twenty (20) dollars shall be charged for each certificate issued.

Section 7. A Professional or[, Paraprofessional [or library experience] certificate shall be issued to an applicant who meets the requirements and submits the required fee.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Approved Guidelines for Library Institutes", January 8, 2010; [and]

(b) "Application for Certification of Librarianship", October 18, 2019[December 15, 2008.]; [and]

(c) "Approved Guidelines for Determination of Paraprofessional Level of Certification", July 8, 2019; and

(d) "Approved Guidelines for Asynchronous Training Courses", July 8, 2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601[40602-0537], Monday through Friday, 9[8] a.m. to 4[:30] p.m.

CONTACT PERSON: Terry Manuel, Commissioner, Kentucky Department for Libraries & Archives, P.O. Box 537, 300 Coffee Tree Road, Frankfort, Kentucky 40602, phone (502) 564-8303, email kdla.certification@ky.gov.

**CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(As Amended at ARRS, September 8, 2020)**

907 KAR 1:604. Recipient cost-sharing.

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

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

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

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

who:

- (a) Remains at home in the community; and
- (b) Is not:
 1. Living in a medical institution;
 2. Living in a nursing facility; or
 3. Participating in a 1915(c) home and community based services waiver program.

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

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

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

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

(5)] "~~DMEPOS~~" means ~~durable medical equipment, prosthetics, orthotics, and supplies.~~

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

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

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

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

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

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

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

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

(c) Is engaged in active employment verifiable with:

1. Paycheck stubs;
 2. Tax returns;
 3. 1099 forms; or
 4. Proof of quarterly estimated tax;
- (d) Meets the income standards established in 907 KAR 20:020;

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

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

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

- (a) ~~Diagnosis of a behavioral health condition is made;~~
- (b) ~~Treatment decision related to the diagnosis of a behavioral health condition is continued; or~~
- (c) ~~Prescription for a behavioral health condition is:~~
 1. ~~Initially issued; or~~
 2. ~~Renewed.~~

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

(15)] "~~Visit~~" means:

(a) ~~1. An encounter; or~~

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

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

(c) ~~A service that occurs:~~

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

Section 2. Copayments. (1) Except as provided by subsection (4) of this section, the following table shall establish the copayment amounts that a recipient shall pay, unless the recipient is otherwise exempt from cost sharing.

<u>Benefit</u>	<u>Copayment Amount</u>
<u>Emergency room for a nonemergency visit</u>	<u>\$1</u>
<u>Prescription and over-the-counter drugs</u>	<u>\$1</u>
<u>Ambulance services provided to individuals in need of nonemergency health transportation services</u>	<u>\$1</u>

(2) The full amount of the copayment established in the table in subsection (1) of this section shall be deducted from the provider reimbursement, unless the recipient has already met any copayment obligation for the year pursuant to Section 3(1)(b) of this administrative regulation.

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

(4) A prescription co-payment shall not apply to:

- (a) Certain antipsychotic medications;
- (b) Contraceptives for family planning;
- (c) Tobacco cessation medications;
- (d) All covered diabetes or diabetic supplies;
- (e) Pregnant recipients;
- (f) Long-term care residents; or
- (g) Any recipient exempted pursuant to Sections 3 or 5 of this administrative regulation.

Section 3. Copayment General Provisions and Exemptions. (1)(a) Cost-sharing or copayments for the delivery of Medicaid services within the Commonwealth shall not exceed the amounts established in the table in Section 2 of this administrative regulation.

(b) After paying for one (1) copayment each calendar year for any service or product within the table established in Section 2 of this administrative regulation, a recipient shall not be subject to additional copayments or cost-sharing for that service or any other Medicaid covered service or product for the remainder of that calendar year.

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

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

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

(5) A provider shall not deny services to a recipient who cannot pay any required cost sharing.

(6) Any amount of uncollected copayment by a provider from a recipient shall not be considered a debt to the provider.

(7) A provider shall not collect:

(a) A copayment from an enrollee for a service or item if a copayment is not imposed for that service or item; or

(b) Any copayment or cost sharing from an enrollee that is greater than the copayment amounts established in the table in Section 2 of this administrative regulation.

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

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

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

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

2. Established in paragraph (b) of this subsection.(b) The monthly premium shall be:

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

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

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

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

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

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

(5) Retroactive eligibility pursuant to 907 KAR 20:010, Section 1(3), shall not apply to a Medicaid Works individual.

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

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

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

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

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

(2) May impose on an enrollee:

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

(b) No copayment.

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

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

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

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

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

Section 8. Federal Approval and Federal Financial Participation. The department's copayment provisions and any coverage of services established in this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation; and

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

Section 9. This administrative regulation was found deficient by the Administrative Regulation Review Subcommittee on May 13, 2014. [Copayments. (1) The following table shall establish the:

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

(b) Corresponding provider reimbursement deductions.

Benefit	Copayment Amount
Acute inpatient hospital admission	\$50
Outpatient hospital or ambulatory surgical center visit	\$4
Emergency room for a nonemergency visit	\$8
DMEPOS	\$4
Podiatry office visit	\$3
Chiropractic office visit	\$3
Dental office visit	\$3
Optometry office visit	\$3
General ophthalmological office visit	\$3
Physician office visit	\$3
Office visit for care by a physician assistant, an advanced practice registered nurse, a certified pediatric and family nurse practitioner, or a nurse midwife	\$3
Office visit for behavioral health care	\$3
Office visit to a rural health clinic	\$3
Office visit to a federally qualified health center or a federally qualified health center look-alike	\$3
Office visit to a primary care center	\$3
Physical therapy office visit	\$3
Occupational therapy office visit	\$3
Speech-language pathology services office visit	\$3
Laboratory, diagnostic, or radiological service	\$3
A Medicaid or KCHIP beneficiary who is younger than nineteen (19) years of age	\$0
Brand name drug	\$4
Generic drug	\$1
Brand name drug preferred over generic drug	\$1
Pharmacy product class: certain antipsychotic drugs	\$1
Pharmacy product class: contraceptives for family planning	\$0
Pharmacy product class: tobacco cessation	\$0
Pharmacy product class: diabetes supplies, blood glucose meters	\$0
Pharmacy product class: Diabetes supplies, all other covered diabetic supplies	\$4 for first fill, \$0 for second fill and beyond, per day
Pharmacy patient attribute: pregnant	\$0
Pharmacy patient attribute: long-term care resident	\$0
Pharmacy patient attribute: under eighteen (18) years of age	\$0
KI-HIPP participant	\$0
[Kentucky HEALTH: Medically Frail	\$0
Kentucky HEALTH: Former Foster Care Youth up to 26 years of age	\$0
Kentucky HEALTH: enrollee current on premiums	\$0

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

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

Section 3. [Copayment General Provisions and Exemptions. (1) The department or any MCO shall not utilize or require cost-sharing or copayments in the delivery of Medicaid services within the Commonwealth.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(6) A provider shall:~~

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

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

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

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

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

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

~~Section 3[4]. Premiums for Medicaid Works Individuals.~~

~~(1)(a) A Medicaid Works individual shall pay a monthly premium that is:~~

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

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

~~(b) The monthly premium shall be:~~

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

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

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

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

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

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

~~(5) Retroactive eligibility pursuant to 907 KAR 20:010, Section 1(3), shall not apply to a Medicaid Works individual.~~

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

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

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

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

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

~~(2) May impose on an enrollee:~~

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

~~(b) No copayment.]]~~

~~Section 4[6]. Freedom of Choice. (1) In accordance with 42 C.F.R. 431.51, a recipient who is not an enrollee may obtain services from any qualified provider who is willing to provide services to that particular recipient.~~

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

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

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

~~Section 5[7]. Appeal Rights. An appeal of a department decision regarding the Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.~~

~~Section 6[8]. [Applicability of KAR Title 895. If eligible for Kentucky HEALTH, an individual subject to this administrative regulation shall also comply with any applicable requirements established pursuant to KAR Title 895.~~

~~Section 9.] [Federal Approval and Federal Financial~~

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

- ~~(1) Receipt of federal financial participation; and~~
- ~~(2) Centers for Medicare and Medicaid Services' approval.~~

~~Section 7/9[40]. This administrative regulation was found deficient by the Administrative Regulation Review Subcommittee on May 13, 2014.]~~

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

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

AGRICULTURAL EXPERIMENT STATION (Amended After Comments)

12 KAR 4:080. Plant nutrient[nutrients] guarantees and labeling.

RELATES TO: KRS 250.366(7), 250.371 – 250.451

STATUTORY AUTHORITY: KRS 250.366(7), 250.421

NECESSITY, FUNCTION, AND CONFORMITY: KRS 250.366(7) authorizes the Kentucky Agricultural Experiment Station Director to promulgate administrative regulations for the inspection and analysis of plant nutrient guarantees. KRS 250.421 requires the director to promulgate administrative regulations necessary to implement KRS 250.371 through 250.451. This administrative regulation establishes requirements for plant nutrient labeling requirements.

Section 1. Plant Nutrient Guarantees. Plant nutrients, additional to nitrogen, phosphorus, and potassium, referenced by fertilizer labeling or information provided with a fertilizer shall be registered and guaranteed pursuant to this administrative regulation. Except guarantees for water-soluble nutrients labeled for **ready-to-use foliar fertilizers, ready-to-use specialty liquid fertilizers**, hydroponic or continuous liquid feed programs and **guarantees for potting soils, garden soils, lawn soils, and any other growing media product labeled with a fertilizer guaranteed analysis**, the minimum elemental percentages shall be as established in the Table established in this paragraph.

Element	Percent
Calcium (Ca)	1.00[00]
Magnesium (Mg)	0.50[00]
Sulfur (S)	1.00[00]
Boron (B)	0.02[00]
Chlorine (Cl)	0.10[00]
Cobalt (Co)	0.0005
Copper (Cu)	0.05[00]
Iron (Fe)	0.10[00]
Manganese (Mn)	0.05[00]
Molybdenum (Mo)	0.0005
Nickel (Ni)	0.0010
Sodium (Na)	0.10[00]
Zinc (Zn)	0.05[00]

(1) Guarantees and claims shall not be referenced by fertilizer labeling or information provided with a fertilizer for elements other than those established in the Table established in this subsection.

(2) Except for nitrogen, phosphorus, and potassium, if present and that shall be listed first, guaranteed elements referenced by fertilizer labeling or information provided with a fertilizer shall be listed in the order established in the Table established in this subsection.

(3) The elements established in this subsection shall be guaranteed on their elemental basis and are the only ones that will be accepted.

(4) Sources of the elements guaranteed and proof of availability shall be provided upon request

Section 2. Fertilizer Labels.

(1) Fertilizer labels or information provided with a fertilizer shall be legible and conspicuous and shall include:

(a) Net Weight; and

(b) Brand and grade, except grade shall not be required if primary nutrients are not claimed; and

(c) Under the heading of Guaranteed Analysis:

Total Nitrogen (N)	%
Available Phosphate (P ₂ O ₅)	%
Soluble Potash (K ₂ O)	%
Other Nutrients, Elemental Basis	%

1. If the percentage is zero, the nutrient shall be omitted from

the statement, except in nutrient guarantee breakdowns.

2. If the chemical forms of nitrogen are claimed, the form shall be guaranteed in the format established in the Table established in this subparagraph, and the percentages of the individual forms shall add up to the total nitrogen percentage. Implied order of the forms of nitrogen is not intended.

	Total Nitrogen (N)	%
%	Ammoniacal Nitrogen	
%	Nitrate Nitrogen	
%	Water Insoluble Nitrogen	
%	Urea Nitrogen	
%	Other Recognized and Determinable Forms of Nitrogen	

(d) The source or sources of the guaranteed elements that, if shown on the fertilizer labeling or information provided with a fertilizer, shall be listed below the completed guaranteed analysis statement; and

(e) Name and address of registrant or licensee.

(2) For packaged products, Fertilizer Labels shall:

(a) Appear on the front or back of the package;

(b) Occupy at least the upper third of a side of a package; or

(c) Be printed on a tag and attached to the package.

(3) If the chemical form of a plant nutrient is guaranteed, the percentage for each component shall be shown before the name of the form, as in the following example:

Total Nitrogen (N)	34%
17% Nitrate Nitrogen	
17% Ammoniacal Nitrogen	
Magnesium (Mg)	2.0%
1% Water Soluble Magnesium (Mg)	
Sulfur (S)	10.0%
5% Free Sulfur (S)	
5% Combined Sulfur (S)	
Iron (Fe)	2.0%
2% Chelated Iron (Fe)	

Section 3. Beneficial Substances and Beneficial Compounds.

(1) Beneficial substances or beneficial compounds guarantees shall be listed below the guaranteed analysis statement under one of the following headings: "Also Contains Beneficial Substances", "Also Contains Beneficial Compounds", or "Also Contains NonPlant Food Ingredients".

(2) The percentage for each beneficial substance or beneficial compound shall be shown after the name of the form, as in the following examples:

(a) Also Contains Beneficial Substances (Compounds)

Beneficial Substance	% or acceptable units
Purpose Statement:	

(b) Also Contains NonPlant Food Ingredients

Beneficial Substance	% or acceptable units
Purpose Statement:	

(3) For the beneficial substance, Silicon, the guarantee shall be "Soluble Silicon." The method of determination of Soluble Silicon shall be from the Journal of AOAC International, Volume 96, No.2, 2013.

Section 4. The term of "percentage" by symbol or word, when used on fertilizer labeling shall represent only the amount of individual plant nutrients in relation to the total product by weight.

Section 5. Incorporation by Reference.

(1) "Journal of AOAC International", Volume 96, No. 2, 2013, "A 5-Day Method for Determination of Soluble Silicon Concentrations in Nonliquid Fertilizer Materials Using a Sodium Carbonate-Ammonium Nitrate Extractant Followed by Visible Spectroscopy with Heteropoly Blue Analysis: Single-Laboratory Validation" is incorporated by reference.

(2) This material may be inspected, copied, or obtained.

~~subject to applicable copyright law, at the Division of Regulatory Services, University of Kentucky, 103 Regulatory Services Building, Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m. [To prescribe in detail when and how plant nutrients in addition to nitrogen, phosphorus and potassium shall be registered and guaranteed.~~

~~Section 1. Plant nutrients in addition to nitrogen, phosphorus and potassium when mentioned in any form or manner shall be registered and shall be guaranteed. Guarantees shall be made on the elemental basis. Sources of the elements guaranteed and proof of availability shall be provided the director upon request. Except guarantees for those water soluble nutrients labeled for hydroponic or continuous liquid feed programs, and guarantees for potting soils, the minimum percentages which will be accepted for registration are as follows:~~

~~Section 2. Guarantees or claims for the plant nutrients listed in Section 1 of this administrative regulation are the only ones which will be accepted. Proposed labels and directions for the use of the fertilizer shall be furnished with the application for registration upon request. Any of the elements listed in Section 1 of this administrative regulation which are guaranteed shall appear in the order listed and shall immediately follow guarantees for the primary nutrients of nitrogen, phosphorus and potassium if present.]~~

DR. ROBERT HOUTZ, Director

APPROVED BY AGENCY: September 4, 2020

FILED WITH LRC: September 8, 2020 at 2 p.m.

CONTACT PERSON: Stephen McMurry, Fertilizer and Seed Program Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 218-2440, fax (859) 257-9478, smcmurry@uky.edu.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stephen McMurry

(1) Provide a brief summary of:

(a) What this administrative regulation does: Describes guaranteeing and labeling of plant nutrient guarantees.

(b) The necessity of this administrative regulation: Creates a format to guarantee and label plant nutrients for fertilizer labels.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 250.421 the Director of the Agricultural Experiment Station is required to promulgate administrative regulations used in 12 KAR Chapter 4.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation creates a format to guarantee and label plant nutrient guarantees.

(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 additional exemptions to the labeling of minimum nutrient guarantees for ready-to-use fertilizers and growing media products labeled with a fertilizer guaranteed analysis.

(b) The necessity of the amendment to this administrative regulation: The amendment expands the products which may guarantee nutrients below the standard minimum.

(c) How the amendment conforms to the content of the authorizing statutes: Updates labeling requirements used to regulate the fertilizer industry.

(d) How the amendment will assist in the effective administration of the statutes: These updates are beneficial to both the regulatory body and the regulated industry as it brings in new labeling requirements as outlined from a national format to label.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Firms which register fertilizer labels in Kentucky 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: Proper labeling of fertilizer will be required by the regulated industry. If they are following a national format by the Association of American Plant Food Control Officials, no new action will be required.

(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 associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Kentucky will be closer to the national format for labeling fertilizer.

(5) Provide an estimate of how much it will cost 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: The Division of Regulatory Services regular annual 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.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increase in fees.

(9) TIERING: Is tiering applied? No, this administrative regulation treats all regulated 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? University of Kentucky Division of Regulatory Services

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 250.366(7), 250.421.

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? No effect

(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 effect

(c) How much will it cost to administer this program for the first year? No effect

(d) How much will it cost to administer this program for subsequent years? No effect

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: No fiscal impact

BOARDS AND COMMISSIONS

Board of Pharmacy (Amended after Comments)

201 KAR 2:311. Compounding drugs for veterinary use.

RELATES TO KRS 315.191(1)(a).

STATUTORY AUTHORITY: KRS 315.191(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(a) requires the board to promulgate administrative

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regulations to regulate and control all matters relating to pharmacists, pharmacist interns, pharmacy technicians, and pharmacies. This administrative regulation addresses compounding for veterinary use.

Section 1. The pharmacist shall receive a written, verbal, facsimile, or electronic request for a compounded drug from a practitioner, indicating the formulation, strength, and quantity ordered. [A pharmacist, pharmacist intern, or pharmacy technician may prepare a compounded drug to be dispensed for a veterinarian's administration with beyond use dates as assigned in accordance.]

Section 2. A compounded drug containing [that contains] a controlled substance shall only be compounded for patient specific dispensation [directly] from pharmacy to the ultimate user.

Section 3. (1) A pharmacist, pharmacist intern, or pharmacy technician may prepare a non-controlled compounded drug to be dispensed for veterinary use or administration (institutional or ambulatory) and which does not designate a specific patient for the purpose of direct administration to patients for emergency treatment, situations when a time delay would negatively affect a patient outcome, or diagnostic purposes.

(2) The compounded drug shall have a beyond use date.

(3) The veterinary institution or ambulatory unit shall maintain only an emergency stock supply.

(4) A veterinarian or licensed veterinary technician (as defined in KRS 321.441) shall be able to administer a compounded drug for veterinary use. [The pharmacist shall receive a written, verbal, facsimile, or electronic request for a compounded drug from a practitioner, indicating the formulation, strength, and quantity ordered.]

Section 4. Label Requirements. Except as provided for in Section 5, a label shall be generated for the compounded drug and shall include:

(1) The name of the requesting veterinarian[practitioner];

(2) The designated name and strength of the compounded drug;

(3) The quantity dispensed;

(4) If for a specific patient and the patient is a food producing animal, the withdrawal time;

(5) A lot or batch number of the compounded drug;

(6) The beyond use date for the compounded drug;

(7) The date the compounded drug is dispensed;

(8) The pharmacy's name, address, and telephone number;

(9) Any special storage requirements;

(10) A notation stating "For [Office or Institutional administration for] veterinary use";

(11) Any auxiliary label required for the compounded drug.

Section 5. (1) A non-controlled substance [(11) The] compounded drug shall be [administered or] dispensed by a [the] veterinarian [or veterinarian technician] for emergency take home use when in his or her professional judgment, failure to provide the drug would result in potential harm to the patient.

(2) When dispensed from the veterinary institution or ambulatory unit, a compounded drug prescription for a veterinary patient shall be for up to a 14-day supply in accordance with the veterinarian prescription and dispensation labeling requirements as found in 201 KAR 16:600. [for up to a 14 day supply in accordance with veterinarian labeling requirements.]

Section 6[5]. The prescription for the compounded drug shall be kept pursuant to 201 KAR 2:170.

LARRY A. HADLEY, Executive Director

APPROVED BY AGENCY: September 8, 2020

FILED WITH LRC: September 8, 2020 at 4 p.m.

CONTACT PERSON: Larry Hadley, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Larry.Hadley@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Larry Hadley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation addresses compounding for veterinary use.

(b) The necessity of this administrative regulation: KRS 315.191(1)(a) requires the board to promulgate administrative regulations to regulate and control all matters relating to pharmacists, pharmacist interns, pharmacy technicians, and pharmacies. This administrative regulation addresses compounding for veterinary use.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation addresses compounding for veterinary use.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Retitle this regulation to Compounding drugs for veterinary use. Update language to restrict this practice to veterinary 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: Retitle this regulation to Compounding drugs for veterinary use. Update language to restrict this practice to veterinary use. Update language to allow for a veterinarian to maintain a stock supply of compounded drugs for immediate use both onsite and offsite.

(b) The necessity of the amendment to this administrative regulation: The criteria needed to be updated to restrict practice to veterinary use.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 315.191 authorizes the board to promulgate administrative regulations pertaining to pharmacists and pharmacies.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will further promote, preserve, and protect public health through effective regulation of pharmacists and pharmacies by updated language to restrict this practice to veterinary use.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates pharmacies and pharmacists will be affected minimally by this regulation amendment.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Pharmacies and pharmacists will have to familiarize themselves with amended language. The board will help to educate pharmacists and pharmacies in these changes.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will clarify previous statutory language.

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

(a) Initially: No costs will be incurred.

(b) On a continuing basis: No costs will be incurred.

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

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Board revenues from pre-existing fees provide the funding to enforce the regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be required because of this new regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because the regulation is applicable to compounding drugs and does not generate revenue.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 315.191(1)(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 the board 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? This administrative regulation will not generate revenue for the board in subsequent years.

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

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

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

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Amended After Comments)

501 KAR 6:120. Blackburn Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards by the American Correctional Association. This administrative regulation establishes the policies and procedures for the Blackburn Correctional Complex.

Section 1. Incorporation by Reference.

(1) "Blackburn Correctional Complex Policies and Procedures," **September 1, [May 14,] 2020**[March 14, 2008], are incorporated by reference. Blackburn Correctional Complex Policies and Procedures include:

BCC 01-11-01	Roles of Consultants, Contract Employees, Volunteers and Employees of Other Agencies
BCC 01-13-01	Relationships with Public, Media, and Other Agencies
BCC 01-13-02	Public Information and News Media Access
BCC 01-19-01	Inmate Access to BCC Staff
BCC 02-01-01	Inmate Canteen (Amended 5/14/20)
BCC 02-01-02	Inmate Canteen Committee (Added 5/14/20)
BCC 02-07-01	Inmate [Personal] Accounts (Amended 5/14/20)
[BCC 05-01-01]	Inmate Participation in Authorized Research]
BCC 06-02-02	Offender Records (Amended 5/14/20[10/14/02])
[BCC 08-02-01]	Natural Disaster Plan (Tornado)
BCC 08-04-01	Fire Safety Plan, Drills and Related Duties]
BCC 08-06-01	Storage Control and Accountability of Flammable, Toxic, Caustic and Other Hazardous Materials (Amended 5/14/20[10/14/02])
BCC 08-08-01	Lockdown in Place (Added 5/14/20)
BCC 09-02-03	Daily Controlled[Regulation of] Inmate Movement (Amended 5/14/20)
BCC 09-03-02	Population Counts and Count Documentation (Added 5/14/20)
[BCC 09-03-01]	Inmate Identification]
BCC 09-14-01	Prohibiting Inmate Authority Over Other Inmates (Amended 5/14/20)
BCC 09-23-01	Restricted Areas (Added 5/14/20)
[BCC 09-19-01]	Duties and Responsibilities of the Institutional Captain]
BCC 10-01-02	Temporary [Segregation] Holding Area (Amended 9/1/2020[5/14/20])
BCC 11-01-01	Meal Planning and Procedure [Menu and Restricted Diets] (Amended 5/14/20[12/10/02])
BCC 11-02-01	Food Service: Inspections[Inspection, Health Protection and Sanitation] (Amended 5/14/20)
BCC 11-02-02	Health Standards for Food Service Workers (Added 5/14/20)
[BCC 11-03-01]	Food Service: Meals
BCC 11-04-01	Dining Room Guidelines
BCC 11-05-01	Food Service Security: Knife & Other Sharp Instrument Control (Amended 12/10/02)]
BCC 11-06-01	Purchasing, Storage and Commodity[Farm] Products (Amended 5/14/20)
BCC 12-01-02	Treatment of Inmates with Body Lice (Added 5/14/20)
BCC 12-02-01	Personal Hygiene Items (Amended 5/14/20)
BCC 12-02-02	Clothing, Linens, Bedding Issuance and Shower Facilities (Amended 5/14/20)
BCC 12-05-01	Barber Shop Services (Amended 5/14/20[10/14/02])
BCC 13-01-01	Sick Call and Pill Call (Amended 5/14/20)
BCC 13-01-02	Self-Administered Medication (Added 9/1/2020[5/14/20])
BCC 13-03-01	[Provisions of] Health Care Services[Delivery] (Amended 5/14/20)
BCC 13-05-01	Medical Alert System (Amended 5/14/20)
[BCC 13-06-01]	Health Care Practices]
BCC 13-07-01	Emergency Medical Care and Specialized Health Services [Plan] (Amended 5/14/20[10/14/02])
[BCC 13-07-02]	Emergency and Specialized Health Services (Amended 10/14/02)]
BCC 13-07-03	Immediate Medical Treatment for Person's Injured by Weapon or Chemical Agent
BCC 13-08-01	Inmate Health Screening and Evaluation (Amended 10/14/02)

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BCC 13-09-01	Prohibition on Medical Experimentation]
BCC 13-10-01	Dental Services (Amended 5/14/20[10/14/02])
[BCC 13-11-01	Suicide Prevention and Intervention Program]
BCC 13-12-01	Use of Pharmaceutical Products (Amended 5/14/20[10/14/02])
[BCC 13-12-02	Parenteral Administration of Medications and Use of Psychotropic Drugs
BCC 13-13-01	Inmate Health Education (Amended 10/14/02)]
BCC 13-14-01	Management of Serious and Infectious Diseases (Amended 5/14/20[10/14/02])
[BCC 13-15-01	Informed Consent]
BCC 13-16-01	Health Records (Amended 5/14/20)
BCC 13-17-01	Notification of Inmate Family in the Event of Serious Illness, Injury or Surgery (Amended 5/14/20[12/10/02])
[BCC 13-19-01	Physicians Referrals and Continuity of Care
BCC 13-20-01	Chronic and Convalescent Care (Amended 10/14/02)]
BCC 13-22-01	Mental Health Program (Amended 5/14/20)[Psychiatric and Psychological Services, Handling of Mentally Retarded Inmates and Transfers]
BCC 14-00-01	Americans with Disabilities Act and Inmate Program Access (Added 5/14/20)
[BCC 14-01-01	Office of Public Advocacy and Attorney Visits (Amended 10/14/02)]
BCC 15-01-01	Restricted Areas
BCC 15-02-01	Inmate Pass System to Restricted Areas
BCC 15-02-02	Room Assignment (Amended 12/10/02)]
BCC 15-03-01	Rules [and Regulations] for Dormitories (Amended 5/14/20[10/14/02])
[BCC 15-04-01	Population Counts and Count Documentation
BCC 15-05-01	Extra Duty Assignments
BCC 16-01-01	Inmate Furloughs (Amended 10/14/02)
BCC 16-02-01	Inmate Visiting (Amended 5/14/20[12/10/02])
BCC 16-02-02	Parole Board (Added 5/14/20)
[BCC 16-03-02	Outgoing Inmate Packages]
BCC 16-03-03	Inmate Correspondence and Mailroom Operations (Amended 5/14/20[10/14/02])
BCC 17-01-01	Processing of New Admissions (Added 5/14/20)
BCC 17-01-03	Orientation for New Inmates (Added 5/14/20)
BCC 17-02-01	Inmate Personal Property (Amended 5/14/20)
BCC 18-02-01	Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) (Added 5/14/20)
[BCC 18-01-01	Classification of the Inmate (Amended 10/14/02)]
BCC 19-01-01	Inmate Work Programs (Amended 5/14/20[10/14/02])
BCC 19-02-01	Classification of Inmates to Governmental Service Program[Programs] (Amended 5/14/20)
BCC 19-03-01	Correctional Industries (Amended 5/14/20[10/14/02])
BCC 20-01-02	Educational Courses (Added 5/14/20)
[BCC 20-01-01	Blackburn Education Center
BCC 20-05-01	Educational Program Planning
BCC 20-06-01	Academic and Vocational Curriculum (Amended 10/14/02)]
BCC 21-01-01	Library Services (Amended 5/14/20[10/14/02])
BCC 21-01-02	Audio or Video Recorded[Tape] Court Transcripts (Amended 5/14/20)
BCC 22-02-01	Privilege[d] Trips (Amended 5/14/20[10/14/02])
BCC 22-04-01	Recreation and Inmate Activities (Amended 5/14/20[12/10/02])
BCC 22-04-02	Inmate Clubs and Organizations (Amended 5/14/20[10/14/02])
[BCC 22-04-03	Conducting Inmate Organizational Meetings and Programs (Amended 10/14/02)
BCC 22-04-04	Recreation Program Availability (Amended 10/14/02)

BCC 22-04-05	Supervision of Leisure-time Craft Club Activities and Materials (Amended 10/14/02)
BCC 22-06-01	Music Club
BCC 22-09-01	Use of Inmates in Recreation Programs]
BCC 23-01-01	Religious Services (Amended 5/14/20[10/14/02])
BCC 24-03-01	Social Services (Amended 5/14/20[12/10/02])
BCC 25-01-01	Inmate Check Out Procedure (Amended 5/14/20)
BCC 25-02-01	Release Preparation (Amended 5/14/20[Reporting Inmate Misconduct Following Favorable Recommendations by the Parole Board (Added 10/14/02)])
BCC 26-01-01	Citizen Involvement and Volunteer Service Program (Amended 5/14/20).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m.

COOKIE CREWS, Commissioner

APPROVED BY AGENCY: August 26, 2020

FILED WITH LRC: September 1, 2020 at 3 p.m.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the Blackburn Correctional Complex (BCC).

(b) The necessity of this administrative regulation: This regulation meets statutory requirements in KRS 196.035 and 197.020 and meets American Correctional Association (ACA) standards policy requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of the Blackburn Correctional Complex including rights and responsibilities of employees and inmates.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference provide direction and information to BCC employees and inmates concerning employee duties, inmate responsibilities, and the procedures that govern operations of the institution.

(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 new policies, deletes policies, and updates procedures in other policies for the Blackburn Correctional Complex in part for compliance with ACA standards as outlined in the summary of material incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: The amendment meets the requirements of KRS 196.035 and 197.020 and updates practices for the institution in part to maintain accreditation with the ACA.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes permit the Secretary of the Cabinet or his delegate and the Commissioner to implement or amend practices or procedures to ensure the safe and efficient operation of the institution.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff, inmates, volunteers, and visitors information concerning the effective and orderly management of the institution.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects approximately 141

employees and 320 inmates at the Blackburn Correctional Complex and all volunteers and visitors to the institution.

(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: Staff, inmates, volunteers, and visitors will have to follow the changes made in the policies and procedures. They will have to change their actions to comply with the operational changes made by this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that the amendment to this administrative regulation will increase current costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The operational changes will assist in the effective and orderly management of the institution.

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

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

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

(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 anticipated.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment does not establish any fee.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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? Blackburn Correctional Complex

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020, 28 C.F.R. §115.15, 28 C.F.R. §115.42

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment to this regulation does not create any revenue for the institution.

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

(c) How much will it cost to administer this program for the first year? The amendment to this regulation impacts how the institution operates, but does not increase costs from what will be budgeted to the institution.

(d) How much will it cost to administer this program for subsequent years? The amendment to this regulation impacts how the institution operates, but is not expected to increase costs from what will be budgeted to the institution.

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

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*.

UNIVERSITY OF KENTUCKY
Agriculture Experiment Station
(Amendment)

12 KAR 5:010. Licenses.

RELATES TO: KRS 260.775-260.845, 260.992

STATUTORY AUTHORITY: KRS 260.825(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.825(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 260.775 to 260.845 regarding milk. This administrative regulation establishes a procedure to license a person or entity who is qualified as a milk handler, laboratory, sampler-weigher, tester, or transfer station.

Section 1. (1) License to handle milk, laboratory license, and transfer station license. Upon receipt of an accurately-completed application with fee as required by KRS 260.815, and if the applicant is deemed to be qualified and in compliance with KRS 260.775 to 260.845, the director may issue a license to handle, laboratory license, or transfer station license. Each license shall be displayed accordingly:

(a) A current license to handle milk shall be prominently displayed at each handling location;

(b) A current laboratory license shall be prominently displayed at each laboratory location; and

(c) A current transfer station license shall be prominently displayed at each transfer station location.

(2) Temporary license to sample and weigh milk. Upon receipt of an accurately-completed application with fee as required by KRS 260.815, and if the applicant is deemed to be qualified and in compliance with KRS 260.775 to 260.845, the director may issue a 120-day, temporary license to sample and weigh milk. A temporary license may only be reissued if a person does not pass the written examination requirement of paragraph (b) of this subsection.

(a) A person issued a temporary license to sample and weigh milk shall be provided informational material by the director to notify him of proper sampling and weighing procedures. He shall become familiar with the informational material and shall perform the procedures under the supervision of a licensed sampler-weigher until a supervisor believes he is competent of proper procedures. When he has become familiar with and complies with proper procedures, he may sample and weigh milk without immediate supervision. He shall carry the temporary license to sample and weigh when sampling and weighing milk.

(b) A person issued a temporary license to sample and weigh milk shall be scheduled for and required to attend a one (1) day training school and take a written examination administered by the director. Upon scoring a minimum of seventy (70) percent on the written examination, a license to sample and weigh milk may be issued. The person shall carry the license to sample and weigh when sampling and weighing milk.

(3) Temporary license to test milk. Upon receipt of an accurately-completed application with fee as required by KRS 260.815, and if the applicant is deemed to be qualified and competent and in compliance with KRS 260.775 to 260.845, the director may issue a 120-day temporary license to test milk. A temporary license may only be reissued if a person does not pass the written examination requirement of paragraph (b) of this subsection.

(a) A person issued a temporary license to test milk shall be provided informational material by the director to notify him of proper testing procedures. He shall become familiar with the informational material and shall perform the testing procedures for which he seeks approval under the supervision of a licensed tester until a supervisor believes he is competent of proper procedures. When he has become familiar with and complies with proper

procedures, he may test milk without immediate supervision. A person shall conspicuously post the temporary license to test in the laboratory where testing is performed or carry the temporary license to test when he is testing milk.

(b) A person issued a temporary license to test milk shall demonstrate competency in milking~~[milk-testing]~~ procedures for which he seeks approval to the director and shall take a written examination administered by the director. Upon demonstrating competency and scoring a minimum of seventy (70) percent on the written exam, a license to test milk may be issued. The milk tester shall conspicuously post the license to test in the laboratory where testing is performed or carry the license to test when he is testing milk.

(4) Renewal for a license to sample and weigh and renewal for a license to test. Upon receipt of an accurately-completed renewal application with fee as required by KRS 260.815, and if the applicant is deemed by the director to be in compliance with KRS 260.775 to 260.845, the director may issue a renewed license to sample and weigh or a renewed license to test. An applicant may renew a lapsed license for up to three (3) years past the expiration date by paying back-fees for each year and one (1) penalty fee provided for in KRS 260.992(3).

(5) All licenses issued under the authority of KRS 260.775 to 260.845 shall expire on June 30 of each year. The licenses shall be renewed on or before July 1 by accurately completing and submitting an application with the appropriate fee to the director. Applications shall be provided by the director.

(6) Reciprocity. The director may reciprocate with other states and issue a license to sample and weigh or a license to test upon submission of satisfactory evidence that the requirement for licensure in the other state is equivalent to the requirements of KRS 260.775 to 260.845. The director may require an applicant for reciprocity to pass an examination to establish his competency. Applicants for reciprocity shall be required to submit an accurately-completed application with fee to the director.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for License to Handle Milk", October 2000, Division of Regulatory Services;

(b) "Application for Laboratory License", October 2000, Division of Regulatory Services;

(c) "Application for Transfer Station License", October 2000, Division of Regulatory Services;

(d) "Application for Temporary License to Sample and Weigh Milk", March 2015~~[October 2000]~~, Division of Regulatory Services;

(e) "Application for Temporary License to Test Milk", March 2015~~[October 2000]~~, Division of Regulatory Services;

(f) "Renewal Application for License to Sample and Weigh Milk", March 2015~~[October 2000]~~, Division of Regulatory Services; and

(g) "Renewal Application for License to Test Milk", March 2015~~[October 2000]~~, Division of Regulatory Services.

(2) These materials may be inspected, copied or obtained, subject to copyright law, at the Division of Regulatory Services, College of Agriculture, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. ROBERT HOUTZ, Director

APPROVED BY AGENCY: September 11, 2020

FILED WITH LRC: September 14, 2020 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 23, 2020, at 1:30 p.m. in the conference room at 1600 University Court, Lexington, Kentucky 40546. 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 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 November 30, 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: G. Alan Harrison, Feed and Milk Program Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 257-2785, fax (859) 323-9931, email alan.harrison@uky.edu.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: G. Alan Harrison

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes procedures to license milk handlers, laboratory personnel, sampler-weighers, testers, or transfer stations.

(b) The necessity of this administrative regulation: Appropriate licenses to handle raw milk are required by KRS 260.775.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 260.825(1), the Director of the Agricultural Experiment Station is required to promulgate administrative regulations used in 12 KAR Chapter 5.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation defines licensing procedures as well as training requirements to ensure competency and compliance.

(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: Dates of applications forms cited in current regulations are not the most recent revisions.

(b) The necessity of the amendment to this administrative regulation: Application forms have been updated since 2001.

(c) How the amendment conforms to the content of the authorizing statutes: Individuals and entities applying for a license must submit completed applications on forms provided by our division.

(d) How the amendment will assist in the effective administration of the statutes: These updates are beneficial to both the regulatory body and the regulated industry.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Individuals and entities required to be licensed under KRS 260.795, KRS 260.797, KRS 260.800, KRS 260.805, KRS 260.807, and 260.809 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: None other than using an updated license application.

(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 associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Updated licensing forms will allow for increased efficiencies by the milk program in processing applications.

(5) Provide an estimate of how much it will cost 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: The Division of Regulatory Services regular annual 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.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increase in fees.

(9) TIERING: Is tiering applied? No, this administrative regulation treats all regulated 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? University of Kentucky Division of Regulatory Services

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 260.825

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 additional costs or revenue.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No additional revenue.

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

(d) How much will it cost to administer this program for subsequent years? No additional costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No fiscal impact

UNIVERSITY OF KENTUCKY Agriculture Experiment Station (Amendment)

12 KAR 5:020. Testing.

RELATES TO: KRS 260.775-260.845, 260.992

STATUTORY AUTHORITY: KRS 260.825(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.825(1) authorizes the Director of the Kentucky Agricultural Experiment Station to promulgate administrative regulations necessary for the effective enforcement of KRS 260.775 to 260.845 regarding milk. This administrative regulation establishes uniform standards and approved procedures and equipment for the analysis of milk components by licensed laboratories and testers.

Section 1. Laboratory Facilities and Environment[Equipment].

(1) A licensed laboratory's facilities shall meet the criteria described in Chapter 2.0310[2.3] of "Standard Methods for the Examination of Dairy Products", 17th[16th] Edition, 2004[1992].

(2) A licensed laboratory shall have established procedures for monitoring equipment performance and preventative maintenance. Specialized instrumentation shall be operated by the manufacturer's recommended procedures for operation and

maintenance. Adequate records to document equipment performance monitoring and maintenance shall be kept. As applicable, equipment and supplies used by laboratories shall meet the criteria described in Chapter 2.0311[2.4] of "Standard Methods for the Examination of Dairy Products", 17th[16th] Edition, 2004[1992].

Section 2. Approved Testing Methods. (1) A laboratory and tester licensed by the director shall be approved for the methods of analysis routinely used for milk component testing. If the laboratory and tester are approved for an electronic method of analysis, they shall also be approved for any intralaboratory reference method used to monitor the electronic equipment.

(2) Methods of analysis used for testing milk samples for pay purposes or as reference methods include:

(a) Methods in "Official Methods of Analysis of AOAC International", Volume II, Chapter 33, 21st[17th] Edition, 2019[2000];

(b) Methods in "Standard Methods for the Examination of Dairy Products", 17th[16th] Edition, 2004[1992]; and

(c) Methods of analysis scientifically proven to be acceptable and approved by the director.

Section 3. Electronic Equipment. (1) Laboratories using electronic milk testing equipment associated with approved procedures shall maintain the following supplies and records:

(a) A thermostatically-controlled, circulatory water-bath of suitable size to maintain milk samples in a temperature range of 40-43° C (104-109.4° F). A milk sample being warmed in the water-bath shall not:

1. Remain in the water-bath in excess of forty (40) minutes prior to being tested; or

2. Be tested for payment purposes if the sample "oils off" while in the water-bath; and

(b) An approved electronic component testing instrument including:

1. All required accessories and reagents; and

2. An instrument operation manual.

(2) Control samples. A minimum of four (4) control samples of unhomogenized milk shall be analyzed daily before routine testing begins. The control samples shall cover the component ranges of samples typically analyzed with the instrument. Control samples for milk fat analysis shall be in the fat range of two (2) to six (6) percent.

(a) The control samples shall be prepared and test results determined for each component tested for pay purposes by recognized procedures or those procedures approved by the director.

(b) Control samples shall be physically handled in a manner to ensure their integrity and in a temperature range of 0.5-4.4°C (33-40° F). Control samples to be stored more than seventy-two (72) hours shall be preserved with an approved preservative. Control samples shall be discarded if they appear to be churned, "oiled off" or spoiled.

(3) Daily performance checks. Written procedures shall be established to monitor electronic milk testing equipment for accuracy each day before testing begins. Minimum requirements for these procedures include:

(a) Zero check. Zero the machine for all components as prescribed by the instrument manufacturer. Run a single, unhomogenized milk sample through the machine at least eleven (11) times. Zero the machine again. Within two (2) cycles the instrument shall not deviate greater than 0.02 percent units from the original zero reading.

(b) Repeatability check. Ten (10) consecutive readings on a single, well-mixed, unhomogenized milk sample shall be made for each component being tested for pay purposes. The repeatability check shall be acceptable when the comparison range of ten (10) consecutive readings is within ± 0.4 percent units for each of these components. The sample used between the zero checks in paragraph (a) of this subsection may be used for the repeatability check.

(c) Accuracy check. A subsample from each of the control samples shall be analyzed to obtain readings for each component

tested for pay purposes. These results shall not differ from the control sample by more than ± 0.09 percent units for total solids and ± 0.05 percent units for each other component when compared to the established values of the control samples.

(d) Hourly check. An accuracy check as described in paragraph (c) of this subsection shall be analyzed on at least one (1) sample each hour during which samples are tested for pay purposes.

(e) Electronic instruments not meeting the prescribed testing criteria shall not be used to test permitted producer's samples for pay purposes. Deficiencies shall be investigated and corrective action taken. A record of any corrective action shall be maintained for two (2) years.

(4) Calibration requirements.

(a) Electronic instrument calibrations shall be required when:

1. The instrument is installed or significantly moved;

2. The daily performance checks fail and cannot be corrected by other means; and

3. When any part that may affect proper operation of the instrument has been replaced, rebuilt, or adjusted.

(b) A calibration shall be evaluated for accuracy:

1. At regular intervals not to exceed a thirty (30) day period; and

2. Using a minimum of eight (8) milk samples that shall cover the component ranges of samples typically analyzed with the instrument. These samples shall be in the milk fat range of two (2) to six (6) percent.

(c) Electronic instruments shall be calibrated according to the manufacturer's instructions using milk samples with known component values as determined by an approved reference method. Laboratories may use approved, commercially-prepared calibration samples in lieu of preparing their own reference calibration samples.

Section 4. Wild Tests. (1) A "wild" test is defined as a test result for a producer's bulk-tank milk sample that is dissimilar to other test results for the producer during the pay period and for which the cause of the difference(s) cannot be determined.

(2) Each laboratory shall have written specifications for determining a "wild" test. Specifications for "wild" tests shall not exceed 0.50 percent units when comparing milk fat test results between or among samples for a permitted producer.

(3) "Wild" tests shall not be used for pay purposes and shall be conspicuously identified within laboratory test records.

Section 5. Check Samples. Periodically, the director may provide check samples to a licensed laboratory for test result comparisons and monitoring purposes. A licensed tester at the laboratory shall test each sample for components used for pay purposes using approved methods routinely utilized by the tester. The tester's results shall be provided to the director within three (3) working days of receipt of the samples. The licensed laboratory is responsible for returning all check sample shipping containers and equipment to the director.

Section 6. Laboratory Records. (1) Laboratory records shall be kept in a manner consistent with 12 KAR 5:070, Section 2, and shall be retained for a two (2) year period.

(2) Equipment records. Records of the operation and maintenance of each electronic instrument shall include:

(a) Maintenance records;

(b) Daily performance check records; and

(c) Complete calibration records.

(3) Test records. All records of tests to be used for pay purposes shall be original and recorded as tests are conducted.

(a) Records of retests and special tests shall be conspicuously identified.

(b) A licensed tester shall be responsible for the accuracy of test records for samples he tests for pay purposes.

Section 7. Sample Age. A permitted producer's sample being tested for pay purposes shall be tested within seventy-two (72) hours from the time of procurement, as identified on the sample

container, unless the sample is preserved with an approved preservative.

Section 8. Hours of Operation. A licensed laboratory that is not open during the normal business hours of Monday through Friday, 8 a.m. to 4:30 p.m. shall submit a monthly testing schedule to the director one (1) month in advance.

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

(a) "Official Methods of Analysis of AOAC International", Volume II, Chapter 33, 21st[47th] Edition, 2019[2000]; and

(b) "Standard Methods for the Examination of Dairy Products", 17th[16th] Edition, 2004[1992].

(2) These materials may be inspected, copied or obtained, subject to copyright law, at the Division of Regulatory Services, College of Agriculture, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. ROBERT HOUTZ, Director

APPROVED BY AGENCY: September 11, 2020

FILED WITH LRC: September 14, 2020 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 23, 2020, at 1:30 p.m. in the conference room at 1600 University Court, Lexington, Kentucky 40546. 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 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 November 30, 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: G. Alan Harrison, Feed and Milk Program Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 257-2785, fax (859) 323-9931, email alan.harrison@uky.edu.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: G. Alan Harrison

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes uniform standards and approved procedures and equipment for the analysis of milk components by licensed laboratories and testers.

(b) The necessity of this administrative regulation: Uniform standards, procedures, and equipment to analyze raw milk are required by KRS 260.825.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 260.825(1), the Director of the Agricultural Experiment Station is required to promulgate administrative regulations used in 12 KAR Chapter 5.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation defines established the standards, procedures, and equipment necessary to analyze raw milk produced by the Kentucky industry.

(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: References to laboratory methods are not the most recent revisions available.

(b) The necessity of the amendment to this administrative regulation: References have been updated since 2001.

(c) How the amendment conforms to the content of the authorizing statutes: Regulations should reflect most current

laboratory method references utilized by milk processors.

(d) How the amendment will assist in the effective administration of the statutes: These updates are beneficial to both the regulatory body and the regulated industry.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Individuals and entities analyzing the components of raw milk under KRS 260.783, KRS 260.790, KRS 260.797, and KRS 260.800 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: None.

(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 associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Most current laboratory methodology and equipment will be in agreement with regulatory requirements.

(5) Provide an estimate of how much it will cost 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: The Division of Regulatory Services regular annual 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.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increase in fees.

(9) TIERING: Is tiering applied? No, this administrative regulation treats all regulated 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? University of Kentucky Division of Regulatory Services

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 260.825

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 additional costs or revenue.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No additional revenue.

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

(d) How much will it cost to administer this program for subsequent years? No additional costs.

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

Revenues (+/-): \$0.00

Expenditures (+/-): \$0.00

Other Explanation: No fiscal impact

UNIVERSITY OF KENTUCKY
Agriculture Experiment Station
(Amendment)

12 KAR 5:030. Test samples.

RELATES TO: KRS 260.775-260.845, 260.992

STATUTORY AUTHORITY: KRS 260.825(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.825(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 260.775 to 260.845 regarding milk. This administrative regulation establishes criteria and procedures for the physical handling and storage of milk samples that will be tested for payment purposes.

Section 1. Producers' milk samples to be tested for payment purposes shall at all times be under the care of, and only be physically handled by, a licensed sampler-weigher or a licensed tester.

(1) The license requirement for the physical handling of milk samples to be tested for payment purposes excludes the shipping of samples via a commercial carrier. In such cases, the samples shall be packaged, the shipping container sealed, and unpacked by licensed sampler-weighers or licensed testers; and

(2) Milk samples shall be physically handled, stored, and shipped in a manner to maintain their integrity. The sample shall be maintained in a temperature range of 0.5-4.4°C (33-40° F).

Section 2. Milk-receiving stations, laboratories, transfer stations, and processors shall provide adequate storage for milk samples.

(1) These locations shall provide a minimum storage capacity for samples [typically] representing at least three (3) days bulk-milk shipments; and

(2) Sample storage refrigerators shall be monitored daily with an accurate thermometer to ensure the proper temperature. The monitoring shall be documented with:

(a) A recording device; or

(b) A licensed sampler-weigher or licensed tester who shall keep a daily record that includes:

1. Date;
2. Time (including a.m. or p.m.);
3. Temperature; and
4. The sampler-weigher's or tester's initials.

DR. ROBERT HOUTZ, Director

APPROVED BY AGENCY: September 11, 2020

FILED WITH LRC: September 14, 2020 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 23, at 1:30 p.m. in the conference room at 1600 University Court, Lexington, Kentucky 40546. 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 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 November 30, 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: G. Alan Harrison, Feed and Milk Program Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 257-2785, fax (859) 323-9931, email alan.harrison@uky.edu.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: G. Alan Harrison

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes criteria and procedures for the physical handling and storage of milk samples that will be tested for payment purposes.

(b) The necessity of this administrative regulation: criteria and procedures for the physical handling and storage of raw milk samples that will be tested for payment purposes are required by KRS 260.825.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 260.825(1), the Director of the Agricultural Experiment Station is required to promulgate administrative regulations used in 12 KAR Chapter 5.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation defines the criteria and procedures necessary to preserve the integrity of raw milk samples used for payment purposes by processors of milk produced 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: Better defines the minimum sample storage capacity requirement for bulk milk samples.

(b) The necessity of the amendment to this administrative regulation: Clarifies the requirement for minimum storage capacity of bulk milk samples

(c) How the amendment conforms to the content of the authorizing statutes: Clarifies the requirement for minimum storage capacity of bulk milk samples

(d) How the amendment will assist in the effective administration of the statutes: These updates are beneficial to both the regulatory body and the regulated industry.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Individuals and entities involved in the handling of raw milk samples for testing purposes under KRS 260.780, KRS 260.783, KRS 260.785, KRS 260.793, and KRS 260.800 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: None.

(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 associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Amending regulation more clearly outlines storage capacity requirements.

(5) Provide an estimate of how much it will cost 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: The Division of Regulatory Services regular annual 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.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increase in fees.

(9) TIERING: Is tiering applied? No, this administrative regulation treats all regulated 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? University of Kentucky Division of Regulatory Services

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 260.825

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 additional costs or revenue.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No additional revenue.

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

(d) How much will it cost to administer this program for subsequent years? No additional costs.

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

Revenues (+/-): \$0.00

Expenditures (+/-): \$0.00

Other Explanation: No fiscal impact

**UNIVERSITY OF KENTUCKY
Agriculture Experiment Station
(Amendment)**

12 KAR 5:040. Sampling and weighing.

RELATES TO: KRS 260.775-260.845, 260.992

STATUTORY AUTHORITY: KRS 260.825(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.825(1) authorizes the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 260.775 to 260.845 regarding milk. This administrative regulation establishes procedures for milk sampler-weighers for accurately sampling and weighing milk in farm bulk tanks.

Section 1. Each bulk farm tank is required to be separately sampled and weighed. If a producer has multiple bulk farm tanks, samples and weights shall be obtained for each tank and the information recorded separately in the sampler-weigher's records.

Section 2. Sampler-weigher Equipment. A sampler-weigher shall use the following equipment in his sampling and weighing procedures:

(1) A sample case shall:

(a) Be rigidly constructed and insulated for safe transportation of the samples;

(b) Have ample space to hold samples;

(c) Maintain a refrigerant that is needed to cool and maintain the samples at a temperature range of 0.5-4.4° C (33-40° F);

(d) Contain a rack or float to keep the samples in an upright position and to keep the neck and the top of each sample container above the surface of the cooling medium; and

(e) Maintain a refrigerant at the level of the milk in the sample containers.

(2) Sample containers shall be clean, dry, and sterile. Sample vials shall have leak-proof caps and may be made of glass or molded, rigid plastic. Approved plastic bags may also be used. The sample containers shall hold a minimum of one (1) ounce of milk

and provide sufficient air space for processing the sample in the laboratory;

(3) A sample dipper or other sampling device of sanitary construction. The sampling device shall be stored in a receptacle containing a sanitizing solution. Both the sampling device and the sanitizing solution shall be approved by the Milk Safety Branch of the Cabinet for Health Services;

(4) An accurate dial or digital thermometer;

(5) A waterproof, indelible marker to write information on sample containers;

(6) A watch or other device to time the agitation of the milk in the bulk tank prior to sampling;

(7) An indelible pen to complete the necessary paperwork; and

(8) An adequate supply of bulk milk delivery tickets.

Section 3. Weighing Procedures. When measuring milk volume in farm bulk tanks with a gauge rod inside the tank or an external scale plate with gauge tube on the outside of the tank, the milk shall be motionless. A sampler-weigher shall:

(1) Use the following procedures for measuring milk with a gauge rod on the inside of a bulk tank:

(a) Remove any milk foam from the measurement area by pushing it aside with the rod;

(b) Remove any milk residue from the rod by wiping the rod with a clean, single-service towel. If the milk residue cannot be removed by this method, rinse the rod in warm (not hot) water and again wipe the rod with a single-service towel;

(c) Lower the gauge rod slowly straight down until it reaches a point approximately one-quarter (1/4) inch above its base. Hold the rod in this position for a moment and then ease it down until it seats firmly and naturally in its base;

(d) Raise the gauge rod and immediately read it in a well-lighted area at eye level;

(e) The gauge rod shall be read to the nearest graduation mark on the rod. If the reading is exactly half-way between two (2) graduation marks, read to the nearest even mark; and

(f) Repeat the gauge rod reading until two (2) readings are in agreement and record the reading.

(2) Use the following procedures for measuring milk with an external scale plate and gauge tube on the outside of a bulk milk tank:

(a) If milk is in the external scale plate's gauge tube, it shall be drained and refilled with cold milk. The tube shall be clean and dry prior to filling it with milk;

(b) To fill the gauge tube, open the outlet valve slowly to prevent foaming of milk as it fills the tube;

(c) After the milk from the bottom of the tank fills the tube, read the highest point of the center of the milk's meniscus as the measuring point to compare to the scale plate;

(d) The scale plate shall be read to the nearest graduation mark. If the reading is exactly half-way between two (2) graduation marks, read to the nearest even mark; and

(e) Repeat the scale plate and gauge tube reading until two (2) readings are in agreement and record the reading.

(3) Promptly convert the volume reading of the bulk milk tank to milk weight using the tank's conversion chart. The conversion should be repeated until two (2) conversions are in agreement. Record the milk weight.

(4) Procedures for weighing farm bulk milk in tanks that are not equipped with a gauge shall be approved by the director.

Section 4. Sampler-weigher Records. A sampler-weigher shall prepare and account for records pertaining to milk he samples and weighs.

(1) Sampler-weigher records shall include;

(a) Bulk milk delivery tickets;

(b) Producer barn charts;

(c) Information recorded on sample containers; and

(d) Any other record relating to bulk milk sampling and weighing activities.

(2) All records relating to sampler-weigher's daily activities shall be legible and written in indelible ink. Changes or corrections to records shall be made by drawing a single line through the entry

and writing the correction nearby. Any changes or corrections shall be dated and initialed.

(3) Bulk milk delivery tickets shall accompany all loads of milk to milk-receiving stations, transfer stations, and processors and shall include the following information:

- (a) Identification of the handler;
- (b) Identification of the milk-receiving station, transfer station, or processor;
- (c) Date of collection;
- (d) Producer identification (and tank identification if the producer has multiple tanks);
- (e) Time of pickup (including a.m. or p.m.);
- (f) Temperature of the milk;
- (g) Milk volumetric reading;
- (h) Converted milk weight;
- (i) Any comments related to unusual circumstances; and
- (j) Sampler-weigher's signature.

(4) A sampler-weigher shall record the following information on producer barn charts for each tank sampled and weighed:

- (a) Date;
- (b) Time (including a.m. or p.m.);
- (c) Milk temperature;
- (d) Milk volumetric reading;
- (e) Converted milk weight; and
- (f) Sampler-weigher's signature or initials.

(5) If more than one (1) sampler-weigher samples and weighs producers' milk for one (1) truckload, each sampler-weigher shall sign the bulk milk delivery ticket, regardless of who delivers the load to the milk-receiving station, transfer station, or processor.

Section 5. Sampling Procedures. A sampler-weigher shall use the following procedures to obtain a representative sample from a producer's standard farm bulk tank:

(1) Each sample container shall be permanently marked with waterproof, indelible ink and shall be identified with the following information:

- (a) Producer identification (and tank identification if the producer has multiple tanks);
- (b) Date;
- (c) Time (including a.m. or p.m.);
- (d) Milk temperature; and
- (e) Sampler-weigher's initials.

(2) Milk in the bulk tank shall be agitated sufficiently to provide a homogenous blend and to obtain a representative sample. A minimum of five (5) minutes of agitation time is required for tanks with less than a 1000 gallon capacity. Tanks with a 1000 gallon capacity or larger shall be agitated a minimum of ten (10) minutes;

(3) To eliminate moisture and sanitizing solutions, the sampling device shall be rinsed with milk at least twice prior to taking samples;

(4) The milk shall be transferred from the sampling device to the sterile sample container away from the opening of the farm bulk tank. The container shall be filled to approximately three-fourths (3/4) full or to the container's "fill line." Enough air space shall be left in the container to allow the sample to be adequately mixed at the laboratory. After the milk has been transferred to the sample container, the container shall be tightly sealed and immediately placed in the sample case with appropriate refrigerant;

(5) At the time of sampling the first bulk milk tank on the sampler-weigher's route, an additional sample shall be collected for temperature determination. This sample's container shall be identified with the information outlined in subsection (1) of this section and with adequate information to identify the sample as the temperature control;

(6) Any additional or special samples obtained on the sampler-weigher's route shall be clearly and specifically identified with waterproof, indelible markings stating the purpose of the sample; and

(7) Sampling procedures for nonstandard or sealed farm bulk milk tanks shall be approved by the director.

(8) Milk samples shall be under a sampler-weigher's immediate care at all times until the samples are delivered to the milk-receiving station, transfer station, or processor.

Section 6. Load Sample. A sampler-weigher shall obtain a load sample from the tank on his truck immediately after the last producer's milk is pumped into the truck's tank.

(1) The load sample shall be taken from the porthole at the top of the tank on the truck using a sanitized sampling device. Care shall be taken to prevent any foreign material from entering the porthole. The load-sample container shall be identified with the following information:

- (a) Adequate information to identify the sample as the load-sample;
- (b) Date;
- (c) Time (including a.m. or p.m.);
- (d) Sampler-weigher's initials; and
- (e) The milk truck's assigned tanker number.

(2) The load sample is to be used for comparisons of the load sample and individual producer's samples for the purpose of grading and evaluation of the sampler-weigher's competency in sampling; and

(3) The load sample is to be taken by all bulk sampler-weighers in addition to, not in lieu of, any other load samples required by the milk handler, transfer station, receiving station, or processor.

Section 7. Sample Set. A sample for each producer bulk milk tank, a temperature control sample, and a load sample shall accompany each load of milk to its final receiving station, transfer station, or processor. A sampler-weigher may need to obtain multiple samples for his bulk milk route to meet this requirement.

Section 8. Milk Sample Transfer Procedures. To expedite the transport of samples to the appropriate laboratory, a sampler-weigher shall follow these procedures:

(1) For bulk milk deliveries to locations where producers' milk samples are routinely transported from the receiving station, transfer station, or processor to the appropriate laboratory; a sampler-weigher shall properly place his samples in the location's sample storage refrigerator or refrigerated sample storage case after the bulk load of milk has been determined to be acceptable; or

(2) For bulk delivery when producer's milk samples are not routinely transported from the receiving station, transfer station, or processor to the appropriate laboratory, a sampler-weigher shall follow written sample transfer procedures established by the licensed handler(s) who issues payments to producers on the sampler-weigher's route(s). Written sample transfer procedures shall be approved by the director.

DR. ROBERT HOUTZ, Director

APPROVED BY AGENCY: September 11, 2020

FILED WITH LRC: September 14, 2020 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 23, 2020, at 1:30 p.m. in the conference room at 1600 University Court, Lexington, Kentucky 40546. 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 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 November 30, 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: G. Alan Harrison, Feed and Milk Program Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 257-2785, fax (859) 323-9931, email alan.harrison@uky.edu.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: G. Alan Harrison

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes criteria and procedures for sampler-weighers for the accurate sampling and weighing of milk from farm bulk tanks.

(b) The necessity of this administrative regulation: criteria and procedures for the sampling and weighing of raw milk to ensure proper payment to milk producers are required by KRS 260.825.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 260.825(1), the Director of the Agricultural Experiment Station is required to promulgate administrative regulations used in 12 KAR Chapter 5.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation defines the criteria and procedures necessary for proper sampling and weighing of raw milk to ensure payment to milk producers 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: Allows for the use of a device other than a watch to time the agitation of milk in a bulk tank.

(b) The necessity of the amendment to this administrative regulation: Requiring a watch is unnecessary.

(c) How the amendment conforms to the content of the authorizing statutes: Regulations have not been updated since 2001 and it is now less common to wear or carry a watch.

(d) How the amendment will assist in the effective administration of the statutes: These updates are beneficial to both the regulatory body and the regulated industry.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Individuals that sample and weigh raw milk from farm bulk tanks under KRS 260.780, KRS 260.785, KRS 260.793, and KRS 260.805 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: None.

(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 associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Allows for flexibility in meeting the requirement of minimum agitation time of milk in a bulk tank.

(5) Provide an estimate of how much it will cost 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: The Division of Regulatory Services regular annual 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.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increase in fees.

(9) TIERING: Is tiering applied? No, this administrative regulation treats all regulated 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? University of Kentucky Division of Regulatory Services

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 260.825

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 additional costs or revenue.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No additional revenue.

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

(d) How much will it cost to administer this program for subsequent years? No additional costs.

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

Revenues (+/-): \$0.00

Expenditures (+/-): \$0.00

Other Explanation: No fiscal impact

UNIVERSITY OF KENTUCKY
Agriculture Experiment Station
(Amendment)

12 KAR 5:050. Inspections.

RELATES TO: KRS 260.775-260.845, 260.992

STATUTORY AUTHORITY: KRS 260.825(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.825(1) authorizes the Director of the Kentucky Agricultural Experiment Station to promulgate administrative regulations necessary for the effective enforcement of KRS 260.775 to 260.845 regarding milk. This administrative regulation establishes a basis for monitoring licensed milk handlers, laboratories, transfer stations, sampler-weighers, and testers to ensure that these licensees are in compliance with KRS 260.775 to 260.845.

Section 1. A milk handler, laboratory, and transfer station shall be inspected and evaluated for compliance with KRS 260.775 to 260.845. The director shall provide written notice to the appropriate licensee to correct any observed discrepancies. Unsatisfactory compliance shall be dealt with in accordance with KRS 260.775 to 260.845 and 260.992.

Section 2. A sampler-weigher shall be inspected and evaluated for compliance with KRS 260.775 to 260.845.

(1) A sampler-weigher's records, equipment, samples, and procedures shall be examined to determine compliance.

(2) Milk samples obtained by a sampler-weigher may be collected and analyzed by the director to assist in the evaluation of the sampler-weigher's activities.

(a) Results of these analyses may be used to make comparisons among and between these samples. These comparisons may include the use of milk-component test results and other test results pertaining to milk quality and composition.

(b) Results of these analyses may be used to determine the amount of milkfat on a load of bulk milk as represented by the individual producer's bulk-tank samples and weights and as represented by the load sample and the sum of individual producers' bulk-tank weights. The deviation of the milkfat on the bulk milk load between these two (2) comparisons may, in part, determine the evaluation of the sampler-weigher.

(c) The deviation between the weight of the load of bulk milk

represented by the sum of the individual producer's bulk-tank weights and, if available, the weight of the load of bulk milk as determined by an accurate scale or meter may, in part, determine the evaluation of the sampler-weigher. The scale or meter used in this determination shall be well maintained and approved by an accredited scale maintenance firm or appropriate government agency.

(3) An evaluation of an inspection of a sampler-weigher shall be awarded a grade. Grades given shall be A - excellent; B - good; C - poor; D - unsatisfactory. Criteria for awarding grades shall be established by the director and shall be printed on the inspection report. Noncompliance with KRS 260.775 to 260.845 and 12 KAR Chapter 5 may result in a D grade inspection.

(4) A sampler-weigher who receives three (3) "D" grade inspections within a twelve (12) month period shall be required to attend the next scheduled one (1) day sampler-weigher training school and take a written examination administered by the director. This shall not prevent the director from taking other actions under KRS 260.775 to 260.845, and 260.992 for a sampler-weigher who receives a D grade inspection or who otherwise is not in compliance with KRS 260.775 to 260.845 and 260.992.

Section 3. A tester shall be inspected and evaluated for compliance with KRS 260.775 to 260.845.

(1) A tester's records, equipment, and procedures shall be examined, in part, to determine compliance.

(2) The results of a tester's analyses may be compared to results of the director's analyses. The deviation between these results shall, in part, determine compliance. The director shall provide written notice to the tester and to the licensed laboratory employing the tester to correct any discrepancies. Unsatisfactory compliance shall be dealt with in accordance with KRS 260.775 to 260.845 and 260.992.

DR. ROBERT HOUTZ, Director

APPROVED BY AGENCY: September 11, 2020

FILED WITH LRC: September 14, 2020 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 23, 2020, at 1:30 p.m. in the conference room at 1600 University Court, Lexington, Kentucky 40546. 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 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 November 30, 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: G. Alan Harrison, Feed and Milk Program Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 257-2785, fax (859) 323-9931, email alan.harrison@uky.edu.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: G. Alan Harrison

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes the basis for monitoring licensed milk handlers, laboratories, transfer stations, sampler-weighers, and testers to ensure that these licensees are in compliance with KRS 260.775 to 260.845.

(b) The necessity of this administrative regulation: Procedures for the evaluation of licensed milk handlers, laboratories, transfer stations, sampler-weighers, and testers are required by KRS 260.825.

(c) How this administrative regulation conforms to the content

of the authorizing statutes: Pursuant to KRS 260.825(1), the Director of the Agricultural Experiment Station is required to promulgate administrative regulations used in 12 KAR Chapter 5.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation defines the criteria and procedures by which the Division of Regulatory Services monitors licensed milk handlers, laboratories, transfer stations, sampler-weighers, and testers for compliance with KRS 260.775 to 260.845.

(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: Clarifies the use of load milk weights in evaluation of sampler-weighers.

(b) The necessity of the amendment to this administrative regulation: Continues to allow the use of load milk weights in evaluation of sampler-weighers while recognizing that load weights are not always available.

(c) How the amendment conforms to the content of the authorizing statutes: Clarifies the use of load milk weights in evaluation of sampler-weighers.

(d) How the amendment will assist in the effective administration of the statutes: These updates are beneficial to both the regulatory body and the regulated industry.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Individuals and entities handling, sampling, and analyzing raw milk under KRS 260.780, KRS 260.783, KRS 260.785, KRS 260.790, and KRS 260.793 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: None.

(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 associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Clarifies the use of load milk weights in evaluation of sampler-weighers.

(5) Provide an estimate of how much it will cost 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: The Division of Regulatory Services regular annual 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.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increase in fees.

(9) TIERING: Is tiering applied? No, this administrative regulation treats all regulated 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? University of Kentucky Division of Regulatory Services

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 260.825

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 additional costs or revenue.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No additional revenue.

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

(d) How much will it cost to administer this program for subsequent years? No additional costs.

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

Revenues (+/-): \$0.00

Expenditures (+/-): \$0.00

Other Explanation: No fiscal impact

**UNIVERSITY OF KENTUCKY
Agriculture Experiment Station
(Amendment)**

12 KAR 5:060. Purchases from farm bulk tanks.

RELATES TO: KRS 260.775-260.845, 260.992

STATUTORY AUTHORITY: KRS 260.825(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.825(1) authorizes the Director of the Kentucky Agricultural Experiment Station to promulgate administrative regulations necessary for the effective enforcement of KRS 260.775 to 260.845 regarding milk. This administrative regulation establishes criteria for recordkeeping and reporting practices to ensure that bulk farm milk is fairly and accurately marketed.

Section 1. A licensed bulk milk handler or licensed transfer station shall review bulk milk delivery tickets to ensure compliance with KRS 260.775 to 260.845.

(1) A bulk-milk delivery ticket representing a load of milk for a permitted Kentucky producer shall be examined to ensure that a licensed sampler-weigher sampled and weighed the milk.

(2) A bulk-milk delivery ticket representing a shipment of milk from a producer shall be examined for compliance with 12 KAR 5:040, Section 4(3).

(3) Discrepancies shall be reported to the director.

Section 2. Personnel at a licensed laboratory who test permitted producers' samples for pay purposes shall review the information recorded on sample containers to ensure compliance with 12 KAR 5:040, Section 5(1). An agent of the laboratory shall report discrepancies to the director.

Section 3. Licensed Milk Handler Reporting Requirements. (1) Each licensed milk handler shall submit to the director an accurately-completed Kentucky Farm Milk Handlers Report each quarter with payment of inspection fee as required by KRS 260.821. The Kentucky Farm Milk Handlers Report form shall be provided to handlers by the director.

(2) Each licensed milk handler who issues payments to permitted producers shall submit to the director, upon request, a current list of these permitted producers to whom payments are being issued. The list shall be submitted with the handler's annual license application and shall be updated when the handler submits its quarterly Kentucky Farm Milk Handlers Report. The listing shall include the following information about each permitted producer:

(a) Name;

(b) Identification number issued by the handler if different from permit number; and

(c) Mailing address.

Section 4. A licensed milk handler who issues payments to permitted producers shall submit to the director, upon request, a copy of each permitted producer's bulk-tank conversion chart(s) to whom they issue payments. These charts may be reviewed by the director to determine if a permitted producer's bulk milk has been accurately weighed by sampler-weighers.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference: "Kentucky Farm Milk Handlers Report", July 2020~~[October 2000]~~, Division of Regulatory Services.

(2) This material may be inspected, copied or obtained, subject to copyright law, at the Division of Regulatory Services, College of Agriculture, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. ROBERT HOUTZ, Director

APPROVED BY AGENCY: September 11, 2020

FILED WITH LRC: September 14, 2020 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 23, 2020, at 1:30 p.m. in the conference room at 1600 University Court, Lexington, Kentucky 40546. 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 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 November 30, 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: G. Alan Harrison, Feed and Milk Program Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 257-2785, fax (859) 323-9931, email alan.harrison@uky.edu.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: G. Alan Harrison

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes criteria for recordkeeping and reporting practices to ensure that bulk farm milk is fairly and accurately marketed.

(b) The necessity of this administrative regulation: criteria for recordkeeping and reporting practices to ensure that bulk farm milk is fairly and accurately marketed are required by KRS 260.825.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 260.825(1), the Director of the Agricultural Experiment Station is required to promulgate administrative regulations used in 12 KAR Chapter 5.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation defines the criteria for recordkeeping and reporting practices by purchasers of raw milk to ensure that bulk farm milk is fairly and accurately marketed 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: Clarifies requirements of milk handlers to submit a current list of permitted producers with the annual license application and quarterly reports. Updates reference to current version of the Kentucky Farm Milk Handlers Report.

(b) The necessity of the amendment to this administrative regulation: Updated version of the Kentucky Farm Milk Handlers Report.

(c) How the amendment conforms to the content of the

authorizing statutes: Updates version of the Kentucky Farm Milk Handlers Report.

(d) How the amendment will assist in the effective administration of the statutes: These updates are beneficial to both the regulatory body and the regulated industry.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Individuals and entities analyzing the components of raw milk under KRS 260.780, KRS 260.795, KRS 260.811, and KRS 260.821 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: None.

(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 associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved clarity of requirements of milk handlers and updated version of the Kentucky Milk Handlers Report.

(5) Provide an estimate of how much it will cost 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: The Division of Regulatory Services regular annual 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.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increase in fees.

(9) TIERING: Is tiering applied? No, this administrative regulation treats all regulated 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? University of Kentucky Division of Regulatory Services

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 260.825

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 additional costs or revenue.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No additional revenue.

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

(d) How much will it cost to administer this program for subsequent years? No additional costs.

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

Revenues (+/-): \$0.00

Expenditures (+/-): \$0.00

Other Explanation: No fiscal impact

UNIVERSITY OF KENTUCKY Agriculture Experiment Station (Amendment)

12 KAR 5:070. Uniform standards for payment.

RELATES TO: KRS 260.775-260.845, 260.992

STATUTORY AUTHORITY: KRS 260.825(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.825(1) authorizes the Director of the Kentucky Agricultural Experiment Station to promulgate administrative regulations necessary for the effective enforcement of KRS 260.775 to 260.845 regarding milk. This administrative regulation establishes criteria for uniform standards of payment for producer milk.

Section 1. Number of Samples Required for Milk Component Testing for Pay Purposes. (1) Grade A milk producers shall be paid based on calculations of component tests from a minimum of five (5) bulk tank samples representative of and [fairly evenly]-spaced throughout the monthly pay period.

(2) Manufacturing grade milk producers shall be paid based on calculations from a minimum of three (3) bulk tank samples representative of and [fairly evenly]-spaced throughout the fifteen (15) day pay period.

(3) Payment calculations for producers with multiple farm bulk tanks shall be made for each tank separately or shall include a weighted-average computation. A daily weighted average shall be based on a test from a sample representing each farm bulk tank and a recorded weight for each farm bulk tank.

Section 2. Pay Records. (1) Written records shall be recorded legibly in ink by an agent of the handler and include the following information:

(a) Each page shall be signed and dated by a responsible person; and

(b) Changes or corrections to records shall be made by drawing a single line through the entry and writing the corrected entry nearby. Any changes or corrections shall be dated and initialed.

(2) Persons who use electronic systems to create, modify, maintain, or transmit records relating to milk samples, weights, tests, or payments shall employ procedures and controls designed to ensure the authenticity and integrity of the records. Such procedures and controls shall include the following:

(a) The ability to generate accurate and complete copies of records in printed and electronic form which are suitable for inspection, review, and copying by the director;

(b) Protection of records to enable their accurate and ready retrieval throughout the retention period of the records;

(c) Limiting electronic record access only to authorized individuals;

(d) Determination that persons who develop, maintain, or use electronic systems have the training and qualifications to perform assigned tasks; and

(e) The establishment of and adherence to written policies to deter record falsification. The policies shall hold a person responsible for his tasks relating to electronic records.

(3) The consolidated pay records shall be compiled from the sampler-weigher's weight records, valid laboratory test records, and other factors affecting the price. All records relating to payments shall be properly documented and retained for a two (2) year period.

(4) A statement that agrees with the pay record shall be provided to each permitted producer with the final payment for each month. The statement shall include the following:

(a) Dates covered by payment;

(b) Amount of milk paid for;

(c) Detailed pricing description;

(d) Test result(s) and component yield(s) used to calculate

payment; and
(e) Any deductions.

DR. ROBERT HOUTZ, Director

APPROVED BY AGENCY: September 11, 2020

FILED WITH LRC: September 14, 2020 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 23, 2020, at 1:30 p.m. in the conference room at 1600 University Court, Lexington, Kentucky 40546. 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 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 November 30, 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: G. Alan Harrison, Feed and Milk Program Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 257-2785, fax (859) 323-9931, email alan.harrison@uky.edu.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: G. Alan Harrison

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes criteria for uniform standards of payment for producer milk.

(b) The necessity of this administrative regulation: criteria for uniform and fair payment for producer milk are required by KRS 260.825.

(c) How this administrative regulation conforms to the content of the authorizing statutes: Pursuant to KRS 260.825(1), the Director of the Agricultural Experiment Station is required to promulgate administrative regulations used in 12 KAR Chapter 5.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation defines the criteria and procedures necessary to ensure uniform standards for payment by processors of milk produced 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: Clarifies the use of milk bulk tank samples to be used for pay purposes by milk buyers.

(b) The necessity of the amendment to this administrative regulation: Removes ambiguous language regarding use of milk samples representative of the pay period.

(c) How the amendment conforms to the content of the authorizing statutes: Clarifies the use of milk bulk tank samples to be used for pay purposes by milk buyers.

(d) How the amendment will assist in the effective administration of the statutes: These updates are beneficial to both the regulatory body and the regulated industry.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Individuals and entities analyzing the components of raw milk under KRS 260.780, KRS 260.790, KRS 260.797, and KRS 260.811 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: None.

(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 associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Provides clarity as to the use of milk samples for pay purposes representative of the pay period.

(5) Provide an estimate of how much it will cost 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: The Division of Regulatory Services regular annual 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.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increase in fees.

(9) TIERING: Is tiering applied? No, this administrative regulation treats all regulated 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? University of Kentucky Division of Regulatory Services

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 260.825

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 additional costs or revenue.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No additional revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No additional revenue.

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

(d) How much will it cost to administer this program for subsequent years? No additional costs.

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

Revenues (+/-): \$0.00

Expenditures (+/-): \$0.00

Other Explanation: No fiscal impact

PERSONNEL CABINET Office of the Secretary (Amendment)

101 KAR 2:210. 2021 [2020] Plan Year Handbook for the Public Employee Health Insurance Program.

RELATES TO: KRS 18A.030, 18A.225, 18A.2254

STATUTORY AUTHORITY: KRS 18A.030(2)(b), 18A.2254(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.2254(1)(a)1 requires the secretary of the Personnel Cabinet to promulgate an administrative regulation to incorporate by reference the plan year handbook distributed by the Department of Employee

Insurance to public employees covered under the self-insured plan and establishes the minimum requirements for the information included in the handbook. This administrative regulation incorporates by reference the plan year Benefits Selection Guide, which is the handbook distributed by the department to public employees for the 2021 [2020] Plan Year as required by KRS 18A.2254(1)(a)1.

Section 1. The Department of Employee Insurance shall distribute or make available to the public employees covered under the self-insured plan the 2021 [2020] Plan Year Kentucky Employees' Health Plan Benefits Selection Guide, which shall include the premiums, employee contributions, employer contributions, and a summary of benefits, copays, coinsurance, and deductibles for each plan provided to the public employees covered under the self-insured plan.

Section 2. Incorporation by Reference. (1) "2021[2020] Plan Year Kentucky Employees' Health Plan Benefits Selection Guide", 2021[2020] edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

GERINA WHETHERS, Secretary

APPROVED BY AGENCY: September 10, 2020

FILED WITH LRC: September 15, 2020 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 24, 2020 at 10:00 a.m. at 501 High Street, 3rd Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard 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 November 30, 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: Sharron Burton, Deputy Commissioner, Department of Employee Insurance, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224, email Sharron.Burton@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Sharron Burton

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the 2021 plan year handbook containing information about the self-insured health insurance plans offered through the Public Employee Health Insurance Program. The handbook, commonly referred to as the Benefits Selection Guide, is distributed to all plan holders participating in the self-insured program. The Benefits Selection Guide contains the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for each plan available to public employees through the self-insured program in 2021.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with the statutory mandate of KRS 18A.2254. More specifically, KRS 18A.2254(1)(a) requires the Personnel Cabinet to promulgate an administrative regulation that incorporates by reference the 2021 plan year handbook that will be distributed to the public employees covered by the Public Employee Health Insurance Program. The handbook

must be filed with the Legislative Research Commission on or before September 15 each year.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with KRS 18A.2254(1), the statute that establishes the self-insured plan and mandates the promulgation of the administrative regulation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation aids in the effectuation of the statute, KRS 18A.2254, by incorporating by reference the 2021 plan year handbook for the Public Employee Health Insurance Program in an administrative regulation. Further, this administrative regulation is the method by which the Personnel Cabinet will comply with KRS 18A.2254.

(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 an amendment. The existing administrative regulation incorporates by reference the 2020 plan year handbook, which constitutes a compilation of the premium rates and contributions, benefit options, eligibility rules, and enrollment information for participants of the Public Employee Health Insurance Program for plan year 2020. The amendment replaces the 2020 plan year handbook with the 2021 plan year handbook. The amendment also incorporates by reference the 2021 plan year handbook, which contains the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for each plan available to public employees for plan year 2021.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to give notice regarding the premiums, employee contributions, employer contributions, benefits, co-pays, coinsurance, and deductibles for each plan available to public employees under the Public Employee Health Insurance Program for plan year 2021. This amendment is also necessary to comply with the statutory mandate in KRS 18A.2254 to annually update the regulation incorporating the plan year handbook.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 18A.2254, the statute authorizing the self-insured plan under the Public Employee Health Insurance Program. KRS 18A.2254 mandates that the plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year. This amendment incorporates the 2021 plan year handbook by reference in accordance with KRS 18A.2254.

(d) How the amendment will assist in the effective administration of the statutes: This amendment conforms to the requirements of KRS 18A.2254, the statute authorizing the self-insured plan under the Public Employee Health Insurance Program. KRS 18A.2254 mandates that the plan year handbook be incorporated by reference in an administrative regulation on or before September 15 each year. This amendment incorporates the 2021 plan year handbook by reference in accordance with KRS 18A.2254.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects employees of state and select county and local government entities, including employees of the local school boards and districts. This administrative regulation also affects certain retirees as specified by KRS 18A.225. More specifically, and as defined by KRS 18A.225(1)(a), this administrative regulation affects approximately 181,827 employees and retirees eligible to participate in the Public Employee Health Insurance Program. In total, this administrative regulation affects 297,737 members in the self-insured plan including employees and retirees, qualifying beneficiaries, and dependents.

(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: Affected entities will not be required to take any additional action to comply with this administrative regulation that incorporates the 2021 plan year handbook. The 2021 Benefits Selection Guide will provide information to the public employees covered under the Public Employee Health Insurance Program about the premiums, employee contributions, employer contributions, and a summary of benefits, co-pays, coinsurance, and deductibles for the 2021 plan year.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This administrative regulation provides employer and employee premium contribution information for health plans available under the Public Employee Health Insurance Program for plan year 2021. There is no direct cost impact to employers participating in the Public Employee Health Insurance Program as a result of incorporating the 2021 plan year handbook into the administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): For plan year 2021, participating employers (entities) and participating employees and retirees and their beneficiaries and dependents covered under the Public Employee Health Insurance Program will have access to comprehensive health insurance benefits under all plans offered through the self-insured program. For plan year 2021, employee contributions to health coverage premiums increased 3% across all plans, as compared to 2020 premiums. The employee contribution increase resulted in an average increase across all plans in the amount of \$6.02/month. The largest increase was \$20.46/month for the LivingWell PPO Family Plan. In addition to the employee contribution increase, prescription co-pays and the specialty co-pay for the LivingWell PPO plan increased by \$5.00. In 2021, the Public Employee Health Insurance Program will utilize the prescription drug Value Formulary with two-tiers of drugs focusing on generic and formulary brand drugs for all plans. Employer premium contribution amounts increased 3% across all plans, as compared to 2020 premiums.

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

(a) Initially: Costs of implementing this administrative regulation initially are believed to be minimal.

(b) On a continuing basis: Costs of implementing this administrative regulation on a continuing basis are believed to be minimal.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation of this administrative regulation will be the Public Employee Health Insurance Trust Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This is an amendment. This administrative regulation will not require an increase in funding or fees.

(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 is not applied because this administrative regulation applies equally to all participants in the Public Employee Health Insurance 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? This administrative regulation will affect all employees of state and select county and local government entities, including employees of the local school boards and districts that participate in the Public Employee Health Insurance Program. As employers, this administrative regulation will affect state and select county and local government entities as

well as local school boards and districts. This administrative regulation also affects retirees under the age of 65 who are eligible to participate in the Program by virtue of their participation in one of the state-administered retirement systems.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.225, 18A.2253, 18A.2254, 18A.2255, 18A.2259, 18A.226, 18A.227, 18A.2271, 18A.228, 18A.2286, 18A.2287; 26 U.S.C. 21, 105, 106, 125, 129, 152, and 213 (Internal Revenue Code); Prop. Treas. Reg. 1.125-1 through 7; the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (2010); and the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152.

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, school boards 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, school boards or school districts) for the first year? The administrative regulation will not generate any revenues.

(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 not generate any revenues.

(c) How much will it cost to administer this program for the first year? Costs of implementing this program are believed to be similar to previous plan years. However, the 2021 plan year handbook will be online and distributed electronically rather than in printed hard copy. This method of distribution is expected to be a savings for the Public Employee Health Insurance Program during the 2020 open enrollment season and throughout the 2021 plan year.

(d) How much will it cost to administer this program for subsequent years? The 2021 plan year handbook will be online and distributed electronically rather than in printed hard copy. This method of distribution is expected to be a savings for the Public Employee Health Insurance Program during the 2020 open enrollment season and throughout the 2021 plan year. Should the distribution of the plan year handbook continue to be made available online and distributed only by electronic means in the future, the Public Employee Health Insurance Program could recognize cost savings 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:

FINANCE AND ADMINISTRATION CABINET Kentucky Retirement Systems (Amendment)

105 KAR 1:149. Quasi-governmental employer cessation window.

RELATES TO: KRS 18A.205, 18A.225, 61.510 to 61.705, 26 U.S.C. 401, 402, 403

STATUTORY AUTHORITY: KRS 61.522(9), 61.645(9)(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(e) requires the Board of Trustees of Kentucky Retirement Systems to promulgate administrative regulations necessary or proper in order to carry out the provisions of KRS 61.510 to 61.705. KRS 61.522(6) authorizes certain quasi-governmental employers in the Kentucky Employees Retirement System to cease participation of its nonhazardous employees under the provisions and requirements of KRS 61.522(8). The ceased quasi-governmental employer shall pay the full actuarial cost of benefits accrued by its current and former nonhazardous

employees through June 30, 2021[2020], except as provided by KRS 61.522(8)(g)4. KRS 61.522(9) requires the Board to promulgate administrative regulations to administer the provisions of the statute. This administrative regulation establishes the temporary procedures and requirements for quasi-governmental employer cessation from participation in the Kentucky Employees Retirement System pursuant to KRS 61.522.

Section 1. Definitions. (1) "Alternative retirement program" means a plan provided by a ceased quasi-governmental employer, which meets the qualification requirements of 26 U.S.C. 401(a) or 26 U.S.C. 403(b), is eligible to receive direct trustee-to-trustee transfers of pre-tax and post-tax contributions, and does not include a defined benefit plan.

(2) "Ceased employer" means a quasi-governmental employer who, on or after April 1, 2021[2020], but prior to May 1, 2021, or in the case of university or community college employers it shall be prior to January 1, 2021[2020], submits a resolution to cease participation in Kentucky Employees Retirement System ("KERS"), which is accepted by the Board on or before June 30, 2021[2020].

(3) "Employer", for the purposes of this administrative regulation, means a quasi-governmental employer including local and district health departments governed by KRS Chapter 212, state-supported universities and community colleges, the Kentucky Higher Education Student Loan Corporation, and any other agency otherwise eligible to voluntarily cease participating in KERS pursuant to KRS 61.522.

(4) "Employer election" means an election by ceasing employers set forth in the resolution to cease participation in KERS regarding whether nonhazardous employees hired prior to June 30, 2021[2020], who began participating in KERS prior to January 1, 2014, will continue to participate in KERS after June 30, 2021[2020]. Nonhazardous employees of employers who do not elect for their employees to continue participating in KERS will not accrue additional service credit or benefits with KERS through the ceased employer after June 30, 2021[2020].

(5) "Nonhazardous employee" means a regular full-time employee participating in KERS in a position other than a position classified as hazardous by the board pursuant to KRS 61.592.

Section 2. (1) An employer may request an estimate of the actuarial cost of ceasing participation in KERS of its nonhazardous employees prior to December 31, 2019. The request shall be made by completing the Form 7726, Request for Estimated Cost of Voluntary Cessation from KERS under KRS 61.522(8).

(2) Kentucky Retirement Systems (hereafter "Systems") shall provide the estimate of the cost within sixty (60) days of receipt of the Form 7726, however, no estimate shall be required to be provided prior to January 31, 2020.

(3) Systems shall provide the estimate of the cost based on the information currently in its database and projecting the service and creditable compensation of all nonhazardous employees as if they remain employed in a regular full-time position through June 30, 2020.

(4) The estimated actuarial cost of ceasing participation shall not be binding on the Systems.

(5) The employer shall not rely on the estimated actuarial cost of ceasing participation.

(6) Systems shall notify the employer of the administrative cost to process the Form 7726. The administrative cost shall be calculated as follows:

(a) If the number of employees and former employees to be submitted to the actuary for purposes of determining the estimated actuarial cost of cessation equals one (1) to 100 employees, the administrative cost shall be \$1,500.

(b) If the number of employees and former employees to be submitted to the actuary for purposes of determining the estimated actuarial cost of cessation equals 101 or more employees, the administrative cost shall be \$4,000.

(7) Systems shall process the Form 7726 after the employer has remitted its payment for the administrative cost.

Section 3. (1) The governing body of an employer seeking to

cease participation in KERS through KRS 61.522(8) shall pass a resolution to cease participation and submit the resolution to the board on or after April 1, 2021[2020], but prior to May 1, 2021, or January 1, 2021, in the case of university or community college employers[2020].

(2) The resolution shall contain the following statements:

(a) That the employer has decided to voluntarily cease participation in KERS;

(b) The employer election and acknowledgement as to whether nonhazardous employees hired prior to June 30, 2021[2020], who began participating in the Systems prior to January 1, 2014, will, as a result of the employer election, either continue to participate or cease earning service credit and benefits after June 30, 2021[2020];

(c) That the employer acknowledges it is unable to rescind the resolution to cease participation after April 30, 2021, or after December 31, 2020 in the case of university or community college employers[2020];

(d) That the employer acknowledges it is subject to the requirements and restrictions of KRS 61.522 and this administrative regulation;

(e) That the employer acknowledges that in order to cease participation in KERS pursuant to KRS 61.522(8), the employer shall pay the actuarial cost of ceasing participation and all administrative costs associated therewith;

(f) That the employer agrees to cooperate with the Systems to educate its employees about the effect of cessation and the employer election on the employees' retirement accounts and the employees' options regarding their retirement accounts;

(g) That the employer shall not mandate, force, or require its employees to take a refund of their accumulated account balance as defined by KRS 61.510(41), or retaliate against its employees who chose not to take refunds of their accumulated account balance as defined in KRS 61.510(41); and

(h) That the employer shall hold the Commonwealth and the Systems, including board members and employees of the Systems, harmless from damages, attorney's fees and costs from legal claims for any cause of action brought by any member or retired member of the ceasing employer related to the cessation of the employer.

(3) The Board shall accept the resolution on or before June 30, 2021[2020], in order for the employer to cease participation.

(4) If a resolution to cease participation in the KERS is not received by the board prior to May 1, 2021, or January 1, 2021 in the case of university or community college employers[2020], the employer shall continue to participate in the KERS and pay the full actuarially determined contributions for fiscal years occurring on or after July 1, 2021[2020].

Section 4. (1) An employer shall file a completed Form 7727, Actuarial Study for Quasi-Governmental Employer Cessation with its resolution on or after April 1, 2021[2020], but prior to May 1, 2021, or January 1, 2021 in the case of university or community college employers[2020], with the executive director of the Systems.

(2) The employer shall submit the following documents with its Form 7727:

(a) Documentation of the alternative retirement program created by or being created by the employer for its employees, such as the determination letter issued by the Internal Revenue Service or a written description of the alternative retirement program;

(b) The employer's most recent five (5) audited financial statements and independent auditor's reports; and

(c) The employer's most recent five (5) Comprehensive Annual Financial Reports, if applicable.

(3) The employer shall submit with its Form 7727, an encrypted electronic file in a format prescribed by the Systems listing each current and former nonhazardous employee, employed in a full-time position as defined by KRS 61.510(21), who was employed during any period the employer participated in KERS, containing:

(a) Full name;

(b) Last known address;

- (c) Date of birth;
- (d) Social security number or Systems member identification number;
- (e) Beginning date of employment;
- (f) Date employment ended, if applicable;
- (g) Sick leave balance;
- (h) Beginning and ending dates of any active duty military service when the employee was not employed by the employer filing the Form 7727, if available; and
- (i) Beginning and ending dates of any active duty military service when the employee was employed by the employer filing the Form 7727.

Section 5. (1) The employer shall pay the administrative costs incurred by the Systems for the actuarial study completed in accordance with the Form 7727 to determine the final cost, as well as all other administrative costs incurred for ceasing participation pursuant to KRS 61.522(3)(a).

(2) The employer shall pay \$10,000 as a deposit with the Form 7727.

(3) Systems shall place the deposit in a designated account and shall utilize the funds to pay the administrative costs of processing the employer's Form 7727.

(4) Systems shall charge a reasonable fee for its administrative costs associated with processing of the employer's Form 7727 and send an invoice to the employer upon completion of the actuarial study.

(a) Systems shall apply the deposit received pursuant to subsection (2) of this section to any administrative costs incurred by the Systems attributable to the employer's cessation in accordance with KRS 61.522(8).

(b) Following the application of the deposit to the outstanding administrative costs, Systems shall submit an invoice to the employer for the additional administrative costs and the employer shall pay the invoice for the remaining administrative costs within thirty (30) days of the date of the invoice.

(5) If the total administrative cost is less than the deposit paid by the employer, Systems shall credit the remaining balance of the deposit to the employer.

Section 6. (1) Systems shall attempt to notify each nonhazardous employee identified on the list provided by the ceased employer that the employer is ceasing participation pursuant to KRS 61.522(8).

(2) For those eligible nonhazardous employees, the Systems shall provide notice informing the employee of the right to request an irrevocable refund, pursuant to KRS 61.522(3)(a)5., of their accumulated account balance as defined in KRS 61.510(41) by submitting a completed Form 1500, KRS 61.522 60-Day Transfer Request within sixty (60) days of June 30, 2021[2020] to Kentucky Retirement Systems. The notice shall be sent no later than June 19, 2021[2020].

(a) Systems shall send the notice to the active nonhazardous employees listed by the employer who has filed a Form 7727 on its most recent report required by KRS 61.675 submitted prior to the date the notices are mailed.

(b) The employer shall submit the name and contact information of each nonhazardous employee it hired between the completion of the Form 7727 and before June 30, 2021[2020], within five (5) days of the date the employee begins working for the employer.

(c) A Form 1500 submitted on or before June 30, 2021[2020], shall be void.

(d) A Form 1500 submitted after August 31, 2021[2020], shall be void.

(e) The employee shall be employed by the employer who has filed a Form 7727 on June 30, 2021[2020], to be eligible to request a refund of his accumulated account balance pursuant to KRS 61.522(3)(a)5.

(f) An employee who submitted Form 1500 to the Systems may rescind the form by submitting written notice to the Systems on or before August 31, 2021[2020].

(g) If an employee requests a refund pursuant to KRS

61.522(3)(a)5., the employee's accumulated account balance shall be transferred to the employer's alternative retirement program pursuant to this section even if the employee terminates employment with the employer after June 30, 2021[2020], unless the employee rescinds the Form 1500 on or before August 31, 2021[2020].

(3)(a) The employer shall establish an alternative retirement program on or before August 31, 2021[2020], as provided in KRS 61.522(3)(a)5.

(b) The employer shall submit the final plan documents for its alternative retirement program as well as an affirmative statement that the alternative retirement program does not include a defined benefit plan.

(c) The employer shall submit verification that it has established an alternative retirement program qualified under 26 U.S.C. 401(a) or 26 U.S.C. 403(b) that is eligible to receive direct trustee-to-trustee transfers of pre-tax and post-tax contributions and does not include a defined benefit plan. Systems shall accept one (1) of the following as verification that the employer has established a valid alternative retirement program:

1. A determination letter from the Internal Revenue Service providing that the alternative retirement program established by the employer is a qualified plan pursuant to 26 U.S.C. 401(a) or 26 U.S.C. 403(b) capable of accepting trustee-to-trustee transfers;

2. A letter from the employer's legal counsel certifying that the alternative retirement program satisfies the requirements of 26 U.S.C. 401(a) or 26 U.S.C. 403(b) capable of accepting trustee-to-trustee transfers; or

3. Other reliable verification as determined by the Systems.

(d) Refunds requested pursuant to KRS 61.522(3)(a)5. shall be transferred to the alternative retirement program established by the ceased employer by trustee-to-trustee transfer after August 31, 2021[2020].

1. The alternative retirement program shall accept and separately account for post-tax employee contributions.

2. The ceased employer's legal counsel shall provide written certification that its alternative retirement program shall accept and separately account for post-tax employee contributions.

(e) If the ceased employer fails to establish an alternative retirement program pursuant to paragraph (a) of this subsection, the refund requests pursuant to KRS 61.522(3)(a)5. shall be void. The employees who filed the refund requests pursuant to KRS 61.522(3)(a)5. shall remain members of the system and shall be included in the full actuarial cost.

(4) Former employees of the ceased employer who are currently participating in the State Police Retirement System, County Employees Retirement System, or Kentucky Employees Retirement System, due to employment with a participating agency, shall not be eligible to take a refund of their accumulated account balance until terminating employment with the current participating employer.

(5) Current employees of the ceased employer who are also employed by another employer participating in the State Police Retirement System, County Employees Retirement System, or Kentucky Employees Retirement System shall not be eligible to take a refund of their accumulated account balance until terminating employment with the participating employer.

(6) Current employees of the ceased employer on June 30, 2021[2020], may request a refund pursuant to KRS 61.522(3)(a)5.

(7)(a) Former employees of the ceased employer who are not participating in State Police Retirement System, County Employees Retirement System, or Kentucky Employees Retirement System shall not be eligible to take a refund of their accumulated account balance pursuant to KRS 61.522(3)(a)5.

(b) The account balance of former employees of the ceased employer who are not participating in State Police Retirement System, County Employees Retirement System, or Kentucky Employees Retirement System, but who were employed with the ceased employer on June 30, 2021[2020], and who submitted a valid Form 1500 pursuant to this section, shall be transferred to the employer's alternative retirement program unless the employee rescinds the Form 1500 on or before August 31, 2021[2020].

(8) The four (4) percent employer pay credit and applicable

interest accrued shall vest as of June 30, 2021[2020], for those nonhazardous employees who began participating on or after January 1, 2014, and who request a refund pursuant to KRS 61.522(3)(a)5.

Section 7. (1)(a) The employer shall continue to file reports and remit employer contributions on all employees in accordance with KRS 61.675 and 105 KAR 1:140 for creditable compensation paid through June 30, 2021[2020].

(b) If the employer elects for nonhazardous employees to continue participation through the employer election, the employer shall continue to file reports in accordance with KRS 61.675 and 105 KAR 1:140. In addition, the employer shall continue to report all applicable pick up installments for pre-tax service purchases pursuant to KRS 61.552(14)(c). However, pursuant to KRS 61.522(8)(d)2., the employer shall not remit employer contributions for nonhazardous employees after June 30, 2021[2020], as those amounts are factored into the cost calculation established by KRS 61.522(7).

(c) The employer shall continue to remit employer contributions for all hazardous employees.

(2)(a) If a member who is an employee of a ceased employer files for disability retirement benefits but does not establish a last day of paid employment prior to June 30, 2021[2020], and does not continue participation, the Systems shall use June 30, 2021[2020], as the member's last day of paid employment.

(b) If a member who is an employee of a ceased employer continues participation because of the employer election and files for disability retirement benefits, the member's last day of paid employment shall be established pursuant to KRS 61.510(32).

(3)(a) The ceased employer shall continue to pick-up payments for installment purchase of service for any employee who is purchasing service pursuant to KRS 61.552(14) and 105 KAR 1:150 through June 30, 2021[2020].

(b) An employee that ceases participation in KERS on June 30, 2021[2020], shall have sixty (60) days from the date of cessation to pay in full any outstanding balance on the installment purchase agreement pursuant to KRS 61.552(14) and 105 KAR 1:150.

Section 8. (1) Employees of a ceased employer shall comply with the provisions of KRS 61.590, 61.625 and 61.637.

(2) Employees of a ceased employer shall terminate employment with all participating employers of the State Police Retirement System, County Employees Retirement System, Kentucky Employees Retirement System and the ceased employer prior to retiring pursuant to KRS 61.590 or taking a refund pursuant to KRS 61.625.

(3)(a) Employees of a ceased employer shall comply with KRS 61.637 and 105 KAR 1:390 after retirement.

(b) The ceased employer shall certify that the employee seeking to retire or take a refund is terminating employment or has terminated employment with no prearranged agreement to return to work for the ceased employer.

Section 9. (1) Employees shall receive service credit for sick leave accrued pursuant to KRS 61.546 as of June 30, 2021[2020].

(a) If the ceased employer participates in a sick leave program established in KRS 61.546 the employer shall report to the Systems the number of hours of each employee's accumulated sick leave as of June 30, 2021[2020].

(b) Systems shall credit the months of sick leave service reported pursuant to this section to the employee's total service credit to determine the ceased employer's actuarial cost.

(c) If the ceased employer elects that nonhazardous employees hired prior to June 30, 2021[2020], who began participating in the Systems prior to January 1, 2014, will continue participation pursuant to KRS 61.522(8)(d), then those employees shall continue to receive service credit for sick leave accrued pursuant to KRS 61.546 after June 30, 2021[2020], while participating through the ceased employer.

(2)(a) Systems shall credit the months of military service pursuant to KRS 61.555 prior to June 30, 2021[2020], and include the months in the calculation of the ceased employer's actuarial

cost.

(b) If the ceased employer elects that nonhazardous employees hired prior to June 30, 2021[2020], who began participating in the Systems prior to January 1, 2014, will continue participation pursuant to KRS 61.522(8)(d), then those employees shall continue to be able to obtain military service pursuant to KRS 61.555 if otherwise eligible.

Section 10. (1) The ceased employer shall pay or otherwise resolve all its invoices and correct all reporting in accordance with KRS 61.675 and 105 KAR 1:140 by July 25, 2021[2020].

(2)(a) Systems shall provide the ceased employer with the amount of the full actuarial cost by sending a notice of actuarial cost and the report of the actuary to the employer.

(b) Systems shall provide the ceased employer with the payment amounts required if the ceased employer elects to pay the actuarial cost in installment payments.

(3)(a) The ceased employer shall elect on the Form 7728, Payment Election for Quasi-Governmental Employer Cessation whether to pay the actuarial cost of cessation by lump-sum payment or in installment payments not to exceed thirty (30) years from June 30, 2021[2020].

(b) The Form 7728 shall be received in the retirement office on or before thirty (30) days after the date on which the Systems mailed the notice of actuarial cost and the report of the actuary to the ceased employer.

(c) A ceased employer intending to pay the full actuarial cost by lump-sum shall submit with the Form 7728 documentation of the source of the funds the employer intends to use to pay the full actuarial cost.

(d) A ceased employer intending to pay the actuarial cost by installment payment plan shall submit with the Form 7728 documentation of:

1. Source of funds to pay the installment payments;
2. List of real property owned by the ceased employer, including deeds of conveyance, title, all liens or encumbrances on the real property, and any current written contractual lease or rental agreement of the real property identified;
3. List of liabilities of the ceased employer; and
4. Inventory of all personal property owned by the ceased employer or in which the employer has an interest that may be used as collateral by the employer, including chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letters of credit rights, and money.

(4)(a) Ceased employers who elect to pay the full actuarial cost by lump-sum shall make the payment by June 30, 2022[2024], pursuant to KRS 61.522(3)(a)7.

(b) If the lump-sum payment is not received by the Systems at the retirement office on or before June 30, 2022[2024], then the ceased employer shall make installment payments and the payment amount shall be recalculated based upon this adjustment with interest added for fiscal year 2022-2023[2021-2022]. The ceased employer shall also remit all outstanding installments payments.

(c) Systems shall notify any ceased employer who has not submitted the lump-sum payment on June 21, 2022[2024], of the impending deadline and the consequences of failing to timely pay.

(5)(a) If the ceased employer elects to pay the actuarial cost of cessation in installment payments, the cost shall be financed by the Systems pursuant to KRS 61.522(8)(g).

(b) If the ceased employer elects for nonhazardous employees who began participating in the Systems prior to January 1, 2014, to continue participating in KERS, and the employer is not projected to pay the full actuarial cost in thirty (30) years, then the Systems shall adjust the payments so that the full actuarial costs are paid at the end of the thirty (30) year period.

(c) If the ceased employer elects for nonhazardous employees who began participating in the Systems prior to January 1, 2014 to cease participating in KERS, and the employer is not projected to pay the full actuarial cost in thirty (30) years, then the employer shall pay the amount financed through the Systems pursuant to KRS 61.522(8)(g)1. and no adjustments shall be made to the monthly payments nor shall additional amounts be charged after

the thirty (30) year period.

(6)(a) Interest shall be assigned to the principal amount annually for both lump-sum and installment payment plans beginning on July 1, 2021[2020]. A ceased employer who elects to pay the actuarial cost by installments may at any time submit payments towards the remaining balance.

(b) If the employer elects to pay the costs in installment payments, the annual payments beginning on or after July 1, 2021[2020], including interest will be calculated as a set dollar value and then divided into monthly installments.

(c) If the ceased employer submits more than the required payments for a fiscal year, the total cost will be reduced but the monthly installment amounts will remain unchanged because the monthly amounts are based upon the set dollar value of the annual payments. Pursuant to KRS 61.522(8)(g), interest amounts are separate from total cost and interest and interest attributable to the actuarial cost will not be calculated until the cost is finalized. However, any early or additional payments may reduce the number of payments required if the full actuarial cost is paid in less than thirty (30) years from June 30, 2021[2020].

(7) Payments made prior to the notice of full actuarial cost shall be credited to the amount and considered early or additional payments pursuant to [subsection] (6)(c) of this section.

Section 11. (1)(a) If a ceased employer elects to make installment payments, the Systems shall submit invoices to the employer for payments owed, which are not paid through the normal monthly reports.

(b) The employer shall remit payment to the Systems by the due date provided on the invoice.

(2)(a) If a ceased employer that elected to make installment payments is delinquent for ninety (90) days or more from the due date of an outstanding invoice, and the ceased employer elected for nonhazardous employees with participation dates prior to January 1, 2014, to continue participating, then the participation of those employees in KERS through the ceasing employer will be suspended until the ceased employer has remitted the required payments. The employees shall not earn service credit, including service credit purchased pursuant to KRS 61.552, or benefits in KERS through the ceased employer during the suspension period.

(b) Any employee contributions provided to the Systems will be held until the ceased employer remits the required payments.

(3) Systems shall notify the Finance and Administration Cabinet of any ceased employer that is delinquent for ninety (90) days or more in making installment payments pursuant to KRS 61.675(4)(c).

(4) Systems may file an action in Franklin Circuit Court to collect delinquent installment payments and attach general fund appropriations in order to satisfy the payments owed.

Section 12. (1)(a) Current and former employees of the ceased employer shall not be eligible to purchase service credit pursuant to KRS 61.552 after June 30, 2021[2020], unless the current employee has continued participation in KERS because of the employer election.

(b) A current employee of a ceased employer continuing participation in KERS because of the employer election may purchase service credit pursuant to KRS 61.552 even if that service is related to employment with the ceased employer.

(2) Former employees shall not be eligible to purchase service credit related to employment with a ceased employer, pursuant to KRS 61.552 after June 30, 2021[2020].

(3) A person eligible to purchase service credit pursuant to KRS 61.552 related to employment with the ceased employer, shall either complete the purchase or enter into a service purchase agreement with the Systems no later than June 30, 2021[2020] unless the individual is a current employee of the ceased employer who has continued participation in KERS because of the employer election.

(4) A person may purchase service credit pursuant to KRS 61.552(20) if the service is not related to employment with the ceased employer, unless the person is a current employee that has continued participation in KERS because of the employer election.

(5) A former employee of a ceased employer who becomes employed with a participating employer after terminating employment with the ceased employer may purchase service credit pursuant to KRS 61.552 that is not related to employment with a ceased employer.

Section 13. If any due date in this administrative regulation or if an installment payment falls on a Saturday, Sunday, or day that the Systems is closed due to state holiday, the due date or time period deadline shall extend to the close of business of the next business day.

Section 14. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form 7726, "Request for Estimated Cost of Voluntary Cessation from KERS under KRS 61.522(8)," August 2019;

(b) Form 7727, "Actuarial Study for Quasi-Governmental Employer Cessation", June 2020[November 2019];

(c) Form 1500, "KRS 61.522 60-Day Transfer Request", November 2019; and

(d) Form 7728, "Payment Election for Quasi-Governmental Employer Cessation", June 2020[November 2019].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DAVID L. EAGER, EXECUTIVE

APPROVE BY AGENCY: September 15, 2020

FILED WITH LRC: September 15, 2020 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday November 23, 2020 at 9:00 a.m. at the Kentucky Retirement Systems, 1270 Louisville Road, Frankfort, Kentucky. 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 until November 30, 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: Katherine Rupinen, Interim Executive Director Office of Legal Services, Kentucky Retirement Systems, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 8647, fax (502) 696-8615, email Legal.Non-Advocacy@kyret.ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Katherine Rupinen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the processes and procedures for a quasi-governmental employer participating in the Kentucky Employees Retirement System to voluntarily cease participation in accordance with KRS 61.522(8).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the processes and procedures for a quasi-governmental employer participating in the Kentucky Employees Retirement System to voluntarily cease participation in accordance with KRS 61.522(8).

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statute by establishing the processes and procedures for a quasi-governmental employer participating in the Kentucky Employees Retirement System to voluntarily cease participation in accordance with KRS 61.522(8).

(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 the processes and procedures for a quasi-governmental employer participating in the Kentucky Employees Retirement System to voluntarily cease participation in accordance with KRS 61.522(8).

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

(a) How the amendment will change this existing administrative regulation: This amendment will change the dates for deadlines for quasi-governmental employers participating in the Kentucky Employees Retirement System to voluntarily cease participation in accordance with KRS 61.522(8) to correspond with the changes to those deadlines set out in statute.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to conform to the dates which provide deadlines for quasi-governmental employers participating in the Kentucky Employees Retirement System to voluntarily cease participation in KRS 61.522(8), which were changed by legislation and effective April 8, 2020.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment is necessary to conform to the dates which provide deadlines for quasi-governmental employers participating in the Kentucky Employees Retirement System to voluntarily cease participation in KRS 61.522(8), which were changed by legislation and effective April 8, 2020.

(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 conforming the deadlines for voluntary cessation from participation in the Kentucky Employees Retirement System by quasi-governmental employers with the dates set forth in KRS 61.522(8), which were changed by legislation and effective April 8, 2020.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky Retirement Systems and quasi-governmental employers wishing to cease participation in the Kentucky Employees Retirement System.

(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 to the regulation will extend the deadlines to correspond with statutory changes effective April 8, 2020. These deadlines provide certain quasi-governmental employers a limited window in which to cease participation in Kentucky Employees Retirement System.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The quasi-governmental employer would have its internal cost of voluntary ceasing participating, which would vary by employer. As required by the statute, KRS 61.522, the employer must also pay all the administrative costs incurred by Kentucky Retirement Systems. This cost will also vary by employer.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The quasi-governmental employer will be permitted to voluntarily cease participating in the Kentucky Employees Retirement System.

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

(a) Initially: The cost of filing the application and completing the process of voluntary withdrawal.

(b) On a continuing basis: There will be no continuing cost to the employer.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses of the Kentucky Retirement Systems are paid from the Retirement Allowance Account (trust and 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: There is

no increase in fees or funding required.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees. The employer must pay the administrative costs incurred by Kentucky Retirement Systems pursuant to KRS 61.522.

(9) TIERING: Is tiering applied? Tiering is not applied. All quasi-governmental employers seeking to voluntarily cease participation are subject to the same processes and procedures.

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 Retirement Systems and quasi-governmental employers eligible to voluntarily cease participation in the Kentucky Employees Retirement System pursuant to KRS 61.522(6).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 61.522.

(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 employer will have to pay its internal administrative costs and Kentucky Retirement Systems' administrative costs. The administrative regulation generates no revenue, but will allow employers to cease participation, which will eliminate the requirement for them to pay continuing employer contributions after cessation. The employer is required by statute to pay the actuarial cost of cessation.

(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? Ultimately, the cost to Kentucky Retirement Systems should be negligible, as KRS 61.522 requires voluntary ceasing quasi-governmental employers to pay its internal administrative costs and Kentucky Retirement Systems' administrative costs related to cessation.

(d) How much will it cost to administer this program for subsequent years? KRS 61.522 requires the ceasing quasi-governmental employer to pay its internal administrative costs and Kentucky Retirement Systems' administrative costs so the cost to Kentucky Retirement Systems should be negligible.

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 Barbering (Amendment)

201 KAR 14:035. Public identification of and access to barber shops and schools.

RELATES TO: KRS 317.410, 317.400, 317.450

STATUTORY AUTHORITY: KRS 317.410, 317.420, 317.430, 317.440

NECESSITY, FUNCTION, AND CONFORMITY: Public identification for shops and schools and outside entrance.

VOLUME 47, NUMBER 4– OCTOBER 1, 2020

Section 1. The main entrance to each barber shop, barber school or barber college shall display a sign indicating that it is a barber shop, barber school or barber college, and ~~[the said]~~ each sign shall be clearly visible~~[at the main entrance of said place]~~.

Section 2. Any licensed barber shop located in a residence shall have an outside entrance separate from the residence entrance.

JASON CROCKETT, Chair

APPROVED BY AGENCY: September 11, 2020

FILED WITH LRC: September 10, 2020 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on November 23, 2020 at 312 Whittington Parkway, Louisville, Kentucky 40220. 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 November 23, 2020, this hearing will be done by video teleconference. Instructions for accessing the video teleconference and a link will be provided on the Web site of the Kentucky Board of Barbering, barbering.ky.gov, by which members of the public will be able to view the video teleconference of the public hearing remotely. Members of the public wishing to attend may utilize the link provided on the Department's Web site. 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 AM on November 30, 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: Christopher D. Hunt, Board Attorney, 500 Mero Street, 218 NC, phone +1 (502) 782-5245, fax +1 (502) 564-3969, email chrisd.hunt@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Christopher D. Hunt

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes guidelines for license holders for the manner in which those license holders must identify the location of a barber shop or school. The regulation also sets a minimum standard for license holders who operate a business out of a residence.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish minimum standards for the identification of, and access to, barber shops and barber colleges.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to applicable statutes, particularly KRS 317.440(1)(a), by establishing guidelines related to the location and housing of barber shops and schools.

(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 applicable statutes by providing licensees and agency inspectors with clear standards for complying with those 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: This amendment clarifies signage requirements and adds a requirement that barber shops located in a residence must have a separate entrance from that of the residence.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clearly state the requirements for identifying barber shops, barber schools and colleges, and to provide for appropriate separation between residences and places of business.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 317.440 requires the agency to promulgate regulations governing the operation and location of barber shops and barber schools and colleges.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide clearer guidance for signage identifying licensed barber shops and schools.

(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 4,550 license holders, in the following categories: master barbers, apprentice barbers, student barbers, barber instructors, barber schools, and barber shops. This administrative regulation will also affect future license applicants.

(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: Current license holders will not be required to make any changes, as the requirements of this administrative regulation incorporate requirements from two previous regulations that have expired. Those regulations are 201 KAR 14:035 and 067. Future license holders will have no additional requirements than those borne by previous license applicants.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is no cost anticipated.

(c) As a result of compliance, what benefits will accrue to the entities: This administrative regulation will provide a minimum level of professionalism for license holders and also assist agency inspectors in locating establishments for routine inspections required by law.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The administrative agency collects licensing fees from the various types of licensees it regulates.

(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 expected to be required.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any new fees, nor does it alter or increase existing fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317.410, 317.420, 317.430, 317.440.

(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. The Board of Barbering is the only agency that would be directly impacted by this regulation. There are no expected impacts on expenditures or revenue, as the agency already employs inspectors, who determine compliance with all applicable regulations on their inspection visits. The only possible revenue would be from fines associated with failures to comply with the administrative regulation. This revenue would be variable and negligible.

(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? \$0-\$100.

(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? \$0-\$100.

(c) How much will it cost to administer this program for the first year? No additional costs are anticipated; any expenses are included with current expenditures for agency inspectors.

(d) How much will it cost to administer this program for subsequent years? No additional costs are anticipated; any expenses are included with current expenditures for agency inspectors.

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

Revenues (+/-): NA
Expenditures (+/-): NA
Other Explanation: NA

BOARDS AND COMMISSIONS Board of Barbering (Amendment)

201 KAR 14:070. Shop license applications.

RELATES TO: KRS 317.450(3)

STATUTORY AUTHORITY: KRS 317.440

NECESSITY, FUNCTION, AND CONFORMITY: Application for shop licenses.

Section 1. All new barber shops and all barber shops moving to new locations shall comply with all city, county and state health regulations and must include a signature from the state plumbing inspector on an application supplied by the barber board.

Section 2. Barber shop licenses are not transferable from one (1) location to another or one (1) person to another. A new license must be obtained[purchased], [at the time of transfer or relocation.]

JASON CROCKETT, Chair

APPROVED BY AGENCY: September 11, 2020

FILED WITH LRC: September 10, 2020 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on November 23, 2020 at 312 Whittington Parkway, Louisville, Kentucky 40220. 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 November 23, 2020, this hearing will be done by video teleconference. Instructions for accessing the video teleconference and a link will be provided on the Web site of the Kentucky Board of Barbering, barbering.ky.gov, by which members of the public will be able to view the video teleconference of the public hearing remotely. Members of the public wishing to attend may utilize the link provided on the Department's Web site. 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 AM on November 30, 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: Christopher D. Hunt, Board Attorney, 500 Mero Street, 218 NC, phone +1 (502) 782-5245, fax +1 (502) 564-3969, email chrisd.hunt@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Christopher D. Hunt

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes guidelines that barber shops changing locations must re-apply for an establishment license and that the new location must certify that it complies with local health and plumbing regulations. This regulation also prohibits transferring an establishment license from one person to another or from one location to another.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to satisfy statutory requirements that licensing guidelines be established. The regulation also ensures continuous compliance with essential health-related regulations, to ensure public safety.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 317.440(1) requires the agency to promulgate regulations governing the housing and location of barber shops.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides guidance on the relocation of barber shops and requires the purchase of a new license upon relocation. This is done to ensure proper review of the new shop location to ensure compliance with applicable local regulations.

(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 removes confusing language that could be read to imply that transfer of an establishment license from one location or person to another is allowed.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to remove language that conflicts with the regulation's primary goal of prohibiting the transfer of licenses.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms with the requirement of KRS 317.440 that the agency promulgate guidelines concerning the location of barber shops.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will clarify the prohibition on the transfer of licenses and reduce confusion among license holders. This will in turn make the administration of regulations more efficient.

(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 4,550 license holders, in the following categories: master barbers, apprentice barbers, student barbers, barber instructors, barber schools, and barber shops. This administrative regulation will also affect future license applicants.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: No action will be required of current license holders. The requirement for obtaining a

new license rather than transfer of a license remains; the amendment only further clarifies the prohibition on transfer of licenses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is no cost anticipated for compliance with the amended language.

(c) As a result of compliance, what benefits will accrue to the entities: License holders will benefit from a clearer, more concise description of their responsibilities concerning relocation of a barber shop.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None – not applicable to 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: No increase in fees or 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 any new fees, nor does it alter or increase existing fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317.450(3); KRS 317.440.

(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. The Board of Barbering is the only agency that would be directly impacted by this regulation. There are no expected impacts on expenditures or revenue, as the agency already employs inspectors, who determine compliance with all applicable regulations on their inspection visits. The only possible revenue would be from fines associated with failures to comply with the administrative regulation. This revenue would be variable and negligible.

(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? \$0-\$500.

(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? \$0-\$500.

(c) How much will it cost to administer this program for the first year? No additional costs are anticipated; any expenses are included with current expenditures for agency inspectors and staff.

(d) How much will it cost to administer this program for subsequent years? No additional costs are anticipated; any expenses are included with current expenditures for agency inspectors and staff.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: NA

BOARDS AND COMMISSIONS

Board of Barbering

(Amendment)

201 KAR 14:095. Accredited school.

RELATES TO: KRS 317.440

STATUTORY AUTHORITY: KRS 317.410, 317.430, 317.440, 317.450

NECESSITY, FUNCTION, AND CONFORMITY: Accredited barber school.

Section 1. Any school in Kentucky that complies with the rules and administrative regulations set forth herein, in addition to all the Kentucky laws, will upon the certification and approval of this board be deemed an accredited barber school.

Section 2. Barber school licenses are not transferrable from one (1) location to another or from one (1) person to another. A new license must be obtained.

JASON CROCKETT, Chair

APPROVED BY AGENCY: September 11, 2020

FILED WITH LRC: September 10, 2020 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on November 23, 2020 at 312 Whittington Parkway, Louisville, Kentucky 40220. 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 November 23, 2020, this hearing will be done by video teleconference. Instructions for accessing the video teleconference and a link will be provided on the Web site of the Kentucky Board of Barbering, barbering.ky.gov, by which members of the public will be able to view the video teleconference of the public hearing remotely. Members of the public wishing to attend may utilize the link provided on the Department's Web site. 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 AM on November 30, 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: Christopher D. Hunt, Board Attorney, 500 Mero Street, 218 NC, phone +1 (502) 782-5245, fax +1 (502) 564-3969, email chrisd.hunt@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Christopher D. Hunt

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes guidelines that barber schools and colleges changing locations must re-apply for an establishment license and that the new location must comply with all applicable law and regulations. This regulation also prohibits transferring an establishment license from one person to another or from one location to another.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to satisfy statutory requirements that licensing guidelines be established. The regulation also ensures continuous compliance with essential health-related regulations, to ensure public safety.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 317.440(1) requires the agency to promulgate regulations governing the housing and location of barber schools and colleges.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides guidance on the relocation of barber schools and colleges and requires the purchase of a new license upon relocation. This is done to ensure proper review of the new location to ensure compliance with applicable statutes and regulations.

(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 adds language to clearly state that relocation of a barber school or college requires that a new license be obtained in all circumstances.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the prohibition on transferring barber school and college licenses from one location or person to another.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms with the requirement of KRS 317.440 that the agency promulgate guidelines concerning the location of barber schools and colleges.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will clarify the prohibition on the transfer of licenses and reduce confusion among license holders. This will in turn make the administration of regulations more efficient.

(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 4,550 license holders, in the following categories: master barbers, apprentice barbers, student barbers, barber instructors, barber schools, and barber shops. This administrative regulation will also affect future license applicants.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: No action will be required of current license holders. The requirement for obtaining a new license rather than transfer of a license remains; the amendment only further clarifies the prohibition on transfer of licenses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is no cost anticipated for compliance with the amended language.

(c) As a result of compliance, what benefits will accrue to the entities: License holders will benefit from a clearer, more concise description of their responsibilities concerning relocation of a barber school or college.

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

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None – not applicable to 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: No increase in fees or funding is expected to be required.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any new fees, nor does it alter or increase existing fees.

(9) TIERING: Is tiering applied? Explain why or why not. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317.440 and KRS 317.450.

(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. The Board of Barbering is the only agency that would be directly impacted by this regulation. There are no expected impacts on expenditures or revenue, as the agency already employs inspectors, who determine compliance with all applicable regulations on their inspection visits. The only possible revenue would be from fines associated with failures to comply with the administrative regulation. This revenue would be variable and negligible.

(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? \$0-\$500.

(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? \$0-\$500.

(c) How much will it cost to administer this program for the first year? No additional costs are anticipated; any expenses are included with current expenditures for agency inspectors and staff.

(d) How much will it cost to administer this program for subsequent years? No additional costs are anticipated; any expenses are included with current expenditures for agency inspectors and staff.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: NA

BOARDS AND COMMISSIONS

Board of Barbering (Amendment)

201 KAR 14:100. School advertising.

RELATES TO: KRS 317.410, 317.440, 317.450

STATUTORY AUTHORITY: KRS 317.420, 317.430, 317.440

NECESSITY, FUNCTION, AND CONFORMITY: School advertising.

Section 1. Schools shall not advertise by any means that are knowingly false such as by the use of deceptive statements and false promises which act as inducements in an effort to get the students to enter said schools.

Section 2. Student equipment and books may, or may not, be supplied by the students, depending upon each individual school, but school advertisements must show what is to be furnished to the students.

Section 3. A school of barbering must display in the reception room, work room, and on the mirror of each work station, [reception room and in the work room] a sign to read "School of Barbering - Work Done Exclusively by Students." The letters on this sign must be large enough to be read from the opposite end of the room.

Section 4. No school is permitted to advertise professional work or guarantee students' work.

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Section 5. A school is allowed to advertise under the description of a school operating for teaching purposes only.

Section 6. Schools are forbidden to advertise positions or guarantee future employment to students.

JASON CROCKETT, Chair

APPROVED BY AGENCY: September 11, 2020

FILED WITH LRC: September 10, 2020 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on November 23, 2020 at 312 Whittington Parkway, Louisville, Kentucky 40220. 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 November 23, 2020, this hearing will be done by video teleconference. Instructions for accessing the video teleconference and a link will be provided on the Web site of the Kentucky Board of Barbering, barbering.ky.gov, by which members of the public will be able to view the video teleconference of the public hearing remotely. Members of the public wishing to attend may utilize the link provided on the Department's Web site. 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 AM on November 30, 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: Christopher D. Hunt, Board Attorney, 500 Mero Street, 218 NC, phone +1 (502) 782-5245, fax +1 (502) 564-3969, email chrisd.hunt@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Christopher D. Hunt

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation governs advertising by barber schools and colleges, as well as setting guidelines for work that is performed by students.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to satisfy statutory requirements that advertising guidelines be established for barber schools and colleges. The regulation also ensures continuous compliance with essential health-related regulations, to ensure public safety.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 317.430 and KRS 317.440 require the agency to promulgate regulations governing advertising for, and operation of, barber schools and colleges.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides detailed guidance on advertising to the public undertaken by barber schools and colleges. The regulation also establishes rules to ensure that the public is adequately notified that services provided by barber schools and colleges is done via work performed by students, and not by licensed barbers and master barbers.

(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 expands the areas of a barber school or college where signs must be posted informing the public that services performed on the premises are done so by students and not licensed barbers.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary, as existing requirements have proven inadequate in informing the public concerning student-provided services. The amendment increases the number of locations where signs must be posted and enhances readability standards.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 317.420, KRS 317.430 and KRS 317.440, which require the agency to promulgate regulations governing advertising for, and operation of, barber schools and colleges and regulations to protect the public against misrepresentation.

(d) How the amendment will assist in the effective administration of the statutes: The amendment creates added safeguards for the public by requiring enhanced signage in barber schools and colleges.

(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 4,550 license holders, in the following categories: master barbers, apprentice barbers, student barbers, barber instructors, barber schools, and barber shops. This administrative regulation will also affect future license applicants.

(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: Each licensed barber school and college will be required (if not already in compliance) to post additional signs at each student work station and to make all such signage larger or more legible.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: The amendment does not establish specific requirements concerning the materials used for the signage, so the cost to license holders is expected to be negligible.

(c) As a result of compliance, what benefits will accrue to the entities: This amendment will assist both license holders and the public by making it clear that unlicensed students are performing services, thus reducing confusion.

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

(a) Initially: None.

(b) On a continuing basis: None.

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

(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 this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any new fees, nor does it alter or increase existing fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317.430 and KRS 317.440.

(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. The Board of Barbering is the only agency that would be directly impacted by this regulation. There are no expected impacts on expenditures or revenue, as the agency already employs inspectors, who determine compliance with all applicable regulations on their inspection visits. The only possible revenue would be from fines associated with failures to comply with the administrative regulation. This revenue would be variable and negligible.

(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? \$0-\$500.

(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? \$0-\$500.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: NA

BOARDS AND COMMISSIONS

Board of Barbering (Amendment)

201 KAR 14:105. Barbering school enrollment and postgraduate requirements.

RELATES TO: KRS 317.410, 317.440, 317.450

STATUTORY AUTHORITY: KRS 317.430[(1)], 317.440[(1)], 317.450[(1)(a)3, (2)(c)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317.430(1) requires the Kentucky Board of Barbering to regulate barber schools and the teaching of barbering. KRS 317.440(1) requires the Kentucky Board of Barbering to promulgate administrative regulations governing applicants for barbering licenses. KRS 317.450(1)(b)[~~KRS 317.450(1)(a)3~~] requires the Kentucky Board of Barbering to ensure that a license to practice barbering shall be issued only if an applicant has acted as a licensed apprentice to a barber for at least six (6), but not more than, nine (9) months, [~~and~~] KRS 317.450(1)(a)(3)[(2)(c)] requires the Kentucky Board of Barbering to ensure that a licensed apprentice to a barber has graduated high school or possesses a General Educational Development (GED) certificate or it's equivalent. This administrative regulation establishes requirements for barbering school enrollment and postgraduate coursework.

Section 1. Enrollment Application. (1) Each student applicant shall complete and submit to the barbering school an Enrollment Application for Barber School.

(2) Each student applicant shall also submit to the barbering school:

(a) A copy of the applicant's high school:

1. Certificate;
2. Diploma; or
3. Transcript; or

(b) A copy of the applicant's General Educational Development (GED) certificate.

(3) A prospective student shall not attend a barber school until the student has complied with subsections (1) and (2) of this section and the board has notified the school, pursuant to subsection (4)(c)2a of this section, that the board is in receipt of the completed and correct enrollment form and documentation.

(4)(a) The barbering school shall submit to the board the:

1. Student's enrollment application; and

2. Documentation required by subsection (2) of this section.

(b) The barbering school shall submit the material required by paragraph (a) of this subsection to the board by:

1. Scanning the application into an electronic format and emailing the application to the board;

2. Fax;

3. Post; or

4. Hand delivery.

(c)1. Upon the first business day that the board receives from the barbering school the material required by paragraph (a) of this subsection and the required permit fee, the board shall print, if the submission was in electronic format, and shall date stamp the material.

2.a. Within two (2) business days of receiving the documentation from the barbering school, the board shall contact the barbering school by phone, fax, or email to alert the school that the student is enrolled and may begin attending.

b. The board shall follow up with an official letter, sent to the barbering school and the student applicant, which shall state the student's official enrollment eligibility date.

Section 2. Postgraduate Requirements. (1) A barbering school shall enroll a student who requests postgraduate coursework if the student has complied with:

(a) Section 1 of this administrative regulation; (b) 201 KAR Chapter 14; and

(c) KRS Chapter 317.

(2) A barbering school shall not approve postgraduate course credits for less than 150 hours, except in accordance with 201 KAR 14:015 if the applicant has failed the licensing examination twice consecutively.

Section 3. A person who is an owner of a barber school or a person who can make policy for the school shall not be enrolled in that barber school as a student.

Section 4. Incorporation by Reference. (1) "Enrollment Application for Barber School," [~~August 2009~~] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Barbering, 312 Whittington Parkway, Suite 110, [914 Leesgate Road, Suite 6,] Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30p.m.

JASON CROCKETT, Chair

APPROVED BY AGENCY: September 11, 2020

FILED WITH LRC: September 10, 2020 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on November 23, 2020 at 312 Whittington Parkway, Louisville, Kentucky 40220. 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 November 23, 2020, this hearing will be done by video teleconference. Instructions for accessing the video teleconference and a link will be provided on the Web site of the Kentucky Board of Barbering, barbering.ky.gov, by which members of the public will be able to view the video teleconference of the public hearing remotely. Members of the public wishing to attend may utilize the link provided on the Department's Web site. 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 AM on November 30,

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: Christopher D. Hunt, Board Attorney, 500 Mero Street, 218 NC, phone +1 (502) 782-5245, fax +1 (502) 564-3969, email chrisd.hunt@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Christopher D. Hunt

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets up the organizational rules and structure of a school for barbering and its reporting functions to the governing board.

(b) The necessity of this administrative regulation: KRS 317.430 and KRS 317.440 require the Kentucky Board of Barbering regulate barber schools and the teaching of barbering.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation outlines the documents required for a school to enroll a student as well as how and where they are to be submitted, pursuant to KRS 317.440.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides detailed guidance for students and barber schools on how to ensure students are properly enrolled and placed on track to meet the agency's licensing 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 amendment is revised to more accurately reflect the requirements of KRS 317.450(1)(b) by including the six-month minimum requirements for apprentice work. The amendment also clarifies when related fees are to be paid and updates the agency's physical address.

(b) The necessity of the amendment to this administrative regulation: This amendment more accurately reflects statutory authority and requirements, clarifies when existing fees must be paid, and updates the agency's physical address.

(c) How the amendment conforms to the content of the authorizing statutes: The board is authorized by KRS 317.450 to promulgate administrative regulations governing enrollment and the fees and qualifications for licenses and permits.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist by clearing up language to match statutes and clarifying the agency's physical address.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Future enrolling students at any of 14 schools licensed with the board.

(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: Regulated entities should not have to take any additional steps to comply with the amended regulation, as the amendments clarify existing policy and practices.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There would be no additional cost to either the school, student or licensee.

(c) As a result of compliance, what benefits will accrue to the entities: Affected entities will benefit from a clearer statement of applicable statutes and regulations, making compliance easier. This will also benefit the agency in terms of more efficient administration of applicable statutes and regulations.

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

(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: There will be no cost to implement 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 will be necessary 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 nor does it increase any fees, either directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Kentucky Board of Barbering and enrolling students pursuant to KRS 317.450.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317.450 authorizes the Kentucky Board of Barbering to promulgate 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. 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? \$0.

(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? \$0.

(c) How much will it cost to administer this program for the first year? \$0.

(d) How much will it cost to administer this program for subsequent years? No costs will be incurred to administer this administrative regulation amendment 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 (+/-): 0

Expenditures (+/-): 0

Other Explanation: 201 KAR 14:105 will not create any new revenues for either the state agency or State Government.

BOARDS AND COMMISSIONS

Board of Barbering (Amendment)

201 KAR 14:130. School fees for services.

RELATES TO: KRS 317.410, 317.440

STATUTORY AUTHORITY: KRS 317.430, 317.440

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes school fees and services.

Section 1. A copy of such prices must be posted on a card in each room of the barber school where work is done on the public. Price lists must be printed in type large enough to be read at a distance of ten (10) feet.

Section 2. Barber schools shall not be permitted to charge students any additional fees for any demonstrations, nor shall any supply house or manufacturer be permitted to charge students fees for such demonstrations. Barber schools may not charge students

any fees on behalf of any individual, supply house, or manufacturer for purpose of demonstration.

JASON CROCKETT, Chair

APPROVED BY AGENCY: September 11, 2020

FILED WITH LRC: September 10, 2020 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on November 23, 2020 at 312 Whittington Parkway, Louisville, Kentucky 40220. 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 November 23, 2020, this hearing will be done by video teleconference. Instructions for accessing the video teleconference and a link will be provided on the Web site of the Kentucky Board of Barbering, barbering.ky.gov, by which members of the public will be able to view the video teleconference of the public hearing remotely. Members of the public wishing to attend may utilize the link provided on the Department's Web site. 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 AM on November 30, 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: Christopher D. Hunt, Board Attorney, 500 Mero Street, 218 NC, phone +1 (502) 782-5245, fax +1 (502) 564-3969, email chrisd.hunt@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Christopher D. Hunt

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation will impact the fees charged for services and to students pursuant to KRS 317.440.

(b) The necessity of this administrative regulation: KRS 317.440 authorizes the Kentucky Board of Barbering to promulgate this administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It clarifies that students are not to be charged fees for demonstrations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It assures that students are not charged additional fees from the school or vendors for demonstration purposes.

(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 is revised to clarify that schools are not allowed to charge for demonstrations by outside vendors or individuals or to charge fees on behalf of those outside vendors or individuals.

(b) The necessity of the amendment to this administrative regulation: This amendment assists in making the fees charged to students more stable and predictable.

(c) How the amendment conforms to the content of the authorizing statutes: The board is authorized to promulgate administrative regulations governing enrollment by KRS 317.440.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist the agency in protecting the public and also students by ensuring clarity in pricing for services, and also in limiting the amount of fees charged to students.

(3) List the type and number of individuals, businesses,

organizations, or state and local governments affected by this administrative regulation: The current 248 students, future students, and 14 schools currently operating 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: Schools may not charge for demonstrations by outside sources for demonstrations on school property.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There would be no additional cost to the student.

(c) As a result of compliance, what benefits will accrue to the entities: No additional fees to students.

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

(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: There will be no cost to implement 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 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 any fees nor does it increase any fees, either directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Kentucky Board of Barbering, schools, and students pursuant to KRS 317.440

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317.440 authorizes the Kentucky Board of Barbering to promulgate 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. 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? \$0.

(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? \$0.

(c) How much will it cost to administer this program for the first year? \$0.

(d) How much will it cost to administer this program for subsequent years? \$0.

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

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: 201 KAR 14:130 will not create any new revenues for either the state agency or State Government.

BOARDS AND COMMISSIONS
Board of Barbering
(Amendment)

201 KAR 14:135. School attendance hours.

RELATES TO: KRS 317.440, 317.450, 317.540

STATUTORY AUTHORITY: KRS 317.440, 317.450, 317.540

NECESSITY, FUNCTION, AND CONFORMITY: Hours of attendance for schools of barbering.

Section 1. No school of barbering shall permit or require students to be in attendance at school more than forty-eight ~~(48)~~~~[forty-(40)]~~ hours in any one (1) week.

JASON CROCKETT, Chair

APPROVED BY AGENCY: September 11, 2020

FILED WITH LRC: September 10, 2020 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on November 23, 2020 at 312 Whittington Parkway, Louisville, Kentucky 40220. 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 November 23, 2020, this hearing will be done by video teleconference. Instructions for accessing the video teleconference and a link will be provided on the Web site of the Kentucky Board of Barbering, barbering.ky.gov, by which members of the public will be able to view the video teleconference of the public hearing remotely. Members of the public wishing to attend may utilize the link provided on the Department's Web site. 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 AM on November 30, 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: Christopher D. Hunt, Board Attorney, 500 Mero Street, 218 NC, phone +1 (502) 782-5245, fax +1 (502) 564-3969, email chrisd.hunt@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Christopher D. Hunt

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation allows barbering students the option of eight (8) more hours of training per week.

(b) The necessity of this administrative regulation: KRS 317.440 requires the Kentucky Board of Barbering to regulate barber schools and the teaching of barbering.

(c) How this administrative regulation conforms to the content of the authorizing statutes: It allows an additional eight (8) hours of training weekly.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides the possibility of six days of school for barber students.

(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 allows for a one additional day of training to achieve a maximum of 48 hours in one week.

(b) The necessity of the amendment to this administrative regulation: This amendment allows students an opportunity to complete their training faster if the school opts to open six (6) days

per week.

(c) How the amendment conforms to the content of the authorizing statutes: The board is authorized to promulgate administrative regulations governing hours and instruction by KRS 317.440. This amendment also complies with the requirements of KRS 317.540.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will expand opportunities for schools and students to allow persons to get to work more quickly.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The current 248 students, future students, and 14 schools currently operating 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: Schools may offer an additional day of classes and students may gain an additional eight (8) hours of instruction.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There would be no additional cost to either the school or student.

(c) As a result of compliance, what benefits will accrue to the entities: The possibility of completing the program sooner and more student enrollments.

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

(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: There will be no cost to implement 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 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: No fees will be necessary to implement this administrative regulation.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Kentucky Board of Barbering, students and schools teaching barbering pursuant to KRS 317.440 and KRS 317.540.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317.440 and KRS 317.540.

(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? \$0.

(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? \$0.

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

year? \$0.

(d) How much will it cost to administer this program for subsequent years? No costs will be incurred to administer this administrative regulation amendment 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 (+/-): 0

Expenditures (+/-): 0

Other Explanation: 201 KAR 14:135 will not create any new revenues for either the state agency or State Government.

BOARDS AND COMMISSIONS

Board of Barbering (Amendment)

201 KAR 14:140. School license.

RELATES TO: KRS 317.440, 317.450, 317.540

STATUTORY AUTHORITY: KRS 317.410, 317.430, 317.440, 317.540

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation sets forth rules for licensing a barber school.

Section 1. Each person making application for a license to operate a barber school is required to submit to the board satisfactory evidence as to the financial responsibility and character of the persons interested in operating such a school; literature and advertising material pertaining to the school; samples of each form of record used to conduct the business of the school, including progress reports, hour sheets, and "sign-in" sheets; and a copy of the contract with the student and term or lease.

Section 2. Application for license to operate a school of barbering must be accompanied by a floor plan of proposed premises, showing the arrangements of the classroom, the placing of equipment, the location of gas and electric outlets, and the entrance and exits.

Section 3. A license to operate a barber school is valid only for the person and location named in the license and is not transferable.

Section 4. Any person, establishment, firm or corporation which accepts, directly or indirectly, compensation for teaching persons as defined in KRS 317.410 shall be classified as a barber school and will be required to comply with all the provisions of the laws and the rules and administrative regulations of the board.

Section 5. A copy of the laws and administrative regulations concerning the licensing of barbers must be available to all students, either in hardcopy (paper) or electronic format.

Section 6. Any barber school owner or manager found guilty by the board of willfully or fraudulently misrepresenting facts to the board concerning any information regarding his or her school, will have their license to operate a barber school revoked as provided in KRS Chapter 317.

JASON CROCKETT, Chair

APPROVED BY AGENCY: September 11, 2020

FILED WITH LRC: September 10, 2020 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on November 23, 2020 at 312 Whittington Parkway, Louisville, Kentucky 40220. 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 November 23, 2020, this hearing will be done by video teleconference. Instructions for accessing the video teleconference and a link will be provided on the Web site of the

Kentucky Board of Barbering, barbering.ky.gov, by which members of the public will be able to view the video teleconference of the public hearing remotely. Members of the public wishing to attend may utilize the link provided on the Department's Web site. 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 AM on November 30, 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: Christopher D. Hunt, Board Attorney, 500 Mero Street, 218 NC, phone +1 (502) 782-5245, fax +1 (502) 564-3969, email chrisd.hunt@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Christopher D. Hunt

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the rules for licensing a barber school.

(b) The necessity of this administrative regulation: This administrative regulation sets up the organizational structure for establishing what is a school for barbering and the requirements for the school, owner and administrators. It also establishes the results of fraudulently representing information submitted to the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 317.440 and KRS 317.540 clarify the financial responsibility and requirements by the board to open a school of barbering. They outline the application process and the physical arrangement and requirements for the building. They establish that the license to operate is for one person and location described and is not transferable. They establish that laws concerning the licensing of barbers must be available to students, and describe the consequences if the owner provides fraudulent information regarding the school or students.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It provides a structure around which a school of barbering can exist and the requirements to open, and maintain a school. It establishes the school is licensed to one location and to one person or entity only, it is not transferable. It requires schools to make available current laws to students.

(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 states that the license is not transferable to another person or location. It allows for laws provided to students also be available in an electronic format.

(b) The necessity of the amendment to this administrative regulation: It clarifies that a license is not transferable. It also modernizes the availability of information to utilize electronic formats.

(c) How the amendment conforms to the content of the authorizing statutes: It expands the definitions and requirements to open and maintain a school for barbering.

(d) How the amendment will assist in the effective administration of the statutes: It clarifies limitations and restricts transfer of a license to a new location or a new owner.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: School owners. There are currently 14 schools in the Commonwealth of 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: If a school moves or changes hands it requires a new license. Additionally, it allows a school to provide access to Kentucky law by electronic means.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: \$500 fee for a new license if the school changes hands or moves. No cost for providing electronic access to laws.

(c) As a result of compliance, what benefits will accrue to the entities: With the transfer of a school to a new owner it allows the board to verify that all of the requirements and new codes are met. It helps guarantee that schools will be financially viable. Easier access to current laws.

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

(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 regulation: \$0.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any new fees nor does it increase any fees, either directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Kentucky Board of Barbering and school owners pursuant to KRS 317.440 and KRS 317.540.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317.440 authorizes the Kentucky Board of Barbering to promulgate this administrative regulation. Other applicable statutes are KRS 317.410, 317.430, and 317.540.

(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? \$0.

(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? \$0.

(c) How much will it cost to administer this program for the first year? \$0.

(d) How much will it cost to administer this program for subsequent years? No costs will be incurred to administer this administrative regulation amendment 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 (+/-): 0

Expenditures (+/-): 0

Other Explanation: 201 KAR 14:140 will not create any new revenues for either the state agency or State Government.

BOARDS AND COMMISSIONS

Board of Nursing (Amendment)

201 KAR 20:320. Standards for curriculum of prelicensure registered nurse and practical nurse programs.

RELATES TO: KRS 314.011(5), 314.021, 314.041(1)(a), 314.111(1), 314.131(1), (2)

STATUTORY AUTHORITY: KRS 314.041(1)(a), 314.051(1)(a), 314.111(1), 314.131(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.041(1)(a) and 314.051(1)(a) require that an applicant for licensure as a registered or licensed practical nurse complete the basic nursing curriculum in an approved school of nursing. KRS 314.111(1) requires that schools of nursing regardless of delivery models shall meet minimum standards and be approved by the Board of Nursing. KRS 314.131(1) and (2) authorizes the board to promulgate administrative regulations necessary to approve programs of nursing. This administrative regulation establishes the curriculum requirements for prelicensure registered nurse and practical nursing programs.

Section 1. Definitions. (1) "Debriefing" means an activity that follows a simulation experience, is led by a nurse faculty as established in 201 KAR 20:310, Section 2, encourages participant's reflective thinking, and provides feedback regarding the participant's performance.

(2) "Distance learning" means didactic instruction offered by any means where the student and faculty are in separate physical locations.

(3) "Practical nursing program" means a program of nursing organized and administered by a vocational, technical, or adult education system or an independent school at a postsecondary level that awards the graduate a diploma in practical nursing upon meeting requirements of the program.

(4) "Program of nursing" means the educational unit that prepares a person for licensure as a registered or licensed practical nurse.

(5) "Registered nursing program" means a program of nursing organized and administered by an institution of higher learning that awards a degree in nursing upon meeting requirements of the program.

(6) "Remediation" means the process by which a student improves or corrects a knowledge deficit.

(7) "Simulation" means an activity or a technique that replicates actual or potential situations in clinical practice that allows the participant to develop or enhance critical thinking.

Section 2. General. (1) An applicant for licensure shall complete a prelicensure program of nursing that meets the requirements of this administrative regulation.

(2) Length. (a) A registered nursing program shall be a minimum of two (2) academic years, which may include prior articulated academic credits.

(b) A practical nursing program shall be a minimum of one (1) academic year.

(3) Philosophy, mission, and outcomes. (a) The philosophy, mission, and outcomes of the program of nursing shall be clearly defined in writing by the nursing faculty and be consistent with those of the governing institution.

(b) The program outcomes shall describe the expected competencies of the graduate.

(c) The program shall conduct an evaluation to validate that identified program outcomes have been achieved and provide evidence of improvement based on an analysis of those results.

(4) Approval.

(a) A curriculum plan shall be approved by the board in accordance with this administrative regulation.

(b) The curriculum plan shall enable the student to develop the nursing knowledge, skills, and competencies for the expected entry level and scope of practice.

(c) Theory and clinical experiences shall provide the student

with opportunities to acquire and demonstrate the knowledge, skills, and competencies necessary for safe practice.

(5) Curriculum plan. (a) The development, implementation, evaluation, and revision of the curriculum shall be the responsibility of the nursing faculty including the program administrator with input from students.

(b) The curriculum of the program of nursing shall assure the development of evidence based practice for the level and scope of nursing practice. This shall include the skills to identify and apply best practices in nursing care by providing client-centered, culturally competent care and respecting client differences, values, preferences, and expressed needs.

(c) A registered nursing program may determine that a portion of the curriculum fulfills the scope of practice for licensed practical nursing and allow students to exit the program and be made eligible for the NCLEX-PN examination. The registered nursing program shall submit its plan to the board for approval.

(6) Organization of the curriculum. (a) There shall be a written plan, including supporting rationale, which describes the organization and development of the curriculum.

(b) The curriculum plan shall reflect the philosophy, mission, and outcomes of the program.

(c) There shall be a rationale for the amount of time or credits allocated to course and clinical practice experience.

(d) A course syllabus shall be developed for each nursing course to include outcomes, planned instruction, learning activities, and method of evaluation.

1. Each course shall be implemented in accordance with the established course syllabus.

2. A copy of each course syllabus shall be on file in the program of nursing office and shall be available to the board upon request.

(e) The curriculum plan shall be logical and sequential, and shall demonstrate an increase in difficulty and complexity as the student progresses through the program.

(f) A course may be offered as a distance learning course. A distance learning course shall meet the same standards as established in 201 KAR 20:260 through 201 KAR 20:360 for any other course.

(7) Curriculum components. (a) The curriculum of a registered nursing program or a practical nursing program shall prepare the graduate for licensure and full scope of practice as defined by current standards for nursing practice and expected competencies of graduates at the appropriate educational level.

(b) The curriculum shall include:

1. Theory and selected clinical practice experiences designed to enable students to provide nursing care to individuals throughout the life span; and

2. Information regarding Kentucky nursing laws, including scope of practice, licensure requirements, and the role of the board of nursing. This subparagraph shall be implemented by January 1, 2020.

(c) Clinical practice settings shall be appropriate for the type of nursing program and the program outcomes and enable the student to observe and practice safe nursing care of persons at each stage of the life span. Experiences shall include opportunities to learn and provide care to diverse ethnic and cultural populations.

(d) Clinical practice experience shall be supervised by board approved nursing faculty in accordance with 201 KAR 20:310.

(e) The curriculum shall have written measurable program outcomes that reflect the role of the graduate.

(f) Students shall have sufficient opportunities in simulated or clinical settings to develop psychomotor skills essential for safe, effective practice.

(8) Curriculum change. (a) A program of nursing that is not accredited by a national nursing accrediting body shall submit a written plan for major curriculum revisions to the board a minimum of four (4) months prior to the planned implementation.

1. A request for curriculum revision shall include the present plan and the proposed change with rationale and expected outcomes.

2. The board shall be available to assist if curriculum revisions are being considered.

3. Major curriculum revisions shall include:

a. A change in the philosophy, mission, or outcomes that results in a reorganization or reconceptualization of the entire curriculum; or

b. The addition of tracks or alternative programs of study that provide educational mobility.

(b) A program of nursing that implements a curriculum change shall provide an evaluation of the outcomes of those changes through the first graduating class following full implementation of the curriculum change. The program of nursing shall also submit the evaluation with its annual report.

(9) Integrated practicum. (a) The curriculum shall include an integrated practicum. The integrated practicum shall consist of a minimum of 120 clock hours of concentrated clinical experience of direct patient care in a health care facility or health care organization.

(b) The integrated practicum shall be completed within a period not to exceed seven (7) consecutive weeks while the governing institution is in session and within seven (7) months of graduation.

Section 3. Simulation Standards. (1)(a) A program of nursing that uses simulation shall adhere to the standards set in this section.

(b) A program of nursing shall not use simulation for more than fifty (50) percent of its total clinical hours required for graduation.

(2)(a) The program of nursing shall provide resources sufficient to support the simulation activities, including training of the faculty, and programmatic outcomes.

(b) Simulation activities shall be managed by a nurse who is academically and experientially qualified in the use of simulation, both in its pedagogical and technical aspects. The managing nurse shall demonstrate his or her qualifications by:

1. Attendance at simulation conferences;

2. Completion of educational activities related to simulation; or

3. Holding a credential issued by the Society for Simulation in Healthcare or a simulation preparation program recognized by the International Nursing Association for Clinical Simulation.

(c) The program of nursing shall have written rationale for the use and purpose of simulation within the curriculum.

(d) The program of nursing shall have an orientation plan for faculty concerning simulation.

(e) The program of nursing shall have a written procedure on the method of prebriefing and debriefing each simulated activity.

(3) The program of nursing shall have appropriate facilities for conducting simulation. This shall include educational and technological resources and equipment to meet the intended objectives of the simulation.

(4) Faculty, both didactic and clinical, that utilize simulation shall:

(a) Have training in the use of simulation; and

(b) Engage in on-going professional development in the use of simulation.

(5) The simulation activities shall be linked to the program of nursing's course objectives and the programmatic outcomes.

(6) Beginning July 1, 2019, a program of nursing shall submit evidence of compliance with these standards in the annual report required by 201 KAR 20:360, Section 3(1) of this administrative regulation.

Section 4. Use of External Examinations. (1) An external examination is a standardized or norm-referenced examination that is designed to compare and rank test takers in relation to one another and is not produced by the program of nursing.

(2) A program of nursing shall not use [require the completion of] an external examination to determine [as a determinant for] a student's progression or graduation.

(3) An external examination may be used to assist in the remediation of a student [or as part of a final course grade. If used as part of a final course grade, it shall not count for more than ten (10) percent of the grade.] The examination shall not be the sole remediation strategy.

(4) A program of nursing that utilizes an external examination as the basis for requiring student remediation shall ensure that

completion of remediation occurs within the same semester or quarter.

(5) The academic progression policy of the program of nursing shall clearly outline the role of the external examination in remediation.

(6) A program of nursing shall not require students who have completed all requirements for graduation to earn a specific score or benchmark on an external examination as a condition for graduation or for placing the student's name on the Certified List of Kentucky Program of Nursing Graduates pursuant to 201 KAR 20:070.

Section 5. Statutory Additions. (1) Each program of nursing shall include information in its curriculum that meets the requirements of KRS 194A.540 related to domestic violence and elder abuse, neglect, and exploitation.

(2) Each program of nursing shall include information about pediatric abusive head trauma as it is defined in KRS 620.020.

JESSICA WILSON, President

APPROVED BY AGENCY: August 20, 2020

FILED WITH LRC: September 2, 2020 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 23, 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.) November 30, 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) 420-1542, 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: This administrative regulation sets standards for curriculum in prelicensure programs of nursing.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.111.

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

(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 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: It clarifies how and when external examinations may be used by a program of nursing.

(b) The necessity of the amendment to this administrative regulation: The administrative regulation was confusing and internally inconsistent.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to set standards. This clarification assists the programs of nursing in their use of external examinations.

(d) How the amendment will assist in the effective administration of the statutes: By clarifying the use of external examinations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Prelicensure programs of nursing, 92.

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

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

(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 associated with complying with this administrative regulation.

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

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase is needed.

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

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.131.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? No additional cost.

(d) How much will it cost to administer this program for subsequent years? No additional cost.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS

**Board of Nursing
(Amendment)**

201 KAR 20:390. Nursing Incentive Scholarship Fund.

RELATES TO: KRS 314.011, 314.025, 314.026, 314.027

STATUTORY AUTHORITY: KRS 314.026(1), 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.025 through 314.027 authorize the Kentucky Nursing Incentive Scholarship Fund for Kentucky residents. KRS 314.026(1) requires the Board of Nursing to promulgate administrative regulations to implement and administer the scholarship fund. This administrative regulation implements the Kentucky Nursing Incentive Scholarship Fund Program and establishes the requirements relating to the program.

Section 1. Definitions. (1) "Academic year" means:

(a) For a registered nursing or graduate nursing program, a twelve (12) month period beginning with a fall session; and

(b) For a practical nursing program, the completion of the required program.

(2) "Board" is defined by KRS 314.011(1).

(3) "Graduate nursing education" means the pursuit of a master's degree, post-master's certificate, or doctoral degree.

(4) "Kentucky resident" is defined by 13 KAR 2:045, Section 1(10).

(5) [(4)] "Program of nursing" means a prelicensure, BSN completion, or graduate nursing program.

(6) [(5)] "Successful academic progression" means, except during the last academic year preceding graduation:

(a) For a prelicensure or BSN completion nursing program, the completion of a minimum of twelve (12) ~~fifteen (15)~~ credit hours per academic year of published requirements for the program of nursing and maintenance of a minimum grade point average which would allow continuation in a program of nursing; or

(b) For a graduate nursing program, the completion of a minimum of nine (9) credit hours per academic year of published requirements for the program of nursing and maintenance of a minimum grade point average which would allow continuation in the graduate program.

Section 2. Application. (1) To be eligible for a nursing incentive scholarship, an applicant shall:

(a) Be a Kentucky resident; and

(b) Have been accepted for admission to a program of nursing.

(2) An applicant shall submit:

(a) A completed Nursing Incentive Scholarship Application by June 8; ~~[1 to apply for a scholarship for the following academic year.]~~

(b) A copy of the Student Aid Report from the Free Application for Federal Student Aid (FAFSA) for the current year, if requesting preference for financial need;

(c) A copy of the program of nursing acceptance letter verifying initial enrollment;

(d) For newly enrolled nursing applicants an official transcript from the last academic institution in which applicant was enrolled for verification of GPA or copy of a GED; and

(e) For applicants enrolled in a program of nursing, a copy of an official transcript to verify continued enrollment.

(3) ~~An applicant shall attach to the Nursing Incentive Scholarship Application a copy of the Student Aid Report from the Free Application for Federal Student Aid (FAFSA) for the current year, if requesting preference for financial need.]~~

Section 3. Criteria for Awards. The board shall consider the following criteria in evaluating an application and shall award points as follows:

(1) Preference categories as specified in KRS 314.025(2):

(a) Licensed practical nurses, twenty (20) ~~[twenty-five (25)]~~ points;

(b) Registered nurses pursuing graduate nursing education, twenty (20) ~~[twenty-five (25)]~~ points; and

(c) Financially-needy Kentucky residents, up to thirty-five (35) [twenty-five (25)] points. Financial need shall be determined by the estimated Federal Expected Family Contribution (EFC) as calculated by the annual FAFSA and points will be awarded based on need-based aid eligibility as follows: ~~[Pell Grant Indicator of Eligibility for Financial Aid:]~~

1. EFC of \$0 to \$5000, thirty-five (35) points;

2. EFC of \$5001 to \$10,000, thirty (30) points; and

3. EFC of \$10,001 to \$20,000, twenty-five (25) points.

(2) Potential for academic success, as follows: high school, vocational school, college, or university grade point average for whichever institution the applicant most recently attended:

(a) Three and five-tenths (3.5) to four (4.0), twenty-five (25) points;

(b) Three (3) to three and four-tenths (3.4), twenty (20) points; and

(c) Two and five-tenths (2.5) to two and nine-tenths (2.9), fifteen (15) points;

(3) Potential for academic success when GED is earned in place of a high school diploma:

(a) A GED score of 601 to 800, twenty-five (25) points;

(b) A GED score of 501 to 600, twenty (20) points; and

(c) A GED score of 401 to 500, fifteen (15) points. ~~[(3) Previous health care experience, either paid or volunteer, shall be equal to five (5) points for each year in which service is validated, to a maximum of twenty-five (25) points.]~~

Section 4. Amount of Award. (1) The board shall be notified by the board's fiscal officer as to the current fund balance prior to making an award.

(2)(a) The board shall first make awards to those recipients who:

1. Received an award in the previous year; and

2. Remain eligible to receive an award pursuant to Section 6 of this administrative regulation in the current year.

(b) If funds remain available after the awards are made pursuant to paragraph (a) of this subsection, the board shall make an award to other eligible applicants.

Section 5. Procedure for Disbursement of Awards. (1) Disbursement of funds shall be made directly to the recipient.

(2) Disbursement shall be made annually.

(3) Each educational institution in which a student receiving a nursing incentive scholarship award is enrolled shall certify to the board no later than thirty (30) days from the beginning of each semester, that the recipient:

(a) Has enrolled; and

(b) Is in good standing in the nursing program.

Section 6. Continuing Eligibility Criteria. (1) A recipient of a nursing incentive scholarship shall be eligible to continue to receive an award if the recipient:

(a) Maintains successful academic progression through the program; and

(b) Submits to the board a completed Nursing Incentive Scholarship Fund Application form by June 1.

(2) The educational institution shall immediately notify the board of a change in a recipient's enrollment status.

(3) An award recipient in a practical nursing program shall not be eligible for further awards from the Nursing Incentive Scholarship Fund while enrolled in that program.

Section 7. Disbursement Contract. (1) Prior to disbursement of initial funds, the recipient shall sign a Nursing Incentive Scholarship Fund Contract.

(2) The recipient shall sign a Nursing Incentive Scholarship Fund Promissory Note for each year in which funds are disbursed.

Section 8. Repayment and Deferral. (1) A recipient shall immediately become liable to the board to pay the sum of all scholarships received and the accrued interest on the scholarships if the recipient fails to complete the:

(a) Nursing program in which he or she is enrolled within the

time specified by the program of nursing; or

(b) Required employment as specified in the contract.

(2) Written notification of demand for repayment shall be sent by the board to the scholarship recipient's last known address and shall be effective upon mailing.

(a) The board may agree to accept repayment in installments in accordance with a schedule established by the board.

(b) Payments shall first be applied to interest and then to principal on the earliest unpaid contracts.

(3) Repayment may be deferred in the case of disability, major illness, or accident that prevents a recipient from completing a program of nursing or being employed as a nurse in Kentucky.

(4) A student enrolled in a program of nursing may defer repayment if the student fails to achieve successful academic progression.

(a) This deferment shall apply for one (1) academic year.

(b) If the student fails to achieve successful academic progression after that time, repayment shall be due.

(c) If the student achieves successful academic progression within the allotted time, he or she may apply for a continuation award pursuant to Section 6 of this administrative regulation.

(5)(a) If a deferment is requested, the recipient shall submit the request to the board on a Nursing Incentive Scholarship Fund Request for Deferral form.

(b) If the request for deferment is submitted pursuant to subsection (3) of this section, the Nursing Incentive Scholarship Fund Request for Deferral form shall be accompanied by a [physician-s] statement by a physician, advanced practice registered nurse or physician's assistant.

(6) If a recipient fails to pass the licensure examination within two (2) years of graduation, the sum of all nursing incentive scholarships received by the recipient, and the accrued interest, shall become due and payable.

(7) If a court of competent jurisdiction determines that the recipient has defaulted and the funds are due and owing to the board, then the provisions of 201 KAR 20:370, Section 1(5), shall apply.

(8) An individual who has defaulted on a scholarship shall not be eligible to receive another scholarship until the defaulted scholarship has been repaid.

(9) The board may utilize the services of a third party for collection of sums owed pursuant to a Nursing Incentive Scholarship Fund Contract and Promissory Note, including reasonable attorney fees.

(10) After the board refers a debt to a third party for collection, a recipient shall not be eligible for deferment or to otherwise cure the recipient's breach, other than through payment of all sums owed to the board.

Section 9. Verification. (1) Verification of employment as a nurse in Kentucky pursuant to the contract shall be submitted to the board when the recipient's employment commitment begins and when it is completed. A termination of employment prior to completion shall be reported to the board within thirty (30) days by the employer and the recipient.

(2) A recipient shall notify the board immediately of a change of name or address or enrollment status in school.

Section 10. Incorporation by Reference. (1) The following forms are incorporated by reference:

(a) "Nursing Incentive Scholarship Fund Application", 12/01;

(b) "Nursing Incentive Scholarship Fund Request for Deferral", 10/96;

(c) "Nursing Incentive Scholarship Fund Contract", 10/13; and

(d) "Nursing Incentive Scholarship Fund Promissory Note", 10/13.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday 8:30 a.m. to 4:30 p.m.

JESSICA WILSON, President

APPROVED BY AGENCY: August 20, 2020

FILED WITH LRC: September 2, 2020 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 23, 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.) November 30, 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) 420-1542, 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 application processes, award criteria, required terms, deferral requirements, and remedies in the event of breach by an award recipient for a Kentucky Nursing Incentive Scholarship.

(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 processes and standards for Kentucky Nursing Incentive Scholarship applications, awards, required terms, deferral requirements and remedies in the event of breach by an award participant.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting the processes and criteria applicable to awards, the terms required of recipients, and the procedures and standards applicable to deferral as well as breach by an award recipient.

(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 changes the scholarship criteria to heighten the emphasis on financial need, removes healthcare experience from being a factor in award determinations, allows a third party collector to recover amounts owed in cases of breach or default by an award recipient, and specifies that deferment or methods of curing default shall not be available after referral of the debt to a third party collector.

(b) The necessity of the amendment to this administrative regulation: An evaluation of award trend data indicates that existing award criteria is too heavily weighted in favor of incumbent nurses, and the modifications provide greater opportunities for LPN and RN students who have financial need but no background in healthcare. Also, the amendment clarifies processes and standards related to deferral, default, and collection.

(c) How the amendment conforms to the content of the authorizing statutes: The removal of healthcare experience as a factor for determining awards brings the regulation into conformity with KRS 314.025(2), which calls for awards to LPN applicants. In many instances, LPN applicants begin nursing school without a history of healthcare employment.

(d) How the amendment will assist in the effective administration of the statutes: By clarifying procedures for deferral, default, and collection.

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

Incentive Scholarships awarded each year depends upon funding levels: (a) FY20, 148; (b) FY19, 165; (c) FY18, 196; (d) FY17, 174; (e) FY16, 185.

(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 actions required of scholarship applicants and recipients are not changed by the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment does not alter the cost imposed upon award recipients. The only cost to scholarship recipients occur in instances of breach or default, and the amendment does not alter such costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliant scholarship applicants may be eligible for scholarship funds, and the amendment clarifies that deferral or remedies for breach are available prior to referral of the debt for collection by a third party.

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

(a) Initially: The amendment will not alter the cost of implementation and enforcement of the regulation, which was approximately fourteen thousand dollars in FY2020.

(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: restricted funds per KRS 314.027.

(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 as a consequence of the amendment.

(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 314.026 and 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? The amendment will not alter the cost of implementation and enforcement of the regulation for the first year. The cost of implementation and enforcement of the regulation was approximately fourteen thousand dollars in FY2020.

(d) How much will it cost to administer this program for subsequent years? The amendment will not alter the cost of implementation and enforcement of the 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 (+/-): Unknown

Expenditures (+/-): Unknown

Other Explanation: Both the scholarships and the cost of administering the scholarship program are funded by an assessment of five dollars (\$5) added to each nurse licensure renewal application fee paid to the board, and from penalties collected by the Kentucky Cabinet for Health and Family Services under the provisions of KRS 216.560 and 216B.131(2). While the precise amount of these revenues in FY21 and subsequent years are not presently known, all expenditures and administration costs for the scholarship program will be paid from such revenues.

BOARDS AND COMMISSIONS Board of Chiropractic Examiners (Amendment)

201 KAR 21:001. Definitions for 201 KAR Chapter 21.

RELATES TO: KRS 312.015, 312.200

STATUTORY AUTHORITY: KRS 312.019(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation sets forth the definitions for 201 KAR Chapter 21.

Section 1. Definitions. (1) "Accepted standards" means those standards of review, care, skill, and treatment that are recognized by a reasonably prudent chiropractor as being acceptable under similar conditions and circumstances.

(2) "Accredited chiropractic college or university" means a chiropractic college or university fully accredited by the Council on Chiropractic Education or its successor and that:

(a) Maintains a standard and reputation approved by the board pursuant to 201 KAR 21:055; and

(b) Meets all educational standards for preceptorship programs as established by the Council on Chiropractic Education.

(3) "Adjacent tissues" means all structures and joints contained within the upper and lower extremity.

(4) "Advertisement of free or discounted services" means any advertisement or solicitation, by any medium, offering free or discounted examinations, consultation, treatment, goods, or other services.

(5) [(4)] "Appropriate chiropractic treatment" means a determination made of treatment and other services performed which, by virtue of a substantiated and properly diagnosed condition, appear to be of a type consistent with that diagnosis.

(6) [(5)] "Bill for treatment" means all services provided to a patient, regardless of the monetary consideration paid to the chiropractor.

(7) [(6)] "Board" is defined by KRS 312.015(1).

(8) [(7)] "Committee" means the peer review committee established by KRS 312.200.

(9) [(8)] "Complaint" means an allegation alleging misconduct that might constitute a violation of KRS Chapter 312 or 201 KAR Chapter 21.

(10) [(9)] "Complete notice of right of rescission" means a conspicuous statement, of not less than ten (10) point font in any advertisement of free or discounted services that reads substantially as follows: "You have the right to rescind, within seventy-two (72) hours, any obligation to pay for services performed in addition to this free or discounted service."

(11) [(10)] "Conviction" means a finding of guilt resulting from a plea of guilty or nolo contendere, the decision of a court, or the finding of a jury, irrespective of a pronouncement of judgment, or the sentence being deferred or suspended.

(12) [(11)] "Hearing officer" is defined by KRS 13B.010(7).

(13) [(12)] "Licensee" means a person who performs chiropractic and who is licensed under KRS 312.015 to 312.991, and 201 KAR Chapter 21, as a chiropractor.

(14){(43)} "Notice of rescission" means notice by the consumer rescinding any agreement to pay for unadvertised additional services performed or to be performed in addition to the free or discounted service.

(15) "Ownership or operation of a chiropractic facility" as set forth in KRS 312.145(3) means continued, ongoing ownership by a licensee, or in the event of the death or permanent disability of the licensee, ownership or operation of the facility by the licensee's spouse, heirs, successors, or assigns as may be designated by or in the licensee's estate, for up to twelve (12) months.

(16){(45)} "Patient" means an individual who receives treatment from a chiropractor.

(17){(46)} "Peer review" is defined by KRS 312.015(4).

(18){(47)} "Preceptor" means a licensed doctor of chiropractic, who, after approval of the board, pursuant to 201 KAR 21:085, and an accredited chiropractic college or university, provides an opportunity for an undergraduate intern to work in the doctor's office.

(19){(48)} "Promotional items" means small tangible items such as pens, magnets, pads, cups, and the like given to existing or potential customers; these are not considered advertising unless the item contains an offer for free or discounted services.

(20){(49)} "Properly utilized services" means appropriate treatment services rendered, including the frequency and duration of those services and that are substantiated as being necessary and reasonable by clinical records and reports prepared by the treating chiropractor.

(21){(20)} "Seventy-two (72) hour right of rescission" means the right of a consumer to rescind within seventy-two (72) hours any agreement to pay for services if performed the same day in addition to the advertised free or discounted service at an additional unadvertised cost, or any agreement entered into on the same date to submit to a series, or course of treatments at an additional unadvertised cost.

(22){(24)} "Unconscionable fees" means charges or bills for treatment submitted for services performed that are unreasonable charges for those services as compared to the usual and customary charges by a chiropractor or by a health care provider other than a chiropractor for the same or similar services in the locality where the services were performed.

(23){(22)} "Undergraduate intern" means an individual studying at an accredited chiropractic college or university and who is in the final academic year prior to receiving a degree in chiropractic.

(24){(25)} "Unlawful solicitation" means offering money or something of value to a potential patient or patient in exchange to seek treatment from the licensee.

JEFF SMITH, Board Chair

APPROVED BY AGENCY: June 26, 2020

FILED WITH LRC: September 11, 2020 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 23, 2020, at 10:00 a.m. in Room 127, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 2020, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until November 30, 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: David C. Trimble, Board Attorney, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 782-8823, fax +1 (502) 564-3969, email DavidC.Trimble@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David C. Trimble

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes definitions for use with the regulation chapter.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 312.019.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes definitions relating to the regulation chapter.

(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 Chapter 312 by carrying out the legislative mandate for the board to establish regulations for the practice of chiropractic.

(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 or amends definitions for terms in the regulation chapter.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update definitions of terms.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes definitions of terms for those regulations.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 312 by carrying out the legislative mandate for the board to establish requirements for the practice of chiropractic.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 1,078 licensed chiropractors practicing in the Commonwealth of Kentucky, as well as an unknown number of their patients who depend on their chiropractor remaining current with their training.

(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: This regulation will provide updated definitions of terms.

(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 chiropractor.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow chiropractors to have an updated understanding of terms.

(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.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Chiropractic Examiners 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 licensees 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 Kentucky Board of Chiropractic Examiners.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 312

(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 the agency beyond regular monitoring of continuing education for license renewals.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to the agency beyond regular monitoring of continuing education for license renewals.

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

BOARDS AND COMMISSIONS Board of Chiropractic Examiners (Amendment)

201 KAR 21:015. Code of ethical conduct and standards of practice.

RELATES TO: KRS 312.019(9)(a)

STATUTORY AUTHORITY: KRS 312.019(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.019(9)(a) authorizes the board to promulgate and amend administrative regulations for the practice of chiropractic, including adopting a code of ethical conduct. This administrative regulation establishes the minimum standards of professional and ethical conduct and practice that a licensee shall maintain.

Section 1. Each licensee shall comply with the minimum standards of professional and ethical conduct established in subsections (1) through (9) of this section.

(1) A licensee shall not advertise the licensee's services except as provided by 201 KAR 21:065.

(2) A licensee shall not commit an act of sexual misconduct,

sexual harassment, or any act punishable as a sexual offense.

(3) A licensee shall refrain from chemical or substance abuse. The chemical or substance abuse shall not have to take place in a chiropractic office for the board to take action against a licensee.

(4)(a) Division of a professional fee shall not be made, except upon the basis of actual services rendered.

(b) Unless prohibited by law, each licensed chiropractor of a business entity shall be allowed to pool or apportion fees received in accordance with a business agreement.

(5)(a) A licensee shall not pay or receive compensation for the referral or unlawful solicitation of patients.

(b) A licensee, employee of a licensee, agent of a licensee, contractor of a licensee, or anyone acting in concert with the licensee shall not provide monetary compensation or other consideration of value to an individual in order to induce or entice the individual to commence a chiropractor-patient relationship or continue as a patient of the licensee.

(6)(a) Telemarketing shall be permitted only if the telemarketing is nontargeted, taken from a general list of phone numbers, and if not violating the state's no-call provisions.

(b) The licensee shall be held responsible for the content of any contact made by a telemarketer, agent, employee, or contractor representing the chiropractor.

(7) A licensee shall report to the board any reasonably suspected violation of KRS Chapter 312 or 201 KAR Chapter 21 by another licensee or applicant within thirty (30) days.

(8) A licensee shall report to the board any guilty plea, criminal conviction other than minor traffic violations, civil judgment, settlement, or civil claim made against the licensee within thirty (30) days.

(9) A licensee shall report to the board any discipline from another state licensing board within thirty (30) days of receiving notice of final disciplinary action.

(10) A licensee shall report to the board any malpractice settlement over \$10,000 within thirty (30) days of the settlement of the claim.

Section 2. Each licensee shall comply with the minimum standards of practice established in subsections (1) through (6) of this section. (1) A licensee shall keep in confidence whatever the licensee may learn about a patient in the discharge of professional duties. Information shall be divulged by the licensee only if required by law or authorized by the patient.

(2) A licensee shall render care to each patient that is consistent with treatment and care that would be rendered by a reasonably prudent chiropractor licensed in the Commonwealth of Kentucky and shall give a candid account of a patient's condition to the patient, or to those responsible for the patient's care.

(3) A licensee shall inform the patient of the licensee's clinical diagnosis, treatment plan, and expected outcome of treatment prior to the onset of care.

(4) A licensee shall give timely notice to the licensee's patient or to those responsible for a patient's care if the licensee withdraws from a case so that the patient may obtain another chiropractor.

(5) A licensee shall not abandon a patient.

(6) A licensee shall practice the licensee's profession in accordance with the provisions of KRS Chapter 312 and 201 KAR Chapter 21.

Section 3. (1) Each licensee shall cooperate with the board by:

(a) Furnishing germane documents requested by the board;

(b) Furnishing in writing a complete explanation covering the matter contained in the complaint filed with the board;

(c) Appearing before the board at the time and place designated; and

(d) Properly responding to a subpoena issued by the board;

(e) The board will in each renewal cycle audit a minimum of fifteen (15) percent of renewals to assure compliance with continuing education requirements. Licensees, if selected for audit, shall cooperate and provide requested information so the audit may be conducted.

(2) A licensee shall comply with an order issued by the board.

JEFF SMITH, Board Chair

APPROVED BY AGENCY: June 26, 2020

FILED WITH LRC: September 11, 2020 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 23, 2020, at 10:00 a.m. in Room 127, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 2020, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until November 30, 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: David C. Trimble, Board Attorney, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 782-8823, fax +1 (502) 564-3969, email DavidC.Trimble@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David C. Trimble

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes a code of ethics for the practice of chiropractic.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 312.019.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes a code of ethics relating to the practice of chiropractic.

(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 Chapter 312 by carrying out the legislative mandate for the board to establish regulations for the practice of chiropractic.

(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 provisions to the code of ethics.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the code of ethics.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes a code of ethics.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 312 by carrying out the legislative mandate for the board to establish requirements for the practice of chiropractic.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 1,078 licensed chiropractors practicing in the Commonwealth of Kentucky, as well as an unknown number of their patients who depend on their

chiropractor remaining current with their training.

(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: This regulation will provide updated code of ethics.

(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 chiropractor.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow chiropractors to have an updated code of ethics.

(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.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Chiropractic Examiners 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 licensees 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 Kentucky Board of Chiropractic Examiners.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 312

(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 the agency beyond regular monitoring of continuing education for license renewals.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to the agency beyond regular monitoring of continuing education for license renewals.

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

BOARDS AND COMMISSIONS
Board of Chiropractic Examiners
(Amendment)

201 KAR 21:025. Board; officers, duties, and compensation.

RELATES TO: KRS 312.019, 312.055

STATUTORY AUTHORITY: KRS 312.019

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.055 requires the election of certain officers by the board. KRS 312.019(6) authorizes the board to employ personnel and incur expenses necessary for the performance of its duties. This administrative regulation establishes the duties of the officers, field personnel, and administrative staff, establishes the terms and procedure for election of officers, and establishes compensation.

Section 1. The officers of the board shall perform the duties established in this section.

(1) The president shall be the chief executive of the board. The president shall preside over all meetings of the board.

(2) The vice president shall perform the duties of the president during the president's absence or inability to serve. The vice president shall perform other reasonable duties delegated to him by the president or by the board.

(3) The executive secretary shall, if necessary or upon the direction of the board, perform the following duties:

(a) Record and present the minutes of a meeting to the board at the next scheduled meeting;

(b) Oversee the administrative functions of the board; and

(c) Perform other reasonable duties delegated to the [secretary or] executive secretary by the [president or the] board.

Section 2. The board may employ a field coordinator as a part of the regular staff of the board. The field coordinator shall be paid a salary as the board may determine.

(1) The field coordinator may be a member of the board, except that the president or executive secretary, as referenced in KRS 312.055(1), shall not serve as field coordinator.

(2) The field coordinator shall:

(a) Investigate complaints against licensees referred to him by the board for investigation and report his findings to the board;

(b) Not vote on any matter relative to formal or informal complaints against any licensee if:

1. Any of the charges were investigated by him in the capacity of field coordinator; and

2. The field coordinator is a board member; and

(c) Perform other reasonable duties as are delegated to him by the [president or by the] board.

(3)(a) If the field coordinator is a member of the board, following his appointment as field coordinator, he shall serve until the conclusion of his term of appointment as a member of the board.

(b) A member who has been appointed to the position of field coordinator, who is reappointed to the board following the expiration of his original term, shall continue in the position of field coordinator until a successor is appointed, and accepts and assumes the duties of the position.

(c) A person appointed as field coordinator may be reappointed by the board to the position.

(4) The administrative staff shall assist the board in the performance of its duties and shall:

(a) Keep an accurate and up-to-date file of all licensees of the board, including:

1. Addresses, e-mail addresses, and telephone numbers;

2. Status as to whether or not they are in active practice or are inactive;

3. Whether a licensee is in practice in this state or out of it;

4. Documents establishing attendance at educational programs if same have been requested by the board;

5. All fees paid by licensees; and

6. Providing to the board, at least once each year, the names of licensees who are delinquent in the payment of fees or

attendance of educational programs;

(b) Transmit notices for renewal of licenses as provided by KRS 312.175(2);

(c) Transmit notices of special meetings of the board; and

(d) Attend to the correspondence and communications of the board.

Section 3. A member elected as president, vice president, [secretary,] or executive secretary shall serve in office for one (1) year. An officer may be reelected by the board. Officer elections shall take place at the last meeting of the calendar year and shall take effect the first meeting of the following calendar year.

Section 4. Salary and Per Diem Compensation. (1) [The executive secretary, if elected, shall receive a salary of \$1,100 per month.

(2)] Board members shall receive \$100 per day for each day of actual service to the board.

Section 5. Financial audit of board accounts. (1) The board shall cause, on a biennial basis, an independent financial audit of board accounts to be conducted and a report made to the board of the results of same.

(2) The annual financial audit shall be conducted by the Kentucky Auditor of Public Accounts, or by an independent auditor qualified and licensed as a certified public accountant, and retained by the board to perform the audit, if the Auditor of Public Accounts declines to perform the audit.

(3) The audit shall be of the previous year's accounts, unless the board finds in its judgment that a broader audit should be conducted, and votes to conduct a broader audit by a majority of the board. The board vote shall define the scope of the audit sought.

JEFF SMITH, Board Chair

APPROVED BY AGENCY: June 26, 2020

FILED WITH LRC: September 11, 2020 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 23, 2020, at 10:00 a.m. in Room 127, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 2020, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until November 30, 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: David C. Trimble, Board Attorney, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 782-8823, fax +1 (502) 564-3969, email DavidC.Trimble@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David C. Trimble

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes board offices, procedures for election of same, compensation, and audit procedures.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 312.019.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes board offices, procedures for election of same, compensation, and audit procedures.

(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 Chapter 312 by carrying out the legislative mandate for the board to establish regulations for the practice of chiropractic.

(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 provisions for board officers, and an audit procedure..

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the provisions for officers, and add audit procedures.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes provisions for officers, and an audit procedure.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 312 by carrying out the legislative mandate for the board to establish requirements for the practice of chiropractic.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 1,078 licensed chiropractors practicing in the Commonwealth of Kentucky, as well as an unknown number of their patients who depend on their chiropractor remaining current with their training.

(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: This regulation will provide updated provisions for officers and an audit procedure.

(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 chiropractor.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow chiropractors to have an updated code of ethics.

(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.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Chiropractic Examiners 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 licensees 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 Kentucky Board of Chiropractic Examiners.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 312

(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 the agency beyond regular monitoring of continuing education for license renewals.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to the agency beyond regular monitoring of continuing education for license renewals.

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

BOARDS AND COMMISSIONS Board of Chiropractic Examiners (Amendment)

201 KAR 21:045. Specialties.

RELATES TO: KRS 312.019, 312.021

STATUTORY AUTHORITY: KRS 312.019, 312.021

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.021 requires the board to identify by administrative regulation those specialties of chiropractic for which certification may be granted and to establish by administrative regulation the procedure for obtaining and maintaining certification and the fees therefor. This administrative regulation implements KRS 312.021.

Section 1. (1) A licensee in active practice and in good standing with the board who makes a written request to the board, provides proof of education, and pays the fee established in Section 3 of this administrative regulation shall be certified as a specialist in the licensee's field of certification, if the licensee holds certified or diplomate status with a certification granting entity.

(2) The certification or diplomate program shall be:

(a) Recognized by the American Chiropractic Board of Specialties or comparable authority with a comparable education level; and

(b) Within the scope of practice as defined by KRS 312.015 and 312.017.

(3) Specialties certified include those such as radiology, nutrition, orthopedics, neurology, and pediatrics as approved by the American Board of Chiropractic Specialties.

(4) The complete list of approved and certified specialties is available on the board's current Web site [at www.kbec.ky.gov].

Section 2. The applicant for certified status under Section 1 of this administrative regulation shall submit with the applicant's written request proof of current status with the specialty certificate issuing board. Certification by the board shall be for a stated period of time not exceeding one (1) year.

Section 3. The board may charge a reasonable fee for certification of specialties. The fees currently charged by the board are \$100 for certification of each specialty and thirty (30) dollars for annual renewal.

Section 4. Advertisement of Designation of Chiropractic Certifications. (1) Advertisement of chiropractic specialties shall include the word "chiropractic" with any specialty designation and conform to the standards established in these administrative regulations.

(2) Any designation or certification not recognized by the board may only be advertised if:

(a) The designation or certification is not abbreviated, but is written out;

(b) The certifying or conferring college, university, or organization is named; and

(c) Proof of attainment of the advertised designation or certification is on file at the board office.

JEFF SMITH, Board Chair

APPROVED BY AGENCY: June 26, 2020

FILED WITH LRC: September 11, 2020 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 23, 2020, at 10:00 a.m. in Room 127, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 2020, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until November 30, 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: David C. Trimble, Board Attorney, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 782-8823, fax +1 (502) 564-3969, email DavidC.Trimble@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David C. Trimble

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes rules for specialties and advertisement of same.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 312.019.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes rules for specialties and advertisement of same.

(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 Chapter 312 by carrying out the legislative mandate for the board to establish regulations for the practice of chiropractic.

(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 further outlines specialties and advertisement of same.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the specialties and advertisements of same.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes provisions specialties and advertisement of same.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 312 by carrying out the legislative mandate for the board to establish requirements for the practice of chiropractic.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 1,078 licensed chiropractors practicing in the Commonwealth of Kentucky, as well as an unknown number of their patients who depend on their chiropractor remaining current with their training.

(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: This regulation will provide updated provisions for specialties and advertisement of same.

(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 chiropractor.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow chiropractors to have an updated code of ethics.

(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.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Chiropractic Examiners 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 licensees 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 Kentucky Board

of Chiropractic Examiners.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 312

(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 the agency beyond regular monitoring of continuing education for license renewals.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to the agency beyond regular monitoring of continuing education for license renewals.

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

BOARDS AND COMMISSIONS **Board of Chiropractic Examiners** **(Amendment)**

201 KAR 21:051. Board hearings.

RELATES TO: KRS 312.150, 312.160, 312.163

STATUTORY AUTHORITY: KRS 312.019(5), (9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.109(5) authorizes the board to enforce and investigate violations. KRS 312.019(9) authorizes the board to promulgate administrative regulations consistent with KRS Chapter 312, governing the practice of chiropractic. KRS 312.150 authorizes disciplinary action to be taken against a licensee. KRS 312.160 requires a right to an appeal for a licensed person disciplined after a hearing. This administrative regulation establishes procedural guidelines for board hearings and the processing of complaints against a licensee.

Section 1. Complaints and Investigations. (1) A complaint may be made by any person, organization, or entity. A complaint made by a person, organization, or entity shall be in writing and shall be signed by the person offering the complaint. The complaint shall contain:

(a) The name, phone number, and address of the person making the charge and the name and address of the place of business of the person or persons against whom charges are made; and

(b) A clear and concise description of the issues of fact.

(2) Upon receipt of a complaint against a licensee, the board shall send a copy of the complaint to the licensee for a response.

(a) The complaint shall be sent to the last known address of the licensee that the board has on file. Proof of mailing of the complaint to the licensee's last address on file shall constitute proof of service of the complaint.

(b) The licensee shall file a response within twenty (20) days from the date of the board's letter.

(c) The board shall review the complaint and the licensee's response before it determines if the nature and quality of the charges warrant dismissal, further investigation, or the initiation of

a hearing.

(d) In making its determination, the board shall consider if the charges if proven would warrant sanction by the board.

(e) If the licensee fails to file a response within twenty (20) days of service of the complaint, the board may, in its discretion, treat such failure as a default by the licensee, which in this case shall be equivalent to a finding that the factual allegations of the complaint may be taken as true. The board shall also have the authority to grant extensions of time for filing of a response.

(3) The board may proceed against a licensee on its own initiative either on the basis of information contained in its own records or on the basis of information obtained through its own investigation.

(4) The filing of formal charges shall require the affirmative vote of a majority of the board.

(5)(a) If the board finds that allegations against a licensee are insufficient for initiation of a formal disciplinary procedure, it shall dismiss the matter and notify all interested parties.

(b) If the board determines that disciplinary proceedings are appropriate, the board shall issue a notice of disciplinary action and inform the licensee of the specific reason for the board's action, including the:

1. Statutory or regulatory violation;

2. Factual basis on which the disciplinary action is based; and

3. Penalty to be imposed.

(c) The licensee, or the complainant may appeal the disciplinary action set forth in the notice of disciplinary action to the board. An appeal shall be made within twenty (20) days of the date of the board's notice.

1. A written request for an administrative hearing shall be filed with the board within twenty (20) calendar days of the date of the board's notice. This request shall be sent to the Board of Chiropractic Examiners by mail or delivery to [P.O. Box 183, Glasgow, Kentucky 42142 or by delivery to 905 South Green Street, Glasgow, Kentucky 42144.] the board's address as shown on the board's notice of disciplinary action.

2. If the request for a hearing is not timely filed, the notice of disciplinary action shall be effective upon the expiration of the time for the licensee to request a hearing.

(d) The board may resolve the matter informally through mediation or negotiation. Any agreed order reached through mediation or negotiation shall be approved by the board and signed by the individual who is the subject of the complaint, the individual's attorney, and the chair of the board.

Section 2. (1) The hearing shall be held in accordance with KRS Chapter 13B.

(2) The respondent may be entitled to a reasonable continuance of the hearing date, for good cause, as recommended to the board by the hearing officer.

(3) The board shall keep a record of the hearing.

(4) It shall take a majority of the board to sustain the charges against the respondent licensee. The hearing officer shall issue a recommended order pursuant to KRS Chapter 13B, which the board shall consider, along with any exceptions filed by the parties, before issuing a final order.

(5) If the board sustains some or all of the charges, the board shall by majority vote establish the sanction under law which it finds warranted. The order of the board shall be mailed to the parties [respondent] by certified mail, return receipt requested.

Section 3. Pursuant to KRS 312.160, the respondent may, within thirty (30) days of receipt of the order, appeal to the Franklin Circuit Court. In the absence of an appeal, the order of the board shall be final at the expiration of the thirty (30) day period.

JEFF SMITH, Board Chair

APPROVED BY AGENCY: June 26, 2020

FILED WITH LRC: September 11, 2020 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 23, 2020, at 10:00 a.m. in Room 127, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky

40601. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 2020, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until November 30, 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: David C. Trimble, Board Attorney, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 782-8823, fax +1 (502) 564-3969, email DavidC.Trimble@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David C. Trimble

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes rules for board hearings.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 312.019.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes rules for board hearings.

(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 Chapter 312 by carrying out the legislative mandate for the board to establish regulations for the practice of chiropractic.

(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 improves procedures for board hearings.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to update the procedures for board hearings.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation updates procedures for board hearings.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 312 by carrying out the legislative mandate for the board to establish requirements for the practice of chiropractic.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 1,078 licensed chiropractors practicing in the Commonwealth of Kentucky, as well as an unknown number of their patients who depend on their chiropractor remaining current with their training.

(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: This regulation will

provide updated provisions for specialties and advertisement of same.

(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 chiropractor.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow chiropractors to have an updated code of ethics.

(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.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Chiropractic Examiners 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 licensees 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 Kentucky Board of Chiropractic Examiners.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 312

(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 the agency beyond regular monitoring of continuing education for license renewals.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to the agency beyond regular monitoring of continuing education for license renewals.

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

BOARDS AND COMMISSIONS
Board of Chiropractic Examiners
(Amendment)

201 KAR 21:052. Appeal of denial of license.

RELATES TO: KRS 312.150

STATUTORY AUTHORITY: KRS 312.019(3), (9), 312.163

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.019(3) authorizes the board to deny, limit, or refuse to renew any license, certification, or registration it issued. KRS 312.019(9) authorizes the board to promulgate administrative regulations consistent with KRS Chapter 312, governing the practice of chiropractic. KRS 312.163 provides disciplinary powers of the board after a hearing. This administrative regulation establishes requirements relating to the appeal of denial of a license.

Section 1. Right of Appeal of Denial of License. (1) If the board denies an application for licensure, activation, restoration, reinstatement, certification of specialty, or application for renewal of licensure, the board shall issue a notice of denial informing the applicant of the specific reason for the board's action, including:

- (a) The statutory or regulatory violation; and
- (b) The factual basis on which the pending denial is based.

(2) A written request for an administrative hearing shall be filed with the board within twenty (20) calendar days of the date of the board's notice. This request shall be sent to the Kentucky Board of Chiropractic Examiners, at the address indicated for the board on the board's notice, [P.O. Box 183, Glasgow, Kentucky 42142 or by personal delivery to 209 South Green Street, Glasgow, Kentucky.]

(3) If the request for an appeal is not timely filed, the notice of denial shall be effective upon the expiration of the time for the applicant to request an appeal.

(4) The administrative hearing shall be conducted in accordance with KRS Chapter 13B.

JEFF SMITH, Board Chair

APPROVED BY AGENCY: June 26, 2020

FILED WITH LRC: September 11, 2020 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 23, 2020, at 10:00 a.m. in Room 127, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 2020, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until November 30, 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: David C. Trimble, Board Attorney, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 782-8823, fax +1 (502) 564-3969, email DavidC.Trimble@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David C. Trimble

- (1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes rules for appeals of denials of licenses..

- (b) The necessity of this administrative regulation: This

administrative regulation is required by KRS 312.019.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes rules for appeals of denial of licenses.

(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 Chapter 312 by carrying out the legislative mandate for the board to establish regulations for the practice of chiropractic.

(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 relates to appeals of denial of licenses.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary for appeals of denial of licenses.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation relates to appeals of denial of licenses.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 312 by carrying out the legislative mandate for the board to establish requirements for the practice of chiropractic.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 1,078 licensed chiropractors practicing in the Commonwealth of Kentucky, as well as an unknown number of their patients who depend on their chiropractor remaining current with their training.

(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: This regulation will provide updated provisions for specialties and advertisement of same.

(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 chiropractor.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow chiropractors to appeals from denial of licenses.

(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.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Chiropractic Examiners 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 licensees 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 Kentucky Board of Chiropractic Examiners.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 312

(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 the agency beyond regular monitoring of continuing education for license renewals.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to the agency beyond regular monitoring of continuing education for license renewals.

Revenues (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: None

BOARDS AND COMMISSIONS Board of Chiropractic Examiners (Amendment)

201 KAR 21:053. Appeal of revocation of probation.

RELATES TO: KRS 312.150, 312.163

STATUTORY AUTHORITY: KRS 312.019(9), 312.163

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.019(9) authorizes the board to promulgate administrative regulations consistent with KRS Chapter 312. KRS 312.163(3) requires the board to provide an administrative hearing to a licensee who is the subject of board discipline. This administrative regulation establishes procedures for a licensee to appeal a revocation of probation.

Section 1. Revocation of Probation. (1) If the board moves to revoke the probation of a licensee, the board shall issue to the last known address on file with the board for the licensee, a notice of revocation and inform the licensee:

- (a) The factual basis on which the revocation is based;
- (b) Each probation term violated; and
- (c) That the licensee may appeal the revocation to the board.

An appeal shall be made within fifteen (15) days of the date of notification of revocation.

(2) A written request for an administrative hearing shall be filed with the board within fifteen (15) calendar days of the date of the board's notice. This request shall be sent to the Kentucky Board of Chiropractic Examiners, at its address as indicated on the notification of revocation. ~~[P.O. Box 183, Glasgow, Kentucky 42442 or by personal delivery to 209 South Green Street, Glasgow,~~

~~Kentucky.]~~

(3) If the request for an appeal is not filed by the deadline established in subsections (1)(c) and (2) of this section, the notice of revocation shall be effective upon the expiration of the time for the licensee to request an appeal.

(4) The administrative hearing shall be conducted in accordance with KRS Chapter 13B.

JEFF SMITH, Board Chair

APPROVED BY AGENCY: June 26, 2020

FILED WITH LRC: September 11, 2020 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 23, 2020, at 10:00 a.m. in Room 127, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 2020, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until November 30, 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: David C. Trimble, Board Attorney, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 782-8823, fax +1 (502) 564-3969, email DavidC.Trimble@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David C. Trimble

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes rules for appeals of probation revocation.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 312.019.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes rules for appeals of probation revocation.

(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 Chapter 312 by carrying out the legislative mandate for the board to establish regulations for the practice of chiropractic.

(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 relates to appeals of probation revocation.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary for appeals of probation revocation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation relates to appeals of probation revocation.

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

effective administration of KRS Chapter 312 by carrying out the legislative mandate for the board to establish requirements for the practice of chiropractic.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 1,078 licensed chiropractors practicing in the Commonwealth of Kentucky, as well as an unknown number of their patients who depend on their chiropractor remaining current with their training.

(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: This regulation will provide updated provisions for probation revocation.

(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 chiropractor.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow chiropractors to make appeals from probation revocation.

(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.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Chiropractic Examiners 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 licensees 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 Kentucky Board of Chiropractic Examiners.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 312

(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 the agency beyond regular monitoring of continuing education for license renewals.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to the agency beyond regular monitoring of continuing education for license renewals.

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

BOARDS AND COMMISSIONS Board of Chiropractic Examiners (Amendment)

201 KAR 21:055. Colleges and universities; accreditation, approval.

RELATES TO: KRS 312.019(2), (9)(b), 312.085

STATUTORY AUTHORITY: KRS 312.019(9)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.019 provides that the board shall pass upon the qualifications of applicants for a license. KRS 312.085 provides that each applicant shall be a graduate of a chiropractic college or university which maintains a standard and reputability approved by the board. The purpose of this administrative regulation is to delineate the characteristics of institutions which are approved by the board.

Section 1. A person who makes application to the board to practice chiropractic shall be a graduate of a chiropractic college or university which is accredited as required by KRS 312.085. In addition to accreditation, the chiropractic college or university shall offer a course of study, provide a faculty, and have a physical plant and facility which are approved by the board. The following minimum standards shall apply:

(1)(a) The chiropractic college or university shall have well stated goals and purposes to prepare the doctor of chiropractic as a competent health care provider, well-educated to diagnose and treat his patients and to render the augmentative treatment provided for by KRS 312.015.

(b) It shall have a course of study, an administration, teaching staff, a physical plant and facility capable of achieving these objectives.

(2)(a) The chiropractic college or university shall offer courses of instruction to teach and train its graduates as set forth by the Council on Chiropractic Education, as doctors of chiropractic to diagnose and treat their patients and to render augmentative care.

[(b) Courses offered shall include:

1. Anatomy;
2. Physiology;
3. Pathology;
4. Neurology;
5. Histology;
6. Hygiene;
7. Bacteriology;
8. Chemistry;
9. Chiropractic orthopedics;
10. Diagnoses;
11. Argumentative procedures, and use and effects of x-rays;

and

12. Chiropractic principles and practices.]

(c) It shall require for graduation and completion the amount and quality of classroom instruction, laboratory and clinical experience required of chiropractic colleges or universities by the Council on Chiropractic Education.

(d) The college or university shall also offer courses of continuing education on a postgraduate level.[]

(3)(a) Seventy-five (75) percent of the members of the full-time faculty of the chiropractic college or university shall hold graduate degrees in the field of chiropractic or graduate degrees in the allied field in which they teach.

(b) A course for which credit is given shall be taught by a

person who holds a degree in chiropractic or in the allied field in which he teaches.

(4)(a) The chiropractic college or university shall have exclusive possession of buildings adequate to accommodate the student body, faculty and administration, with classrooms, laboratories, clinic, library, research facilities and offices.

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(b) The plant, grounds, equipment and facilities shall be maintained in a safe, sanitary, efficient and attractive condition.

(c) The chiropractic college or university shall fully comply with all applicable statutes, administrative regulations, ordinances and codes pertaining to health and safety.

Section 2. (1) Each chiropractic college or university shall engage in a comprehensive, active and ongoing self-evaluation program conducted by representatives from its administration, faculty and student body.

(2) A report of that evaluation shall be submitted to the board from the college or university upon written request of the board.

(3) The college or university shall also submit, upon written request by the board;

(a) Its catalog and supplemental materials and information sufficient to advise the board of the courses offered and the instructors thereof;

(b) The faculty and staff of the college or university, the courses they teach and the duties they perform, their educational attainment, professional memberships and professional positions held by them;

(c) The physical plant of the college or university, including the number and size of buildings, classrooms, libraries, laboratories, offices and clinic; the extent of laboratory training and clinical experience available to its students; the books and materials available in its library;

(d) The number of students at each level of educational attainment;

(e) The calendar of the college or university showing the beginning and ending dates of its terms, the vacation periods, the holidays observed, and the examination periods; and

(f) Any other information as may be requested by the board to assist it in evaluating the college or university and its ability to produce graduates qualified to diagnose and treat patients as doctors of chiropractic.

Section 3. (1) The board and any designees of the board shall have the right to inspect and observe any aspect of the educational program, plant and facilities of any chiropractic college or university which has a graduate or graduates to apply to be licensed by the board.

(2) Upon request of a college or university, the board shall designate an inspection team consisting of not more than five (5) members to inspect the college or university and to observe operations and to report its observations to the board with respect to the manner in which the college or university is complying with the standards set forth or alluded to in this administrative regulation.

(3) The expenses of the inspection team and reasonable compensation for members of the inspection team who are not members of the board shall be paid by the requesting college or university.]

JEFF SMITH, Board Chair

APPROVED BY AGENCY: June 26, 2020

FILED WITH LRC: September 11, 2020 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 23, 2020, at 10:00 a.m. in Room 127, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 2020, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A

transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until November 30, 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: David C. Trimble, Board Attorney, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 782-8823, fax +1 (502) 564-3969, email DavidC.Trimble@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David C. Trimble

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes rules for chiropractic education.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 312.019.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes rules for chiropractic education.

(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 Chapter 312 by carrying out the legislative mandate for the board to establish regulations for the practice of chiropractic.

(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 relates to chiropractic education.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary for chiropractic education.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation relates to chiropractic education.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 312 by carrying out the legislative mandate for the board to establish requirements for the practice of chiropractic.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 1,078 licensed chiropractors practicing in the Commonwealth of Kentucky, as well as an unknown number of their patients who depend on their chiropractor remaining current with their training.

(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: This regulation will provide updated provisions for chiropractic education.

(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 chiropractor.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow potential chiropractors to obtain chiropractic education.

(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.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Chiropractic Examiners 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 licensees 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 Kentucky Board of Chiropractic Examiners.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 312

(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 the agency beyond regular monitoring of continuing education for license renewals.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to the agency beyond regular monitoring of continuing education for license renewals.

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

BOARDS AND COMMISSIONS Board of Chiropractic Examiners (Amendment)

201 KAR 21:065. Professional advertising; seventy-two (72) hour right of rescission.

RELATES TO: KRS 312.019(9)(g), 312.021, 312.991

STATUTORY AUTHORITY: KRS 312.019(9), 312.021(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.021(1) prohibits advertising that is false, deceptive, or misleading. KRS 312.019(9)(g) authorizes the board to promulgate administrative regulations to regulate forms of advertising and authorizes the board to establish a seventy-two (72) hour rescission period for a consumer responding to certain forms of

solicitation or advertising. This administrative regulation establishes limits of permissible professional advertising to safeguard the public from false or misleading statements and nuisance type advertising. This administrative regulation also defines the forms of solicitation or advertising wherein the responding consumer shall be granted a seventy-two (72) hour rescission period.

Section 1. Interpretation, application, and any disciplinary action taken pursuant to this regulation shall be at the sole discretion of the board as part of its statutory function of regulating the profession of chiropractic.

Section 2. A licensee may advertise chiropractic services through any medium if the advertisement is not false, deceptive, or misleading. (1) An advertisement shall include:

(a) If the business name used in the advertisement has the word "chiropractic" in it, then no additional information is required.

[Business name and address;

(b) Chiropractor's name;

(c) Telephone number;

(d) Expiration date of the advertisement, if any; and]

(b) [(e)] If the word "chiropractic" is not included in the name of the business, then the advertisement must contain the name of at least one (1) doctor in the office and clearly identify them as a doctor of chiropractic, or clearly state in some manner that the office is a chiropractic office. Words or letters designating the particular doctor degree held by the chiropractor. "D.C." shall designate a doctor of chiropractic.

(2) Deviation from these requirements shall first be approved by the board. [

(3) An advertisement offering a free or discounted service shall include complete a notice of the right of rescission, which notice shall not be smaller than ten (10) point font.]

Section 2. Consumer Rights, Notice. (1) The Board may choose, in its sole discretion, to require a licensee to place a consumer notice of a seventy-two (72) hour right of rescission on any advertisement offering a free or discounted service.

(a) A chiropractor advertising free or discounted services shall in any advertisement or solicitation provide the consumer with notice, in print of no less than ten (10) point font, of the seventy-two (72) hour right of rescission. Such notice shall include information on the form and manner in which the patient must exercise the right of rescission.

(2)(a) Within ten (10) days of a notice of rescission, the chiropractor shall tender to the consumer any payment made by the consumer prior to the rescission for an unadvertised service performed.

(b) If payment had not yet been made by the consumer for an unadvertised service, the consumer's account shall not be billed for that service.

(3)(a) In order to be effective, the notice of rescission shall be given by the consumer to the chiropractor within seventy-two (72) hours of the completion of the advertised free or discounted service or agreement to submit to a series or course of treatments.

(b) The notice shall be:

1. In writing; and

2. Express the intention of the consumer to rescind his or her obligation.

(c) If notice of rescission is given by mail, it shall be effective if it:

1. Is properly addressed;

2. Has sufficient postage affixed; and

3. Is postmarked.

Section 3. (1) A written advertisement may be sent or delivered to an individual addressee only if [(a) That addressee is one (1) of a class of persons, other than a family, to whom it is also sent or delivered at or about the same time; and (b)] It is not prompted or precipitated by a specific event or occurrence involving or relating to the addressee or addressees as distinct from the general public.

(2) A licensee who advertises a fee for routine services and accepts the employment shall perform the services for the amount advertised, and a statement to that effect shall be included in every advertisement in which a fee is listed.

Section 4. If a complaint is filed with the board regarding an advertisement of a licensee, the board shall request, and the licensee shall furnish, a copy of the advertisement, including audio or video if the advertisement is in such medium.]

~~Section 5. Advertisement of Designation of Chiropractic Certifications.~~

~~(1) Advertisement of chiropractic specialties as established in 201 KAR 21:045 shall include the word "chiropractic" with any specialty designation and conform to the standards established in this administrative regulation.~~

~~(2) Any designation or certification not recognized by the board may only be advertised if:~~

~~(a) The designation or certification is not abbreviated, but is written out;~~

~~(b) The certifying or conferring college, university, or organization is named; and~~

~~(c) Proof of attainment of the advertised designation or certification is on file at the board office.]~~

Section 5[6]. A licensee shall post his or her name on the premises where a chiropractic service is being offered, and the name(s) of all associate licensees who practice chiropractic on the premises. [and the posted name] The posted names shall be clearly visible to the public at the entrance to the premises, or on a sign visible outside of the premises, that offers the delivery of chiropractic services

JEFF SMITH, Board Chair

APPROVED BY AGENCY: June 26, 2020

FILED WITH LRC: September 11, 2020 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 23, 2020, at 10:00 a.m. in Room 127, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 2020, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until November 30, 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: David C. Trimble, Board Attorney, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 782-8823, fax +1 (502) 564-3969, email DavidC.Trimble@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David C. Trimble

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes rules for advertising.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 312.019.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the

Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes rules for advertising.

(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 Chapter 312 by carrying out the legislative mandate for the board to establish regulations for the practice of chiropractic.

(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 relates to advertising.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary for chiropractic advertising.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation relates to chiropractic advertising.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 312 by carrying out the legislative mandate for the board to establish requirements for the practice of chiropractic.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 1,078 licensed chiropractors practicing in the Commonwealth of Kentucky, as well as an unknown number of their patients who depend on their chiropractor remaining current with their training.

(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: This regulation will provide updated provisions for chiropractic advertising.

(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 chiropractor.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow chiropractors to advertise.

(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.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Chiropractic Examiners 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 licensees 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 Kentucky Board of Chiropractic Examiners.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 312

(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 the agency beyond regular monitoring of continuing education for license renewals.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to the agency beyond regular monitoring of continuing education for license renewals.

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

BOARDS AND COMMISSIONS
Board of Chiropractic Examiners
(Amendment)

201 KAR 21:075. Peer review committee procedures and fees.

RELATES TO: KRS 312.200

STATUTORY AUTHORITY: KRS 312.015, 312.019, 312.200

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.200 requires the board to appoint a peer review committee and establish procedures and fees for the review of submitted claims. This administrative regulation establishes fees and procedures pertaining to the peer review committee.

Section 1. Peer Review Committee. (1) The board shall appoint a Peer Review committee of up to four (4) members. Subject to the below regulation, all members of the peer review committee shall serve a three (3) year term.

(a) Each member of the Peer Review committee shall serve until their successor is appointed and qualified.

(b) Appointments to fill vacancies shall be for the unexpired term.

(c) Applicants for appointment to the Peer Review committee shall make application on the same form utilized by applicants for appointment to the board, except filed with the board and not the Governor's office, and shall include a cover letter stating that the application is for the Peer Review Committee.

(2) Members of the Peer Review committee shall be doctors of chiropractic of integrity and ability who at the time of their appointment have been actual residents of the Commonwealth of Kentucky for at least two (2) years next preceding their appointment, and have been engaged in the actual practice of chiropractic for at least five (5) years next preceding their appointment.

(3) Any member of the peer review committee shall not hold an elected position in any state organization or association relating to or consisting of licensees of this board, or the practice of chiropractic.

(4) Beginning in 2021 the longest-serving member on the Peer Review committee shall be replaced by a member with a three (3) year appointment; in 2022, the next longest-serving member of the Peer Review committee shall be replaced by a member with a three (3) year appointment; in 2023 the next longest-serving member on the Peer Review committee shall be replaced by a member with a three (3) year appointment; and in 2024 the next longest-serving member shall be replaced by a member with a three-year appointment. Thereafter, each appointee to the Peer Review committee shall be appointed to a three (3) year term. This provision does not prohibit any member of the peer review committee from serving consecutive terms.

Section 2. Procedures and Fees of Peer Review Committee.

(1) Peer review shall not take place until the patient has submitted a release permitting photocopies of the applicable treatment or billing records prepared by the chiropractor in the regular course of business.

(a) Treatment records shall not be released for peer review without the patient's authorization.

(b) The acceptance of, or the request for, payment by a chiropractor shall constitute the consent of the chiropractor to the submission of all necessary records and other information concerning the treatment or the cost to the peer review committee. [

~~(c) Six (6) copies of all records or other data shall be submitted to the committee.]~~

(2)(a) Each claim shall be assigned to an individual member of the committee who shall review the submitted records and response from the charged party and report his findings to the full committee, which shall review the findings and either adopt those findings or modify them as determined by majority vote.

(b) A copy of the findings shall be forwarded to the board, the patient, the chiropractor, and insurer or other third party payor.

(3)(a) The peer review committee shall elect a chair.

(b) The committee may recommend for the board's approval a contract with or employment of third parties to perform administrative functions or to aid in obtaining records necessary for appropriate review of claims.

(c)1. The peer review committee shall recommend to the board that a complaint be filed against a chiropractor if it appears from the review of a claim that reasonable cause exists to believe that the chiropractor has violated any portion of KRS Chapter 312 or 201 KAR Chapter 21 for which a chiropractor may be disciplined.

2. The peer review committee shall transmit all complaint information the committee possesses to the board.

(4)(a) A chiropractor, insurer, or other third party payor requesting review shall submit with the request a service fee of fifty (50) dollars payable to "B.C.E. Peer Review."

(b) An additional fee shall be charged for claims requiring more than one (1) hour of review by the committee calculated at fifty (50) dollars per hour, which sum shall be due prior to the delivery of committee findings to all parties.

(c) All fees shall be paid by the chiropractor, insurer, or other third party payor requesting the review.

(5) Each member of the peer review committee shall comply with the requirements and standards established in 201 KAR 21:095.

Section 3. [2.] Annual Report. (1) An annual summary of the findings of the peer review committee shall be prepared by the committee and submitted to the board.

(2) The report shall be made available to interested persons upon request and upon payment of the cost of reproduction.

(3) A report or summary submitted to the public by the board shall not disclose the name or identity of any patient without the patient's consent.

JEFF SMITH, Board Chair

APPROVED BY AGENCY: June 26, 2020

FILED WITH LRC: September 11, 2020 at noon

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CONTACT PERSON: David C. Trimble, Board Attorney, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 782-8823, fax +1 (502) 564-3969, email DavidC.Trimble@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David C. Trimble

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation relates to the Board's Peer Review Committee.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 312.019.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation relates to the peer review committee.

(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 Chapter 312 by carrying out the legislative mandate for the board to establish regulations for the practice of chiropractic.

(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 relates to the peer review committee.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary for peer review.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation relates to peer review.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 312 by carrying out the legislative mandate for the board to establish requirements for the practice of chiropractic.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 1,078 licensed chiropractors practicing in the Commonwealth of Kentucky, as well as an unknown number of their patients who depend on their chiropractor remaining current with their training.

(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: This regulation will provide updated provisions for peer review.

(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 chiropractor.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow chiropractors to receive peer review.

(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.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Chiropractic Examiners 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 licensees 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 Kentucky Board of Chiropractic Examiners.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 312

(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.

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(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 the agency beyond regular monitoring of continuing education for license renewals.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to the agency beyond regular monitoring of continuing education for license renewals.

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

BOARDS AND COMMISSIONS
Board of Chiropractic Examiners
(Amendment)

201 KAR 21:085. Preceptorship Program.

RELATES TO: KRS 312.019(9)(h), 312.085(2)
STATUTORY AUTHORITY: KRS 312.019(9), 312.085(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.019(9)(h) and 312.085(2) authorize the board to establish a preceptorship program through which students at accredited colleges and universities may work at the direction and under the supervision of a licensed doctor of chiropractic prior to graduation. This administrative regulation establishes the preceptorship program.

Section 1. Requirements of Preceptor. A preceptor shall:

- (1) Be approved by the Kentucky State Board of Chiropractic Examiners for participation;
- (2) Have a current Kentucky license that is active and in good standing;
- (3) Have been in practice for five (5) years or more in Kentucky;
- (4) Provide evidence of malpractice insurance;
- (5) Be of good moral character, proof of which shall be evidenced by three (3) letters of reference from persons outside the licensee's family;
- (6) Not practice while impaired by alcohol or narcotics;
- (7) Have not been found in violation of a requirement of 201 KAR Chapter 21, other than for a minor advertising violation, for the preceding two (2) years and have no present investigations (including during a term as preceptor) for possible violations; and
- (8) Comply and be qualified as applicable. The board shall encourage development of ex-tension faculty designation for all preceptors approved by the colleges or university.

Section 2. Preceptor Relationship with College or University and Intern. (1) The preceptor shall make a joint application to the board and the college or university.

(2) The preceptor shall arrange or confer with the college or university representative prior to the beginning date of each session to plan the program duration, organization, and substance.

(3) The preceptor is required to maintain any records and reports related to the student's performance in compliance with the standards set forth by the Council on Chiropractic Education and the college or university the student attends. [Upon assignment, the preceptor shall maintain complete records and reports of each student's performance and provide an evaluation to the college or university on forms provided by the college or university.

~~(a) Any incident reports related to the operation of the practicum education experience shall be maintained by the preceptor and shall be the sole property of the preceptor.~~

~~(b) Upon receipt of written consent by the college or university, board, or student, the preceptor shall provide a copy of the report.]~~

(4)(a) The preceptor may request the college or university to withdraw any student whose performance is unsatisfactory or whose health status prevents the student's successful completion of the practicum education assignment.

(b) A statement, in writing, of the reason for that action shall be provided by the preceptor to the college, university, or student upon request.

(5) The preceptor shall not be liable for the payment of any wage, salary, or compensation of any kind for services properly required of and performed by an intern.

(6) The preceptor shall provide the college or university with a written code of ethics that applies to the preceptor's office.

(7)(a) The preceptor shall ensure that interns are allowed to perform only those duties that are lawful and ethical in the practice of chiropractic.[]

~~(b) An intern shall not make a final diagnosis or perform an adjustment.]~~

(8)(a) The preceptor shall assume the risk of any accident or injury to any intern while on preceptor's premises, which shall include working areas.

(b) The preceptor shall maintain premises liability insurance.

Section 3. Requirements of Intern. (1) The intern shall submit a fee of \$200 to the board for each semester he or she is participating in the preceptorship program.

(2) The intern shall remain in good standing academically and demonstrate an acceptable level of performance, both quantitatively and qualitatively, in the college or university outpatient clinic.

(3) The intern shall complete, sign, and submit all application materials to the college or university clinic director for verification and approval.

(4) The intern shall serve in the preceptorship program for a term established by the college or university for the purpose of augmenting his competence in all areas of chiropractic practice.

(5) The intern shall provide both the college or university and the preceptor with a current telephone number and address.

(6) The intern shall be responsible for following all reasonable and lawful policies and procedures of the preceptor's office.

(7) The intern shall be responsible for providing and wearing professional attire.

(8) The intern shall be responsible for his own transportation and living arrangements.

(9) The intern shall report to the preceptor on time.

(10) The intern shall not submit for publication any material relating to his preceptorship without prior written approval of the preceptor and the college or university.

(11) The intern shall make such reports as required by the Council on Chiropractic Education and the college or university under which the preceptorship is conducted. [ensure that biweekly reports shall be submitted by the preceptor to the college or university on his or her activities and progress.

~~(12) At the completion of the preceptorship, the intern shall present to the college or university clinic director a paper describing his or her experiences and summarizing the acquisition of knowledge during the preceptorship.]~~

~~(12[13])~~ The intern shall provide evidence of professional liability insurance from the college or university.

~~(13[14])~~ The intern shall respond to any inquiry by the board within twenty (20) days.

JEFF SMITH, Board Chair

APPROVED BY AGENCY: June 26, 2020

FILED WITH LRC: September 11, 2020 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 23, 2020, at 10:00 a.m. in Room 127, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 2020, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until November 30, 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: David C. Trimble, Board Attorney, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 782-8823, fax +1 (502) 564-3969, email DavidC.Trimble@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David C. Trimble

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation relates to the Board's preceptorship program.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 312.019.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation relates to the preceptorship program.

(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 Chapter 312 by carrying out the legislative mandate for the board to establish regulations for the practice of chiropractic.

(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 relates to the preceptorship program.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary for preceptorships.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation relates to the preceptorship program.

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(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 1,078 licensed chiropractors practicing in the Commonwealth of Kentucky, as well as an unknown number of their patients who depend on their chiropractor remaining current with their training.

(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: This regulation will provide updated provisions for the preceptorship program.

(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 chiropractor.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation will allow prospective chiropractors to participate in preceptorships.

(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.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Chiropractic Examiners 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 licensees 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 Kentucky Board of Chiropractic Examiners.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 312

(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 the agency beyond regular monitoring of continuing education for license renewals.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to the agency beyond regular monitoring of continuing education for license renewals.

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

BOARDS AND COMMISSIONS

Board of Licensure for Pastoral Counselors (Amendment)

201 KAR 38:070. Renewal of licenses and continuing education.

RELATES TO: KRS 210.366, 335.625, 335.640, 335.650

STATUTORY AUTHORITY: KRS 210.366, 335.615(6), 335.625

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.615(6) requires the board to promulgate administrative regulations to implement the purposes of KRS 335.600 to 335.699. KRS 335.625(1) requires the board to establish the renewal fee in an administrative regulation. KRS 210.366 requires a board licensee to complete a minimum of six (6) hours of continuing education in suicide assessment, treatment, and management at least once every six (6) years. KRS 335.625(1)(b) requires licensees to obtain twenty (20) hours of continuing education each renewal cycle. This administrative regulation establishes all fees charged by the board necessary for renewal of licenses and establishes all required continuing education necessary for renewal of licenses.

Section 1. Renewal. Each license holder of the board shall renew his or her license as required by KRS 335.625 on or before

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a date that is three (3) years from the date of his or her original license or last renewal by submitting to the board a completed Renewal Application.

Section 2. Renewal Fees and Penalties. The following fees shall be paid in connection with all renewals of licenses of the board.

(1) The renewal fee for licensure shall be \$300.

(2) The late renewal fee, including penalty, for renewal of licensure during the three (3) month grace period shall be \$400.

(3) The reinstatement fee for reinstatement and renewal of licensure after the expiration of the three (3) month grace period and before the expiration of one (1) year after the renewal date, including penalty, shall be \$500.

Section 3. Continuing Education.

(1) Each license holder of the board, before his or her license renewal date, shall obtain twenty (20) clock or credit hours of continuing education completed since the date of the last renewal of the license or the date of the original issuance of the license, whichever is later. Continuing education shall be obtained from any of the following providers or for any of the following activities:

(a) Individual or group supervision of other license holders of this board at the supervisory level;

(b) Attendance at any mental health educational conferences, continuing education seminars, or educational meetings where seminars are provided in a live or two (2) way video presentation format and which are approved for continuing education by:

1. The American Association of Pastoral Counselors;
2. The Kentucky Board of Licensure of Marriage and Family Therapists;
3. The Kentucky Board of Medical Licensure;
4. The Kentucky Board of Examiners of Psychology;
5. The Kentucky Board of Alcohol and Drug Counselors;
6. The Kentucky Board of Licensure for Professional Art Therapists;

7. The Kentucky Board of Licensed Professional Counselors;

8. The Kentucky Board of Social Work;

9. The Kentucky Board of Nursing; [or]

10. Kentucky Association of Pastoral Counselors;

11. The Association for Clinical Pastoral Education;

12. Interactive CE Training, LLC; or

13. A mental health credentialing agency or board of any other state in the United States for which continuing education credit is awarded in that state;

(c) Writing and publishing professionally-related articles in mental health publications regarding pastoral counseling which shall not be counted for more than five (5) hours.

(2) A person holding a license shall complete a minimum of six (6) hours of continuing education in suicide assessment, treatment, and management within the first year of licensure and at least once every six (6) years thereafter as required by KRS 210.366. A person holding a license shall be exempt from the requirement to complete a continuing education course in suicide assessment, treatment, and management at least once every six (6) years if, during the six (6) year requirement, the licensee teaches a:

(a) Graduate-level psychology course in suicide assessment, training, and management; or

(b) Continuing education course in suicide assessment, training, and management at least once during the six (6) year period.

(3) If audited by the board, the license holder shall submit written proof of compliance with this section to the board within ten (10) days of notice from the board that this proof is required.

Section 4. Expired Licenses.

(1) A person holding a license shall not represent himself or herself as a licensed pastoral counselor in this state after the renewal date of his or her license unless:

(a) That license has been renewed as provided by this administrative regulation;

(b) The license holder has retained proof of continuing education as set forth by Section 3 of this administrative regulation;

and

(c) The prescribed fee has been paid as set forth by Section 2 of this administrative regulation.

(2) All licenses not renewed within three (3) months after the renewal date shall be expired for nonrenewal.

Section 5. Duplicate License Fees. The fee for a duplicate certificate shall be twenty-five (25) dollars.

Section 6. Incorporation by Reference.

(1) "Renewal Application for Licensure as a Pastoral Counselor", December 2016, edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure for Pastoral Counselors, 500 Mero Street, 2 SC 32[911 Leawood Drive], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JONATHAN ERIC CARROLL, KLPC Chair

APPROVED BY AGENCY: August 28, 2020

FILED WITH LRC: September 14, 2020 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held from 9:00 AM to 12:00 PM EST on November 23, 2020 at 500 Mero Street, Room 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 November 23, 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/95738150727?pwd=RIBOMXRuUkg0TjhSml4QmJwY2t6Zz09>

Password: 711160

Or Telephone:

Dial:

USA 713 353 0212

USA 8888227517 (US Toll Free)

Conference code: 866544

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 EST on November 30, 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, 500 Mero Street, 218 NC, 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 renewal and continuing education requirements for a credential holder

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish the renewal and 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 will assist in establishing the continuing education requirements of a credential holder and protect the public seeking pastoral counseling.

(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 organizations to the list of preapproved continuing education providers and makes a technical amendment to update the Board's physical address.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to establish a continuing education requirement for licensees licensed by the board.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as KRS 335.615(6) gives the board the ability to promulgate regulations to carry out the purpose of the Board, and KRS 335.625(1)(b) requires licensees to obtain 20 hours of continuing education each renewal period.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in notifying licensees of continuing education providers approved by the Board.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 35 licensed Pastoral Counselors licensed in the Commonwealth of 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: A licensee does not have to take any actions to comply with this amendment as it just lists organizations whose continuing education programs are automatically approved by the Board.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There are no additional costs to licensees 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 KAPC, ACPE, and ICE-T 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: This administrative regulation does not create a cost for the administrative body.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Board of Licensure for Pastoral Counselors 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 licensees 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 Pastoral Counselors 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 335.625(1)(b) and 335.615(6).

(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 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? 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 (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

PUBLIC PROTECTION CABINET Office of the Secretary (Amendment)

802 KAR 1:010. Tax appeal procedures.

RELATES TO: KRS 12.027, Chapter 13B, 49.220, 49.230, 49.240, 49.250, EO 2020-708

STATUTORY AUTHORITY: KRS 49.020, 49.220(1)

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 2020-708 ("Order") requires that the Kentucky Claims Commission be abolished and the Office of Claims and Appeals be immediately established within the Public Protection Cabinet, and to include the Board of Tax Appeals. The Order also sets forth the powers and duties of the Board of Tax Appeals, and authorizes the Board to promulgate regulations necessary to immediately carry out the provisions and purposes of the Order and the Board's statutory authority. KRS 49.020(5) authorizes the Board [commission] to promulgate administrative regulations that are necessary to carry out the provisions and purposes of the Board's [commission's] statutory authority. KRS 49.220(1) authorizes the Board [commission], with exclusive jurisdiction, to hear and determine appeals from final rulings, orders, and determinations of any agency of state or county government affecting revenue and taxation. This administrative regulation establishes the procedures governing tax appeals.

Section 1. Definitions. (1) "Board" means the Board of Tax Appeals.

(2) "Office" means the Office of Claims and Appeals.

Section 2. Rules for Filing Tax Appeals with the Board. (1) Initiation of tax appeal. A party wishing to appeal a final ruling, order, or determination of any agency of state or county government affecting revenue or taxation shall file a petition with the Board for a formal hearing in accordance with KRS Chapter 13B.

(2) Timing. The initial petition of appeal shall be received by the Board within thirty (30) days of the date of mailing of the final

ruling, order, or determination of the agency of state or county government that is the subject of the appeal. If the determination is not mailed, then the initial petition shall be considered as received by the Board within (30) days of the date of issuance.

(a) An untimely appeal shall be dismissed.

(b) If the appeal is timely filed, but deficient, the Board, Office, or hearing officer shall notify the petitioner of deficiencies and allow fifteen (15) business days to amend the petition.

(3) Format and content. A petition of appeal shall be legibly written, typed, or printed and contain the following:

(a) A statement of all relevant issues of fact and law;

(b) A statement certifying that the information contained in the petition of appeal is true and correct to the best knowledge of the petitioner or counsel, if represented by an attorney;

(c) The signature of the petitioner or the signature of counsel, if represented by an attorney;

(d) The petitioner's mailing address, telephone number, and email address;

(e) If represented by an attorney, the petitioner's attorney's name, mailing address, telephone number, and email address; and

(f) A copy of the final ruling, order, or determination to be reviewed.

(4) Upon receiving a petition of appeal, the Board shall provide notice to:

(a) The appellee that an action has been filed;

(b) The petitioner that the petition of appeal has been received; and

(c) The petitioner's counsel, if represented by an attorney.

(5) Upon receiving a Petition of Appeal, the appellee or the appellee's attorney shall file an entry of appearance within thirty (30) days of the date of the notice of appeal provided by the Board. The entry of appearance shall contain the mailing address, telephone number, and email address of the appellee and the appellee's attorney, if applicable.

Section 3. Rules Applicable to All Filings. (1) Filings. All documents may be filed:

(a) In person or by private delivery to Board of Tax Appeals, 500 Mero Street, 2 SC1, Frankfort, Kentucky 40601;

(b) Mail to the address listed above; or

(c) Electronic mail to taxappeals@ky.gov if the document can be sent in one (1) electronic message.

(2) Service.

(a) Any party who files a pleading or motion with the Board or hearing officer shall notify all other parties to the appeal by serving upon each party a copy of the pleading or motion filed. A filed pleading or motion shall be accompanied by a certification stating:

1. That a copy has been served on each party, or if the party is represented by counsel, on the party's counsel; and

2. The method of service used.

(b) Service upon a party shall be made by delivering a copy to the attorney or party, electronic mail, or by mailing it to the attorney or party at the last known address. Service is complete upon mailing, unless the serving party learns or has reason to know that it did not reach the person to be served. Service by electronic mail shall be considered complete when sent if properly addressed. Documents filed by electronic mail shall be considered received when sent if properly addressed.

Rules Applicable to All Filings. (1) Filings. All documents shall be filed by mail, electronic mail to taxappeals@ky.gov, or in person. Documents filed by electronic mail shall be considered received when sent if properly addressed.

(2) Service. Any party who files a document with the commission or hearing officer shall serve to all other parties to the appeal a copy of the document filed. A filed document shall be accompanied by a certification stating: (a) That a copy has been served on each party; and (b) The method of service used.

Section 2. Rules for Filing Tax Appeals with the Commission. (1) Initiation of tax appeal. A party wishing to appeal a final ruling, order, or determination of any agency of state or county government affecting revenue or taxation shall file a petition of appeal with the commission.

(2) Timing. The initial petition of appeal shall be received by

the commission within thirty (30) days of the date of mailing of the final ruling, order, or determination of the agency of state or county government that is the subject of the appeal.

(a) An untimely appeal shall be dismissed.

(b) If the appeal is timely filed, the commission or hearing officer shall notify the petitioner of deficiencies and allow fifteen (15) days to amend the petition.

(3) Format and content. A petition of appeal shall be legibly written, typed, or printed and contain the following:

(a) A statement of all relevant issues of fact and law;

(b) A statement certifying that the information contained in the petition of appeal is true and correct to the best knowledge of the petitioner or counsel, if represented by an attorney;

(c) The signature of the petitioner or counsel, if represented by an attorney;

(d) The petitioner's mailing address, telephone number, and email address;

(e) If represented by an attorney, the petitioner's attorney's name, mailing address, telephone number, and email address; and

(f) A copy of the final ruling, order, or determination to be reviewed.

(4) Upon receiving a petition of appeal, the commission shall provide notice to:

(a) The appellee that an action has been filed;

(b) The petitioner that the petition of appeal has been received; and

(c) The petitioner's counsel, if represented by an attorney.]

Section 4[3]. Representation in Proceedings before the Board [Commission]. (1) If the appeal is by an individual, the individual may proceed without an attorney or engage counsel to provide representation.

(2) An individual who is not an attorney shall not be permitted to represent any other individual or legal entity who is a party to an appeal.

(3) In accordance with Supreme Court Rule 3.020, if the appealing party is a corporation, joint venture, partnership, LLC, estate, or any entity other than an individual as identified in subsection (1) of this section, the entity shall be represented by an attorney on all matters before the board, including the filing of the appeal.

(4) An attorney licensed to practice in another state, but not the Commonwealth of Kentucky, shall be permitted to represent a party before the board if the attorney complies with Supreme Court Rule 3.030(2). [The appellee or the appellee's attorney shall file an entry of appearance within thirty (30) days of the date of the notice of appeal provided by the commission. The entry of appearance shall contain the mailing address, telephone number, and email address of the appellee and the appellee's attorney, if any. (2) An individual who is not an attorney shall not represent any other individual or an entity or other individual who is a party to an appeal.]

Section 5[4]. Discovery. (1) Discovery may be obtained without prior order of the Board [commission] or hearing officer. [pursuant to the] The Kentucky Rules of Civil Procedure (CR) governing depositions and discovery shall apply except to the extent the provisions of this section differ.

(2) In addition to the provisions of CR 26 addressing opinions and use of expert witnesses:

(a) a party shall disclose to the other party or parties the identity of any witness qualified as an expert by knowledge, skill, experiences, training, or education the party may use at the hearing to provide expert testimony at least ninety (90) days before the date set for the hearing, absent a stipulation between the parties or an order issued by the Board providing otherwise; or

(b) if the evidence is intended solely to contradict or rebut evidence on the same subject matter of a witness identified by another party, within thirty (30) days after the other party's disclosure.

(3)[(2)] The Board [commission] or hearing officer may deny, limit, or require discovery.

(4)[(3)] If a party fails to comply with an order regarding

discovery, the Board [commission] or hearing officer may order that the:

- (a) Matters that the requesting party was seeking to establish through discovery shall be taken as having been established for the purposes of the hearing;
- (b) Noncomplying party shall be prohibited from introducing related documents or testimony at the hearing;
- (c) Appeal be dismissed or relief be granted as requested by the opposing party;
- (d) Appeal be stayed until the order is obeyed; or
- (e) Noncomplying party, the advising attorney, or both pay the reasonable costs, including attorney's fees, caused by the failure to comply.

(5)[(4)] A response to discovery under subsection (1) of this section shall not be filed with the Board [commission] unless required by order of the Board or hearing officer.[or used as evidence.]

Section 6. Prehearing or Status Conference and Hearing Schedule. (1) In any appeal assigned to a Board member or hearing officer, the Board or hearing officer may schedule a prehearing or status conference. The prehearing or status conference may be conducted by telephone or other electronic means upon reasonable notice to all parties, which consists of prior notice of not less than five (5) days, unless otherwise agreed to by the parties.

(2) A prehearing or status conference may be used to set a hearing date, discuss jurisdictional matters, settlement possibilities, discovery, preparation of stipulations, clarification of issues, rulings on witnesses, taking of evidence, issuance of subpoenas, mediation, and other matters that will promote the orderly and prompt conduct of the hearing.

(3) If the Board member or hearing officer and parties cannot agree upon a hearing date, the Board member or hearing officer shall set the matter for hearing no later than six (6) months from the date of the conference.

(4) Upon conclusion of the prehearing or status conference, the Board member or hearing officer shall issue an order including all matters determined at the prehearing or status conference.

Section 7[5]. Prehearing Filings. (1) At least thirty (30) days prior to the hearing, a party shall file with the Board [commission] or hearing officer a:

- (a).[(1)] Prehearing summary that contains a:
 - 1.[(a)] Summary of the party's position on any issue of fact in dispute;
 - 2.[(b)] Summary of the party's position on any issue of law raised by the appeal; and
 - 3.[(c)] Written statement of facts to which the party agrees and any facts which [that] a party does not dispute;
 - (b)[(2)] List of the names, addresses, and phone numbers (if known) of all witnesses the party expects to call to testify as a witness at the hearing; [and]
 - (c)[(3)] Copy of all exhibits that the party intends to introduce at the hearing;
 - (d) Proposed findings of fact and conclusions of law; and
 - (e) Proposed final order if the appeal is heard by the board, or a proposed recommended order if the appeal is heard by a hearing officer.

(2)The prehearing filings required by the section shall satisfy the requirements under KRS 13B.090(3) establishing a party's right to inspect a list of witnesses and documentary or tangible evidence at least five (5) days prior to the hearing. The Board may issue a prehearing order modifying discovery procedures or deadlines, or mandating additional requirements for prehearing filings.

Section 8[6]. Motion Practice. (1) Any party may file a motion. Any party affected by a motion or pleading may file a response to the motion or pleading within thirty (30) [fifteen-(15)] days from the date on which the motion or pleading was [originally] served.

(2) A moving party may file a reply to another party's response. The reply shall be filed within fifteen (15) days from the date the response was served. Other replies or responses shall not be filed,

unless prior approval is granted by the Board [commission] or hearing officer.

Section 9. Briefs. A party shall file with the Board or hearing officer any brief required by order of the Board or hearing officer. The Board or hearing officer may require a party to file a post-hearing brief or to supplement at any time a brief already filed to assist in adjudicating the hearing. A brief shall include the signature of the party, or the party's counsel.

Section 10[7]. Summary Disposition. (1) At any time after the commencement of an appeal [has begun], a party may move for a summary disposition of the whole or a part of the appeal by filing a motion that[; in which event the procedure established in subsections (1) through (4) of this section shall apply.

(1) The moving party shall file a motion that:
(a) Asserts that there are no disputed material facts as to one (1) or more of the issues before the Board [commission] or hearing officer;

(b) Includes a statement specifying which material facts are undisputed. Assertions of a material undisputed fact or facts may be submitted to the Board or hearing officer through affidavits or responses made by another party to any discovery request, including answers to interrogatories, admissions, and depositions. Facts stated in the petition of appeal, including exhibits attached to the petition, may be relied upon as undisputed material facts by the appellee; and[A material undisputed fact may be submitted to the commission or hearing officer through affidavits, discovery responses, or deposition testimony;]

(c) States that any issue before the Board [commission] or hearing officer for which summary disposition is sought is a matter of legal, and not factual, interpretation[; and

(d) Attaches a copy of any legal authority that supports the moving party's position on any legal issue before the board [commission] or hearing officer.]

(2)(a) Within twenty (20) days after a party moves for summary disposition, any other party may file a response presenting the party's position on issues of law and fact, which shall include any affidavit, written response to discovery requests, deposition testimony, or statements in the Petition of Appeal, demonstrating the party's assertion that a material fact or facts are disputed.[shall:

- 1. Submit an ~~An~~ acknowledgment that there are no disputed material facts;
- 2. Submit a response stating that a material fact is in dispute, along with any affidavit, discovery response, or deposition testimony that shows the material fact in dispute. Facts stated in the petition of appeal and any document or exhibit attached thereto may be relied upon as undisputed material facts by the appellee; and
- 3. Attach all legal authorities that support the opposing party's position on any legal issue.]

(b) Failure of a nonmoving party to respond within twenty (20) days to the motion for summary disposition or to request additional time to respond to the motion may result in the Board [commission] or hearing officer finding there are no disputed factual issues to be considered in deciding the legal issues.

(3) If the nonmoving party files a response to the motion for summary disposition, the moving party shall have ten (10) days to file a reply to the response.

(4) The Board [commission] or hearing officer may grant a motion for summary disposition in whole or in part. If the Board [commission] or hearing officer grants a summary disposition as to one (1) or more issues, but not all issues, then the remaining issues shall be heard by the Board [commission] or hearing officer in accordance with this administrative regulation and KRS Chapter 13B.

Section 11[8]. Other. Except as otherwise stated in KRS Chapter 49 or this administrative regulation, the conduct of hearings shall be governed by the procedures established in KRS Chapter 13B.

KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: September 2, 2020

FILED WITH LRC: September 2, 2020 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 10:00 am on November 24, 2020, in Room 239CW of the Mayo-Underwood Building, 500 Mero Street, 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 this time, this hearing will be done by video teleconference. Members of the public wishing to attend may utilize the following link:

Join Zoom Meeting

<https://us02web.zoom.us/j/81484140906?pwd=bVdMMlpTTnhHL0QxTDA2elBkcGhYdz09>

Meeting ID: 814 8414 0906

Passcode: GTwPY1

Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request 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 EST on November 30, 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: Leah Cooper Boggs, Executive Advisor, 500 Mero Street 218NC, phone +1 (502) 352-8095, fax +1 (502) 564-3969, email LBoggs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Leah Cooper Boggs

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the tax appeal procedures for persons or entities wishing to dispute their tax liability.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with Governor's Executive Order 2020-708 which immediately abolishes the Kentucky Claims Commission and establishes the Board of Tax appeals and Office of Claims and Appeals in the Public Protection Cabinet.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed regulatory language conforms with KRS 12.080 which authorizes the Secretary of the Public Protection Cabinet to prescribe general rules for the conduct of this administrative office as he deems necessary or expedient for the proper conduct of the work of the office not inconsistent with the general rules prescribed by the Governor; and KRS 49.020(5) which authorizes the promulgation of regulations to carry out the duties of this office.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed regulation removes references to the abolished Kentucky Claims Commission and inserts language regarding the new Board of Tax Appeals and Office of Claims and Appeals. It also provides more comprehensive guidelines to file an appeal.

(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: See (1)(d).

(b) The necessity of the amendment to this administrative regulation: See (1)(b)

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Public Protection Cabinet, the Board of Tax Appeals, the Office of Claims and Appeals, the state and county agencies charged with the administration of taxation, and any person or entity filing a claim or appeal with the Office of Claims and Appeals and the Board of Tax Appeals.

(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: None known, beyond updating documentation to reflect the new office structure.

(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 expenditures because of this administrative regulation. Current staff will implement the provisions once promulgated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are currently 151 tax appeals pending before the Claims Commission, including 43 from 2018 and 103 from 2019. This backlog involves a significant sum, which negatively affects the State's ability to appropriate revenue, and raises concerns with respect to the procedural due process rights of taxpayers. Establishing a separate Board of Tax Appeals and providing greater guidance will provide greater efficiency and service to the citizens of the Commonwealth.

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

(a) Initially: None. Current staff and agency funds will provide implementation.

(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: Current agency budgetary funding will be 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 additional funding or increase in fees is needed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed language will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Public Protection Cabinet, Office of Claims and Appeals, and Board of Tax Appeals.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13B, 49.020, 49.220.

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 administrative regulation should not create any additional expenses or revenues for any state or local government agency after implementation. It is only updating references to the newly created Office of Claims and Appeals and Board of Tax Appeals, and establishing procedures to file appeals under the new office structure.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fires, or school districts) for the first year? No revenues are expected to be generated by the provisions of this administrative regulation.

This administrative regulation does not contain any fees or charges for filing an appeal with the Board of Tax Appeals.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? See 3.(c).

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:

PUBLIC PROTECTION CABINET (Amendment)

802 KAR 2:010. Negligence claims before the Board of Claims [Kentucky Claims Commission].

RELATES TO: KRS 12.027, 49.020, 49.040, 49.090, 49.120, EO 2020-708

STATUTORY AUTHORITY: KRS 49.020(5)

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 2020-708 ("Order") requires that the Kentucky Claims Commission be abolished and that the Board of Claims, and the Office of Claims and Appeals be established. The Order also sets forth the powers and duties of the Board of Claims and the Office and authorizes the Board to promulgate emergency regulations necessary to carry out the provisions and purposes of the Order and the Board's statutory authority. KRS 49.020(5) authorizes the board [commission] to promulgate administrative regulations that are necessary to carry out the provisions and purposes of the board's statutory authority. KRS 49.220(1) authorizes the board [commission], with exclusive jurisdiction to investigate, hear proof, and to compensate persons for damages sustained to either person or property as a proximate result of negligence on the part of the Commonwealth, any of its cabinets, departments, bureaus, or agencies, or any of its officers, agents, or employees while acting within the scope of their employment by the Commonwealth or any of its cabinets, departments, bureaus, or agencies. This administrative regulation establishes the [requirements and] procedures [for filing and adjudicating negligence] governing these claims[under the jurisdiction of the commission and the method of pleading and practice before the commission].

Section 1. Definition. (1) "Board" means the Board of Claims.

(2) "Office" means the Office of Claims and Appeals.

Section 2[4]. Filing Claims. Form and content. A claim shall be legibly written, typed, or printed and contain the following:

(1) The name, address, telephone number, and email address of the claimant;

(2) The amount of the claim; and

(3) A statement of the facts that:

(a) Shows that the claimant may be entitled to relief pursuant to KRS 49.010 through 49.180; and

(b) Enables the agency against which a claim is made to investigate the claim and prepare its defense; and

(4) Is signed by the claimant and counsel for claimant, if any. [

(1) A claim shall:

(a) Be legibly written, typed, or printed;

(b) Contain:

1. The name, address, telephone number, and email address of the claimant;

2. The amount of the claim; and

3. A statement of the facts that:

a. Shows that the claimant may be entitled to relief pursuant to KRS 49.010 through 49.180; and

b. Enables the respondent agency to investigate the claim and

prepare its defense; and]

Section 3. Rules Applicable to All Filings. (1) Filings. All documents may be filed:

(a) In person or by private delivery to the Board of Claims, 500 Mero Street, 2 SC1, Frankfort, Kentucky 40601;

(b) Mail to the address listed above; or

(c) Electronic mail to mailto:negligenceclaims@ky.gov, if the document can be sent in one (1) electronic message. [

(c) Be filed by mail, electronic mail at mailto:negligenceclaims@ky.gov, or delivered in person to the commission's office.]

(2) Service.

(a) Any party who files a pleading or motion with the Board or hearing officer shall notify all other parties to the claim by serving upon each party a copy of the pleading or motion filed. A filed pleading or motion shall be accompanied by a certification stating:

1. That a copy has been served on each party, or if the party is represented by counsel, on the party's counsel; and

2. The method of service used.

(b) Service upon a party shall be made by delivering a copy to the attorney or party, electronic mail, or by mailing it to the attorney or party at the last known address. Service is complete upon mailing, unless the serving party learns or has reason to know that it did not reach the person to be served. Service by electronic mail shall be considered complete when sent if properly addressed. Documents filed by electronic mail shall be considered received when sent if properly addressed.

(3) Extension of time. An extension of time to file a response, motion, other pleading, brief, proposed finding of fact, or conclusion of law shall be granted:

(a) On agreement of the parties; or

(b) Upon a showing of good cause.

Section 4. Representation in Proceedings before the Board [Commission]. (1) If the claim is by an individual, the individual may proceed without an attorney or engage counsel to provide representation.

(2) An individual who is not an attorney shall not be permitted to represent any other individual or legal entity who is a party to the claim.

(3) In accordance with Supreme Court Rule 3.020, if the claimant is a corporation, joint venture, partnership, LLC, estate, or any entity other than an individual as identified in subsection (1), the entity shall be represented by an attorney on all matters before the board, including filing the claim.

(4) An attorney admitted to practice in another state, but not the Commonwealth of Kentucky, shall be permitted to represent a party before the board if the attorney complies with Supreme Court Rule 3.030(2).

(5) If an attorney is not identified in the claim form or is later retained to represent a claimant after the filing of the claim form, the attorney shall enter an appearance in the record within ten (10) days of being retained. [

(2) An attorney representing a claimant before the commission shall enter an appearance the time the complaint is filed or as soon thereafter as possible.

(3) Any orders related to the claim and copies shall be served on the opposing party and the hearing officer presiding over the claim.

(4) An individual who is not an attorney shall not represent any other individual or an entity party to a claim.]

Section 5[2]. Response to Claims. (1) Upon receipt of a completed claim, the Board [commission] shall submit a copy of each claim to the head of the agency against which the claim is filed, or the attorney representing the agency against which the claim is filed.

(2) The agency against which a claim has been filed shall respond [answer the claim or file a responsive motion in writing] to the Board [commission] and the claimant within thirty (30) days of receiving the claim.

(3) If the agency against which a claim is filed admits liability in

its response, a final order shall be entered.]

(3) The commission shall consider the claim at its next regular or special meeting if:

(a) The response filed by the affected agency admits liability; or

(b) The respondent agency fails to respond to the commission concerning its investigation within thirty (30) days.

(4) ~~If the agency denies negligence in a claim requiring a hearing pursuant to KRS 49.090(3), a hearing officer shall be assigned, and the commission shall notify the claimant and the head of the affected agency of the assignment.~~

(5) The commission may grant an extension of time to file the answer or response to the claim upon:

(a) Agreement of the parties; or

(b) A showing of good cause demonstrating that the purpose of the request is not to delay proceedings.]

Section 6. Claims Not Requiring a Hearing Under KRS 49.090(3). (1) If the agency against which a claim is filed fails to respond within thirty (30) days, the board or a board member assigned by the chair shall do one of the following:

(a) Enter a show cause order;

(b) A recommended order of dismissal, or

(c) Deem the facts contained in the claim admitted and render an award.

(2) If the response filed by the agency denies negligence in a claim not requiring a hearing pursuant to KRS 49.090(3), the Board or Board member shall decide the claim and render a decision.

(3) Within fourteen (14) days of the decision, any party may request a full board review by written notice to the Board.

Section 7. Claims Requiring a Hearing under KRS 49.090(3).

(1) If the agency fails to respond within thirty (30) days, the Board shall issue a show cause order or the matter shall be assigned to a hearing officer.

(2) If the response filed by the agency denies negligence in a claim requiring a hearing pursuant to KRS 49.090(3), a hearing officer shall be assigned, and notice of such assignment shall be provided to the parties.

Section 8[3]. Prehearing or Status Conference and Hearing Schedule. (1) The hearing officer shall schedule a [telephonic] prehearing or status conference, which may be conducted by telephone or other electronic means:

(a) Within thirty (30) days of the assignment of the claim; and

(b) Upon reasonable notice to all parties, which consists of prior notice of not less than five (5) days, unless agreed to otherwise by the parties.

(2) The hearing officer may convene the [telephonic] prehearing or status conference or order the affected state agency to convene the conference.

(3) A prehearing or status conference may be used to discuss jurisdictional matters, settlement possibilities, discovery, preparation of stipulations, clarification of issues, rulings on witnesses, taking of evidence, issuance of subpoenas, mediation, and other matters that will promote the orderly and prompt conduct of the hearing.

(4) The hearing officer and the parties shall set an agreed date for the hearing at the prehearing or status conference. If the hearing officer and parties cannot agree upon a hearing date, the hearing officer shall set the matter for hearing no later than six (6) months from the date of the conference, unless the parties have otherwise agreed to hold the claim in abeyance.

(5) Upon conclusion of the prehearing or status conference, the hearing officer shall issue an order including all matters determined at the prehearing or status conference.

(6) The hearing officer shall notify the Board [commission] of the date and time for the hearing. The Office[executive director, or his or her designee,] shall:

(a) Reserve a place within the proper venue to conduct the hearing;

(b) Select a court reporter to be present at the hearing to record the proceedings; and

(c) Notify the parties and the court reporter of the date, time, and place of the hearing.

Section 9. Motion Practice. (1) Any party may file a motion.

(2) Any party affected by a motion or pleading may file a response to the motion or pleading within thirty (30) days from the date on which the motion or pleading was served.

(3) A moving party may file a reply to another party's response. The reply shall be filed within fifteen (15) days from the date the response was served. Other replies or responses shall not be filed, unless prior approval is granted by the Board or hearing officer.

(4) If a response is not filed within thirty (30) days, the Board or hearing officer shall issue an order on the motion within sixty (60) days of the date the response was due.

Section 10. Discovery. (1) Discovery may be obtained without prior order of the Board or hearing officer. The Kentucky Rules of Civil Procedure (CR) governing depositions and discovery shall apply except to the extent the provisions of this Section 10 differ.

(2) In addition to the provisions of CR 26 addressing opinions and use of expert witnesses:

(a) a party shall disclose to the other party or parties the identity of any witness qualified as an expert by knowledge, skill, experiences, training, or education the party may use at the hearing to provide expert testimony at least ninety (90) days before the date set for the hearing, absent a stipulation between the parties or an order issued by the Board providing otherwise; or

(b) if the evidence is intended solely to contradict or rebut evidence on the same subject matter of a witness identified by another party, within thirty (30) days after the other party's disclosure.

(3) The Board or hearing officer may deny, limit, or require discovery.

(4) If a party fails to comply with an order regarding discovery, the Board or hearing officer may order that the:

(a) Matters that the requesting party was seeking to establish through discovery shall be taken as having been established for the purposes of the hearing;

(b) Noncomplying party shall be prohibited from introducing related documents or testimony at the hearing;

(c) The claim be dismissed or relief be granted as requested by the opposing party;

(d) The claim be stayed until the order is obeyed; or

(e) Noncomplying party, the advising attorney, or both pay the reasonable costs, including attorney's fees, caused by the failure to comply.

(5) A response to discovery under subsection (1) of this section shall not be filed with the Board unless required by order of the Board or hearing officer.

Section 11. Briefs. A party shall file with the Board or hearing officer any brief required by order of the Board or hearing officer. The Board or hearing officer may require a party to file a post-hearing brief or to supplement at any time a brief already filed to assist in adjudicating the hearing. A brief shall include the signature of the party, or the party's counsel.

Section 12. Summary Disposition. At any time after the commencement of the claim, a party may move for a summary disposition of the whole or a part of the claim by filing a motion that:

(1) Asserts that there are no disputed material facts as to one (1) or more of the issues before the Board or hearing officer;

(2) Includes a statement specifying which material facts are undisputed. Assertions of a material undisputed fact or facts may be submitted to the Board or hearing officer through affidavits or responses made by another party to any discovery request, including answers to interrogatories, admissions, and depositions. Facts stated in the claim, including exhibits, may be relied upon as undisputed material facts by the appellee; and

(3) States that any issue before the Board or hearing officer for which summary disposition is sought is a matter of legal, and not factual, interpretation.

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(4) Within twenty (20) days after a party moves for summary disposition, any other party may file a response presenting the party's position on issues of law and fact, which shall include any affidavit, written response to discovery requests, deposition testimony, or statements in the claim, demonstrating the party's assertion that a material fact or facts are disputed.

(5) If the nonmoving party files a response to the motion for summary disposition, the moving party shall have ten (10) days to file a reply to the response.

(6) The Board or hearing officer may grant a motion for summary disposition in whole or in part. If the Board or hearing officer grants a summary disposition as to one (1) or more issues, but not all issues, then the remaining issues shall be heard by the Board or hearing officer in accordance with this administrative regulation and KRS Chapter 13B.

Section 13[4]. Conduct of Hearing. Except as otherwise established in KRS Chapter 49 or this administrative regulation, the conduct of hearings shall be governed by the procedures established in KRS Chapter 13B.

Section 14. Board Decision. (1)(a) Each contested claim shall be submitted to the Board at its next meeting following the submission of the recommended order, except for Agreed Orders.

(b) The Board shall issue its final order in accordance with KRS 49.080.

(c) The stated deadlines within which the Board shall render a final order shall commence upon the last filing of any exceptions to the recommendation.

(2) The Board, or a majority of its members, shall render a decision on each contested claim requiring a hearing pursuant to KRS 49.090(3) and each request for a full board review of a claim decided by an individual member.

(3) In rendering the final order, the Board shall consider the record including the recommended order and any exceptions duly filed to the recommended order.

(4) The Board may accept the recommended order of the hearing officer and adopt it as the final order of the Board, or it may reject or modify, in whole or in part, the recommended order, or it may remand the matter, in whole or in part, to the hearing officer for further proceedings as appropriate.

(5) If the final order differs from the recommended order, it shall include separate statements of findings of fact and conclusions of law. The final order shall also include the date the Board rendered the order, the date it was served on the parties, and to whom it was served, and a statement advising the parties fully of available appeal rights.

(6) Unless waived by the party, a copy of the final order shall be transmitted to each party or to his attorney of record.

(7) The matter shall be deemed finally adjudicated if:

(a) In a claim under \$2,500, no full board review has been requested; or

(b) The claim has been the subject of full board review; or

(c) No judicial appeal has been filed.

Section 15. Payment of Awards. Within thirty (30) days after an order of the Board of Claims making an award has become final, the agency making payment of such award shall furnish to the Board of Claims a copy of any check reflecting such payments.

KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: September 2, 2020

FILED WITH LRC: September 2, 2020 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 10:00 am on November 24, 2020, in Room 239CW of the Mayo-Underwood Building, 500 Mero Street, 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 this time, this hearing will be done by video teleconference. Members of the public wishing to attend may utilize the following link:

Join Zoom Meeting

<https://us02web.zoom.us/j/81484140906?pwd=bVdMMlplTTNhHl0QxTDA2eIBkcGhYdz09>

Meeting ID: 814 8414 0906

Passcode: GTwPY1

Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request 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 EST on November 30, 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: Leah Cooper Boggs, Executive Advisor, 500 Mero Street 218NC, phone +1 (502) 352-8095, fax +1 (502) 564-3969, email LBoggs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Leah Cooper Boggs

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the procedures by which persons who have allegedly suffered damage caused by the negligence of the Commonwealth can file a claim against the Commonwealth.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with Governor's Executive Order 2020-708, which immediately abolishes the Kentucky Claims Commission and establishes the Board of Claims and the Office of Claims and Appeals in the Public Protection Cabinet.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed regulatory language conforms with KRS 12.080, which authorizes the Governor to prescribe general rules for the conduct of departments; and KRS 49.020(5), which authorizes the promulgation of regulations to carry out the duties of the office.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed regulation removes references to the abolished Kentucky Claims Commission and inserts language regarding the new Board of Claims and Office of Claims and Appeals. It also provides more comprehensive guidelines to establish a claim.

(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: See (1)(d).

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Public Protection Cabinet, the Office of Claims and Appeals, the Board of Claims, and any person or entity filing a claim with the Board of 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: None known, beyond updating documentation to reflect the new Office structure.

(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 expenditures because of this administrative regulation. Current staff will implement the provisions once promulgated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Currently, claims against the Commonwealth are determined by the Kentucky Claims Commission. The Kentucky Claims Commission has a backlog of tax appeal cases. By separating these functions and creating a Board of Tax Appeals, a Board of Claims, and a Crime Victims Compensation Board, the Board of Claims will be able to more efficiently process the claims against the Commonwealth of Kentucky and provide redress for those injured.

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

(a) Initially: None. Current staff and agency funds will provide implementation.

(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: Current agency budgetary funding will be 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 additional funding or increase in fees is needed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed language will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Public Protection Cabinet, Office of Claims and Appeals, and the Board of Claims.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13B, 49.020, 49.220.

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 administrative regulation should not create any additional expenses or revenues for any state or local government agency after implementation. It is only updating references to the newly created Office of Claims and Appeals and the Board of Claims, and establishing procedures to file claims under the new office structure.

(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 revenues are expected to be generated by the provisions of this administrative regulation. This administrative regulation does not contain any fees or charges for filing a claim with the Board of Claims.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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:

PUBLIC PROTECTION CABINET (Amendment)

802 KAR 3:010. Crime victims compensation.

RELATES TO: KRS 12.027, 49.260 - 49.490, 216B.015, 216B.400, EO 2020-708

STATUTORY AUTHORITY: KRS 49.020, 49.300(1)

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 2020-708 ("Order") requires that the Kentucky Claims Commission be abolished and the Office of Claims and Appeals be established to include the Crime Victim's Compensation Board. The Order also sets forth the powers and duties of the Crime Victims Compensation Board and authorizes the Board to promulgate regulations necessary to immediately carry out the provisions and purposes of the Order and the Board's statutory authority. KRS 49.300(1) authorizes the Crime Victims Compensation Board [commission] to promulgate administrative regulations that are necessary to carry out the provisions of KRS 49.270 through 49.490. This administrative regulation establishes procedures for crime victims to file claims for compensation.

Section 1. Definition. "Board" means the Crime Victims Compensation Board.

Section 2[4]. Filing Claims. (1) A claim shall be:

(a) Legibly written, typed, or printed on the Crime Victim Compensation Form;

(b) Signed by the claimant and the counsel representing the claimant, if any.

(2) A claim shall be filed by:

(a) In person or by private delivery to the Crime Victim's Compensation Board, 500 Mero Street, 2 SC1, Frankfort, Kentucky 40601;

(b) Mail to the address listed above; or

(c) Electronic mail to crimevictims@ky.gov, if the document can be sent in one (1) electronic message[-; and

(c) Filed by mail, electronic mail to crimevictims@ky.gov, or delivered in person to the commission].

(3) [(2)] If applying for lost wages or loss of support, a claim shall be supplemented by:

(a) A notarized Employment Verification form; and

(b) If requested by the Board [commission] staff:

1. A Physician Statement form; or

2. A Mental Health Counselor's Report form.

Section 3[2]. Kentucky Medical Assistance Program. (1) The Board [commission] shall cross-reference every claim with those claims that appear in the Kentucky Medical Assistance Program (KMAP) database maintained by the Cabinet for Health and Family Services.

(2) If a crime victim is covered by Medicare or Medicaid, the Board's [commission's] staff will provide the Board [commission] a list of:

(a) All itemized medical charges for which that victim seeks compensation; and

(b) The victim's services covered by medical assistance as reported in KMAP.

(3) Upon making an award to a Medicaid-eligible crime victim, the Board [commission] shall not consider any medical bills submitted by or on behalf of the victim for any KMAP-covered services.

(4) If the Board [commission] makes an award to a victim who received medical assistance for a KMAP-covered service, the KMAP as final payor shall not be responsible for the payment of any portion of that claim awarded by the Board [commission].

Section 4. Attorney's Fees. If a claimant is represented by an attorney and the attorney so requests, the board, may, as a part of any award or by separate order subsequent to the award, allow a reasonable attorney's fee for the filing of a claim and any subsequent proceedings. Such fee shall not exceed fifteen (15) percent of the amount of the award, and shall be paid out of the

award and not in addition to the award. No attorney representing a claimant shall contract for or receive a fee any sum larger than fifteen (15) percent of the amount of the award. Any fee contract in violation of this provision shall be void.

Section 5[3]. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Crime Victim Compensation Form", August 2020[February 2018];
- (b) "Employment Verification", August 2020[February 2018];
- (c) "Physician Statement", August 2020[February 2018]; and
- (d) "Mental Health Counselor's Report", August 2020[February 2018].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Claims and Appeals [Kentucky Claims Commission], 500 Mero St 2SC1, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at <http://cvcb.ky.gov/Pages/default.aspx>.

KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: September 2, 2020

FILED WITH LRC: September 2, 2020 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 10:00 am on November 24, 2020, in Room 239CW of the Mayo-Underwood Building, 500 Mero Street, 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 this time, this hearing will be done by video teleconference. Members of the public wishing to attend may utilize the following link:

Join Zoom Meeting

<https://us02web.zoom.us/j/81484140906?pwd=bVdMMlptTTNhHL0QxTDA2elBkcGhYdz09>

Meeting ID: 814 8414 0906

Passcode: GTwPY1

Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request 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 EST on November 30, 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: Leah Cooper Boggs, Executive Advisor, 500 Mero Street 218NC, phone +1 (502) 352-8095, fax +1 (502) 564-3969, email LBoggs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leah Cooper Boggs

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the procedures for crime victims wishing to file a claim for compensation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with Governor's Executive Order 2020-708, which immediately abolishes the Kentucky Claims Commission and establishes Crime Victims Compensation Board and the Office of Claims and Appeals in the Public Protection Cabinet.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed regulatory language conforms with KRS 12.080 which authorizes the Governor to prescribe general rules for the conduct of departments; and KRS 49.020(5) which authorizes the promulgation of regulations to carry out the duties of

the office.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed regulation removes references to the abolished Kentucky Claims Commission and inserts language regarding the Crime Victims Compensation Board and the new Office structure and 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: See (1)(d).

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Public Protection Cabinet, the Office of Claims and Appeals, the Crime Victims Compensation Board, and any person or entity filing a claim with the Crime Victims Compensation Board and the Office of Claims and Appeals.

(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: None known, beyond updating documentation to reflect the new Office structure and the Crime Victims Compensation 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 expected expenditures because of this administrative regulation. Current staff will implement the provisions once promulgated.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Currently, crime victim claims are determined by the Kentucky Claims Commission. The Kentucky Claims Commission has a backlog of tax appeal cases. By separating the functions and creating the Crime Victims Compensation Board, claims of crime victims will be more efficiently processed.

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

(a) Initially: None. Current staff and agency funds will provide implementation.

(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: Current agency budgetary funding will be 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 additional funding or increase in fees is needed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed language will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Public Protection Cabinet, Office of Claims and Appeals, and the Crime Victims Compensation Board.

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

regulation. KRS 13B, 49.020, 49.220.

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 administrative regulation should not create any additional expenses or revenues for any state or local government agency after implementation. It is only updating references to the newly created Office of Claims and Appeals and the Crime Victims Compensation Board, and establishing procedures to file claims under the new office structure.

(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 revenues are expected to be generated by the provisions of this administrative regulation. This administrative regulation does not contain any fees or charges for filing a claim with the Crime Victims Compensation Board.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? See 3(c).

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:

LABOR CABINET
Department of Workers' Claims
(Amendment)

803 KAR 25:091. Workers' compensation hospital fee schedule.

RELATES TO: KRS 216B.105, 342.020, 342.035, 342.315

STATUTORY AUTHORITY: KRS 342.020, 342.035(1), 342.260(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.035(1) and 342.260(1) require the Commissioner of the Department of Workers' Claims to promulgate administrative regulations to adopt a medical fee schedule for fees, charges and reimbursements under KRS 342.020. KRS 342.020 requires the employer to pay for hospital treatment, including nursing, medical, and surgical supplies and appliances. This administrative regulation establishes hospital fees for services and supplies provided to workers' compensation patients pursuant to KRS 342.020.

Section 1. Definitions. (1) "Ambulatory surgery center" means a public or private institution that is:

(a) Hospital based or freestanding;

(b) Operated under the supervision of an organized medical staff; and

(c) Established, equipped, and operated primarily for the purpose of treatment of patients by surgery, whose recovery under normal circumstances will not require inpatient care.

(2) "Hospital" means a facility; surgical center; [or] psychiatric, [rehabilitative,] or other treatment or specialty center that is licensed pursuant to KRS 216B.105 or, if located in another state, is licensed pursuant to the laws of such other state; and shall include a facility that is approved as a rehabilitation agency under the Medicare or Medicaid programs.

(3) "Hospital-based practitioner" means a provider of medical services who is an employee of the hospital and who is paid by the hospital.

(4) "Independent practitioner" means a physician or other practitioner who performs services that are covered by the

Kentucky Workers' Compensation Medical Fee Schedule for Physicians, incorporated by reference in 803 KAR 25:089, on a contract basis and who is not a regular employee of the hospital.

(5) "New hospital" means a hospital that has not completed its first fiscal year.

(6) "Surgical hardware" means any object that provides internal fixation but is not intended to replace or alter the part of an internal body organ and is not intended to replace all or part of the function of a permanently inoperative or malfunctioning internal body organ. Surgical hardware can be removed after a healing period."

(7) "Surgical implant" means any single-use item/object/device which replaces all or part of an internal body organ, or replaces all or part of the function of a permanently inoperative or malfunctioning internal body organ.

Section 2. Applicability. This administrative regulation shall apply to all workers' compensation patient hospital and ambulatory surgery center fees for each hospital and ambulatory surgery center for each compensable service or supply.

Section 3. Calculation of Hospital's Base and Adjusted Cost-to-charge Ratio; Reimbursement. (1)(a) The commissioner shall calculate cost-to-charge ratios and notify each hospital of its adjusted cost-to-charge ratio on or before February 1 of each calendar year.

(b) A hospital's base cost-to-charge ratio shall be based on the latest cost report, or HCFA-2552, which has been supplied to the Cabinet for Health and Family Services, Department of Medicaid Services, pursuant to 907 KAR 1:815 and utilized in 907 KAR 1:820 and 1:825 on file as of October 31 of each calendar year.

(c) The base cost-to-charge ratio shall be determined by dividing the net expenses for allocation as reflected on Worksheet A, Column 7, Line 118 [95,] plus the costs of hospital-based physicians and nonphysician anesthetists reflected on lines 10 [42] and 28 [35] of Worksheet A-8, by the total patient revenues as reflected on line 28 of Worksheet G-2 of the HCFA-2552. The adjusted cost-to-charge ratio shall be determined as set forth in paragraph (d) of this subsection.

(d) 1. The base cost-to-charge ratio shall be further modified to allow for a return to equity by multiplying the base cost-to-charge ratio by 132 percent except that a hospital with more than 400 licensed acute care beds as shown by the Cabinet for Health and Family Services, Office of Inspector General's Web site or a hospital that is designated as a Level I trauma center by the American College of Surgeons shall have a return to equity by multiplying its base cost-to-charge ratio by 138 percent.

2. If a hospital's base cost-to-charge ratio falls by ten (10) percent or more of the base for one (1) reporting year, the next year's return to equity shall be reduced from 132 percent to 130 percent or 138 percent to 135 percent as determined by subparagraph 1. of this paragraph.

a. This reduction shall be subject to an appeal pursuant to Section 4 of this administrative regulation.

b. Upon written request of the hospital seeking a waiver and a showing of extraordinary circumstances, the commissioner shall waive the reduction for no more than one (1) consecutive year.

c. The determination of the commissioner shall be made upon the written documents submitted by the requesting hospital.

(e)1. Except as provided in subparagraph 2 of this paragraph, a hospital's adjusted cost-to-charge ratio shall not exceed fifty (50) percent, including the return to equity adjustment.

2. The adjusted cost-to-charge ratio shall not exceed sixty (60) percent for a hospital that:

a. Has more than 400 licensed acute care beds as shown by the Cabinet for Health and Family Services, Office of Inspector General's Web site;

b. Is designated as a Level I trauma center by the American College of Surgeons;

c. Services sixty-five (65) percent or more patients covered and reimbursed by Medicaid or Medicare as reflected in the records of the Cabinet for Health and Family Services, Department of Medicaid Services; or

d. Has a base cost-to-charge ratio of fifty (50) percent or more.

(2)(a) Except as provided in paragraph (b) and (c) of this subsection, the reimbursement to a hospital for services or supplies furnished to an employee that are compensable under KRS 342.020 shall be calculated by multiplying the hospital's [total] charges by its adjusted cost-to-charge ratio after removing any duplicative charges, billing errors, [or] charges for services or supplies not confirmed by the hospital records, and charges for surgical implants and surgical hardware.

(b) If part of a bill for services or supplies is alleged to be noncompensable under KRS 342.020 and that part of the bill is challenged by the timely filing of a medical fee dispute or motion to reopen, the noncontested portion of the bill shall be paid in accordance with paragraph (a) of this subsection.

(c) Charges for surgical implants and surgical hardware shall be reimbursed at invoice cost plus fifteen (15) percent. Invoice cost shall not include shipping, handling, and taxes. Shipping, handling and taxes shall be reimbursed at the amount for those charges listed on the invoice. The hospital shall provide a copy of the invoice and shall certify the actual cost of the item or items.

Section 4. Appeal of Assigned Ratio. (1) A hospital may request a review of its assigned ratio. A written appeal to request a review shall be filed with the commissioner no later than thirty (30) calendar days after the ratio has been assigned and the hospital notified of its proposed cost-to-charge ratio.

(2) The determination of the commissioner shall be made upon the written documents submitted by the requesting hospital.

Section 5. Calculations of New Hospitals, Hospitals that do not file Worksheets A and G-2 of HCFA-2552 and ASC's within the Commonwealth of Kentucky.

(1)(a) A new hospital shall be assigned a cost-to-charge ratio equal to the average adjusted cost-to-charge ratio of all existing in-state acute care hospitals until it has been in operation for one (1) full fiscal year.

(b) A hospital that does not file Worksheets A and G-2 of HCFA 2552 shall be assigned a cost-to-charge ratio as follows:

1. A psychiatric, rehabilitation, or long-term acute care hospital shall be assigned a cost-to-charge ratio equal to 125 percent of the average adjusted cost-to-charge ratio of all in-state acute care hospitals;

2. An ambulatory surgery center shall be assigned a cost-to-charge ratio equal to:

a. 120 percent of the average adjusted cost-to-charge ratio of all acute care hospitals located in the same county as the ambulatory surgery center;

b. 120 percent of the average adjusted cost-to-charge ratio of all acute care hospitals located in counties contiguous to the county in which the ambulatory surgery center is located, if an acute care hospital is not located in the county of the ambulatory surgery center; or

c. The adjusted cost-to-charge ratio of the base hospital if:

(i) The center is hospital based;

(ii) It is a licensed ambulatory surgery center pursuant to 902 KAR 20:106; and

(iii) It is a Medicare provider based entity;

d. Except as provided in subparagraph c, an ambulatory surgical center's adjusted cost-to-charge ratio shall not exceed fifty (50) percent; and

3. All other hospitals not specifically mentioned in subparagraphs 1 or 2 of this paragraph shall be assigned a cost-to-charge ratio equal to:

a. The average adjusted cost-to-charge ratio of all acute care hospitals located in the same county as the facility; or

b. If there are no hospitals in the county, the average of all acute care hospitals located in contiguous counties.

(2) An assigned cost-to-charge ratio shall remain in full force and effect until a new cost-to-charge ratio is assigned by the commissioner.

(3)(a) Reimbursement to an ambulatory surgical center for services or supplies furnished to an employee that are compensable under KRS 342.020 shall be calculated by multiplying the ambulatory surgical center's charges by its

assigned cost-to-charge ratio after removing any duplicative charges, billing errors, charges for services or supplies not confirmed by ambulatory surgical center records, and charges for surgical implants and surgical hardware.

(b) If part of a bill for services or supplies is alleged to be noncompensable under KRS 342.020 and that part of the bill is challenged by the timely filing of a medical fee dispute or motion to reopen, the noncontested portion of the bill shall be paid in accordance with paragraph (a) of this subsection.

(c) Charges for surgical implants and surgical hardware shall be reimbursed at invoice cost plus fifteen (15) percent. Invoice cost shall not include shipping, handling, and taxes. Shipping, handling and taxes shall be reimbursed at the amount for those charges listed on the invoice. The ambulatory service center shall provide a copy of the invoice and shall certify the actual cost of the item or items.

Section 6. Calculation for Hospitals and Ambulatory Surgery Centers Located Outside the Commonwealth of Kentucky. (1) A hospital or ambulatory surgery center located outside the boundaries of Kentucky shall be deemed to have agreed to be subject to this administrative regulation if it accepts a patient for treatment who is covered under KRS Chapter 342.

(2) The base cost-to-charge ratio for an out-of-state hospital shall be calculated in the same manner as for an in-state hospital, using Worksheets A and G-2 of the HCFA 2552.

(3) An out-of-state ambulatory surgery center having no contiguous Kentucky counties shall be assigned a cost-to-charge ratio equal to 120 percent of the average adjusted cost-to-charge ratio of all existing in-state acute care hospitals.

(4) An out-of-state ambulatory surgery center having one (1) or more contiguous Kentucky counties shall be assigned a cost-to-charge ratio in accordance with Section 5(1)(b)2.b. of this administrative regulation.

(5) An out-of-state ambulatory surgical center's assigned cost-to-charge ratio shall not exceed fifty (50) percent.

Section 7. Reports to be Filed by Hospitals. Each bill submitted by a hospital pursuant to this administrative regulation shall be submitted on a statement for services, Form UB-04 (Formerly UB-92), as required by 803 KAR 25:096.

Section 8. Billing and Audit Procedures. (1) A hospital providing the technical component of a procedure shall bill and be paid for the technical component.

(2)(a) An independent practitioner providing the professional component shall bill for and be paid for the professional component.

(b) An independent practitioner billing for the professional component shall submit the bill to the insurer on the appropriate statement for services, HCFA 1500, as required by 803 KAR 25:096.

(3) An Ambulatory Surgical Center may charge only one facility fee for one surgical session even though the surgical session may involve multiple procedures and CPT codes; more than one facility charge shall constitute a duplicate charge. The physician may submit charges on form HCFA 1500 using appropriate CPT codes.

Section 9. Miscellaneous. (1) A new hospital shall file a letter with the commissioner setting forth the start and end of its fiscal year within ninety (90) days of the date it commences operation.

(2)(a) An independent practitioner who does not receive direct compensation from the contracting hospital shall use the statement for services defined by 803 KAR 25:096 if billing for professional services and shall be compensated pursuant to the Kentucky Workers' Compensation Medical Fee Schedule for Physicians, incorporated by reference in 803 KAR 25:089.

(b) An independent practitioner who is directly compensated for services by the contracting hospital shall not bill for the service, but shall be compensated pursuant to the practitioner's agreement with the hospital.

(c) The hospital may bill for the professional component of the service under the Kentucky Workers' Compensation Medical Fee

Schedule for Physicians if the independent practitioner is directly compensated for services by the contracting hospital.

(3) A hospital-based practitioner shall not bill for a service he performs in a hospital if the service is regulated by 803 KAR 25:089, but he shall receive payment or salary directly from the employing hospital.]

~~Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) Form UB-04, 10-23-06; and~~

~~(b) HCFA 1500, 12-90.~~

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

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: September 10, 2020

FILED WITH LRC: September 11, 2020 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 24, 2020, at 1:00 p.m. (prevailing local time) 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 November 30, 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: B. Dale Hamblin, Jr., Assistant General Counsel, Department of Workers' Claims Mayo-Underwood Building, 3rd Floor, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 782-4404, fax (502) 564-0681, email Dale.Hamblin@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: B. Dale Hamblin, Jr.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets the fee schedule for hospitals, ambulatory surgical centers, and other specified facilities.

(b) The necessity of this administrative regulation: Pursuant to KRS 342.035, the commissioner is required to promulgate an administrative regulation regarding fee schedules.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation sets the fee schedule for hospitals, ambulatory surgical centers, and other specified facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It is imperative to have fee schedules to control the medical costs of the workers' compensation system. Injured employees should receive quality medical care and hospitals and ambulatory surgical centers should be appropriately reimbursed.

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

(a) How the amendment will change this existing administrative

regulation: The amendment clarifies the definition of "hospital" to include certain out-of-state facilities and rehabilitation agencies, defines "surgical hardware" and "surgical implants," establishes the method by which the cost of surgical implants will be reimbursed, and clarifies the calculation and use of a cost-to-charge ratio for ambulatory service centers.

(b) The necessity of the amendment to this administrative regulation: KRS 342.035(1) and 342.260(1) require the Commissioner of the Department of Workers' Claims to promulgate administrative regulations to adopt a medical fee schedule for fees, charges and reimbursements under KRS 342.020. KRS 342.020 requires the employer to pay for hospital treatment, including nursing, medical, and surgical supplies and appliances. The amendments to this administrative regulation clarifies fees for services and supplies provided to workers' compensation patients pursuant to KRS 342.020.

(c) How the amendment conforms to the content of the authorizing statutes: The schedule of fees has been appropriately updated to insure that medical fees are fair, current, and reasonable for similar treatment in the same community for general health insurance payments.

(d) How the amendment will assist in the effective administration of the statutes: The schedule of fees assists the workers' compensation program by updating fees for hospitals and other facilities to insure injured employees get qualified and appropriate medical treatment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All hospitals and ambulatory surgery centers providing services to injured workers pursuant to KRS Chapter 342, injured employees, insurance carriers, self-insurance groups, and self-insured employers and employers, third party administrators.

(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, third party administrators, and medical providers, hospitals and other facilities must calculate the charge for surgical implants in a manner different from other charges.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no additional cost to comply with the amendments to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Medical providers will receive fair, current, and reasonable fees for services provided to injured workers. Injured workers will be treated in appropriate medical facilities. Insurance carriers, self-insured groups, and self-insured employers will reimburse the cost of surgical implant hardware at an appropriate rate.

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

(a) Initially: There is no additional cost to the administrative body to implement these amendments.

(b) On a continuing basis: There are no continuing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Workers' Claims normal 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 sets forth a current schedule of fees to be paid to hospitals and other facilities. Fees have been updated to be fair, current, and reasonable for similar treatment in the same

community as paid by health insurers.

(9) TIERING: Is tiering applied? Tiering is not applied, because the updated fee schedule applies to all parties equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Workers' Claims and all 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 342.020, 342.035, 342.260(1)

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. As an employer, there may be some increased costs for medical services. It is impossible to estimate without knowing what medical services will be needed by injured workers.

(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? None.

(c) How much will it cost to administer this program for the first year? There will be no new administrative costs.

(d) How much will it cost to administer this program for subsequent years? There will be no new 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 because the fee schedule governs the cost of medical services between medical treatment providers and payment obligors.

PUBLIC PROTECTION CABINET
Department of Insurance
Agent Licensing Division
(Amendment)

806 KAR 9:025. [Agent] Licensing process.

RELATES TO: KRS 304.4-010, 304.9-105, 304.9-130, 304.9-150, 304.9-160, 304.9-230, 304.-260, 304.9-270, 304.9-295, 304.9-320, 304.9-430, 304.14-642

STATUTORY AUTHORITY: KRS 304.2-110, 304.9-080, 304.9-105, 304.9-160, 304.9-170, 304.9-230, 304.9-270, 304.9-295

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code. KRS 304.9-080 requires the commissioner to prescribe and furnish all forms required for licenses and appointments under Subtitle 9 of the insurance code. KRS 304.9-105 requires the commissioner to promulgate administrative regulations to mandate a preclicensing course of study for all agents except for a variable life and variable annuities line of authority and limited lines of authority. KRS 304.9-230 requires the commissioner to promulgate administrative regulations regarding a preclicensing course of study for limited lines of authority. KRS 304.9-160 requires the commissioner to establish the examination process, and KRS 304.9-170 provides exemptions to the examination requirement. KRS 304.9-270 requires the commissioner to prescribe a form required for appointment of individual and business entity agents. KRS 304.9-

295 requires the commissioner to establish forms and standards for the approval of pre-licensing and continuing education course providers, instructors, and courses. This administrative regulation establishes the guidelines for individual agents, business entities, consultants, and adjusters to become licensed, obtain appointments, as required, in Kentucky, maintain their licenses through the completion of continuing education, and surrender their license voluntarily or have their appointment terminated by an insurer.

Section 1. Pre[-]Licensing Course Requirements.

(1) An individual applying for an agent license shall complete a pre-licensing course of study approved by the commissioner for a minimum of forty (40) hours for life and health insurance, forty (40) hours for property and casualty insurance, or twenty (20) hours for each line of authority, as applicable, for the lines of authority included in the application, unless the applicant is:

- (a) Seeking a limited line of authority under KRS 304.9-230; or
- (b) Exempt pursuant to KRS 304.9-170.

(2)(a) All preclicensing courses, providers, and instructors shall be approved by the commissioner prior to offering a course.

(b) A preclicensing course provider shall submit either in writing or electronically through the department's Web site, <http://insurance.ky.gov>:

- 1. A Form KYP-01, Provider Approval Application, submitted once to become an approved course provider;
- 2. A Form CE/PL-100, Course Approval Application, for each course the approved provider wants to offer;
- 3. A Form CE/PL-200, Instructor Approval Application, for each course instructor;
- 4. The fee, as applicable, established for provider, instructor, and course approval in 806 KAR 4:010; and
- 5. An outline of the content of the course of study.

(c) In approving a preclicensing course of study, the commissioner or the commissioner's designee shall consider whether the course of study covers the subject matter included in the department's current study outlines or their equivalent.

(d) If approved, a preclicensing course of study approved by the commissioner shall be renewed biennially.

(e) If approved previously, the provider and instructor approval applications shall not be ~~[are not]~~ required to be submitted with each course.

(3) A preclicensing course of study shall be ~~[is]~~ valid for one (1) year from the date of completion.

(4) The preclicensing provider shall submit proof of completion of a course of study to the department and the applicant on Form CPL-01, Certificate of Pre-Licensing Course Completion or electronically through the department's Web site, <http://insurance.ky.gov>, for each applicant.

Section 2. Agent Examinations.

(1) An applicant ~~[All applicants]~~ for an individual agent ~~[a]~~ license shall file with the department ~~[commissioner]~~:

- (a) A completed Form 8301, NAIC Individual Insurance Producer License Application;
- (b) Documentation demonstrating successful completion of any required preclicensing course ~~[courses]~~;
- (c) A completed background check through the administrative office of the courts; and
- (d) Payment of the fees applicable to the license and lines of authority sought in accordance with ~~[according to]~~ KRS 304.4-010 and 806 KAR 4:010.

(2) If an examination is required, the documents and fees required in subsection (1) of this section shall be submitted prior to scheduling an examination.

(3) An individual applying for a line of authority identified in KRS 304.9-030(2) shall successfully ~~[successfully]~~ complete an examination ~~[examinations]~~ as follows:

- (a) For a life line of authority, a life examination;
- (b) For a health line of authority, a health examination;
- (c) For a property line of authority, a property examination;
- (d) For a casualty line of authority, a casualty examination;
- (e) For a personal line ~~[lines]~~, a property and casualty personal

lines examination;

(f) For a line of authority identified in accordance with KRS 304.9-030(2)(h), an examination appropriate for the kind of insurance; and

(g) For a variable life and variable annuity ~~product~~[~~products~~], no examination is required.

(4) An examination [Examinations] shall only be required for the following limited lines of authority identified in KRS 304.9-230:

(a) For a crop limited of authority, a crop examination; and

(b) For a rental vehicle limited line of authority, a rental vehicle examination shall be administered or monitored by a rental vehicle agent pursuant to 806 KAR 9:265.

(5) Every applicant for a license ~~for which~~ [required to take] an examination ~~is required~~ shall answer correctly seventy (70) percent of the questions to pass the examination.

(6) To retake an examination, an applicant shall submit ~~to the department~~:

(a) Form 8304, Examination Retake Form; and

(b) The applicable examination retake fees established in 806 KAR 4:010.

Section 3. Adjuster Examinations.

(1) ~~An applicant for an adjuster license shall file with the department~~:

(a) A completed Form 8301, NAIC Individual Insurance Producer License Application;

(b) The applicable fee established in 806 KAR 4:010.

(2) An individual applying for an adjuster line of authority identified in KRS 304.9-430(7) or (8) shall:

(a) For a property and casualty line of authority, successfully complete a property and casualty adjuster examination;

(b) For a workers' compensation line of authority, successfully complete a workers' compensation adjuster examination; and

(c) For a crop line of authority, either:

1. Successfully complete a crop adjuster examination; or

2. Demonstrate certification through the Crop Adjuster Proficiency Program, by providing to the department a copy of a Crop Adjuster Proficiency Program certification identification card with an active status issued by the federal Risk Management Agency, an agency within the U.S. Department of Agriculture, which specifies the applicant has passed a proficiency examination to adjust multi-peril crop claims.

(3) [(2)] Every applicant for a license ~~for which~~ [required to take] an examination ~~is required~~ shall answer correctly seventy (70) percent of the questions to pass the examination.

(4) ~~To retake an examination, an applicant shall submit to the department~~:

(a) Form 8304, Examination Retake Form; and

(b) The applicable examination retake fees established in 806 KAR 4:010.

Section 4. Consultant Examination.

(1) ~~An applicant for a consultant license shall file with the department~~:

(a) A completed Form 8301, NAIC Individual Insurance Producer License Application;

(b) ~~Payment of the fees applicable to the license in accordance with KRS 304.4-010 and 806 KAR 4:010.~~

(2) ~~The documents and fees required in subsection (1) of this section shall be submitted prior to scheduling an examination.~~

(3) An applicant for a consultant license shall answer correctly seventy (70) percent of the questions to pass the consultant examination and obtain a license.

(4) ~~To retake an examination, an applicant shall submit to the department~~:

(a) Form 8304, Examination Retake Form; and

(b) The applicable examination retake fees established in 806 KAR 4:010.

Section 5. Continuing Education.

(1) Continuing education providers, instructors, and courses shall be approved by the commissioner unless specifically exempted by KRS 304.9-295.

~~(a) To apply for approval as a continuing education provider, an applicant~~ [Continuing education courses providers] shall submit ~~to the department~~:

1. ~~A~~ [a] completed Form KYP-01, Provider Approval Application; and

2. For new proprietary education providers, documentation of approval by the Kentucky Commission on Proprietary Education.

~~(b) To apply for approval of a continuing education instructor, an approved continuing education provider~~ [Continuing education course instructors] shall submit ~~to the department~~:

1. ~~A~~ [a] completed Form CE/PL-200, Instructor Approval Application; and

2. The applicable fee established in 806 KAR 4:010.

~~(c)1. To apply for approval of a continuing education course, an approved continuing education provider~~ [A continuing education course] shall ~~submit to the department~~ [be filed by submitting the] Form CE/PL-100, Course Approval Application [form] at least sixty (60) days in advance of advertising ~~the course~~, unless good cause is demonstrated by the provider for the failure to ~~timely submit the form~~ [file]. If the course is offered in multiple states, the provider may use the National Association of Insurance Commissioners', NAIC Uniform Continuing Education Reciprocity Course Filing Form for approval.

2. ~~After approval of the continuing course and the determination of the number of credit hours assigned to the course, the continuing education provider shall pay to the department the applicable fee established in 806 KAR 4:010.~~

(d) The commissioner shall consider the following in determining approval of a continuing education ~~course~~ [courses]:

1. Whether the applicant has remitted all fees due once the total credit hours are determined pursuant to 806 KAR 4:010;

2. Whether the continuing education course contributes directly, at a professional level, to the competence of the licensee with respect to the following subjects:

a. Insurance, annuities, and risk management;

b. Insurance laws and administrative regulations;

c. Mathematics, statistics, and probability;

d. Economics;

e. Business law;

f. Finance;

g. Taxes;

h. Agency management including all aspects of agency operations that support the long- term stability of the agency system and encourage the service and protection of customers;

i. Ethics; or

j. Other topics approved by the commissioner which contribute directly at a professional level to the competence of the licensee.

(e) The continuing education course shall:

1. Include current, relevant, accurate, and valid reference materials, graphics, and interactivity;

2. Have clearly defined objectives and course completion criteria;

3. Have a written outline and study materials or texts; and

4. Include a means for evaluation.

~~(f) A self-study course~~ [Self-study courses] shall require successful completion of an examination.

(g) Continuing education credit shall not be provided for:

1. Any course used to prepare for taking an examination required pursuant to KRS Chapter 304;

2. Committee service for professional organizations;

3. Computer training to develop functional skills; and

4. Motivational or self-help courses.

(h) The commissioner shall measure continuing education course credit hours by the following:

1. Each credit hour for live instruction courses, completed in a classroom, by video, teleconference, or computer, shall include at least fifty (50) minutes of continuous instruction or participation; and [-]

2. Each credit hour for recorded self-study courses, completed online or by correspondence, shall be calculated in accordance with the National Association of Insurance Commissioners', Recommended Guidelines for Online Courses.

(i) Any material change in a previously approved continuing

education course shall be filed with and approved by the commissioner prior to use.

(j) Biennially, a continuing education provider [providers] shall request renewal [renew-approval] of a continuing education course [courses] and a continuing education instructor [instructors] by submitting the information required by subsection (1)(b) and (c) of this section and the fee established in 806 KAR 4:010 to the department on or before [all applicable information and fee payment to the commissioner prior to] June 30 of even-numbered years.

(2) Licensees engaging in the sale, solicitation, or negotiation of specialized products listed [as noted] in paragraphs (a), (b) and (c) of this subsection are subject to the following:

(a) A resident [Resident] individual agent [licensees] selling, soliciting, or negotiating insurance products that qualify under the Long-Term Care Partnership Insurance Program, as described in KRS 304.14-642, shall complete eight (8) hours of initial long-term care training, and four (4) hours of additional training for each biennial continuing education compliance period;

(b) A resident individual agent [Any resident-licensee] who holds [licensed with] a property and casualty line [Property and Casualty lines] of authority selling federal flood insurance shall complete three (3) hours of training in accordance with the Flood Insurance Reform Act of 2004, as set forth in Pub.L. 108-264, Section 207; and

(c) An individual agent [Any individual-licensee] who holds a life line of authority shall successfully complete four (4) hours of initial training, prior to the sale, solicitation, or negotiation of annuities, unless the agent [licensee] has documented the completion of substantially similar training in another state, that shall include information on the following topics:

1. The types of annuities and various classifications of annuities;
2. Identification of the parties to an annuity;
3. The manner in which fixed, variable, and indexed annuity contract provisions affect consumers;
4. The application of income taxation of qualified and non-qualified annuities;
5. The primary uses of annuities; and
6. Appropriate standard of conduct, sales practices, replacement, and disclosure requirements.

(d)1. An agent who has completed an annuity training course approved by the department prior to July 1, 2021 shall, within six (6) months after July 1, 2021, complete either:

a. A new four (4) hour credit training course approved by the Department of Insurance; or

b. An additional one-time one (1) credit training course approved by the Department of Insurance and provided by a Department of Insurance-approved education provider on appropriate sales practices, replacement and disclosure requirements under 806 KAR 12:120.

2. A non-resident agent who has completed a training course that is substantially similar to the training course required in subparagraph 1. of this paragraph shall meet the requirements of subparagraph 1. of this paragraph.

(3) A continuing [Continuing] education provider [providers] shall:

(a) Within thirty (30) days of completion of a continuing education course, submit electronically through the department's Web site, <http://insurance.ky.gov> [to the commissioner] the Continuing Education Certificate of Completion forms and attendance roster for all licensees who satisfactorily completed the course;

(b) Issue the Form CE-301, Approved Continuing Education Certificate of Completion form to the licensee that successfully completed the course; and

(c) Maintain all attendance rosters and course completion certificates in hard copy or electronic format for at least five (5) years for review, as necessary, by the commissioner.

(4) A licensee shall be [Licensees remain] responsible for verifying that a continuing education provider has submitted a continuing education certificate of completion form to the department for a continuing education course that the licensee has

successfully completed. If the continuing education provider has not submitted a continuing education certificate of completion form in accordance with subsection (3) of this section, the licensee shall submit continuing education certificate of completion to the department within the timeframes established in KRS 304.9-260 and 304.9-295. [the timely submission of a continuing education certificates of completion to the commissioner even if the provider does not fulfill their responsibilities under this section.]

(5) A licensee [Licensees] may carry forward up to twelve (12) excess credit hours to the subsequent continuing education biennium.

(6) If the department does not receive proof of fulfillment of a licensee's continuing education requirement on or before the deadline established in KRS 304.9-260 and 304.9-295, the commissioner shall:

(a) Make information of the deficiency available to the licensee; and

(b) Terminate the license if proof of completion of the deficient hours is not received as prescribed by KRS 304.9-295.

(7) A licensee [Licensees] whose license is terminated due to the failure to submit the certification of continuing education by the required deadline established in KRS 304.9-260 and 304.9-295 shall:

(a) Have the license reissued within twelve (12) months of the license termination if the licensee:

1. Satisfies the delinquent continuing education requirements;
2. Submits a new application with required attachments included within Section 2(1) or Section 3(1) of this administrative regulation for a license; and
3. Submits the applicable fees established in 806 KAR 4:010; or

(b) Complete [Be required to complete] all licensing requirements specified in KRS Chapter 304, Subtitle 9 and this administrative regulation if [after] the continuing education delinquency remains unsatisfied for twelve (12) months or longer.

(8) A licensee may seek exemption from continuing education [Continuing Education] requirements by completing a Form CE AFF 304, Affidavit for Exemption from Continuing Education Requirement.

(a) An agent exempted from continuing education requirements on the basis of a supporting affidavit that the agent license is maintained for the sole purpose of receiving renewals or deferred commissions may withdraw the continuing education exemption and may have all restrictions against selling, soliciting, and negotiating insurance removed from the agent license by:

1. Completing the continuing education requirements for the immediate preceding continuing education biennium;
2. Providing a certification of completion of those continuing education requirements; and
3. Providing a signed, written statement withdrawing the affidavit.

(b) The false use of a supporting affidavit that the agent license is maintained for the sole purpose of receiving renewals or deferred commissions for any reason, including for the purpose of obtaining an extension for completion of continuing education requirements for a continuing education biennium, shall be a violation of KRS 304.9-295 and shall subject the affiant to suspension or revocation of the agent license.

(9) Members of the Armed Forces who have been mobilized or deployed in support of their duties may:

(a) Request an extension of time for completion of continuing education requirements, in accordance with KRS 304.9-260(3), by filing with the department the Form MLW-01, Request for Waiver of Renewal Procedures or Exemption from Examination or Extension for Continuing Education Due to Active Military Service Deployment; or

(b) Request a waiver of continuing education requirements in accordance with KRS 304.9-260(3).

Section 6. Business Entity Agent Application and Designation.

(1) A business entity applying for a license in accordance with KRS Chapter 304 Subtitle 9 or Subtitle 10 [seeking an agent license pursuant to KRS 304.9-130] shall submit to the department:

(a) Form 8301-BE, Uniform Application for Business Entity

Insurance License; and

(b) The applicable fee established in 806 KAR 4:010.

(2) A business entity shall submit Form 8305, Business Entity Designation or Termination of Designation Form, to designate or terminate individuals authorized to act under the business entity's license or[and] appointments.

Section 7. Agent Appointment.

(1) Each insurer shall appoint each agent acting on the insurer's behalf within fifteen (15) days of the agent contract's execution or the date on which the agent submits their first application to the insurer, whichever is earlier, in accordance with [as established by] KRS 304.9-270.

(2) An insurer seeking approval of an agent's appointment shall submit to the department:

(a) Form 8302-AP, Producer Appointment; and

(b) The [the] applicable filing fee established in 806 KAR 4:010.

(3) An insurer terminating an appointment pursuant to KRS 304.9-280 shall submit Form 8302-TE, Termination of Producer Appointment within thirty (30) days following the effective date of an agent's termination.

(4) The requirements of this section shall apply to both individual and business entity agent appointments.

Section 8. Record Correction. A licensee shall submit Form 8303, Record Correction Form to the department [with the commissioner] to make a change or update the licensee's:

(1) Name;

(2) Address;

(3) Phone number;

(4) Email address; and

(5) Name in which the licensee is doing business.[name and address.]

Section 9. Material Incorporated by Reference.

(1) The following material is incorporated by reference:

(a) Form CPL-01, "Certificate of Pre-licensing Course Completion," (8/2019);

(b) Form 8301, "NAIC Individual Insurance Producer License Application," (8/2019);

(c) Form 8301-BE, "Uniform Application for Business Entity Insurance License Application," (8/2019);

(d) Form 8302-AP, "Producer Appointment," (8/2019);

(e) Form 8302-TE, "Termination of Producer Appointment," (8/2019);

(f) Form 8305, "Business Entity Designation or Termination of Designation Form," (8/2019);

(g) Form 8304, "Examination Retake Form," (8/2019);

(h) Form KYP-01, "Provider Approval Application," (8/2019);

(i) Form CE/PL-100, "Course Approval Application," (8/2019);

(j) Form CE/PL-200, "Instructor Approval Application," (8/2019);

(k) Form CE-301, "Approved Continuing Education Certificate of Completion," (12/2019);

(l) Form CE AFF 304, "Affidavit for Exemption from Continuing Education," (8/2019);

(m) Form 8303, "Record Correction Form," (8/2019);

(n) Form MLW-01, "Request for Waiver of Renewal Procedures or Exemption from Examination or Extension for Continuing Education Due to Active Military Service Deployment," (8/2019);

(o) "NAIC Uniform Continuing Education Reciprocity Course Filing Form," (8/2019); and

(p) "Recommended Guidelines for Online Courses", National Association of Insurance Commissioners, 3/2015.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, Mayo-Underwood Building, 500 Mero Street[245 West Main Street], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SHARON P. CLARK, Commissioner
KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: August 14, 2020

FILED WITH LRC: August 17, 2020 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. November 24th, 2020 at 500 Mero Street, Frankfort, Kentucky 40602. 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 p.m. on November 30, 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: DJ Wasson, Deputy Commissioner, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email dj.wasson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the guidelines for individual agents, business entities, consultants, and adjusters to become licensed, obtain appointments, as required, in Kentucky, maintain their licenses through the completion of continuing education, and surrender their license voluntarily or have their appointment terminated by an insurer.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide additional information to clarify the licensing requirements for adjusters and apprentice adjusters.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code. KRS 304.9-080 requires the commissioner to prescribe and furnish all forms required for licenses and appointments under Subtitle 9 of the insurance code. KRS 304.9-105 requires the commissioner to promulgate administrative regulations to mandate a prelicensing course of study for all agents except for a variable life and variable annuities line of authority and limited lines of authority. KRS 304.9-230 requires the commissioner to promulgate administrative regulations regarding a prelicensing course of study for limited lines of authority. KRS 304.9-160 requires the commissioner to establish the examination process, and KRS 304.9-170 provides exemptions to the examination requirement. KRS 304.9-270 requires the commissioner to prescribe a form required for appointment of individual and business entity agents. KRS 304.9-295 requires the commissioner to establish forms and standards for the approval of pre-licensing and continuing education course providers, instructors, and courses. This administrative regulation establishes the guidelines for individual agents, business entities, consultants, and adjusters to become licensed, obtain appointments, as required, in Kentucky, maintain their licenses through the completion of continuing education, and surrender their license voluntarily or have their appointment terminated by an insurer.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide the Department with the necessary information to appropriately and effectively evaluate an applicant for licensure.

(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 adopts the annuity training

requirements related to the National Association of Insurance Commissioner's (NAIC) model law related to Suitability on Annuity Transactions. Additionally, the amendment updates the address of the Department of Insurance.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure agents selling annuities receive the proper training and to ensure the general public is informed of the Department's new address.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code. KRS 304.9-080 requires the commissioner to prescribe and furnish all forms required for licenses and appointments under Subtitle 9 of the insurance code. KRS 304.9-105 requires the commissioner to promulgate administrative regulations to mandate a prelicensing course of study for all agents except for a variable life and variable annuities line of authority and limited lines of authority. KRS 304.9-230 requires the commissioner to promulgate administrative regulations regarding a prelicensing course of study for limited lines of authority. KRS 304.9-160 requires the commissioner to establish the examination process, and KRS 304.9-170 provides exemptions to the examination requirement. KRS 304.9-270 requires the commissioner to prescribe a form required for appointment of individual and business entity agents. KRS 304.9-295 requires the commissioner to establish forms and standards for the approval of pre-licensing and continuing education course providers, instructors, and courses. This administrative regulation establishes the guidelines for individual agents, business entities, consultants, and adjusters to become licensed, obtain appointments, as required, in Kentucky, maintain their licenses through the completion of continuing education, and surrender their license voluntarily or have their appointment terminated by an insurer.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will conform to the national training requirements for agents selling annuities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment will impact the approximately 19,795 agent licensed to sell annuities 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: All agents licensed to sell annuities must complete the required training listed the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Each approved provider can establish its own cost for offering the training course.

(c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance, licensees will be appropriately trained on the sale of annuity products, as required to maintain their license.

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

(a) Initially: Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance.

(b) On a continuing basis: Implementation of this amendment is not anticipated to have an on-going cost on the Department of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks 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 of fees will not 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? is not applied because this regulation applies equally to all licensees.

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?

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110, 304.9-080, 304.9-105, 304.9-160, 304.9-170, 304.9-230, 304.9-270, 304.9-295

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate significant revenue for the Department of Insurance 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 significant revenue for the Department of Insurance for subsequent years

(c) How much will it cost to administer this program for the first year? There should not be a significant cost to administer this program initially

(d) How much will it cost to administer this program for subsequent years? There should not be a significant cost to administer this program in subsequent years

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation:

PUBLIC PROTECTION CABINET

Department of Insurance

Agent Licensing Division

(Amendment)

806 KAR 9:030. Adjuster licensing restrictions.

RELATES TO: KRS 304.9-020, 304.9-430, 304.9-432(2)(d), 304.9-440

STATUTORY AUTHORITY: KRS 304.2-110(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner of the Department of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation restricts the persons whom an adjuster may represent to prevent conflicts of interest, and clarifies the circumstances under which the restriction for holding only one (1) apprentice adjuster license applies.

Section 1. (1) An independent, staff, or public adjuster licensed pursuant to the Kentucky Insurance Code shall not represent the interest of both insurer and the insured or claimant.

(2) When applying for an adjuster license, an applicant shall elect to act solely on behalf of either:

(a) Insurers; or

(b) Persons claiming benefits under insurance or annuity contracts.

(3) A licensed adjuster shall act in a fiduciary capacity on

behalf of his or her principal.

Section 2. An individual may hold only one (1) apprentice adjuster license until the individual is issued an adjuster license in accordance with KRS 304.9-430. Once an individual has held an adjuster license in accordance with KRS 304.9-430, the individual may again be eligible to hold one (1) apprentice adjuster license.

Section 3. Temporary Adjuster Registration for Catastrophe. Insurers seeking to temporarily register emergency independent or staff adjusters if there is a catastrophe under KRS 304.9-430(14) shall submit to the commissioner the Form 8307, Request for Unlicensed Adjuster Representing Insurer to Adjust Losses Resulting from a Catastrophe.

Section 4. Incorporation by Reference. (1) "Request for unlicensed adjuster representing an insurer to adjust losses resulting from a catastrophe, Form #8307" (07/2020[95/2019]), is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law at the Kentucky Department of Insurance, Mayo-Underwood Building, 500 Mero Street[215 W. Main St.], Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m.

SHARON P. CLARK, Commissioner
KERRY B. HARVEY, Secretary

APPROVED By AGENCY: August 14, 2020

FILED WITH LRC: August 14, 2020 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on November 24, 2020 at 500 Mero Street, Frankfort, Kentucky 40602. 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 p.m. on November 30, 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: DJ Wasson, Deputy Commissioner, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email dj.wasson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation restricts the persons whom an adjuster may represent thus preventing any conflicts of interest and clarifies the circumstances under which the restriction for holding only one apprentice adjuster license applies.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide additional information to clarify the licensing requirements for adjusters and apprentice adjusters.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the commissioner may adopt reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code as defined in KRS 304.1-010. This administrative regulation restricts the persons whom an adjuster may represent thus preventing any conflicts of interest and clarifies the circumstances under which the restriction for holding only one apprentice adjuster license applies.

(d) How this administrative regulation currently assists or will

assist in the effective administration of the statutes: This administrative regulation will supplement the general statutory requirements for the licensing of adjusters and apprentice adjusters by clarifying that an adjuster must determine whether he or she represents the interests of an insurer or an insured at the time of licensure and by clarifying that if an adjuster loses his or her license, he or she is eligible to apply for an apprentice adjuster license prior to taking the adjuster 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: The amendment lists the new address of the Department of Insurance and is strictly technical.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure the general public is informed of the Department's new address.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 provides that the commissioner may adopt reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code as defined in KRS 304.1-010. The amendment includes technical changes to conform to statutory changes.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will ensure all licensed agents, those intending to be licensed in the commonwealth, and consumers can send correspondence to the correct address of the Department.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment will have no impact on of applicants for an apprentice adjuster, independent, staff and public adjuster license.

(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: There will be no impact, this is a technical amendment.

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment:

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

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

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

(a) Initially: Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance.

(b) On a continuing basis: Implementation of this amendment is not anticipated to have an on-going cost on the Department of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks 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 of fees will not be necessary because additional personnel is likely unnecessary.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all workers' compensation self-insured groups operating in Kentucky.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance as the implementer of the regulation and, specifically, the Agent Licensing Division.

(2) Identify each state or federal statute or federal regulation

that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(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. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate significant revenue for the Department of Insurance 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 significant revenue for the Department of Insurance for subsequent years.

(c) How much will it cost to administer this program for the first year? There should not be a significant cost to administer this program initially.

(d) How much will it cost to administer this program for subsequent years?? There should not be a significant cost to administer this program in subsequent years.

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

Revenues (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation:

**PUBLIC PROTECTION CABINET
Department of Insurance
Agent Licensing Division
(Amendment)**

806 KAR 9:190. Disclosure requirements for financial institutions authorized to engage in insurance agency activities.

RELATES TO: KRS 286.3-030(4), 304.9-135

STATUTORY AUTHORITY: KRS 304.9-135(2)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.9-135(2)(g) requires the Commissioner to promulgate administrative regulations to specify the disclosure forms required by KRS 304.9-135(2)(b), (c), and (f). This administrative regulation specifies the disclosure forms for use by financial institutions authorized to engage in insurance agency activities.

Section 1. A financial institution authorized by law to engage in insurance agency activities shall provide to an insurance consumer the disclosure forms:

- (1) Notice of Free Choice of Agent and Insurer; and
- (2) Financial Institution Disclosures.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) FI-02, "Notice of Free Choice of Agent and Insurer", (8/2020 edition) [(7/2002 edition)]; and

(b) FI-03, "Financial Institution Disclosures", (8/2020 edition) [(7/2002 edition)].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, Mayo-Underwood Building, 500 Mero Street[245 West Main Street], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SHARON P. CLARK, Commissioner
KERRY B. HARVEY, Secretary

APPROVED By AGENCY: August 14, 2020

FILED WITH LRC: August 14, 2020 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on November 24, 2020 at 500 Mero Street, Frankfort, Kentucky 40602. 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 p.m. on November 30, 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: DJ Wasson, Deputy Commissioner, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email dj.wasson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation specifies the disclosure forms for use by financial institutions authorized to engage in insurance agency activities.

(b) The necessity of this administrative regulation: This administrative regulation ensures consumers are aware of the financial institutions ability to engage in insurance activities, holding financial institutions accountable for insurance actions taken.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.9-135(2)(g) requires the Commissioner to promulgate administrative regulations to specify the disclosure forms required by KRS 304.9-135(2)(b), (c), and (f).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures that any financial institution partaking in insurance activities have met KRS 304.19-135.

(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 in this administrative regulation is a technical change to the address of the Department of Insurance. No substantive amendments have been made.

(b) The necessity of the amendment to this administrative regulation: This necessity of this amendment to this administrative regulation is the ensure that the general public is aware of where to send any necessary correspondence(s).

(c) How the amendment conforms to the content of the authorizing statutes: The commissioner shall promulgate administrative regulations in accordance with KRS Chapter 13A that specify the disclosure forms required by subsections (b), (c), and (f) of this section.

(d) How the amendment will assist in the effective administration of the statutes: Financial Institutions as well as the general public will be aware of where to find the cited disclosure forms due to this amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All financial institutions interested in insurance activities.

(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 financial institution authorized by law to engage in insurance agency activities shall provide to an insurance consumer the disclosure forms: Notice of

Free Choice of Agent and Insurer; and Financial Institution Disclosures.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is no cost associated with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities: Consumers are aware of the financial institutions disclosure to partake in insurance activities and financial institutions are permitted to partake in said activities.

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

(a) Initially: Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance.

(b) On a continuing basis: Implementation of this amendment is not anticipated to have an on-going cost on the Department of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks 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 of fees will not be necessary because additional personnel is likely unnecessary.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation affects all financial institutions participating in insurance activities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance 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 304.9-135(2)(g)

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

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

(c) How much will it cost to administer this program for the first year? This administrative regulation will not have a cost to implement in the first year.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not have a cost to administer subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: The program including receipt and review of annual audited financial statements will be handled by internal personnel. At this point, the Department anticipates all duties will be handled by current personnel.

PUBLIC PROTECTION CABINET Department of Insurance Agent Licensing Division (Amendment)

806 KAR 9:360. Pharmacy Benefit Manager License.

RELATES TO: KRS 304.1-050, 304.2-310, 304.9-053, 304.9-054, 304.9-133, 304.10-040, 304.17A-163, 304.17A-165, 304.17A-607, 45 C.F.R. 156.122

STATUTORY AUTHORITY: KRS 304.2-110, 304.9-053(2), 304.9-054(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of Insurance to promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.9-053(2) requires a pharmacy benefit manager seeking a license to apply to the commissioner in writing on a form provided by the department. KRS 304.9-054(6) requires the department to promulgate administrative regulations to implement and enforce the provisions of KRS 304.9-053, 304.9-054, 304.9-055, and 304.17A-162. This administrative regulation establishes requirements for the licensure of pharmacy benefit managers.

Section 1. Definitions. (1) "Admitted insurer" is defined by KRS 304.10-030(1).

(2) "Commissioner" is defined by KRS 304.1-050(1).

(3) "Department" is defined by KRS 304.1-050(2).

(4) "Maximum allowable cost" is defined by KRS 304.17A-161(3).

(5) "Nonadmitted insurer" is defined by KRS 304.10-030(8).

(6) "Pharmacy benefit manager" is defined by KRS 304.9-020(15).

Section 2. Initial License and Renewal. (1) An applicant for a pharmacy benefit manager license or renewal license from the commissioner shall submit the following in the format as outlined in the instruction on the Pharmacy Benefit Manager License Application [hard copy format] to the department:

(a) The Pharmacy Benefit Manager License Application;

(b) The fee set forth in KRS 304.9-053(3) and the penalty fee, if applicable, set forth in KRS 304.9-053(5);

(c) The following evidence of financial responsibility:

1. A certificate of insurance from either an admitted insurer or a nonadmitted insurer, in accordance with KRS 304.10-040, stating that the insurer has and will keep in effect on behalf of the pharmacy benefit manager a policy of insurance covering the legal liability of the licensed pharmacy benefit manager's erroneous acts or failure to act in his or her capacity as a pharmacy benefit manager, and payable to the benefit of any aggrieved party in the sum of not less than \$1,000,000; or

2. A cash surety bond issued by a corporate surety authorized to issue surety bonds in this commonwealth, in the sum of \$1,000,000, which shall be subject to lawful levy of execution by any party to whom the licensee has been found to be legally liable;

(d) The name of at least one (1) responsible individual who shall be responsible for the pharmacy benefit manager's compliance with KRS Chapter 304 and KAR Title 806 and who is:

1. Licensed as an administrator in Kentucky; and

2. Designated in accordance with KRS 304.9-133;

(e) If performing utilization review in accordance with KRS 304.17A-607, the pharmacy benefit manager's utilization review registration number;

(f) The following written policies and procedures to be used by the pharmacy benefit manager:

1. Appeals dispute resolution process;

2. [Maximum allowable cost appeals process;] An appeals process for any pricing system used to determine the cost of a generic drug;

3. Exceptions policy and override policy required by 45 C.F.R. 156.122(c) and KRS 304.17A-163 and KRS 304.17A-165; and

4. Pharmacy and Therapeutics committee membership standards and duties as required by 45 C.F.R. 156.122(a); and

(g) Proof of registration with the Kentucky Secretary of State.

(2)(a) Upon receipt of a complete application as required by subsection (1) of this section, the commissioner shall review the application and:

1.a. Approve the application; and

b. Issue the applicant the pharmacy benefit manager license;

2. Notify the applicant that additional information is needed in accordance with paragraph (b) of this subsection; or

3. Deny the application in accordance with paragraph (c) of this subsection.

(b)1. If supplemental or additional information is necessary to complete the application, the applicant shall submit that information within thirty (30) days from the date of the notification from the commissioner.

2. If the missing or necessary information is not received within thirty (30) days from the date of the notification, the commissioner shall deny the application unless good cause is shown. To determine if the applicant has demonstrated good cause, the commissioner shall weigh the justification provided against any other issues, including [such as] if the applicant had submitted any prior good cause excuses for the same request. Some examples of good cause include:

a. Personnel related issues, including [such as] the individual responsible for responding was transferred, terminated, or became incapacitated due to illness;

b. A need to obtain information that was not immediately available and had to be requested from other sources;

c. A lack of sufficient resources to respond to large requests; and

d. Information technology ([IT]), operational, or equipment malfunctions causing unexpected delays.

(c) If the commissioner determines that the applicant does not meet the requirements for licensure, or if the application is denied pursuant to paragraph (b)2. of this subsection, the commissioner shall:

1. Provide written notice to the applicant that the application has been denied; and

2. Advise the applicant that a request for a hearing may be filed in accordance with KRS 304.2-310.

(3)(a) Except as provided in paragraph (b) of this subsection, a pharmacy benefit manager license shall:

1. Be renewed annually as required by subsection (4) of this section; or

2. Expire on March 31.

(b) If the license was issued on or before January 1, 2017, the license shall expire on March 31, 2018, if not renewed as required by subsection (4) of this section.

(4)(a) A renewal application shall include the items required by subsection (1) of this section.

(b) If the renewal application is submitted between April 1 and May 31, the application required by subsection (1) of this section shall be accompanied by a penalty fee of \$500 in accordance with KRS 304.9-053(5).

Section 3. Notice of Changes. Within thirty (30) days of any change, a licensee shall notify the commissioner of all changes among its members, directors, officers, and other individuals designated or registered to the license, including a listing of clients identifying any self-funded non-ERISA plans and any delegated contractors, and any changes to its written policies and procedures submitted pursuant to Section 2(1)(f) of this administrative regulation.

Section 4. Incorporation by Reference. (1) "Pharmacy Benefit Manager License Application", Form PBM, 07/2020 [04/2017], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, Mayo-Underwood Building, 500 Mero Street [245 West Main Street], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SHARON P. CLARK, Commissioner

KERRY B. HARVEY, Secretary

APPROVED By AGENCY: August 14, 2020

FILED WITH LRC: August 14, 2020 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on November 24, 2020 at 500 Mero Street, Frankfort, Kentucky 40602. 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 p.m. on November 30, 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: DJ Wasson, Deputy Commissioner, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email dj.wasson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for the licensure of pharmacy benefit managers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the application form and required attachments for a pharmacy benefit manager requesting licensure in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner of Insurance to promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.9-053(2) requires a pharmacy benefit manager seeking a license to apply to the commissioner in writing on a form provided by the department. KRS 304.9-054(6) requires the department to promulgate administrative regulations to implement and enforce the provisions of KRS 304.9-053, 304.9-054, 304.9-055, and 304.17A-162. This administrative regulation establishes the licensure requirements for pharmacy benefit managers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation will provide the Department of Insurance with the relevant information necessary to evaluate a pharmacy benefit manager's ability to conduct business 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: The amendment lists the new address of the Department of Insurance and is strictly technical.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure the general public is informed of the Department's new address.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment corrects the address of the Department of Insurance in both the administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This technical amendment will ensure that applicants are aware of the physical address of the Department of Insurance.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact the 49 licensed pharmacy benefit managers and an unknown

number of new applicants.

(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: The amendment is a technical amendment to correct the physical address of the Department in the administrative regulation. Applications will continue to be submitted to the P.O. Box.

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

(c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance, complete applications to obtain and maintain a pharmacy benefit manager license in Kentucky will be submitted.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There will not be a cost to implement the technical amendments to this administrative regulation.

(a) Initially: Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance.

(b) On a continuing basis: Implementation of this amendment is not anticipated to have an on-going cost on the Department of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks 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 of fees will not be necessary. Review of these applications is an existing function for the Department that are handled by existing personnel. The amendments are technical.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The fee to apply for a pharmacy benefit manager license and renewal is \$1,000. This amendment does not change these existing fees.

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all pharmacy benefit managers applying for licensure in Kentucky.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the 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. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate significant revenue for the Department of Insurance 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 significant revenue for the Department of Insurance for subsequent years.

(c) How much will it cost to administer this program for the first year? There should not be a significant cost to administer this program initially.

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

subsequent years?? There should not be a significant cost to administer this program in subsequent years

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation:

PUBLIC PROTECTION CABINET Department of Insurance Health and Life Division (Amendment)

806 KAR 12:120. Suitability in annuity transactions.

RELATES TO: KRS 304.1-040, 304.5-030, 304.9-020(1), 304.9-040, 304.9-390, 304.12-010, 304.12-030(1)(a), 304.99-020, 26 U.S.C. 401, 403, 408, 414, 457, 29 U.S.C. 1001-1461

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. This administrative regulation requires licensees to act in the best interest of the consumer when making a recommendation of an annuity and to require insurers to establish [establishes] and maintain a system to supervise recommendations [standards and procedures for recommendations to consumers that result in a transaction involving annuity products] so that the insurance needs and financial objectives of consumers during the transaction are effectively [appropriately] addressed.

Section 1. Definitions. (1) "Agent" is defined in KRS 304.9-020(1).

(2) "Annuity" is defined in KRS 304.5-030.

(3) "Cash Compensation" means any discount, concession, fee, service fee, commission, sales charge, loan, override, or cash benefit received by a producer in connection with the recommendation or sale of an annuity from an insurer, intermediary, or directly from the consumer.

(4)[(3)] "Commissioner" is defined by KRS 304.1-050(1).

(5) "Comparable standards" means:

1. With respect to broker-dealer and registered representatives of broker-dealers, applicable SEC and FINRA rules pertaining to best interest obligations and supervision of annuity recommendations and sales, including Regulation Best Interest and any amendments or successor regulations thereto;

2. With respect to investment advisers registered under federal and state securities laws or investment adviser representatives, the fiduciary duties and all other requirements imposed on such investment advisers or investment adviser representatives by contract or under the Investment Advisers Act of 1940, including the Form ADV and interpretations; and

3. With respect to plan fiduciaries or fiduciaries, means the duties, obligations, prohibitions and all other requirements attendant to such status under the Employee Retirement Security Act of 1974 (ERISA) or the Internal Revenue Code (IRC) and any amendments or successor statutes thereto.

(6)[(4)] "Consultant" is defined in KRS 304.9-040.

(7)[(5)] "Financial professional" means a licensee that is regulated and acting as:

1. A broker-dealer registered under federal and state securities laws or a registered representative of a broker-dealer;

2. An investment adviser registered under federal and state securities laws or an investment adviser representative associated with the federal and state registered investment adviser; or

3. A plan fiduciary under Section 3(21) of the ERISA or fiduciary under Section 4975 (e)(3) of the IRC or any amendments or successor statutes thereto.

(8) "FINRA" means the Financial Industry Regulatory Authority or a succeeding agency.

(9)[(6)] "Insurance producer" is defined in KRS 304.9-020(10).

(10)[(7)] "Insurer" is defined in KRS 304.1-040.

(11) "Intermediary" means an entity contracted directly with an insurer or with another entity contracted with an insurer to facilitate the sale of the insurer's annuities by producers.

(12)[(8)] "Licensee" means agent, or an insurer if an agent is not involved, and consultant.

(13) "Material conflict of interest" means a financial interest of the producer in the sale of an annuity that a reasonable person would expect to influence the impartiality of a recommendation but does not include cash compensation or non-cash compensation.

(14) "Non-cash compensation" means any form of compensation that is not cash compensation.

(15) "Nonguaranteed elements" means the premium, credited interest rates including bonus, benefits, values, dividends, non-interest based credits, charges or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue.

(16)[(9)] "Recommendation" means advice provided by a licensee to an individual consumer that results in a purchase, exchange, or replacement of an annuity in accordance with that advice.

(17)[(40)] "Replacement" is defined in KRS 304.12-030(1)(a).

(18) "SEC" means the United States Securities and Exchange Commission.

(14) "Suitability information" means information that is reasonably appropriate to determine the suitability of a recommendation in accordance Section 3(2).]

Section 2. Exemptions. This administrative regulation shall not apply to recommendations involving:

(1) Direct response solicitations without a recommendation based on information collected from the consumer pursuant to this administrative regulation; or

(2) Contracts used to fund:

(a) An employee pension or welfare benefit plan covered by the Employee Retirement and Income Security Act (ERISA), codified as 29 U.S.C. 1001 to 1461;

(b) A plan described by 26 U.S.C. 401(a), (k), 403(b), 408(k), or (p), as amended, if established or maintained by an employer;

(c) A government or church plan defined in 26 U.S.C. 414, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under 26 U.S.C. 457;

(d) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(e) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(f) Prepaid funeral contracts.

Section 3. Duties of Insurers and Licensees.

(1) Best interest obligations. A licensee, when making a recommendation of an annuity, shall act in the best interest of the consumer under the circumstances known at the time the recommendation is made, without placing the licensee's or the insurer's financial interest ahead of the consumer's interest. A licensee shall have acted in the best interest of the consumer if he has satisfied the following obligations regarding care, disclosure, conflict of interest and documentation.

(a) 1. Care obligation. The licensee, in making a recommendation, shall exercise reasonable diligence, care and skill to:

a. Know the consumer's financial situation, insurance needs, and financial objectives;

b. Understand the available recommendation options after making a reasonable inquiry into options available to the licensee;

c. Have a reasonable basis to believe the recommended option effectively addresses the consumer's financial situation, insurance needs and financial objectives over the life of the product, as evaluated in light of the consumer profile information; and

d. Communicate the basis or bases of the recommendation.

2.a. The requirements under subparagraph 1. of this paragraph

shall include making reasonable efforts to obtain consumer profile information from the consumer prior to the recommendation of an annuity.

b. Consumer profile information shall include:

(i) Age;

(ii) Annual Income;

(iii) Financial situation and needs, including debts and other obligations;

(iv) Financial experience;

(v) Insurance needs;

(vi) Financial objectives;

(vii) Intended use of the annuity;

(viii) Financial time horizon;

(ix) Existing assets or financial products, including investment, annuity and insurance holdings;

(x) Liquidity needs;

(xi) Liquid net worth;

(xii) Risk tolerance, including willingness to accept nonguaranteed elements in the annuity;

(xiii) Financial resources used to fund the annuity; and

(xiv) Tax status.

3.a. The requirements under subparagraph 1. of this paragraph shall require a licensee to consider the types of products the licensee is authorized and licensed to recommend or sell that address the consumer's financial situation, insurance needs, and financial objectives.

b. The requirements under subparagraph 1. of this paragraph shall not require analysis or consideration of any products outside the authority and licensee of the licensee or other possible alternative products or strategies available in the market at the time of the recommendations.

4. The requirements under paragraph (a) of this subsection shall not create a fiduciary obligation or relationship and only create a regulatory obligation as established in this administration regulation.

5. a. Factors relevant in making a determination whether an annuity effectively addresses the consumer's financial situation, insurance needs, and financial objectives shall include:

(i) Consumer profile information;

(ii) Characteristics of the insurer; and

(iii) Product costs, rates, benefits and features.

b. The level of importance of each factor under the care obligation of the paragraph may vary depending on the facts and circumstances of a particular case;

c. Each factor shall not be considered in isolation.

6. The requirements under paragraph (a) of this subsection shall include having a reasonable basis to believe the consumer would benefit from certain features of the annuity, such as annuitization, death, or living benefit or other insurance-related features.

7. The requirements under subparagraph (a) of this subsection shall apply to the particular annuity as a whole and the underlying subaccount to which funds are allocated at the time of purchase or exchange of an annuity, and riders and similar producer enhancements, if any.

8. The requirements under paragraph (a) of this subsection shall not mean the annuity with the lowest one-time or multiple occurrence compensation structure shall necessarily be recommended.

9. The requirements under paragraph (a) of this subsection shall not mean the licensee has ongoing monitoring obligations. An obligation may be separately owed under the terms of a fiduciary, consulting, investment advising, or financial planning agreement between the consumer and the licensee.

10. In the case of an exchange or replacement of an annuity, the licensee shall consider the whole transaction, which shall include taking into consideration whether:

a. The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits, such as death, living or other contractual benefits, or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements;

b. The replacing product would substantially benefit the

consumer in comparison to the replaced product over the life of the product; and

c. The consumer had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding sixty (60) months.

11. If the licensee does not give advice or provide services that are otherwise subject to securities laws or engage in any other activity requiring other professional licenses, this administrative regulation shall not be construed to require a licensee to obtain any license other than a license with the appropriate line of authority to sell, solicit, or negotiate insurance in this state, including any securities license, in order to fulfill the duties and obligations contained in this administrative regulation

(b) Disclosure obligation.

1. Prior to the recommendation or sale of an annuity, the licensee shall prominently disclose to the consumer on a form substantially similar to "Insurance Agent (Producer) Disclosure For Annuities":

a. A description of the scope and terms of the relationship with the consumer and the role of the licensee in the transaction;

b. An affirmative statement on whether the licensee is licensed and authorized to sell the following products:

(i) Fixed annuities;

(ii) Fixed indexed annuities;

(iii) Variable annuities;

(iv) Life insurance;

(v) Mutual funds;

(vi) Stocks and bonds; and

(vii) Certificates of deposit;

c. An affirmative statement describing the insurers the licensee is authorized, contracted or appointed, or otherwise able to sell insurance products for using the following descriptions:

(i) One insurer;

(ii) From two or more insurers; or

(iii) From two or more insurers although primarily contracted with one insurer.

d. A description of the sources and types of cash compensation and non-cash compensation to be received by the licensee, including whether the licensee is to be compensated for the sale of a recommended annuity by commission as part of premium or other remuneration received from the insurer, intermediary, or other licensee, or by fee as a result of a contract for advice or consulting services; and

e. A notice of the consumer's right to request additional information regarding cash compensation described in subparagraph 2. of this paragraph;

2. Upon request of the consumer or the consumer's designated representative, the licensee shall disclose:

a. A reasonable estimate of the amount of cash compensation to be received by the licensee, which may be stated as a range of amounts or percentages; and

b. Whether the cash compensation is a one-time or multiple occurrence amount, and if a multiple occurrence amount, the frequency and amount of the occurrence, which may be stated as a range of amounts or percentages.

3. Prior to or at the time of the recommendation or sale of an annuity, the licensee shall have a reasonable basis to believe: [In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the licensee shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to these investments and other insurance products and as to the consumer's financial situation and needs, including the consumer's suitability information, and that there shall be a reasonable basis to believe all of the following:]

a. [(a)] The consumer has been informed of various features of the annuity, including:

(i) [1.] The potential surrender period and surrender charge;

(ii) [2.] Potential tax penalty if the consumer sells, exchanges, surrenders, or annuitizes the annuity;

(iii) [3.] Mortality and expense fees;

(iv) [4.] Investment advisory fees;

(v) [5.] Potential charges for and features of riders or other options of the annuity;

(vi) [6.] Limitations on interest returns, potential changes in nonguaranteed elements of the annuity, insurance, and investment components; and

(vii) [7.] Market risk.];

(b) The consumer would benefit from certain features of the annuity, including:

1. Tax deferred growth;

2. Annuitization; or

3. Death or living benefit;

(c) For the particular consumer, based on his or her suitability information, the transaction as a whole is suitable, including:

1. The type of annuity;

2. The underlying subaccounts to which the funds are allocated at purchase or exchange of the annuity;

3. The riders; and

4. The similar product enhancements; and

(d) If there is an exchange or replacement of an annuity, the exchange or replacement is suitable including taking into consideration whether:

1. The consumer shall:

a. Incur a surrender charge;

b. Be subject to the commencement of a new surrender period;

c. Lose existing benefits including death, living, or other contractual benefits; or

d. Be subject to increased fees, including:

(i) Investment advisory fees; or

(ii) Charges for riders and similar product enhancements;

2. The consumer would benefit from product enhancements and improvements; and

3. The consumer has had another annuity exchange or replacement and in particular, exchange or replacement within the preceding thirty-six (36) months.]

(c) Conflict of interest obligation. A licensee shall identify and avoid or reasonably manage and disclose material conflicts of interest, including material conflicts of interest related to an ownership interest.

(d) Documentation obligation. A licensee shall at the time of recommendation or sale:

1. Make a written record of any recommendation and the basis for the recommendation subject to this regulation;

2. Obtain a consumer signed statement on a form substantially similar to "Consumer Refusal To Provide Information" documenting:

a. A consumer's refusal to provide the consumer profile information, if any; and

b. A consumer's understanding of the ramifications of not providing his or her consumer profile information or providing insufficient consumer profile information; and

3. Obtain a consumer signed statement on a form substantially similar to "Consumer Decision To Purchase An Annuity NOT Based On Recommendation" acknowledging the annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the licensee's recommendation.]

(2) Prior to the execution of a purchase, exchange, or replacement of an annuity resulting from a recommendation, the licensee shall make reasonable efforts to obtain the consumer's suitability information including the following:

(a) Age;

(b) Annual income;

(c) Financial situation and needs, including the financial resources used for the funding of the annuity;

(d) Financial experience;

(e) Financial objectives;

(f) Intended use of the annuity;

(g) Financial time horizon;

(h) Existing assets, including investment and life insurance holdings;

(i) Liquidity needs;

(j) Liquid net worth;

(k) Risk tolerance; and

(l) Tax status.

(3) Except as permitted under subsection (4), an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.]

(e) 1. Application of the best interest obligation. A requirement applicable to a licensee under this subsection shall apply to every licensee who has exercised material control or influence in the making of a recommendation and has received direct compensation as a result of the recommendation or sale, regardless of whether the licensee has had any direct contact with the consumer.

2. Activities providing or delivering marketing or educational materials, product wholesaling or other back office product support, and general supervision of a licensee shall not constitute material control or influence.

(2) Transactions not based on a recommendation.

(a)[(4)(a)] Except as provided under paragraph (b) of this subsection, the licensee shall not have an obligation to a consumer under this subsection or subsection (1) of this section related to an annuity transaction if:

1. A consumer refuses to provide relevant [suitability] consumer profile information requested by the licensee and the annuity transaction is not recommended;

2. A consumer decides to enter into an insurance transaction not based on a recommendation of the licensee;

3. A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer; or

4. No recommendation is made.

(b) An insurer's issuance of an annuity [A licensee's recommendation] subject to paragraph (a) of this subsection shall be reasonable under all the circumstances actually known to the insurer [licensee] at the time the annuity is issued.

(3)(a) Except as permitted under subsection (2) of this section, an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity would effectively address the particular consumer's financial situation, insurance needs, and financial objectives based on the consumer's consumer profile information.]

(5) A licensee shall at the time of sale:

(a) Make a record of any recommendation subject to section 3(1) of this administrative regulation;

(b) Obtain a consumer signed statement documenting a consumer's refusal to provide suitability information, if any; and

(c) Obtain a consumer signed statement acknowledging that an annuity transaction is not recommended if a consumer decides to enter into an annuity transaction that is not based on the licensee's recommendation.

(b)[(6)(a)] An insurer shall establish and maintain a system that is reasonably designed to achieve a licensee's compliance with this administrative regulation, including the following:

1. The insurer shall establish and maintain reasonable procedures to inform its licensees of the requirements of this administrative regulation and shall incorporate the requirements of this administrative regulation into relevant [insurance] licensee training manuals.

2. The insurer shall establish and maintain standards for licensee product training and shall establish and maintain reasonable procedures to require its licensees to comply with the requirements of Section 4 of this administrative regulation.

3. The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its licensees.

4. The insurer shall establish and maintain procedures for the review of each recommendation prior to issuance of an annuity that are designed to ensure [that] there is a reasonable basis to determine that the recommended annuity would effectively address the particular consumer's financial situation, insurance needs and financial objectives. [a recommendation is suitable.]

a. These review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other

means including physical review.

b. This electronic or other system for review procedures may be designed to require additional review only of those transactions identified for additional review by the selection criteria.

5. The insurer shall establish and maintain reasonable procedures to detect recommendations that are not in compliance with subsections (1), (2), (4), and (5) of this section. [suitable.] This may include confirmation of the consumer's consumer profile [consumer suitability] information, systematic customer surveys, licensee and consumer interviews, confirmation letters, licensee statements or attestations, and programs of internal monitoring. An insurer may comply with this subparagraph by applying sampling procedures, or by confirming the consumer profile [suitability] information or other required information under this section after issuance or delivery of the annuity.

6. The insurer shall establish and maintain reasonable procedures to assess, prior to or upon issuance or delivery of an annuity, if a licensee has provided to the consumer the information required to be provided under this section.

7. The insurer shall establish and maintain reasonable procedures to identify and address suspicious consumer refusals to provide consumer profile information.

8. The insurer shall establish and maintain reasonable procedures to identify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific annuities within a limited period of time. The requirements of this subparagraph shall not prohibit the receipt of health insurance, office rent, office support, retirement benefits, or other employee benefits by employees as long as those benefits are not based upon the volume of sales of a specific annuity within a limited period of time.

9.[6.] The insurer shall annually provide a written report to senior management, including to the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

(c)[(b)]1. An insurer may contract for performance of a function, including maintenance of procedures, required under paragraph (2)[(a)] of this subsection.

2. An insurer's supervision system under this subsection [paragraph 4.] shall include supervision of contractual performance under this subsection. This shall include the following:

a. Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and

b. Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager represents, that the function is properly performed; and

3. If an insurer contracts for performance of a function and supervises the performance of the contract in accordance with subsection (c)1. [(6)(b)]2 of this section, the insurer shall remain responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to Section 5 of this administrative regulation.

(d)1. [(e)] An insurer shall not be required to include in its system of supervision a licensee's recommendations to consumers of products other than the annuities offered by the insurer; or:

2. Include consideration of or comparison to options available to the licensee or compensation relating to those options other than annuities or other products offered by the insurer.

(4)[(7)] Prohibited Practices. A licensee or an insurer shall not attempt to influence a consumer from:

(a) Truthfully responding to an insurer's request for confirmation of suitability information;

(b) Filing a complaint; or

(c) Cooperating with the investigation of a complaint.

(5)(a)1. Safe Harbor. Recommendations and sales of annuities [(8)(a)1. Sales] made in compliance with comparable standards [FINRA requirements pertaining to suitability and supervision of annuity transactions] shall satisfy the requirements under this administrative regulation.

2. This subsection shall apply to [FINRA broker-dealer] all recommendations and sales of [variable annuities and fixed]

annuities made by financial professionals in compliance with business rules, controls and procedures that satisfy a comparable standard even if such standard would not otherwise apply to the product or recommendation at issue [if the suitability and supervision is similar to those applied to variable annuity sales.]

3. This subsection shall not limit the commissioner's ability to investigate and enforce the provisions of this administrative regulation.

(b) Nothing in paragraph (a) of this subsection shall limit the insurer's obligation to comply with subsection (3)(a) of this section, although the insurer may base its analysis on information received from either the financial professional or the entity supervising the financial professional.

(c)[(b)] For paragraph (a) to apply, an insurer shall:

1. Monitor the [FINRA member broker-dealer] relevant conduct of the financial professional seeking to rely on paragraph (a) or the entity responsible for supervising the licensee, such as the licensee's broker-dealer or investment adviser registered under federal securities laws using information collected in the normal course of an insurer's business; and

2. Provide to the [FINRA member broker-dealer] entity responsible for supervising the licensee seeking to rely on paragraph (a), such as the financial professionals broker-dealer or investment adviser registered under federal securities laws, information and reports that are reasonably appropriate to assist [the FINRA member broker-dealer] such entity to maintain its supervision system.

(6)[(9)] The requirements of this section are intended to supplement and not replace the disclosure requirements in 806 KAR 12:150.

Section 4. Licensee Training. (1) An agent shall not sell, solicit, or negotiate an annuity product unless the agent has completed training in accordance with 806 KAR 9:220,~~[Section 5.]~~

(2) A consultant shall not advise an individual regarding an annuity unless the consultant has completed the training in accordance with 806 KAR 9:220, Section 5.

(3) A licensee shall maintain records documenting compliance with the training requirements in subsection (1) and (2) of this section, which shall be available:

(a) To the department, if requested; and

(b) For a period not less than five (5) years.

(4) An insurer shall verify that an agent has completed the annuity training course required under this subsection before allowing the agent to sell an annuity product for that insurer.

Section 5. Mitigation of Responsibility. (1) An insurer shall be responsible for compliance with this administrative regulation. If a violation occurs, due to the action or inaction of the insurer or its licensee, the commissioner may require:

(a) An insurer to take appropriate corrective action for any consumer harmed by a failure to comply with this regulation by the insurer[insurer's], an entity contracted to perform the insurer's supervisory duties or by its licensee's [agent's, violation of this administrative regulation];

(b) A licensee [an agent] to take appropriate corrective action for any consumer harmed by the licensee's [insurance agent's] violation of this administrative regulation; or

(c) A supervising licensee [insurance producer] that employs or contracts with another licensee [an insurance agent] to sell, or solicit the sale, of annuities to consumers, to take appropriate corrective action for any consumer harmed by the licensee's [agent's] violation of this administrative regulation;

(2) The commissioner may require consultant to take appropriate corrective action for any consumer harmed by the consultant's violation of this administrative regulation.

(3) Any applicable penalty under KRS 304.99-020 for a violation of Section 3(1), (2), or (3) of this administrative regulation may be reduced or eliminated, if corrective action for the consumer is taken promptly after a violation is discovered.

Section 6. Recordkeeping. Licensees shall maintain records of the information collected from the consumer, disclosure made to

the consumer, including summaries of oral disclosures, and other information used in making the recommendations that were the basis for insurance transactions in accordance with KRS 304.9-390 and 806 KAR 2:070. An insurer may maintain documentation on behalf of a licensee.

Section 7. Effective Date. The requirements of this administrative regulation shall not be implemented or enforced prior to the effective date, determined pursuant to KRS 13A.330, or July 1, 2021 [January 1, 2012], whichever is later.

Section 8. Material Incorporated by Reference.

(1) The following material is incorporated by reference:

(a) "Insurance Agents (Producer) Disclosure For Annuities", (7/2020);

(b) "Consumer Refusal To Provide Information", (7/2020); and

(c) "Consumer Decisions To Purchase An Annuity NOT Based on Recommendation", (7/2020);

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, Mayo-Underwood Building, 500 Mero Street Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SHARON P. CLARK, Commissioner

KERRY B. HARVEY, Secretary

APPROVED By AGENCY: August 14, 2020

FILED WITH LRC: August 14, 2020

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on November 24, 2020 at 500 Mero Street, Frankfort, Kentucky 40602. 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 p.m. on November 30, 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: DJ Wasson, Deputy Commissioner, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email dj.wasson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards and procedures for recommendations to consumers that result in a transaction involving annuity products so that the insurance needs and financial objectives of consumers during the transaction are appropriately addressed.

(b) The necessity of this administrative regulation: This administrative regulation will provide guidance to insurers and agents selling an annuity product as to the suitability of the product.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. This regulation will aid insurers and agents by providing guidance and requirements for purchase of annuities as to the suitability.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation currently provides guidance, procedures and information for insurers and agents with regard to the purchase of annuities as to

the suitability of the product.

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

(a) How the amendment will change this existing administrative regulation: The amendments adopt the amendments to the National Association of Insurance Commissioners (NAIC) model regulation on Suitability in Annuity Transactions.

(b) The necessity of the amendment to this administrative regulation: Adoption of the amendments to this model regulation are necessary to protect consumers purchasing annuities in Kentucky by ensuring that the recommendations made to them on the purchase of products are in their best interest and to ensure consistent regulation of the sale of annuities across the nation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110(1) authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. This administrative regulation requires licensees to act in the best interest of the consumer when making a recommendation of an annuity and to require insurers to establish and maintain a system to supervise so that the insurance needs and financial objectives of consumers during the transaction are effectively addressed.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will add a requirement for licensees to act in the best interest of the consumer when making a recommendation of an annuity.

(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 affect approximately 470 insurers and 66,000 agents offering annuity products.

(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: Licensees will be required to comply with the amended regulation by revising their suitability questionnaires to ensure that all required information is obtained prior to recommending an annuity product.

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

(c) As a result of compliance, what benefits will accrue to the entities: Since these insurers and agents are already complying with the previous version of this regulation, the costs associated with providing the amended version should be minimal.

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

(a) Initially: Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance. Minimal, if any.

(b) On a continuing basis: Implementation of this amendment is not anticipated to have an on-going cost on the Department of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks 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 of fees will not be necessary because additional personnel is likely unnecessary.

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

(9) TIERING: Is tiering applied? Tiering is not applied; the provisions of this administrative regulation will be implemented in the same manner for all insurers and agents who have annuity products.

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 Insurance

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate significant revenue for the Department of Insurance 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 significant revenue for the Department of Insurance for subsequent years.

(c) How much will it cost to administer this program for the first year? There should not be a significant cost to administer this program initially.

(d) How much will it cost to administer this program for subsequent years?? There should not be a significant cost to administer this program in subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation:

PUBLIC PROTECTION CABINET Department of Insurance Health and Life Division (Amendment)

806 KAR 12:150. Annuity disclosures.

RELATES TO: KRS 304.12-010, 304.12-020, 304.12-230, 26 U.S.C. 401, 403, 414, 457, 29 U.S.C. 1001-1461

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner of the Department of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. This administrative regulation requires insurers to deliver information to purchasers of annuities that will improve the buyer's ability to select the most appropriate annuity for the buyer's needs and improve the buyer's understanding of the basic features of the product that has been purchased or is under consideration.

Section 1. Definitions. (1) "Buyer's Guide" means the current National Association of Insurance Commissioner's approved Annuity Buyer's Guide [Annuity Buyer's Guide published by the Commonwealth of Kentucky Department of Insurance].

(2) "Charitable gift annuity" is defined in KRS 304.1-120(6)(b).

(3) "Contract owner" means the owner named in the annuity contract or certificate holder in the case of a group annuity contract.

(4) "Determinable elements" means elements derived from processes or methods that are guaranteed at issue and not subject to company discretion, but ones in which the values or amounts cannot be determined until some point after issue. These elements

include the premiums, credited interest rates including any bonus, benefits, values, noninterest based credits, charges, or elements of formulas used to determine at issue. An element is determinable if it was calculated from underlying determinable elements only, or from both determinable and guaranteed elements.

(5) "Funding agreement" means an agreement for an insurer to accept and accumulate funds and to make one (1) or more payments at future dates in amounts that are not based on mortality or morbidity contingencies.

(6) "Generic name" means a short title descriptive of the annuity contract being applied for or illustrated.

(7) "Guaranteed elements" means the premiums and credited interest rates, including any bonus, benefits, values, noninterest based credits, charges, or elements of formulas used to determine any of these, that are guaranteed and determined at issue. An element is guaranteed if all of the underlying elements that go into its calculation are guaranteed.

(8) "Illustration" means a personalized presentation or depiction prepared for and provided to an individual consumer that includes nonguaranteed elements of an annuity contract over a period of years.

(9) "Market Value Adjustment" or "MVA" feature means a positive or negative adjustment that may be applied to the account value or cash value of the annuity upon withdrawal, surrender, contract annuitization or death benefit payment based on either the movement of an external index or on the company's current guaranteed interest rate being offered on new premiums or new rates for renewal periods, if that withdrawal, surrender, contract annuitization or death benefit payment occurs at a time other than on a specified guaranteed benefit date.

(10) "Nonguaranteed elements" means the premiums and credited interest rates including any bonus, benefits, values, non-interest based credits, charges, or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue. An element is nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.

(11) "Registered Product" means an annuity contract or life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933.

(12) [(9)] "Structured settlement annuity" means:

(a) A "qualified funding asset" as defined in 26 U.S.C. 130(d); or

(b) An annuity that would be a qualified funding asset pursuant to 26 U.S.C. 130(d) except for the fact that it is not owned by an assignee under a qualified assignment.

Section 2. Applicability. This administrative regulation shall apply to all group and individual annuity contracts and certificates except:

(1) Registered or nonregistered variable annuities or other registered products;

(2)(a) Annuities used to fund:

1. An employee pension plan which is covered by the Employee Retirement Income Security Act (ERISA), codified as 29 U.S.C. 1001 to 1461;

2. A plan described by 26 U.S.C. 401(a), (k), or 403(b), if the plan, for purposes of ERISA, is established or maintained by an employer;

3. A governmental or church plan defined in 26 U.S.C. 414 or a deferred compensation plan of a state or local government or a tax exempt organization under 26 U.S.C. 457; or

4. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(b)1. Notwithstanding paragraph (a) of this subsection, this administrative regulation shall apply to annuities used to fund a plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis, and if the insurance company has been notified that plan participants may choose from among two (2) or more fixed annuity providers and there is a direct solicitation of an individual employee by a producer for the purchase of an annuity contract; and

2. As used in this subsection, direct solicitation shall not include a meeting held by a producer solely for the purpose of

educating or enrolling employees in the plan or arrangement;

(3) Non-registered variable annuities issued exclusively to an accredited investor or qualified purchaser as those terms are defined by the Securities Act of 1933 (15 U.S.C. Section 77a et seq.), the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.), or the regulations promulgated under either of those acts, and offered for sale and sold in a transaction that is exempt from registration under the Securities Act of 1933 (15 U.S.C. Section 77a et seq.)

(4)(a) Transactions involving variable annuities and other registered products in compliance with Securities and Exchange Commission (SEC) rules and Financial Industry Regulatory Authority (FINRA) rules relating to disclosures and illustrations, except that compliance with Section 3 shall be required after January 1, 2014, unless, or until the SEC has adopted a summary prospectus rule or FINRA has approved for use a simplified disclosure form applicable to variable annuities or other registered products.

(b) Notwithstanding subsection (4), the delivery of the Buyer's Guide is required in sales of variable annuities, and if appropriate, in sales of other registered products.

(c) Nothing in this subsection shall limit the commissioner's ability to enforce the provisions of this regulation or to require additional disclosure.

(5) [(3)] Structured settlement annuities;

(6) [(4)] Charitable gift annuities; and

(7) [(5)] Funding agreements.

Section 3. Standards for the Disclosure Document and Buyer's Guide. (1)(a) If the application for an annuity contract is solicited personally by an agent, the applicant shall be given both the disclosure document described in subsection (3) of this section and the Buyer's Guide no later than the time of application.

(b) If the application for an annuity contract is taken by means other than a personal solicitation by an agent, the applicant shall be sent both the disclosure document described in subsection (3) of this section and the Buyer's Guide no later than five (5) business days after the completed application is received by the insurer.

1. With respect to an application received as a result of a direct solicitation through the mail:

a. Providing a Buyer's Guide in a mailing inviting prospective applicants to apply for an annuity contract shall satisfy the requirement that the Buyer's Guide be provided no later than five (5) business days after receipt of the application; and [or]

b. Providing a disclosure document in a mailing inviting a prospective applicant to apply for an annuity contract shall satisfy the requirement that the disclosure document be provided no later than five (5) business days after receipt of the application.

2. With respect to an application received via the Internet:

a. Taking reasonable steps to make the Buyer's Guide available for viewing and printing on the insurer's Web site shall satisfy the requirement that the Buyer's Guide be provided no later than five (5) business days after receipt of the application; or

b. Taking reasonable steps to make the disclosure document available for viewing and printing on the insurer's Web site shall satisfy the requirement that the disclosure document be provided no later than five (5) business days after receipt of the application.

3. A solicitation for an annuity contract that is not personally solicited by an agent shall include a statement that the proposed applicant may obtain a free Annuity Buyer's Guide by contacting the Department of Insurance or the insurer.

(c) 1. If the Buyer's Guide and disclosure document described in subsection (3) of this section are not provided at or before the time of application, a free look period of no less than fifteen (15) days shall be provided for the applicant to return the annuity contract without penalty.

2. This free look period shall run concurrently with any other free look period provided under state law or administrative regulation.

(2) The following information shall be included in the disclosure document:

(a) The generic name of the contract, the company product name, if different, the form number, and the fact that it is an

annuity;

(b) The insurer's name, physical address, Web site address and telephone number [and address];

(c) A description of the contract and its benefits, emphasizing its long-term nature, including the following information:

1. The guaranteed and[;] nonguaranteed [~~and determinable~~] elements of the contract and their limitations, if any, including for fixed indexed annuities, the elements used to determine the index-based interest, such as the participation rates, caps or spreads, and an explanation of how they operate;

2. An explanation of the initial crediting rate, or for fixed indexed annuities, an explanation of how the index-based interest is determined, specifying any bonus or introductory portion, the duration of the rate, and the fact that rates may change from time to time and shall not be guaranteed;

3. Periodic income options both on a guaranteed and nonguaranteed basis;

4. Value reductions caused by withdrawals from or surrender of the contract;

5. How values in the contract can be accessed;

6. The death benefit, if available, and how it will be calculated;

7. A summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract; and

8. An explanation of the impact of a rider, such as a long-term care rider or guaranteed living benefit;

(d) Specific dollar amount or percentage charges and fees shall be listed with an explanation of how they apply; and

(e) Information about the current guaranteed rate or indexed crediting rate formula, for new contracts that contains a clear notice that the rate is subject to change.

(3) The disclosure statement shall comply with the minimum standards for readability and intelligibility established in 806 KAR 14:121.

Section 4. Standards for Annuity Illustrations.

(1) An insurer or producer may elect to provide a consumer an illustration at any time, if the illustration is in compliance with this section and:

(a) Is clearly labeled as an illustration;

(b) Includes a statement referring consumers to the Disclosure Document and Buyer's Guide provided to them at time of purchase for additional information about their annuity; and

(c) Is prepared by the insurer or third party using software that is authorized by the insurer prior to its use, if the insurer maintains a system of control over the use of illustrations.

(2) An illustration furnished to an applicant for a group annuity contract or a contract issued to a single applicant on multiple lives may be an individual or composite illustration representative of the coverage on the lives of members of the group or the multiple lives covered.

(3) The illustration shall not be provided unless accompanied by the disclosure document referenced in Section 3.

(4) When using an illustration, the illustration shall not:

(a) Describe nonguaranteed elements in a manner that is misleading or has the capacity or tendency to mislead;

(b) State or imply that the payment or amount of nonguaranteed elements is guaranteed; or

(c) Be incomplete.

(5) Costs and fees of any type noted on the illustration shall be individually noted and explained.

(6) An illustration shall conform to the following requirements:

(a) The illustration shall be labeled with the date on which it was prepared;

(b) Each page, including any explanatory notes or pages, shall be numbered and show its relationship to the total number of pages in the disclosure document;

(c) The assumed dates of premium receipt and benefit payout within a contract year shall be clearly identified;

(d) If the age of the proposed insured is shown as a component of the tabular detail, it shall be issue age plus the number of years the contract is assumed to have been in force;

(e) The assumed premium on which the illustrated benefits and values are based shall be clearly identified, including rider premium

for any benefits being illustrated;

(f) Any charges for riders or other contract features assessed against the account value or the crediting rate shall be:

1. Recognized in the illustrated values; and

2. Accompanied by a statement indicating the nature of the rider benefits or the contract features, and whether or not they are included in the illustration;

(g) Guaranteed death benefits and values available upon surrender, if any, for the illustrated contract premium shall be shown and clearly labeled guaranteed;

(h) The nonguaranteed elements underlying the nonguaranteed illustrated values:

1. Shall be no more favorable than current nonguaranteed elements; and

2. Shall not include any assumed future improvement of nonguarantee elements.

(i) Nonguaranteed elements used in calculating nonguaranteed illustrated values at any future duration shall:

1. Reflect any planned changes; and

2. Reflect planned changes that occur after expiration of an initial guaranteed or bonus period;

(j) In determining the nonguaranteed illustrated values for a fixed indexed annuity, the index-based interest rate and account value shall be calculated for the following three different scenarios:

1. To reflect historical performance of the index for the most recent ten (10) calendar years;

2. To reflect the historical performance of the index for the continuous period of ten (10) calendar years out of the last twenty (20) calendar years that would result in the least index value growth (the low scenario); and

3. To reflect the historical performance of the index for the continuous period of ten (10) calendar years out of the last twenty (20) calendar years that would result in the most index value growth, known as the high scenario. The following requirements apply to this scenario:

a. The most recent ten (10) calendar years and the last twenty (20) calendar years are defined to end on the prior December 31, except for illustrations prepared during the first three (3) months of the year, for which the end date of the calendar year period may be the December 31 prior to the last full calendar year;

b. If any index utilized in determination of an account value has not been in existence for at least ten (10) calendar years, indexed returns for that index shall not be illustrated. If the fixed indexed annuity provides an option to allocate account value to more than one indexed or fixed declared rate account, and one or more of those indexes has not been in existence for at least ten (10) calendar years, the allocation to such indexed accounts shall be assumed to be zero;

c. If any index utilized in determination of an account value has been in existence for at least ten (10) calendar years but less than twenty (20) calendar years, the ten (10) calendar year periods that define the low and high scenarios shall be chosen from the exact number of years the index has been in existence;

d. The nonguaranteed elements, such as caps, spreads, participation rates or other interest crediting adjustments, used in calculating the nonguaranteed index-based rate shall be no more favorable than the corresponding current elements;

e. If a fixed indexed annuity provides an option to allocate the account value to more than one indexed or fixed declared rate account:

(i) The allocation used in the illustration shall be the same for all three scenarios; and

(ii) The ten (10) calendar year periods resulting in the least and greatest index growth periods shall be determined independently for each indexed account option.

f. The geometric mean annual effective rate of the account value growth over the ten (10) calendar year period shall be shown for each scenario;

g. If the most recent ten (10) calendar year historical period experience of the index is shorter than the number of years needed to fulfill the requirement of subsection (8) of this section, the most recent ten (10) calendar year historical period experience of the index shall be used for each subsequent ten (10) calendar year

period beyond the initial period for the purpose of calculating the account value for the remaining years of the illustration;

h. The low and high scenarios;

(i) Are not required to show surrender values if they are different than account values;

(ii) Shall not extend beyond ten (10) calendar years and therefore are not subject to the requirements of subsection (8) of this section except for subsection (8)(a)(1); and

(iii) May be shown on a separate page.

i. A graphical presentation shall also be included comparing the movement of the account value over the ten (10) calendar year period for the low scenario, the high scenario and the most recent ten (10) calendar year scenario;

j. The low and high scenarios shall reflect the irregular nature of the index performance and shall trigger every type of adjustment to the index-based interest rate under the contract, clearly explaining the effect of the adjustments. The illustration shall state if an adjustment to the index-based interest rate is not triggered in the illustration because no historical values of the index in the required illustration range would have triggered it;

k. The guaranteed elements, if any, shall be shown before corresponding nonguaranteed elements and shall be specifically referred to on any page of an illustration that shows or describes only the non-guaranteed elements;

l. The account or accumulation value of a contract, if shown, shall be identified by the name this value is given in the contract being illustrated and shown in close proximity to the corresponding value available upon surrender;

m. The value available upon surrender shall be identified by the name this value is given in the contract being illustrated and shall be the amount available to the contract owner in a lump sum after deduction of surrender charges, bonus forfeitures, contract loans, contract loan interest and application of any market value adjustment, as applicable;

n. Illustrations may show contract benefits and values in graphic or chart form in addition to the tabular form;

o. Any illustration of nonguaranteed elements shall be accompanied by a statement indicating that:

(i) The benefits and values are not guaranteed;

(ii) The assumptions on which they are based are subject to change by the insurer; and

(iii) Actual results may be higher or lower;

p. Illustrations based on nonguaranteed credited interest and non-guaranteed annuity income rates shall contain equally prominent comparisons to guaranteed credited interest and guaranteed annuity income rates, including any guaranteed and nonguaranteed participation rates, caps or spreads for fixed indexed annuities;

q. The annuity income rate illustrated shall not be greater than the current annuity income rate unless the contract guarantees are in fact more favorable;

r. Illustrations shall be concise and easy to read;

s. Key terms shall be defined and then used consistently throughout the illustration;

t. Illustrations shall not depict values beyond the maximum annuitization age or date;

u. Annuitization benefits shall be based on contract values that reflect surrender charges or any other adjustments, if applicable; and

v. Illustrations shall show annuity income rates per \$1000.00 and the dollar amounts of the periodic income payable.

(7) If the information is not included in a disclosure statement provided at the same time as an illustration, an annuity illustration shall include a narrative summary that includes the following:

(a) A brief description of any contract features, riders or options, guaranteed and nonguaranteed, shown in the basic illustration and the impact they may have on the benefits and values of the contract;

(b) A brief description of any other optional benefits or features that are selected, but not shown in the illustration and the impact they have on the benefits and values of the contract;

(c) Identification and a brief definition of column headings and key terms used in the illustration;

(d) A statement containing in substance the following:

1. For other than fixed indexed annuities:

a. This illustration assumes the annuity's current nonguaranteed elements will not change. It is likely that they will change and actual values will be higher or lower than those in this illustration but will not be less than the minimum guarantees; and

b. The values in this illustration are not guarantees or even estimates of the amount you can expect from your annuity. Please review the entire Disclosure Document and Buyer's Guide provided with your Annuity Contract for more detailed information;

2. For fixed indexed annuities:

a. This illustration assumes the index will repeat historical performance and that the annuity's current nonguaranteed elements, such as caps, spreads, participation rates or other interest crediting adjustments, will not change. It is likely that the index will not repeat historical performance, the nonguaranteed elements will change, and actual values will be higher or lower than those in this illustration but will not be less than the minimum guarantees; and

b. The values in this illustration are not guarantees or even estimates of the amount you can expect from your annuity. Please review the entire Disclosure Document and Buyer's Guide provided with your Annuity Contract for more detailed information; and

(e) Additional explanations as follows:

1. Minimum guarantees shall be clearly explained;

2. The effect on contract values of contract surrender prior to maturity shall be explained;

3. Any conditions on the payment of bonuses shall be explained;

4. For annuities sold as an individual retirement account, qualified plan, or in another arrangement subject to the required minimum distribution requirements of the Internal Revenue Code, the effect of required distribution requirements on the contract values shall be explained;

5. A brief description of the types of annuity income options available shall be explained including:

a. The earliest or only maturity date for annuitization as the term is defined in the contract;

b. For a contract with an optional maturity date, the periodic income amount for at least one of the annuity income options available based on the guaranteed rates in the contract, at the later of age seventy (70) or ten (10) years after issue, but in no case later than the maximum annuitization age or date in the contract;

c. For contracts with a fixed maturity date, the periodic income amount for at least one of the annuity income options available, based on the guaranteed rates in the contract at the fixed maturity date; and

d. The periodic income amount based on the currently available periodic income rates for the annuity income option in item 1 or item 2.

(8) Following the narrative summary, an illustration shall include a numeric summary which shall include at minimum, numeric values at the following durations:

(a)1. First ten (10) contract years; or

2. Surrender charge period if longer than ten (10) years, including any renewal surrender charge period;

(b) Every tenth contract year up to the later of thirty (30) years or age seventy (70); and

(c)1. Required annuitization age; or

2. Required annuitization date.

(9) If the annuity contains a market value adjustment the following provisions apply to the illustrations:

(a) The market value adjustment shall be referred to as a market value adjustment throughout the illustration;

(b) The narrative shall include an explanation, in simple terms, of the potential effect of the MVA on the value available upon surrender;

(c) The narrative shall include an explanation, in simple terms, of the potential effect of the MVA on the death benefit;

(d) A statement, containing in substance the following, shall be included: "When you make a withdrawal, the amount you receive may be increased or decrease by a Market Value Adjustment (MVA). If interest rates on which the MVA is based go up after you

buy your annuity, the MVA likely will decrease the amount you receive. If interest rates go down, the MVA will likely increase the amount you receive."

(e) Illustrations shall describe both the upside and the downside aspects of the contract features relating to the market value adjustment;

(f) The illustrative effect of the market value adjustment shall be shown under at least one positive and one negative scenario. This demonstration shall appear on a separate page and be clearly labeled that it is information demonstrating the potential impact of a market value adjustment;

(g) Actual market value adjustment floors and ceilings as listed in the contract shall be illustrated; and

(h) If the market value adjustment has significant characteristics not addressed by paragraphs (a) through (f) of this subsection, the effect of the characteristics shall be shown in the illustration.

(10) A narrative summary for a fixed indexed annuity illustration also shall include the following unless provided at the same time in a disclosure document:

(a) An explanation, in simple terms, of the elements used to determine the index-based interest, including the following elements:

1. The indexes which will be used to determine the index-based interest;

2. The indexing method;

3. The index term, including the period over which index-based interest is calculated;

4. The participation rate, if applicable;

5. The cap, if applicable; and

6. The spread, if applicable;

(b) The narrative shall include an explanation, in simple terms, of how index-based interest is credited in the indexed annuity;

(c) The narrative shall include a brief description of the frequency with which the company can re-set the elements used to determine the index-based credits, including the participation rate, the cap and the spread, if applicable; and

(d) If the product allows the contract holder to make allocations to declared-rate segment, the narrative shall include a brief description of:

1. Any options to make allocations to a declared-rate segment, both for new premiums and for transfers from the indexed-based segments; and

2. Differences in guarantees applicable to the declared-rate segment and the indexed-based segments.

(11) A numeric summary for a fixed indexed annuity illustration shall include, at a minimum, the following elements:6(j):

(a) The assumed growth rate of the index in accordance with subsection 6(i);

(b) The assumed values for the participation rate, cap and spread, if applicable; and

(c) The assumed allocation between indexed-based segments and declared-rate segment, if applicable, in accordance with subsection 6(i).

(12) If the contract is issued other than as applied for, a revised illustration conforming to the contract as issued shall be sent with the contract, except that non-substantive changes, including changes in the amount of expected initial or additional premiums and any changes in amounts of exchanges pursuant to Section 1035 of the Internal Revenue code, rollovers or transfers, which do not alter the key benefits and features of the annuity as applied for shall not require a revised illustration unless requested by the applicant.

Section 5. Report to Contract Owners. For annuities in the payout period with changes in nonguaranteed elements and for the accumulation period of a deferred annuity, the insurer shall provide each contract owner with a report, at least annually, on the status of the contract that contains at least the following information:

(1) The beginning and end date of the current report period;

(2) The accumulation and cash surrender value, if any, at the end of the previous report period and at the end of the current report period;

(3) The total amounts, if any, that have been credited, charged to the contract value or paid during the current report period; and

(4) The amount of outstanding loans, if any, as of the end of the current report period.

Section 6.[5-] Effective Date. The requirements of this administrative regulation shall not be implemented or enforced prior to the effective date, determined pursuant to KRS 13A.330, or July 1, 2021, [January 1, 2012], whichever is later.

Section 7.[6-] Incorporation by Reference. (1) "Buyer's Guide for Deferred Annuities" published by the National Association of Insurance Commissioners, Revised 2013 [The Annuity Buyer's Guide, Commonwealth of Kentucky", July 2014] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Insurance, 500 Mero [245 West Main] Street, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30 p.m.

(3) This material is also available on the department's Web site at <http://insurance.ky.gov/>.

SHARON P. CLARK, Commissioner

KERRY B. HARVEY, Secretary

APPROVED By AGENCY: August 14, 2020

FILED WITH LRC: August 14, 2020 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on November 24, 2020 at 500 Mero Street, Frankfort, Kentucky 40602. 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 p.m. on November 30, 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: DJ Wasson, Deputy Commissioner, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email dj.wasson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation requires insurers to deliver information to purchasers of annuities that will improve the buyer's ability to select the most appropriate annuity for the buyer's needs and improve the buyer's understanding of the basic features of the product that has been purchased or is under consideration

(b) The necessity of this administrative regulation: This administrative regulation will provide guidance and a consumer guide to insurers to assist in educating Kentucky citizens prior to purchasing an annuity.

(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 304.2-110 authorizes the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. This regulation and the material incorporated by reference will aid insurers to educate consumers regarding the purchase of annuities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation currently provides guidance, procedures and the Annuities Buyer's Guide to insurers for use with consumers.

(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 adopts the National Association of Insurance Commissioners (NAIC) model language regarding illustrations related to the sale of annuities and to adopt the NAIC buyers guide.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide consumers with information necessary for them to make an annuity purchase decision.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. This administrative regulation requires insurers to deliver information to purchasers of annuities that will improve the buyer's ability to select the most appropriate annuity for the buyer's needs and improve the buyer's understanding of the basic features of the product that has been purchased or is under consideration.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide buyers with the information needed to consider the various annuity products being offered before finalizing a purchase.

(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 affect approximately 450 insurers offering annuity products.

(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: Licensees selling annuities will be required to provide a copy of the new buyer's guide and illustrations meeting the requirements of this amendment to consumers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Since these insurers and agents are already providing the previous version of the illustration and buyer's guide, the costs associated with providing the amended version should be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The insurers and agents will be in compliance with state law and will have resources to aid consumers in purchasing an annuity.

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

(a) Initially: Minimal, if any.

(b) On a continuing basis: Minimal, if any.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The budget of the Department of Insurance.

(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 required.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No new fees, or direct or indirect increases in fees, will be established or incurred.

(9) TIERING: Is tiering applied? Tiering is not applied: The provisions of this administrative regulation will be implemented in the same manner for all insurers who have annuity products.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110

(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 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? The administrative regulation will not generate any revenue for state or local government.

(c) How much will it cost to administer this program for the first year? The cost to administer the program will not change.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the program is indeterminable.

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: N/A

PUBLIC PROTECTION CABINET Department of Insurance Health and Life Division (Amendment)

806 KAR 12:170. Life insurance disclosures.

RELATES TO: KRS 304.12-010, 304.12-020, 304.12-230

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. This administrative regulation establishes requirements for insurers to deliver information to purchasers of life insurance that is designed to improve the buyer's ability to select the most appropriate plan of life insurance for the buyer's needs and improve the buyer's understanding of the basic features of the policy that has been purchased or is under consideration.

Section 1. Definitions. (1) "Buyer's Guide" means the current Life Insurance Buyer's Guide published by the National Association of Insurance Commissioners[Commonwealth of Kentucky Department of Insurance].

(2) "Current scale of nonguaranteed elements" means a formula or other mechanism that produces values for an illustration as if there is no change in the basis of those values after the time of illustration.

(3)[(2)] "Generic name" means a short title that is descriptive of the premium and benefit patterns of a policy or a rider.[

(3) "In force illustration" means an illustration furnished after the policy has been in force for one (1) year or more.]

(4) "Nonguaranteed elements" means the premiums, credited interest rates, including any bonus, benefits, values, non-interest based credits, charges, or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue. An element is considered nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.

(5) "Policy data" means a display or schedule of numerical

values, both guaranteed and nonguaranteed, for each policy year or a series of designated policy years of the following information:

- (a) Illustrated annual, other periodic, and terminal dividends;
 - (b) Premiums;
 - (c) Death benefits; and
 - (d) Cash surrender values, outstanding policy loans, current policy loan interest rate, and endowment benefits.
- (6) "Policy summary" means a separate document describing the elements of the policy and complying with the requirements established in Section 3 of this administrative regulation.

Section 2. Application. (1) Except as provided in subsection (2) of this section of this administrative regulation, this administrative regulation shall apply to:

- (a) A solicitation, negotiation, or procurement of life insurance occurring within this state; and
 - (b) An issuer of life insurance contracts including fraternal benefit societies.
- (2) This administrative regulation shall not apply to:
- (a) Individual and group annuity contracts;
 - (b) Credit life insurance;
 - (c) Group life insurance;
 - (d) Life insurance policies issued in connection with pension and welfare plans which are subject to the federal Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. Section 1001 et seq. as amended; or
 - (e) Variable life insurance under which the amount or duration of the life insurance varies according to the investment experience of a separate account.

Section 3. Policy Summary. A policy summary shall describe the elements of the policy including the following:

- (1) A permanently placed title stating: "STATEMENT OF POLICY COST AND BENEFIT INFORMATION";
- (2) The name and address of the insurance agent or, if an agent is not involved, a statement of procedure to be followed in order to receive responses to inquiries regarding the policy summary;
- (3) The full name and home office or administrative office address of the life insurance company issuing the policy;
- (4) The generic name of the basic policy and each rider;
- (5) The following amounts shall be listed in total, not on a per thousand or per unit basis and, if applicable for the first ten (10) policy years and representative policy years thereafter, the amounts shall be listed sufficiently to clearly illustrate the premium and benefit patterns, including at least an age from sixty (60) through sixty-five (65) and policy maturity:
 - (a) The annual premium of the basic policy;
 - (b) The annual premium for each optional rider;
 - (c) 1. The amount payable upon death at the beginning of the policy year pursuant to the basic policy with additional benefits for each rider shown separately.
 - 2. If more than one (1) insured is covered pursuant to one (1) policy or rider, death benefits shall be displayed separately for each insured or for each class of insured's if death benefits do not differ within the class;
 - (d) The total guaranteed cash surrender values at the end of the year with values shown separately for the basic policy and each rider; and
 - (e) Endowment amounts payable pursuant to the policy that are not included pursuant to the cash surrender values described in this subsection;
 - (6)(a) The effective policy loan annual percentage interest rate, if the policy contains this provision, specifying whether the rate is applied in advance or in arrears.
 - (b) If the policy loan interest rate is adjustable, the policy summary shall state that the annual percentage rate shall be determined in accordance with the provisions of the policy and the applicable law; and
 - (7) The date on which the policy summary was prepared.

Section 4. Duties of Insurers. (1) Requirements for new issues.

- (a) 1. Except as provided in subparagraph 2 of this paragraph,

the insurer shall provide the Buyer's Guide to each prospective purchaser prior to accepting the applicant's initial premium or premium deposit.

2. If the policy for which application is made contains an unconditional refund provision of at least ten (10) days, the Buyer's Guide may be delivered with the policy or prior to delivery of the policy.

(b) The insurer shall provide a policy summary to prospective purchasers in which the insurer shall identify the policy form as not marketed with an illustration.

- 1. The policy summary shall show guarantees only.
- 2. The policy summary shall consist of a separate document with all required information set out in a manner that does not minimize or render any portion of the summary obscure.
- 3. Amounts that remain level for two (2) or more years of the policy may be represented by a single number if it is clearly indicated what amounts are applicable for each policy year.
- 4. Amounts in Section 3(5) of this administrative regulation shall be listed in total, not on a per thousand or per unit basis.
- 5. If more than one (1) insured is covered under one (1) policy or rider, death benefits shall be displayed separately for each insured or for each class of insured if death benefits do not differ within the class.
- 6. Zero amounts shall be displayed as a blank space.
- 7. Delivery of the policy summary shall be consistent with the time for delivery of the Buyer's Guide as specified in paragraph (a) of this subsection.

(2) Requirements applicable to existing policies.

(a) Upon request by the policy owner, the insurer shall furnish the policy data or an in force illustration as follows:

- 1. For policies issued prior to January 1, 2008, the insurer shall furnish policy data, or, at its option, an in force illustration meeting the requirements of 806 KAR 12:140.
- 2. For policies issued on and after January 1, 2008 and declared not to be used with an illustration, the insurer shall furnish policy data, limited to guaranteed values, if it has chosen not to furnish an in force illustration meeting the requirements of 806 KAR 12:140.
- 3. If the policy was issued on and after January 1, 2008 and declared to be used with an illustration, an in force illustration shall be provided.
- 4. Unless otherwise requested, the policy data shall be provided for twenty (20) consecutive years beginning with the previous policy anniversary.
- 5. The insurer may charge a reasonable fee for the policy data, not to exceed ten (10) dollars.
 - (b) 1. If a life insurance company changes its method of determining scales of nonguaranteed elements on existing policies, it shall notify each affected policy owner of the change and its effect on the policy no later than the date of the first payment on the new basis.
 - 2. The requirement established in subparagraph 1. of this paragraph shall not apply to policies for which the death benefit pursuant to the basic policy on the date of notice does not exceed \$5,000.
 - (c) If the insurer makes a material revision in the terms and conditions which will limit its right to change any nonguaranteed factor, it shall notify each affected policy owner of the change no later than the first policy anniversary following the revision.

Section 5. General Rules. (1)(a) Prior to commencing a life insurance sales presentation, an agent shall inform the prospective purchaser that the agent is acting as a life insurance agent.

(b) The agent shall inform the prospective purchaser in writing of the full name of the insurance company which the agent represents.

(c) In sales situations in which an agent is not involved, the insurer shall identify the insurer's full name.

(2)(a) An insurance producer marketing insurance products shall not use a title or designation, including "financial planner," "investment advisor," "financial consultant," or "financial counseling" to imply that the insurance producer is engaged in an advisory or consulting business in which compensation is unrelated

to sales.

(b) This subsection shall not preclude:

1. A person recognized as having a financial planning or consultant designation from using the designation even if only selling insurance; or

2. Members of a recognized trade or professional association from having these terms as part of the organization's name from citing membership. If authorized only to sell insurance products, a person citing membership shall disclose that fact.

(c) A person shall not charge an additional fee for services customarily associated with the solicitation, negotiation, or servicing of policies.

(3)(a) A reference to nonguaranteed elements shall include a statement that the item is not guaranteed and is based on the company's current scale of nonguaranteed elements.

(b) If a nonguaranteed element would be reduced by the existence of a policy loan, a statement to that effect shall be included in each reference to nonguaranteed elements.

Section 6. Failure to Comply. Failure of an insurer to provide or deliver the Buyer's Guide, an in force illustration, a policy summary, or policy data shall constitute an omission that misrepresents the benefits, advantages, conditions, or terms of an insurance policy.

Section 7. Effective Date. The requirements of this administrative regulation shall not be implemented or enforced prior to the effective date, determined pursuant to KRS 13A.330, or January 1, 2012, whichever is later.

Section 8. Incorporation by Reference. (1) "[The] Life Insurance Buyer's Guide, "National Association of Insurance Commissioners", 2018[Common-wealth of Kentucky", July 2011,] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Insurance, Mayo-Underwood Building, 500 Mero Street[245 West Main Street], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department's Web site at: <http://insurance.ky.gov/>.

SHARON P. CLARK, Commissioner
KERRY B. HARVEY, Secretary

APPROVED By AGENCY: August 14, 2020

FILED WITH LRC: August 14, 2020 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on November 24, 2020 at 500 Mero Street, Frankfort, Kentucky 40602. 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 p.m. on November 30, 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: DJ Wasson, Deputy Commissioner, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email dj.wasson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for insurers to deliver information to purchasers of life insurance that is designed

to improve the buyer's ability to select the most appropriate plan of life insurance for the buyer's needs and improve the buyer's understanding of the basic features of the policy that has been purchased or is under consideration.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that consumers have the appropriate information to make a decision when purchasing life insurance.

(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 304.2-110 authorizes the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. This regulation and the material incorporated by reference will help insurers educate consumers regarding the purchase of life insurance policies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation will ensure that insurers are providing consistent, accurate information to consumers regarding the basic features of a life insurance policy.

(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 adopt the latest edition of the National Association of Insurance Commissioners (NAIC) Buyers Guide.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to adopt the NAIC Buyers Guide which will streamline administrative costs for insurers operating in multiple states.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. This regulation and the material incorporated by reference will help insurers educate consumers regarding the purchase of life insurance policies. (d) How the amendment will assist in the effective administration of the statutes: The regulation will ensure that insurers are providing updated, consistent, accurate information to consumers regarding the basic features of a life insurance policy.

(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 affect approximately 450 insurers offering life insurance products.

(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: These entities will be required to provide a copy of the new buyer's guide to consumers due to this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Since these insurers and agents are already providing the previous version of the buyer's guide, the costs associated with providing the amended version should be minimal. The insurer or agent may print or e-mail a link to the buyer's guide which is published on the Department of Insurance website.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The insurers and agents will be in compliance with state law and will have resources to aid consumers in purchasing an annuity.

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

(a) Initially: Minimal, if any.

(b) On a continuing basis: Minimal, if any.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The budget of the Department of Insurance.

(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 required.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No new fees, or direct or indirect increases in fees, will be established or incurred.

(9) TIERING: Is tiering applied? Tiering is not applied: The provisions of this administrative regulation will be implemented in the same manner for all insurers who sell life insurance products.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110

(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 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? The administrative regulation will not generate any revenue for state or local government.

(c) How much will it cost to administer this program for the first year? The cost to administer the program will not change.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the program is indeterminable.

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

Revenues (+/-): Neutral

Other Explanation: N/A

PUBLIC PROTECTION CABINET Department of Insurance Financial Standards Division (Amendment)

806 KAR 30:010. Application for license procedure.

RELATES TO: KRS 304.30-030

STATUTORY AUTHORITY: KRS 304.30-070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.30-070 authorizes the commissioner ~~[executive-director]~~ to make reasonable administrative regulations to effectuate subtitle 30 of the Kentucky Insurance Code and to regulate the manner in which licensed insurance premium finance companies conduct their business. This administrative regulation sets forth application for license procedures.

Section 1. Application for Original or Renewal License. Each application for an original or renewal license as an insurance premium finance company shall be made on forms prescribed by the commissioner ~~[executive-director]~~. It shall be accompanied by all required documents and the license fee provided by KRS 304.4-010 which shall not be prorated. Each application for renewal of a

license as an insurance premium finance company shall be made on or before May 1 of each year and shall be accompanied by the renewal fee provided by KRS 304.4-010.

Section 2. Biographical Questionnaire. Each application for an original license as an insurance premium finance company shall be accompanied by biographical information for the persons specified in this section on forms prescribed by the commissioner ~~[executive-director]~~. A separate form shall be completed and executed:

(1) In the case of a sole proprietor, by the sole proprietor;

(2) In the case of a partnership or limited partnership, by each partner or limited partner;

(3) In the case of a firm, by each member or holder of record or beneficial interest therein; and

(4) In the case of a corporation, by each officer, director, and owner of more than ten (10) percent, directly or indirectly, of the outstanding shares of stock.

(5) Biographical questionnaires shall ~~[need not]~~ be filed with an application for renewal of a license if ~~[unless]~~ changes have taken place in the business organization involving individuals who have not previously filed the ~~[such]~~ questionnaire.

Section 3. Consent to Jurisdiction and Service of Process. Each applicant for a license and each person required to file the biographical questionnaire shall be deemed to have appointed the Secretary of State as its attorney to receive service of all legal process issued against it in this state upon causes of action arising within this state. Nothing contained herein shall preclude service by any other authorized method. Service upon the Secretary of State shall be made in the same manner as is provided for service of process upon authorized foreign or alien insurers.

Section 4. Changes in Condition of Licensee. (1) If any licensee or any person who is a partner, member, supervisory employee, officer, director, or ten (10) percent stockholder of a licensee is convicted, by final judgment of a court, of a felony involving moral turpitude, the commissioner ~~[executive-director]~~ shall, within ten (10) days after such conviction, be advised of the facts in detail by letter.

(2) The licensee shall notify the commissioner ~~[executive-director]~~ immediately upon its discovery that it no longer meets the requirements of 806 KAR 30:080.

SHARON P. CLARK, Commissioner

KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: August 14, 2020

FILED WITH LRC: August 17, 2020 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on November 24, 2020 at 500 Mero Street, Frankfort, Kentucky 40602. 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 p.m. on November 30, 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: DJ Wasson, Deputy Commissioner, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email dj.wasson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This

administrative regulation sets forth the process to apply for a license as a premium finance company.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the application process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.30-070 authorizes the Commissioner of Insurance to make and enforce reasonable rules and regulations as may be necessary to make effective the provisions of this subtitle and to establish the manner in which licensees shall conduct their business. This regulation establishes the application process for a premium finance company license.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation creates a process for the Department of Insurance to gather the necessary information to evaluate requests for a premium finance company license.

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

(a) How the amendment will change this existing administrative regulation: This amendment includes technical changes to correct agency names and to bring the language into compliance with the drafting rules in KRS 13A.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to correct the agency name and to bring the language of the administrative regulation into compliance with KRS 13A.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.30-070 authorizes the Commissioner of Insurance to make and enforce reasonable rules and regulations as may be necessary to make effective the provisions of this subtitle and to establish the manner in which licensees shall conduct their business. This amendment provides technical corrections to the existing administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will bring the language of the regulation into compliance with KRS 13A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact any entity applying for a premium finance company license.

(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: Applicants wanting to be licensed as a premium finance company in Kentucky are required to follow the provisions of this administrative regulation. The amendments to this regulation are technical amendments only.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: The amendments to this administrative regulation are technical in nature and will not have a cost impact on the applicants. The cost to file a premium finance company application is \$500 and is not changed as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance entities wanting to do business as a premium finance company in Kentucky will have taken the steps necessary to be licensed.

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

(a) Initially: Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance.

(b) On a continuing basis: Implementation of this amendment is not anticipated to have an on-going cost on the Department of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks 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 of fees will not be necessary because additional personnel is likely unnecessary.

(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 as the regulation applies in the same manner to all applicants for a premium finance company license.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.30-070

(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 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? The administrative regulation will not generate any revenue for state or local government.

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

(d) How much will it cost to administer this program for subsequent years? The cost to administer the program is indeterminable.

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: This is an existing function within the Department. The amendments to this administrative regulation are technical and do not have a cost impact on the existing program. Applications are reviewed by existing personnel at the Department.

PUBLIC PROTECTION CABINET

Department of Insurance

Financial Standards and Examination Division (Amendment)

806 KAR 30:070. Books and records subject to inspection.

RELATES TO: KRS 304.30-060

STATUTORY AUTHORITY: KRS 304.30-070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.30-070 authorizes the commissioner [~~executive director~~] to make reasonable administrative regulations to effectuate Subtitle 30 of the Kentucky Insurance Code and to regulate the manner in which licensed insurance premium finance companies conduct their business. This administrative regulation sets forth the records and recorded information subject to inspection by the commissioner [~~Executive Director~~].

Section 1. Books and Records. (1) Until payment under the agreement is made in full, every licensee shall maintain [file] each

premium finance agreement or duplicate originals [thereof,] and all original documents relating to the premium finance agreement, [thereto—]except those papers returned to the insured. The premium finance agreement and all original documents relating to the premium finance agreement shall:

(a) Include a common identifying number; and
(b) Be available for inspection by the department at any time. [so as to be readily available for inspection at any time. All such papers and instruments shall bear a common identifying number.]

(2) Every licensee shall maintain a register, ledger, or combination of records containing a summary of premium finance agreements acquired, other than pursuant to a pledge, which can readily show:

(a) The date of acquisition;
(b) The name of the insured;
(c) The identifying number;
(d) The principal balance;
(e) The amount of service charge;
(f) The balance payable by the insured;
(g) A distribution of proceeds showing the dates, amounts, purposes, and names of the person to whom any part of the proceeds is distributed;

(h) The application of any part of the proceeds to an unpaid balance due on an existing premium finance agreement which is terminated by refinance agreement.

(3) Every licensee shall maintain a record which will readily disclose at any time the aggregate number and outstanding time balances of all premium finance agreements held by it, other than pursuant to a pledge.

(4) Every licensee shall maintain an individual ledger card or appropriate combination of records with respect to each premium finance agreement showing:

(a) The name and address of the insured;
(b) The identifying account number;
(c) The name of the agent or broker;
(d) The amount of the principal balance;
(e) The date of acquisition;
(f) The name or names of the insurers and the policy number of the related insurance contracts;

(g) The date from which the service charge is payable and whether the [such] date is the effective date of the insurance coverage or some other later date;

(h) The service charge;
(i) The balance payable by the insured;
(j) Schedule of required payments.

(5) The ledger card shall also show all receipts setting forth their application to outstanding balances, delinquency, and other charges, if any, with the type of the [such] charge clearly specified.

(6) With respect to cancellation of insurance, the licensee shall record:

(a) The [the] effective date of the [such] cancellation;
(b) The [the] date of notice to the insured; [and]
(c) The [the] date of notice to the insurer;
(d) The [the] amount of return premium received, if any; [and]
(e) The [the] disposition of any return premium received [thereof].

(7) In connection with the prepayment of a premium finance agreement, the ledger card shall show the amount of service charge refund required to be made and the date such refund is made.

(8) With respect to any premium finance agreement, whether charged off or not, upon which legal proceedings have been taken, every licensee shall clearly indicate in permanent form on the insured's ledger card or on a separate sheet or card or file bearing the identifying account number, the following:

(a) The date of referral to an outside counsel for collection;
(b) The date and terms of any settlement agreed upon or the results of any legal or summary action taken for or against the licensee; and
(c) The nature or any collection expense incurred by the licensee in connection with litigation and charged to or paid by the insured or other obligor.

(9)(a) Except as noted in paragraph (b) of this subsection, records [Records] bearing any notation made in conformity with subsection (8) of this section shall be kept in a binder or file separate from other records.

(b) The [the] record of [as to] a premium finance agreement which has been paid in full, [or] which is current as to payments, or concerning which a decision has been officially made to abandon collection efforts of every kind, may be placed elsewhere.

(c) If the licensee engages in any other business, the records relating to the insurance premium finance business shall be kept separate from the records of any other business.

Section 2. Annual Report. Prior to May 1 of each year, each licensee shall furnish to the commissioner [Executive Director] a completed [form, entitled "Annual Report of Insurance Premium Finance Company," filed herein by reference. Copies may be obtained from the Office of Insurance, 151 Elkhorn Court, P.O. Box 517, Frankfort, Kentucky 40602.]

Section 3. Incorporation by Reference. (1) "Annual Report of Insurance Premium Finance Company (07/2020) is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Insurance, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30 p.m.

SHARON P. CLARK, Commissioner

KERRY B. HARVEY, Secretary

APPROVED By AGENCY: August 14, 2020

FILED WITH LRC: August 14, 2020

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on November 24, 2020 at 500 Mero Street, Frankfort, Kentucky 40602. 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 p.m. on November 30, 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: DJ Wasson, Deputy Commissioner, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email dj.wasson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This information sets for the records that must be retained by premium finance companies and the manner in which they must be maintained. It also sets forth the format of the annual report filed by premium finance companies.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide clarification on the records that must be maintained by premium finance companies and the manner in which they must be maintained to ensure consistency among premium finance companies doing business in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.30-070 authorizes the commissioner to make reasonable administrative regulations to effectuate Subtitle 30 of the Kentucky Insurance Code and to regulate the manner in which licensed insurance premium finance

companies conduct their business. This administrative regulation sets forth the records and recorded information subject to inspection by the commissioner.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides uniformity in the types of records maintained by all premium finance companies doing business in Kentucky in order to provide more efficient regulation of these entities.

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

(a) How the amendment will change this existing administrative regulation: The amendment provides technical changes to correct agency names and bring the language of the regulation into compliance with the drafting requirements of KRS 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to bring the language of the regulation into compliance with KRS 13A.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.30-070 authorizes the commissioner to make reasonable administrative regulations to effectuate Subtitle 30 of the Kentucky Insurance Code and to regulate the manner in which licensed insurance premium finance companies conduct their business. This amendment makes technical changes to correct agency names and bring the language of the regulation into compliance with KRS 13A.

(d) How the amendment will assist in the effective administration of the statutes: The amendment is technical in nature.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The administrative regulation impacts the approximately 36 premium finance companies licensed 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: The amendment is technical and does change the current business practices of licensed premium finance companies.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: The amendment is technical and does not change the cost of doing business as a premium finance company in Kentucky.

(c) As a result of compliance, what benefits will accrue to the entities: The amendment is technical and does not require a change in compliance. In general, premium finance companies that maintain their records in the manner outlined in the administrative regulation will be able to respond to any inspection requests or other inquiries by the Department.

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

(a) Initially: Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance.

(b) On a continuing basis: Implementation of this amendment is not anticipated to have an on-going cost on the Department of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks 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 of fees will not be necessary because additional personnel is likely unnecessary.

(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 as the requirements of this administrative regulation apply equally to all

premium finance companies doing business in Kentucky.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.30-070.

(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 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? The administrative regulation will not generate any revenue for state or local government.

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

(d) How much will it cost to administer this program for subsequent years? The cost to administer the program is indeterminable.

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: The amendments to this administrative regulation are technical in nature. In general, the regulation relates to the records maintained by premium finance companies and the annual reporting requirements. This is an existing program within the Department of Insurance. The administrative regulation will not require any additional resources.

PUBLIC PROTECTION CABINET Department of Insurance Financial Standards and Examination Division (Amendment)

806 KAR 46:040. Forms for application and financial statements.

RELATES TO: KRS 304.1-050, 304.48-020(7), 304.48-050, 304.48-070, 304.48-170, 304.48-230

STATUTORY AUTHORITY: KRS 304.2-110, 304.48-050, 304.48-170, 304.48-230

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.48-230 permits the commissioner to promulgate administrative regulations as necessary for the proper administration of KRS Chapter 304.48[304.28]. KRS 304.48-050 requires a proposed liability self-insurance group to file an application on a form approved by the commissioner. KRS 304.48-070 permits the commissioner to require a liability self-insurance group to provide a security deposit to the commissioner in the form and amount prescribed by the commissioner. KRS 304.48-170 requires liability self-insurance groups to file statements of financial condition on a form prescribed by the commissioner. This administrative regulation prescribes the required forms for application, security deposits and financial statements.

Section 1. Definitions. (1) "Commissioner" is defined in KRS

304.1-050(1).

(2) "Department" is defined in KRS 304.1-050(2).

(3) "Liability self-insurance group" is defined in KRS 304.48-020(7).

Section 2. (1) Pursuant to KRS 304.48-050, Form 995, Application for Certificate of Filing As a Liability Self-Insurance Group, shall be completed and submitted to the commissioner to apply for certification as a liability self-insurance group.

(2) Pursuant to KRS 304.48-170(2), the Liability Self-Insurance Group Quarterly Statement (Blank) shall be completed and submitted to the commissioner to file a quarterly statement of financial condition. Form 101, Trustee Confirmation of Receipt, shall be completed by each trustee of the liability self-insurance group, acknowledging receipt of a copy of the quarterly statement of financial condition, and submitted to the Department of Insurance within seventy-five (75) calendar days after the close of each quarterly reporting period.

(3) Pursuant to KRS 304.48-170(1), the Liability Self-Insurance Group Annual Statement (Blank) shall be completed and submitted to the commissioner to file an annual statement of financial condition.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Form 995 - Application for Certificate of Filing As a Liability Self-Insurance Group", 7/2020[9/2019];

(b) "Liability Self-Insurance Group Quarterly Statement (Blank)", 7/2020[9/2019];

(c) "Form 101 - Trustee Confirmation of Receipt", 7/2020[9/2019]; and

(d) "Liability Self-Insurance Group Annual Statement (Blank)", 7/2020[9/2019].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, Mayo-Underwood Building, 500 Mero Street, [215 West Main Street] Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material is also available on the Department of Insurance Internet Web site at <http://insurance.ky.gov>.

SHARON P. CLARK, Commissioner

KERRY B. HARVEY, Secretary

APPROVED By AGENCY: August 14, 2020

FILED WITH LRC: August 14, 2020 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on November 24, 2020 at 500 Mero Street, Frankfort, Kentucky 40602. 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 p.m. on November 30, 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: DJ Wasson, Deputy Commissioner, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email dj.wasson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation prescribes the required forms for application for certification of a new liability self-insurance group

and financial statements.

(b) The necessity of this administrative regulation: This regulation is necessary to set forth the format for an entity to apply for licensure as a liability self-insurance group and the format for quarterly and annual financial statements for liability self-insurance groups.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.48-230 permits the commissioner to promulgate administrative regulations as necessary for the proper administration of KRS Chapter 304 Subtitle 48. KRS 304.48-050 requires a proposed liability self-insurance group to file an application on a form approved by the commissioner. KRS 304.48-070 permits the commissioner to require a liability self-insurance group to provide a security deposit to the commissioner in the form and amount prescribed by the commissioner. KRS 304.48-170 requires liability self-insurance groups to file statements of financial condition on a form prescribed by the commissioner. This administrative regulation prescribes the required forms for application, security deposits and financial statements

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation prescribes the required forms to ensure that complete, comparable information is filed for review and analysis by the Department of Insurance.

(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 technical amendment to address an address change and a clarification on the incorporated material.

(b) The necessity of the amendment to this administrative regulation: The Department of Insurance moved from the previous address of 215 West Main Street, Frankfort, Kentucky 40601 to the Mayo-Underwood Building in November of 2019. This amendment is important for consumers, insurers and insureds to be informed of where to send documents. The change on the incorporated material is necessary to clarify that short-term investments should be listed as assets on the balance sheet.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.48-230 permits the commissioner to promulgate administrative regulations as necessary for the proper administration of KRS Chapter 304 Subtitle 48. KRS 304.48-050 requires a proposed liability self-insurance group to file an application on a form approved by the commissioner. KRS 304.48-070 permits the commissioner to require a liability self-insurance group to provide a security deposit to the commissioner in the form and amount prescribed by the commissioner. KRS 304.48-170 requires liability self-insurance groups to file statements of financial condition on a form prescribed by the commissioner. The amendments to this administrative regulation provide updates to the Department's address in both the administrative regulation and a technical clarification to the balance sheet incorporated by reference.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is technical in nature and provides notice of the Department's change of address to ensure mail is routed correctly and to ensure that all assets are appropriately listed on the balance sheet.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the five (5) liability self-insurance groups currently authorized to do business in Kentucky and an unknown number of future liability self-insurance groups that may apply to do business 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: Applicants for licensure as a liability self-insurance will need to submit an application on the form prescribed by this administrative regulation. Liability self-insurance groups will need to comply with the filing

requirements outlined in this administrative regulation in order to be in compliance with KRS 304.48-170

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Liability self-insurance groups have previously filed forms with the Department. This administrative regulation provides clear guidelines for the submission of their filings. Therefore, the cost to comply with this administrative regulation should be minimal.

(c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance, liability self-insurance groups will be in compliance with KRS 304.48-170 and will have applications and financial statements appropriately reviewed by the Department of Insurance.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There will be no cost to implement this administrative regulation.

(a) Initially: Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance.

(b) On a continuing basis: Implementation of this amendment is not anticipated to have an on-going cost on the Department of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks 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 of fees will not be necessary because additional personnel is likely unnecessary.

(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? No, because this regulation applies equally to all liability self-insurance groups.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.48-050, 304.48-170, 304.48-230

(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. This administrative regulation will not have a significant impact on the expenditures and revenues of the Department of Insurance.

(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 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? The administrative regulation will not generate any revenue for state or local government.

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

(d) How much will it cost to administer this program for subsequent years? The cost to administer the program is indeterminable.

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: This regulation adopts the forms for liability self-insurance groups to file annual and quarterly financial statements with the Department of Insurance as well as the application to be licensed as a liability self-insurance group. The Department currently has five (5) licensed liability self-insurance that currently file financial statements. Additionally, the statute, KRS 304.48-050 establishes a fee of \$5.00 for the filing of new applications. As this administrative regulation is simply updating an existing process and as the fee for any new applicants is minimal, this administrative regulation will not have a significant impact on the revenues or expenditures of the Department of Insurance.

PUBLIC PROTECTION CABINET Department of Insurance Financial Standards and Examination Division (Amendment)

806 KAR 52:010. Forms for application, security deposits and financial statements.

RELATES TO: KRS 304.50

STATUTORY AUTHORITY: KRS 304.50-010(2), 304.50-030(1), 304.50-050(1), (2), 304.50-060(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.50-010(2) requires the commissioner [~~executive—director~~] to promulgate administrative regulations as necessary to govern admission, certification and regulation of workers' compensation self-insured groups. 304.50-030(1) requires a workers' compensation self-insured group seeking initial certification to file an application on a form approved by the commissioner [~~Executive Director~~]. KRS 304.50-050(1) requires a workers' compensation self-insured group to provide a security deposit to the commissioner [~~Executive—Director~~] on a form prescribed by the commissioner [~~Executive—Director~~]. KRS 304.50-050(2) allows trustees to file cash, cash equivalents, United States Treasuries or a bank letter of credit in satisfaction of the security deposit requirement, on a form prescribed by the commissioner [~~Executive Director~~]. KRS 304.50-060(4) requires workers' compensation self-insured groups to file statements of financial condition on a form prescribed by the commissioner [~~Executive—Director~~]. This administrative regulation prescribes the required forms for application, security deposits and financial statements.

Section 1. Definitions. (1) Commissioner is defined in KRS 304.1-050(1) ["Executive Director" means the Executive Director of the Office of Insurance].

(2) Department is defined in KRS 304.1-050(2) ["Office" means the Office of Insurance].

(3) "Self-Insured group" is defined in KRS 304.50-015(29).

Section 2. (1) Pursuant to KRS 304.50-030(1), Form 100, Initial Application for Certificate of Filing As a Workers' Compensation Self-Insured Group, shall be completed and submitted to the commissioner [~~Executive Director~~] to apply for initial certification as a workers' compensation self-insured group.

(2) Pursuant to KRS 304.50-050(5), Form 141, Election Form for Designation of Custodian Bank for Safekeeping of Securities, shall be completed and submitted to the commissioner [~~Executive Director~~] to propose designation of a bank or trust company for the safekeeping of securities.

(3) Pursuant to KRS 304.50-050(2), Form 142, Letter of Credit, shall be completed and submitted to the commissioner [~~Executive Director~~] when issuing a letter of credit in satisfaction of the security deposit requirement for a workers' compensation self-insured group.

(4) Pursuant to KRS 304.50(2), Form 145, Transaction Sheet for Securities Held Under Safekeeping with Designated Custodian Banks, shall be completed and submitted to the commissioner [~~Executive—Director~~] when transferring funds in or out of the Safekeeping Account and shall be approved by the commissioner [~~Executive Director~~] before the bank can complete the transfer.

(5) Pursuant to KRS 304.50(2), Form 826, Safekeeping Agreement for Workers' Compensation Self-Insured Groups, shall be completed and submitted to the commissioner [Executive Director] when the self-insured group initially sets up the security account or when a group transfers the security deposit to another bank.

(6) Pursuant to KRS 304.50-060(4), the Workers' Compensation Self-Insured Group Quarterly Statement (Blank), shall be completed and submitted to the commissioner [Executive Director] to file a quarterly statement of financial condition. Form 102, Trustee Confirmation of Receipt, shall be completed by each trustee of the workers' compensation self-insured group, acknowledging receipt of a copy of the quarterly statement of financial condition, and submitted to the Department [Office] of Insurance within seventy-five (75) calendar days after the close of each quarterly reporting period.

(7) Pursuant to KRS 304.50-060(4), the Workers' Compensation Self-Insured Group Annual Statement (Blank), shall be completed and submitted to the commissioner [Executive Director] to file an annual statement of financial condition.

(8) Pursuant to KRS 304.50-050(1), Form 147, Deposit Calculation for Workers' Compensation Self-Insured Groups, shall be completed and submitted annually to the commissioner [Executive Director] to calculate the correct amount to be placed in the Safekeeping Account.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Form 100 - Initial Application for Certificate of Filing As a Workers' Compensation Self-Insured Group 7/2020[(2005)]";

(b) "Form 141 - Election Form for Designation of Custodian Bank for Safekeeping of Securities 7/2020[(2005)]";

(c) "Form 142 - Letter of Credit 7/2020[(2005)]";

(d) "Form 145 - Transaction Sheet for Securities Held Under Safekeeping with Designated Custodian Banks 7/2020[(2005)]";

(e) "Form 826 - Safekeeping Agreement for Workers' Compensation Self-Insured Groups 6/2020[(2005)]";

(f) "Workers' Compensation Self-Insured Group Quarterly Statement (Blank) 7/2020[(July-15, 2005)]";

(g) "Form 102 - Trustee Confirmation of Receipt 7/2020[(4/2005)]";

(h) "Workers' Compensation Self-Insured Group Annual Statement (Blank) [(July-15, 2005)]"; and

(i) "Form 147 - Deposit Calculation for Workers' Compensation Self-Insured Groups 6/2020[(2005)]".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department [Office] of Insurance, Mayo-Underwood Building, 500 Mero Street, [215 West Main Street], Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also available on the Department [Office] of Insurance Internet Web site at <https://insurance.ky.gov> [<http://doi.ppr.ky.gov/kentucky/>].

SHARON P. CLARK, Commissioner

KERRY B. HARVEY, Secretary

APPROVED By AGENCY: August 14, 2020

FILED WITH LRC: August 14, 2020 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on November 24, 2020 at 500 Mero Street, Frankfort, Kentucky 40602. 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 p.m. on November 30, 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: DJ Wasson, Deputy Commissioner, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email dj.wasson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: DJ Wasson

(1) Provide a brief summary of: This regulation is needed to prescribe the forms to be used by workers' compensation self-insured groups in applying for a certificate of filing, providing security deposits, and reporting financial information.

(a) What this administrative regulation does: This administrative regulation prescribes the required forms for application for certification of a new workers' compensation self-insured group, security deposits and financial statements.

(b) The necessity of this administrative regulation: This regulation is necessary to implement the provisions of KRS 304, Subtitle 50, which requires the Commissioner to prescribe forms for an application for initial certification as a workers' compensation self-insured group, security deposit requirements and quarterly and annual financial statements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.50-010 requires the Commissioner to promulgate administrative regulations as necessary to govern admission, certification and regulation of workers' compensation self-insured groups. Section 6(1) requires a workers' compensation self-insured group seeking initial certification to file an application on a form approved by the Commissioner. KRS 304.50-050(1) requires a workers' compensation self-insured group to provide a security deposit to the Commissioner on a form prescribed by the Commissioner. KRS 304.50-050(2) allows trustees to file cash, cash equivalents, United States Treasuries or a bank letter of credit in satisfaction of the security deposit requirement, on a form prescribed by the Commissioner. Finally, KRS 304.50-060(4) requires workers' compensation self-insured groups to file statements of financial condition on a form prescribed by the Commissioner. This regulation prescribes the forms required by those statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation prescribes the required forms to insure that complete, comparable information is filed for review and analysis by the Department of Insurance.

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

(a) How the amendment will change this existing administrative regulation: The amendments made to this regulation are technical, there are not substantive changes.

(b) The necessity of the amendment to this administrative regulation: The amendments are to ensure formatting, technicalities, and forms are up to date and clear.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments are strictly technical.

(d) How the amendment will assist in the effective administration of the statutes: The amendments are strictly technical.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the six (6) existing workers' compensation self-insured groups and any entity desiring to file an initial application to become certified as a workers' compensation self-insured group.

(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: Workers' compensation self-insured groups will be required to utilize the forms prescribed by this regulation when making the statutorily required filings with the Department of Insurance.

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Form 100, Initial Application for Certificate of Filing As a Workers' Compensation

Self-Insured Group, shall be completed and submitted to the Commissioner to apply for initial certification as a workers' compensation self-insured group. Form 141, Election Form for Designation of Custodian Bank for Safekeeping of Securities, shall be completed and submitted to the Commissioner to propose designation of a bank or trust company for the safekeeping of securities. Form 142, Letter of Credit, shall be completed and submitted to the Commissioner when issuing a letter of credit in satisfaction of the security deposit requirement for a workers' compensation self-insured group. Form 145, Transaction Sheet for Securities Held Under Safekeeping with Designated Custodian Banks, shall be completed and submitted to the Commissioner when transferring funds in or out of the Safekeeping Account and shall be approved by the Commissioner before the bank can complete the transfer. Form 826, Safekeeping Agreement for Workers' Compensation Self-Insured Groups, shall be completed and submitted to the Commissioner when the self-insured group initially sets up the security account or when a group transfers the security deposit to another bank. The Workers' Compensation Self-Insured Group Quarterly Statement (Blank), shall be completed and submitted to the Commissioner to file a quarterly statement of financial condition. Form 102, Trustee Confirmation of Receipt, shall be completed by each trustee of the workers' compensation self-insured group, acknowledging receipt of a copy of the quarterly statement of financial condition, and submitted to the Department of Insurance within seventy-five (75) calendar days after the close of each quarterly reporting period. The Workers' Compensation Self-Insured Group Annual Statement (Blank), shall be completed and submitted to the Commissioner to file an annual statement of financial condition. Form 147, Deposit Calculation for Workers' Compensation Self-Insured Groups, shall be completed and submitted annually to the Commissioner to calculate the correct amount to be placed in the Safekeeping Account.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: It will cost the applicant the fee of the necessary application. The initial application is \$600 non-refundable. This is an existing fee that has not been changed in this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance, existing workers' compensation self-insured groups and groups wanting to be licensed as a workers' compensation self-insured group will be utilizing the correct forms for compliance with the applicable statutes in the Insurance Code.

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

(a) Initially: Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance.

(b) On a continuing basis: Implementation of this amendment is not anticipated to have an on-going cost on the Department of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks 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 of fees will not be necessary because additional personnel is likely unnecessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not directly establish any new fees.

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all workers' compensation self-insured groups operating in Kentucky.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

Department of Insurance.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.50-010(2), 304.50-030(1), 304.50-050(1), (2), 304.50-060(4)

(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 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? The administrative regulation will not generate any revenue for state or local government.

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

(d) How much will it cost to administer this program for subsequent years? The cost to administer the program is indeterminable.

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: The program including receipt and review of annual audited financial statements will be handled by internal personnel. At this point, the Department anticipates all duties will be handled by current personnel.

PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (Amendment)

810 KAR 1:001. Definitions for 810 KAR Chapter 1.

RELATES TO: KRS Chapter 230

STATUTORY AUTHORITY: KRS 230.215(2), [230.225(5)-] 230.260(8), 230.361(1), 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission (the "commission") to regulate conditions under which horse[thoroughbred] racing shall be conducted in Kentucky. KRS 230.260(8) authorizes the commission to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall be conducted in Kentucky[this state]. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating pari-mutuel[mutuel] wagering on horse races under the pari-mutuel system of wagering. This administrative regulation defines the terms used in 810 KAR Chapter 1.

Section 1. Definitions. (1) [~~"Added money" means cash, exclusive of trophy or other award, added by the association to stakes fees paid by subscribers to form the total purse for a stakes race.~~

(2)] "Age" means the number of years since a horse was foaled, reckoned as if the horse was foaled on January 1 of the year in which the horse was foaled.

(2) "Appaloosa horse" means a horse duly registered with the Appaloosa Horse Club, Inc., Moscow, Idaho.

(3) "Appaloosa racing" is defined by KRS 230.210(3).

(4) "Arabian horse" means a horse duly registered with the Arabian Horse Club Registry of America. [~~"Arrears" means all sums due by a licensee as reflected by his or her account with the~~

horsemen's bookkeeper, including subscriptions, jockey fees, forfeitures, and any default incident to 810 KAR Chapter 1-.]

(5)[(4)] "Association" is defined by KRS 230.210(5).]

(5) "Authorized agent" means any person currently licensed as an agent for a licensed owner or jockey by virtue of notarized appointment of agency filed with the commission.]

(6) "Betting interest" means a single horse, or more than one (1) horse joined as a mutuel entry or joined in a mutuel field, on which a single pari-mutuel wager may be placed.

(7) ["Bleeder" means any horse known to have bled internally or from its nostrils during a workout or race.

(8) "Breakage" means the net pool minus payout.

(9) "Breeder" means the owner of the dam of a horse when the horse was foaled. A horse is "bred" at the place of its foaling.

(10)] "Calendar days" means consecutive days counted irrespective of number of racing days.]

(11) "Carryover" means nondistributed pool monies which are retained and added to a corresponding pool in accordance with 810 KAR 6:020.

(12) "Claiming race" means any race in which every horse running in the race may be transferred in conformity with 810 KAR 4:050.

(13) "Closing" means the time published by the association after which entries for a race will not be accepted by the racing secretary.]

(8)[(14)] "Commission" means:

(a) The Kentucky Horse Racing Commission if used in the context of the administrative agency governing horse racing and pari-mutuel wagering; and

(b) If used in the context of pari-mutuel wagering, the amount an association is authorized to withhold from a pari-mutuel wager pursuant to KRS 230.3615.

(9)[(15)] "Day" means any twenty-four (24) hour period beginning at 12:01 a.m. and ending at midnight.

(10)[(16)] "Dead heat" means a finish of a race in which the noses of two (2) or more horses reach the finish line at the same time.]

(17) "Declaration" means the withdrawal of a horse entered in a race prior to time of closing of entries for the race in conformance with 810 KAR Chapter 1-.]

(11)[(18)] "Designated area" means any enclosed area that the commission has approved for the location of terminals used for wagering on a[an] historical horse race.]

(19) "Disciplinary action" means action taken by the stewards or the commission for a violation of KRS Chapter 230 or KAR Title 810 or Title 811 and can include:

- (a) Refusal to issue or renew a license;
- (b) Revocation or suspension of a license;
- (c) Imposition of probationary conditions on a license;
- (d) Issuance of a written reprimand or admonishment;
- (e) Imposition of fines or penalties;
- (f) Denial of purse money;
- (g) Forfeiture of purse money; or
- (h) Any combination of paragraphs (a) through (g) of this subsection.

(20) "Disqualification" means a ruling of the stewards or the commission revising the order of finish of a race.]

(12) "Driver" means a person who is licensed to drive a horse in a race.

(13)[(21)] "Entry" means the act of nominating a horse for a race in conformance with KAR Title 810.

(14)[(22)] "Equipment" means accoutrements other than ordinary saddle, girth, pad, saddle cloth, and bridle carried by a horse, and includes whip, blinkers, tongue strap, muzzle, hood, noseband, bit, shadow roll, martingale, breast plate, bandages, boots, and racing plates or shoes.]

(23) "Exhibition race" means a race between horses of diverse ownership for which a purse is offered by the association, but on which no pari-mutuel wagering is permitted.]

(15)[(24)] "Exotic wager" means any pari-mutuel wager placed on a live or historical horse race other than a win, place, or show wager placed on a live horse race.

(16)[(25)] "Field" or "mutuel field" means a single betting

interest involving more than one (1) horse that is not a mutuel entry.]

(26) "Forfeit" means money due by a licensee because of an error, fault, neglect of duty, breach of contract, or alternative ruling of the stewards or the commission.

(27) "Free handicap" means a handicap for which no nominating fee is required to be weighted, but an entrance or starting fee may be required for starting in the race.

(28) "Handicap race" means a race in which the weights to be carried by the horses are assigned by the association handicapper with the intent of equalizing the chances of winning for all horses entered in the race.]

(17)[(29)] "Handle" means the aggregate of all pari-mutuel pools, excluding refundable wagers.

(18)[(30)] "Historical horse race" means any horse race that:

(a) Was previously run at a licensed pari-mutuel facility located in the United States;

(b) Concluded with official results; and

(c) Concluded without scratches, disqualifications, or dead-heat finishes.

(19)[(31)] "Horse" means any equine (including and designated as a mare, filly, stallion, colt, ridgeling, or gelding)[a thoroughbred registered with The Jockey Club irrespective of age or sex designation].]

(32) "Ineligible" means a horse or person not qualified under 810 KAR Chapter 1 or conditions of a race to participate in a specified racing activity.]

(20)[(33)] "Initial seed pool" means a nonrefundable pool of money funded by an association in an amount sufficient to ensure that a patron will be paid the minimum amount required on a winning wager on a[an] historical horse race.

(21)[(34)] "Jockey" means a rider currently licensed to ride in races as a jockey, apprentice jockey, amateur jockey, or a provisional jockey permitted by the stewards to ride in three (3) races prior to applying for a license.

(22) "Judge" means a duly appointed racing official with powers and duties specified in 810 KAR 2:050 serving at a current meeting in the Commonwealth.]

(35) "Lessee" means a licensed owner whose interest in a horse is a leasehold.]

(23)[(36)] "Licensed premises" means:

(a) The location and physical plant described in response to question P of the "Commonwealth of Kentucky Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, and Pari-Mutuel Wagering"[filed for racing to be conducted in 2010];

(b) Real property of an association, if the association receives approval from the commission for a new location at which live racing will be conducted; or

(c) One (1) facility or real property that is:

1. Owned, leased, or purchased by a licensed association within a sixty (60) mile radius of the association's track but not contiguous to track premises, upon commission approval; and

2. For purposes of paragraphs (b) and (c) of this subsection, is not within a sixty (60) mile radius of another licensed track premise where live racing is conducted and not within a forty (40) mile radius of a simulcast facility, unless any affected track of simulcast facility agrees in writing to permit a noncontiguous facility within the protected geographic area.

(24)[(37)] "Licensee" means an individual, firm, association, partnership, corporation, trustee, or legal representative that has been duly issued a currently valid license to participate in racing in the Commonwealth.]

(38) "Maiden" means a horse which has never won a race on the flat at a recognized meeting in any country. A maiden which was disqualified after finishing first remains a maiden. Race conditions referring to maidens shall be interpreted as meaning maidens at the time of starting.

(39) "Match race" means a race between two (2) horses for which no other horses are eligible.]

(25)[(40)] "Meeting" means the entire period of consecutive days, exclusive of dark days, granted by the commission to a licensed association for the conduct of live horse racing that:

(a) Begins at 10 a.m. of the first racing day; and
(b) Extends through a period ending one (1) hour after the last scheduled race of the last day.

(26)[(41)] "Minus pool" means a pari-mutuel pool in which the amount of money to be distributed on winning wagers exceeds the amount of money contained in the net pool.[

(42) "Month" means calendar month.]

(27)[(43)] "Mutuel entry" means a single betting interest involving two (2) or more horses entered in the same race and joined for pari-mutuel purposes because of common ties as to ownership or training so that a wager on one (1) horse joined in a mutuel entry is a wager on all horses joined in the same mutuel entry.

(28)[(44)] "Net pool" means the total amount wagered less refundable wagers and takeout.[

(45) "Nomination" means a subscription or entry of a horse in a stakes or early closing race.

(46) "Nominator" means the person in whose name a horse is entered for a race.]

(29)[(47)] "Owner" means any person who holds, in whole or in part, any right, title, or interest in a horse, or any lessee of a horse, who has been duly issued a currently valid owner's license as a person responsible for the horse.

(30)[(48)] "Pari-mutuel wagering," "mutuel wagering", or "pari-mutuel system of wagering" each means a system or method of wagering approved by the commission in which patrons are wagering among themselves and not against the association and amounts wagered are placed in one or more designated wagering pools and the net pool is returned to the winning patrons.

(31)[(49)] "Patron" means an individual present at a track or a simulcast facility who observes or wagers on a live or historical horse race.

(32)[(50)] "Payout" means the amount of the net pool payable to an individual patron on his or her winning wager.

(33)[(51)] "Place," if used in the context of a single position in the order of finish in a race, means second; if used in the context of pari-mutuel wagering, a "place" wager means one involving a payoff on a betting interest which finished first or second in a race; if used in the context of multiple positions in the order of finish in a race, "place or placing" means finishing first or second.[

(52) "Post" means the starting point of a race.

(53) "Post position" means the relative place assigned to each horse, numbered from the inner rail across the track at the starting line, from which each horse is to start a race.

(54) "Post time" means the advertised moment scheduled for the arrival of all horses at the starting point for a race.

(55) "Prize" means the combined total of any cash, premium, trophy, and object of value awarded to the owners of horses according to order of finish in a race.]

(34)[(56)] "Purse" means the gross cash portion of the prize for which a race is run.

(35) "Quarter horse" means a horse registered with the American Quarter Horse Association of Amarillo, Texas.]

(57) "Purse race" means any race for which entries close at a time designated by the racing secretary, and for which owners of horses entered are not required by its conditions to contribute money toward its purse.]

(36)[(58)] "Race" means a running contest between thoroughbreds, ridden by jockeys, over a prescribed course free of obstacles or jumps, at a recognized meeting, during regular racing hours, for a prize.[

(59) "Race day" means any period of twenty-four (24) hours beginning at 12:01 a.m. and ending at midnight in which live racing is conducted by an association.

(60) "Racing official" means a racing commission member, commission staff as duties require, and all association racing department employees, as duties require.

(61) "Recognized meeting" means any meeting with regularly scheduled live horse races for thoroughbreds on the flat, licensed by and conducted under administrative regulations promulgated by a governmental regulatory body, to include foreign countries which are regulated by a racing authority which has reciprocal relations with The Jockey Club and whose race records can be provided to

an association by The Jockey Club.

(62) "Registration certificate" means:

(a) The document issued by The Jockey Club certifying the name, age, color, sex, pedigree, and breeder of a horse as registered by number with The Jockey Club; or

(b) The document known as a "racing permit" issued by The Jockey Club in lieu of a registration certificate if a horse is recognized as a thoroughbred for racing purposes in the United States, but is not recognized as a thoroughbred for breeding purposes insofar as registering its progeny with the Jockey Club.]

(37)[(63)] "Result" means the part of the official order of finish in a race used to determine the pari-mutuel payoff of pools.

(38)[(64)] "Rulings" means all determinations, decisions, or orders of the stewards or of the commission duly issued in writing and posted.

(39)[(65)] "Scratch" means the withdrawal of a horse entered for a race after the time of closing of entries for the race in conformance with KAR Title 810.[

(66) "Scratch time" means the time set by the racing secretary as a deadline for horsemen to indicate their desire to scratch out of a race.

(67) "Secretary" means the duly appointed and currently serving secretary of the commission.]

(40)[(68)] "Seed pool" means a pool of money funded by patrons wagering on a~~an~~ historical horse race that is used to ensure that all patrons are paid the minimum payout on winning wagers.

(41) "Simulcasting" is defined by KRS 230.210(11).[

(69) "Specimen" means a sample of blood, urine, or other biologic sample taken or drawn from a horse for chemical testing.

(70) "Stakes" means all fees:

(a) Paid by subscribers to an added-money or stakes race for nominating, eligibility, entrance, or starting, as may be required by the conditions of the race; and

(b) Included in the purse.

(71) "Stakes race" means a race that closes more than seventy-two (72) hours in advance of its running and for which subscribers contribute money towards its purse, or a race for which horses are invited by an association to run for a guaranteed purse of \$50,000 or more without payment of stakes. With the exception of stakes races in North America, "stakes race" shall exclude races not listed by The Jockey Club Information System International Cataloguing Standards, Part One (1).]

(42)[(72)] "Starter" means a horse in a race when the starting-gate doors open in front of it at the moment the starter dispatches the horses for a race.

(43)[(73)] "Steward" means a duly appointed racing official with powers and duties specified in 810 KAR 2:040 serving at a current meeting in the Commonwealth.

(44)[(74)] "Subscription" means nomination or entry of a horse in a stakes race.

(45)[(75)] "Takeout" means the total amount of money, excluding breakage and any amounts allocated to a seed pool, withheld from each pari-mutuel pool, as authorized by KRS 230.3615 and 810 KAR Chapter 1.

(46)[(76)] "Terminal" means any self-service totalizator machine or other mechanical equipment used by a patron to place a pari-mutuel wager on a live or historical horse race.

(47)[(77)] "Thoroughbred racing" is defined by KRS 230.210(21).

(48)[(78)] "Totalizator" means the system, including hardware, software, communications equipment, and electronic devices that accepts and processes the cashing of wagers, calculates the odds and prices of the wagers, and records, displays, and stores pari-mutuel wagering information.[

(79) "Unplaced" means a horse that finishes a race outside the pari-mutuel payoff.

(80) "Walkover" means a race in which the only starter or all starters represent single ownership.

(81) "Weigh in" means the presentation of a jockey to the clerk of scales for weighing after a race.

(82) "Weigh out" means the presentation of a jockey to the clerk of scales for weighing prior to a race.

(83) "~~Weight for age~~" means ~~the standard assignment of pounds to be carried by horses in races at specified distances during specified months of the year, scaled according to the age of the horse as set out in 810 KAR 4:020.~~

(84) "~~Workout~~" means ~~the training exercise of a horse on the training track or main track of an association during which the horse is timed for speed over a specified distance.~~

~~(49)~~(85) "Year" means twelve (12) consecutive months beginning with January and ending with December.

Section 2. Severability. If any provision or administrative regulation of this chapter is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby.

JONATHAN RABINOWITZ, Chair

KERRY HARVEY, Secretary

APPROVED BY AGENCY: September 8, 2020

FILED WITH LRC: September 9, 2020 at 8:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on November 23, 2020 at 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on November 30, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the regulatory definitions that apply to all pari-mutuel and exotic wagering on live and historical horse races in the Commonwealth.

(b) The necessity of this administrative regulation: The regulation is necessary to provide specific and updated definitions of the terms used in the commission's regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215 authorizes the commission to regulate the conditions under which racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.361 requires the commission to promulgate administrative regulations governing and regulating pari-mutuel wagering on horse races under the pari-mutuel system of wagering.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.215(2) authorizes the commission to regulate the conditions under which racing and pari-mutuel wagering thereon shall be conducted in the Commonwealth. This regulation provides specific and updated definitions for the terms used in the commission's administrative regulations.

(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 proposed amendment does not change any pari-mutuel or exotic pari-mutuel wagering definitions. Primarily, this amendment helps to consolidate the pari-mutuel and exotic pari-mutuel wagering definitions into one regulation rather than three.

Also, the proposed amendment eliminates numerous definitions that are obsolete or are not used in pari-mutuel wagering.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to reduce the number of regulations applicable to pari-mutuel and exotic pari-mutuel wagering and make the regulations easier to understand.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215 authorizes the commission to regulate the conditions under which horse racing and pari-mutuel wagering thereon shall be conducted in the Commonwealth. KRS 230.361 requires the commission to promulgate administrative regulations governing and regulating pari-mutuel wagering on horse races. This regulation provides specific definitions of terms used in the commission's administrative regulations.

(d) How the amendment will assist in the effective administration of the statutes: This proposed amendment provides definitions of terms used in the commission's administrative regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This proposed amendment will affect the seven currently-licensed racing associations in the Commonwealth, any applicant for a racing association license, the owners and trainers who participate in racing in the Commonwealth, the jockeys who ride in the Commonwealth, the harness drivers who drive in the Commonwealth, the patrons who place pari-mutuel wagers on live and historical horse racing in the Commonwealth, and the commission.

(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: This proposed amendment does not change any pari-mutuel or exotic pari-mutuel wagering definitions that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of pari-mutuel wagering definitions into one regulation, rather than three.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This proposed amendment does not change any pari-mutuel or exotic pari-mutuel wagering definitions that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of pari-mutuel wagering definitions into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission.

(c) As a result of compliance, what benefits will accrue to the entities: The racing associations will have a defined process to follow if they plan to request exotic wagers. They will be able to offer increased pari-mutuel wagering options to patrons and can expect an increase in on-track attendance and total pari-mutuel handle. The increased revenue can be used to maintain and improve racing association facilities and supplement purses for live races run at each racing association. The increased purses will help the racing associations to compete with racing associations in neighboring states that offer expanded gaming options. The owners, trainers, jockeys, and harness drivers will benefit from increased purses, as well as any improvements to a racing association's facilities. The patrons will benefit from any improvements to a racing association's facilities, as well as from increased pari-mutuel wagering options.

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

(a) Initially: This proposed amendment does not change any pari-mutuel or exotic pari-mutuel wagering definitions that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of pari-mutuel wagering definitions into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission. The racing associations will continue to experience costs due to employee compensation and

expenses, as well as equipment maintenance. The commission will be reimbursed by the racing associations for additional employee compensation and other expenses.

(b) On a continuing basis: This proposed amendment does not change any pari-mutuel or exotic pari-mutuel wagering definitions that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of pari-mutuel wagering definitions into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission. The racing associations will continue to experience costs due to employee compensation and expenses, as well as equipment maintenance. The commission will be reimbursed by the racing associations for additional employee compensation and other expenses pursuant to KRS 230.240.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This proposed amendment does not change any pari-mutuel or exotic pari-mutuel wagering definitions that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of pari-mutuel wagering definitions into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission. As a general rule, the commission is reimbursed by the racing associations for additional employee compensation and other expenses pursuant to KRS 230.240.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This proposed amendment does not change any pari-mutuel or exotic pari-mutuel wagering definitions that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of pari-mutuel wagering definitions into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This proposed amendment does not change any pari-mutuel or exotic pari-mutuel wagering definitions that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of pari-mutuel wagering definitions into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission.

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to each racing association.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission and the Department of Revenue.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215, 230.260, 230.361, and 230.370.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will have no effect on the expenditures and revenues of any state or local government agency.

(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?

(c) How much will it cost to administer this program for the first year? This regulation will have no effect on the expenditures and revenues of any state or local government agency.

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

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

Revenues (+/-): None.

Expenditures (+/-): None.

Other Explanation: N/A.

PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (Amendment)

810 KAR 1:011. Pari-mutuel wagering.

RELATES TO: KRS ~~230.300, 230.361, 230.3615, 230.370, 230.398, 230.750~~~~[138.510-138.550, 230.210-230.375, 230.990]~~

STATUTORY AUTHORITY: KRS ~~230.210, 230.215~~~~[230.215, 230.240, 230.260, 230.280, 230.290, 230.300, 230.310, 230.320], 230.361, 230.370~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes ~~[grants]~~ the Kentucky Horse Racing Commission ~~(the "commission")~~ ~~[authority]~~ to regulate conditions under which horse ~~[thoroughbred]~~ racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.361(1) requires the commission~~[authority]~~ to promulgate administrative regulations governing and regulating pari-mutuel~~[mutuel]~~ wagering on horse races under the pari-mutuel system of wagering. This administrative regulation establishes the requirements for the operation of pari-mutuel wagering under KRS Chapter 230 and [810] KAR Title 810, Chapter 1.

Section 1. Pari-Mutuel System of Wagering Required. (1) The only wagering permitted on a live or historical horse race shall be under the pari-mutuel system of wagering. All systems of wagering other than pari-mutuel shall be prohibited. Any person participating or attempting to participate in prohibited wagering shall be ejected and excluded from association grounds.

(2) Wagering conducted in conformity with KRS Chapter 230 and [810] KAR Title 810 ~~[Chapter 4]~~ is pari-mutuel.

Section 2. Totalizator or Other Approved Equipment Required.

(1) Pari-Mutuel wagering on live and historical horse races shall only be conducted through the use of a totalizator or other similar mechanical equipment approved by the commission pursuant to KRS 230.361.

(2) The totalizator or other mechanical equipment shall be available for testing under the supervision of the commission upon request by the commission to ensure its proper working order.

Section 3. Wagering on a[an] Historical Horse Race Authorized. (1) Wagering on a[an] historical horse race is hereby authorized and may be conducted in accordance with KRS Chapter 230 and [810] KAR Title 810~~[Chapter 4]~~.

(2) Wagering on a[an] historical horse race shall only be conducted by:

(a) An association licensed to conduct a live horse race meet; or

(b) Two (2) or more associations licensed to conduct a live horse race meet:

1. Who form a joint venture; or

2. Pursuant to an agreement between them.

(3) Wagering on a[an] historical horse race shall only be permitted in a designated area on the licensed premises of an association licensed to conduct a live horse race meeting. Wagering on historical horse racing shall not be offered in any other location.

(4) An association may conduct wagering on historical horse races of any horse breed ~~regardless~~[regard-less] of the type of breed that primarily races in live meets conducted by the association. An association may conduct wagering on historical races on any days and hours approved by the commission, and shall not be limited to times during which the association is conducting a live horse race meeting.

(5) Any wager placed on a[an] historical horse race is an exotic wager.

(6) Before offering wagering on a[an] historical horse race, an association shall first obtain the commission's written approval of all wagers offered as set forth in 810 KAR 6:030 [840-KAR-4:120].

(7) All wagering on a[an] historical horse race shall incorporate the following elements:

(a) A patron may only wager on a[an] historical horse race on a terminal approved by the commission;

(b) An association shall at all times maintain at least two (2) terminals offering each type of exotic wager on a[an] historical horse race;

(c) Once a patron deposits the wagered amount in the terminal offering wagering on a[an] historical horse race, a[an] historical horse race shall be chosen at random;

(d) Prior to the patron making his or her wager selections, the terminal shall not display any information that would allow the patron to identify the historical race on which he or she is wagering, including the location of the race, the date on which the race was run, the names of the horses in the race, or the names of the jockeys that rode the horses in the race;

(e) The terminal shall make available true and accurate past performance information on the historical horse race to the patron prior to making his or her wager selections. The information shall be current as of the day the historical horse race was actually run. The information provided to the patron shall be displayed on the terminal in data or graphical form; and

(f) After a patron finalizes his or her wager selections, the terminal shall display a video replay of the race, or a portion thereof, and the official results of the race. The identity of the race shall be revealed to the patron after the patron has placed his or her wager.

Section 4. Payouts Only Out of Pari-Mutuel Pools: Seed Pools Required. (1)(a) A wager on a[an] historical horse race, less deductions permitted by KRS Chapter 230 or [840] KAR Title 810[Chapter 4], shall be placed in pari-mutuel pools approved by the commission.

(b) A payout to a winning patron shall be paid from money wagered by patrons and shall not constitute a wager against the association.

(c) An association conducting wagering on a[an] historical horse race shall not conduct wagering in such a manner that patrons are wagering against the association, or in such a manner that the amount retained by the association as a commission is dependent upon the outcome of any particular race or the success of any particular wager.

(2) An association shall only pay a winning wager on a[an] historical horse race out of the applicable pari-mutuel pool and shall not pay a winning wager out of the association's funds. Payment of a winning wager shall not exceed the amount available in the applicable pari-mutuel pool.

(3) An association offering wagering on a[an] historical horse race shall operate seed pools in a manner and method approved by the commission as set forth in 810 KAR 6:030 [840-KAR-4:120]. For each wager made, an association may assign a percentage of the wager to seed pools. The seed pools shall be maintained and funded so that the amount available at any given time is sufficient to ensure that a patron will be paid the minimum amount required on a winning wager.

(4) An association shall provide the funding for the initial seed pool for each type of exotic wager. The funding for the initial seed pool shall be ~~non-refundable~~[non-refundable] and in an amount sufficient to ensure that a patron will be paid the minimum amount required on a winning wager.

Section 5. Location of Terminals Used for Wagering on a[an] Historical Horse Race. (1) Terminals offering wagering on historical horse races shall be located within designated areas which have the prior written approval of the commission. Designated areas shall be established in such a way so as to control access by the general public and prevent entry by any patron who is under eighteen (18) years of age or who is otherwise not permitted to place wagers.

(2) Each association shall monitor persons entering and leaving the designated areas and shall prevent access to any patron who is under eighteen (18) years of age or who is otherwise not permitted to place wagers on historical horse races.

(3) Each association shall provide terminals that are accessible to handicapped patrons.

Section 6. Records to be Maintained. (1) Each association and each simulcast facility authorized under KRS 230.380 shall maintain complete records of all pari-mutuel wagering transactions on live and historical horse races, including the amounts wagered at each betting window, self-service totalizator, mobile pari-mutuel teller, and terminal.

(2) A copy of the wagering records shall be retained and safeguarded for a period of not less than two (2) years and shall not be destroyed without the prior written permission of the commission.

Section 7. Equipment. (1) The association and the totalizator provider shall install a primary and secondary device[,] which activate the stop betting function of the totalizator system. The chief state steward, presiding judge, or his or her designee, shall use the primary device to stop wagering at the start of a live horse race. If wagering is not stopped by the primary device at the start of the race, the totalizator operator shall stop wagering using the secondary device. The secondary device shall be installed in the totalizator room and shall only be used by the totalizator operator.

(2) If there is a complete breakdown of the totalizator or mechanical equipment during the wagering on a live horse race, the wagering on that race shall be declared closed. If the totalizator remains capable of computing payouts, the payouts for that race shall be computed based on the amounts wagered prior to the breakdown. If the totalizator is incapable of computing payouts, then refunds shall be issued for all amounts wagered on that race.

(3) If there is a complete breakdown of a terminal offering wagering on a[an] historical horse race, the association offering the wager shall make a full refund of the patron's balance on the terminal at the time of the breakdown.

Section 8. Entries in a Live Horse Race. (1) The chief state steward or presiding judge shall timely advise an association's pari-mutuel manager, prior to the beginning of wagering on each live horse race, of the horses that will compete in the race.

(2) If two (2) or more horses entered for the same live horse race are determined by the commission to have common ties through ownership or training, they may be joined by the commission as a mutuel entry. The mutuel entry shall become a single betting interest and a wager on one (1) horse in a mutuel entry shall be a wager on all horses in the same mutuel entry. [If the number of horses competing in a live horse race exceeds the numbering capacity of the totalizator, the racing secretary shall assign the highest pari-mutuel numbers to horses so that the highest numbered horse within the numbering capacity of the totalizator, together with horses of higher numbers, shall be grouped in the mutuel field as a single betting interest, and a wager on one (1) horse in the mutuel field shall be a wager on all horses in the same mutuel field.]

(3) A refund at cost value shall be made to all holders of a purchased ticket bearing the number of a horse in any race that has been scratched or withdrawn before the horse has become a starter, unless the horse is part of a mutuel entry, and one (1) or more of the entry starts.

Section 9. Sale of Pari-Mutuel Tickets on Live Horse Races.

(1) The following types of pari-mutuel wagering shall be permitted

on a live horse race at all licensed associations and simulcast facilities:

- (a) Normal win, place, and show wagers on each race;
- (b) Any exotic wager previously approved by the commission; and

(c) Any new exotic wager approved in writing by the commission pursuant to 810 KAR 6:030 [810-KAR-1:120].

(2) Pari-mutuel tickets on live horse races shall not be sold except by a licensed association or a simulcast facility authorized by KRS 230.380.

(3) Pari-mutuel tickets on a live horse race shall only be sold at regular ticket windows, self-service totalizator machines, by mobile pari-mutuel tellers with hand-held totalizator devices, or by any other method approved in writing by the commission prior to being offered to the public. At least one (1) regular ticket window shall be made accessible to handicapped patrons.

(4)(a) Pari-mutuel stored value cards or cash vouchers may be offered by an association. The dollar amount on the stored value card or cash voucher may be redeemed at any time at any regular ticket window, or may be used to fund additional wagers, subject to the restrictions outlined in subsection (4)(b) of this section.

(b) Cash vouchers shall be valid for one (1) year after the date of issuance. Failure to present any cash voucher for redemption within one (1) year of issuance shall constitute a waiver of the right to receive payment on the voucher.

(5) A pari-mutuel wager shall not be made on a race after the totalizator has been locked for that race.

(6) Any claim by a patron that he or she has been issued a pari-mutuel ticket other than that which was requested shall be made before the patron has left the ticket window or before the mobile teller has initiated a transaction with another patron. A claim for an incorrect ticket shall not be honored after the totalizator has been locked.

Section 10. Payment on Pari-Mutuel Tickets on Live Horse Races.(1) At the end of each live horse race, the placing judges shall advise the manager of the pari-mutuel department by the use of the totalizator equipment or by telephone of the official placement of the horses, and payouts shall not be made until the receipt of the notice.

(2) Payment of valid pari-mutuel tickets shall be made on the basis of the order of finish as declared "official" by the stewards or judges. A subsequent change in the order of finish or award of purse money that may result from a subsequent ruling by the stewards, judges, or commission shall not affect the pari-mutuel payout.

(3) Each association shall deduct from each pari-mutuel pool a commission, not exceeding the commission provided by KRS 230.3615 or KRS 230.750. The remainder of the pool after the deduction of the commission shall be the net pool for distribution as payouts to ticket holders.

(4) Payment on valid pari-mutuel tickets shall be made only if presented and surrendered within one (1) year following the running of the live horse race on which the wager was made. Failure to present a ticket within one (1) year shall constitute a waiver of the right to receive payment on the ticket.

(5) The association shall be responsible for the correctness of all payout prices posted as "official." If an error is made in posting the payout figures, and ascertained before any tickets are cashed, the posting error shall be corrected, accompanied by a public address announcement, and only the correct amounts shall be used in the payout, irrespective of the initial error.

(6) A mutilated pari-mutuel ticket that is not easily identifiable as being a valid ticket shall not be accepted for payment.

(7) An association shall establish a written procedure for granting patrons an opportunity to file a claim on a lost pari-mutuel ticket and shall provide a copy of that written procedure to the commission.

(8) Prior to posting official results or payouts, the association's pari-mutuel manager shall require the verification of the winning runners and prices[prior to posting official results].

(9)(a) If an error is made in calculating the payout on a winning wager, resulting in overpayment, the association shall be

responsible for the amount between the correct payout and the amount paid.

(b) If the error in calculation results in a payout being too low, the amount between the correct payout and the amount paid shall be added to the net pool of the same position in the following race on the same day or, if it is the last race of the day, then it shall be added to the net pool of the same position in the same race on the following day. If an error occurs in computing the daily double pool, the underpayment shall be added to the daily double pool of the following day.

(c) If an error occurs causing underpayment on the last race of the entire racing meeting, the amount of the underpayment shall be paid to the Kentucky Revenue Cabinet.

Section 11. Minimum Wagers and Payouts. (1) The minimum wager to be accepted by any licensed association on a live horse race shall be ten (10) cents. The minimum payout on a one (1) dollar wager on a live horse race shall be one (1) dollars and ten (10) cents, unless a minus pool occurs. If a minus pool occurs, the minimum payout for a one (1) dollar wager shall be one (1) dollar and five (5) cents.

(2) The minimum wager to be accepted by any licensed association on a[an] historical horse race shall be ten (10) cents. The minimum payout on any wager shall not be less than the amount wagered.

Section 12. Minors Prohibited from Wagering. A minor shall not be permitted by any licensed association or simulcast facility to purchase or cash a pari-mutuel ticket.

Section 13. Odds and Payouts Posted. (1) Approximate odds for live horse races, based on win pool betting for finishing first for each betting interest, shall be posted on one (1) or more boards or television screens within view of the wagering public at intervals of not more than ninety (90) seconds.

(2) If daily double wagering is conducted on a live horse race, before off-time of the second daily double race, the probable payout for each two (2) dollar daily double wager combining the winner of the first daily double race with every horse or betting interest in the second daily double race shall be posted; except that if a dead heat for first in the first daily double race occurs, or a scheduled starter in the second daily double race is excused so as to cause a consolation daily double pool, then posting of all possible payouts shall not be mandatory, but the association shall make every effort to compute such daily double prices and advise the public by posting or public address announcement as soon as possible and prior to the running of the second daily double race.

(3) For wagering on a[an] historical horse race, approximate odds or payouts for each wagering pool shall be posted on each terminal for viewing by patrons at intervals of no more than ninety (90) seconds.

Section 14. Betting Explanation. (1) Each association shall publish in the daily race program, for each day of live horse racing, a general explanation of pari-mutuel wagering offered on live horse races and an explanation of each type of betting pool offered. The explanation also shall also be posted in conspicuous places about the association grounds to adequately inform the public and shall be submitted to the commission prior to publication for approval.

(2) Each association shall post, in conspicuous places in the designated area, a general explanation of pari-mutuel wagering offered on historical horse races and an explanation of each betting pool offered. The explanation shall be submitted to the commission for approval prior to its posting.

Section 15. Prior Approval Required for Number of Live Horse Races. Each association desiring to conduct more than nine (9) live horse races on a single day shall first apply in writing to the commission and obtain specific approval of the number of live horse races to be offered on a single day.

Section 16. Pools Dependent upon Entries for Live Horse Races. (1) If horses representing five (5) or fewer betting interests

qualify to start in a live horse race, the association may prohibit show wagering on that race. If horses representing four (4) or fewer betting interests qualify to start in a live horse race, the association may prohibit both place and show wagering on that race.

(2) If a horse is scratched by the stewards or judges after wagering has commenced, or if a horse is prevented from running in a live horse race because of failure of a starting-gate door to open properly, and the number of actual starters representing different betting interests is:

(a) Reduced to five (5), the association may cancel show wagering on that race and the entire show pool shall be refunded upon presentation and surrender of show tickets; or

(b) Reduced to four (4) or fewer, the association may cancel both place and show wagering on that race and the entire place and show pool shall be refunded upon presentation and surrender of place and show tickets.

Section 17. Emergency Situation. If any emergency arises in connection with the operation of the pari-mutuel department not provided for by this administrative regulation, the pari-mutuel manager shall take immediate corrective action and shall by the quickest means possible notify the chief state steward or presiding judge and render a full report to the commission.

Section 18. Severability. In the event that any provision or administrative regulation of this chapter is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby.

JONATHAN RABINOWITZ, Chair

KERRY HARVEY, Secretary

APPROVED BY AGENCY: September 8, 2020

FILED WITH LRC: September 9, 2020 at 8:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on November 23, 2020 at Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on November 30, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the regulatory framework that applies to all pari-mutuel wagering on live and historical horse races in the Commonwealth. It authorizes pari-mutuel wagering on historical horse races and requires the use of seed pools for such wagers. It establishes where, and under what circumstances, pari-mutuel wagering on live and historical horse races may take place. It places requirements on how winning pari-mutuel wagers shall be paid. It requires associations to maintain records regarding all pari-mutuel wagering at their facilities and to make them available to the commission on request. It establishes guidelines for the equipment used by the association to offer pari-mutuel wagering and provides

requirements for the sale of pari-mutuel tickets. It establishes minimum wager amounts and payouts for pari-mutuel wagers on live and historical horse races.

(b) The necessity of this administrative regulation: This regulation is necessary for the commission to regulate the integrity of pari-mutuel wagering in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) authorizes the commission to regulate the conditions under which racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating pari-mutuel wagering on horse races. This regulation establishes the regulatory framework that applies to all pari-mutuel wagering on live and historical horse races in the Commonwealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.215(2) authorizes the commission to regulate the conditions under which racing and pari-mutuel wagering thereon shall be conducted in the Commonwealth. This regulation provides the specific rules for pari-mutuel wagering on live and historical horse races in 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: This amendment eliminates one obsolete provision. It also expands KAR Title 810 to regulate pari-mutuel wagering on all types of horse racing, including thoroughbred, standardbred, quarter horse, appaloosa, and Arabian racing. This amendment will continue to bring uniformity to the rules governing pari-mutuel wagering for the various breeds.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to reduce the number of regulations applicable to pari-mutuel wagering and make the regulations easier to understand.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215(2) authorizes the commission to regulate the conditions under which horse racing and pari-mutuel wagering thereon shall be conducted in the Commonwealth. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating pari-mutuel wagering on horse races. This amendment sets forth the requirements that apply to all pari-mutuel wagering on live and historical horse races in the Commonwealth, for all breeds of horse.

(d) How the amendment will assist in the effective administration of the statutes: KRS 230.215(2) authorizes the commission to regulate the conditions under which horse racing and pari-mutuel wagering thereon shall be conducted in the Commonwealth. This amendment provides the specific rules for pari-mutuel wagering on live and historical horse races in the Commonwealth.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the seven currently-licensed racing associations in the Commonwealth, any applicant for a racing association license, the owners and trainers who participate in racing in the Commonwealth, the jockeys who ride in the Commonwealth, the harness drivers who drive in the Commonwealth, the patrons who place pari-mutuel wagers on live and historical horse races in the Commonwealth, and the commission.

(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: This proposed amendment does not change any pari-mutuel compliance requirements that were not already in place. Instead, the proposed amendment simply consolidates pari-mutuel compliance requirements into one regulation, rather than three. With that in mind, the licensed racing associations will be required to follow the procedure outlined in the regulation to offer pari-mutuel wagering.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This proposed amendment does not change any pari-mutuel compliance requirements that were not already in place. Instead, the proposed amendment simply consolidates pari-mutuel compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission.

(c) As a result of compliance, what benefits will accrue to the entities: The associations will be able to offer pari-mutuel wagering options to patrons. Pari-mutuel wagering will increase on-track attendance and total pari-mutuel handle. The increase revenue can be used to maintain and improve racing association facilities and supplement purses for live races run at each association. The increased purses will help the associations to compete with racing associations in neighboring states that offer expanded gaming options. The owners, trainers, jockeys and harness drivers will benefit from increased purses, as well as any improvements to an association's facilities. The patrons will benefit from any improvements to an association's facilities, as well as from increased pari-mutuel wagering options.

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

(a) Initially: This proposed amendment does not change any pari-mutuel compliance requirements that were not already in place. Instead, the proposed amendment simply consolidates pari-mutuel compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission. The racing associations will continue to experience costs due to employee compensation and expenses, as well as equipment maintenance. The commission will be reimbursed by the associations for additional employee compensation and other expenses pursuant to KRS 230.240.

(b) On a continuing basis: This proposed amendment does not change any pari-mutuel compliance requirements that were not already in place. Instead, the proposed amendment simply consolidates pari-mutuel compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission. The racing associations will continue to experience costs due to employee compensation and expenses, as well as equipment maintenance. The commission will be reimbursed by the associations for additional employee compensation and other expenses pursuant to KRS 230.240.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This proposed amendment does not change any pari-mutuel compliance requirements that were not already in place. Instead, the proposed amendment simply consolidates pari-mutuel compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission. As a general rule, the commission is reimbursed by the association for additional employee compensation and other expenses pursuant to KRS 230.240.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This proposed amendment does not change any pari-mutuel compliance requirements that were not already in place. Instead, the proposed amendment simply consolidates pari-mutuel compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This proposed amendment does not change any pari-mutuel compliance requirements that were not already in place. Instead, the proposed amendment simply consolidates pari-mutuel compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission.

However, as in previous version of this regulation, the associations that request and receive permission to offer pari-mutuel wagering on historical horse races will be required to reimburse the commission for the cost of compensation of additional employees and expenses pursuant to KRS 230.240.

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to each association.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission and the Department of Revenue.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.210, 230.215, 230.361, and 230.370.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This proposed amendment does not change any pari-mutuel compliance requirements that were not already in place. Instead, the proposed amendment simply consolidates pari-mutuel compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase revenue any more than the current regulatory scheme does. Under the current regulatory scheme, the amount of tax revenue will be dependent on the number of terminals the associations install and operate.

(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 proposed amendment does not change any pari-mutuel compliance requirements that were not already in place. Instead, the proposed amendment simply consolidates pari-mutuel compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase revenue any more than the current regulatory scheme does. Under the current regulatory scheme, the amount of tax revenue will be dependent on the number of terminals the associations install and operate.

(c) How much will it cost to administer this program for the first year? This proposed amendment does not change any pari-mutuel compliance requirements that were not already in place. Instead, the proposed amendment simply consolidates pari-mutuel compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase costs any more than the current regulatory scheme does. Under the current regulatory scheme, the costs largely come from employee compensation and expenses, as well as equipment maintenance. The commission is reimbursed for these costs by the associations.

(d) How much will it cost to administer this program for subsequent years? This proposed amendment does not change any pari-mutuel compliance requirements that were not already in place. Instead, the proposed amendment simply consolidates pari-mutuel compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase costs any more than the current regulatory scheme does. Under the current regulatory scheme, the costs largely come from employee compensation and expenses, as well as equipment maintenance. The commission is reimbursed for these costs by the associations.

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

regulation.

Revenues (+/-): None.
Expenditures (+/-): None.
Other Explanation: N/A

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)**

810 KAR 1:120. Exotic wagering.

RELATES TO: KRS 230.300, 230.361, 230.3615, 230.370, 230.398, 230.750 [230.240-230.375, 230.990]

STATUTORY AUTHORITY: KRS 230.210, 230.215, [230.240, 230.260, 230.280, 230.290, 230.300, 230.340, 230.320,] 230.361, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes [grants] the Kentucky Horse Racing Commission (the "commission") the authority to regulate conditions under which horse[thoroughbred] racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating pari-mutuel[mutuel] wagering on horse races under the pari-mutuel system of wagering. This administrative regulation establishes the procedures and regulations governing exotic wagering under KRS Chapter 230 and [840] KAR Title 810[Chapter 4].

Section 1. All Pari-mutuel Wagers on a[an] Historical Horse Race Are Exotic Wagers. All pari-mutuel wagers other than win, place, or show wagers on a live horse race are exotic wagers.

Section 2. Exotic Wagers to Be Approved by Commission.

(1) An association shall not offer an exotic wager on any live or historical horse race without the prior written approval of the commission.

(2) An association making a request to offer an exotic wager on a live or historical horse race may make an oral presentation to the commission regarding the wager prior to the commission deciding on the request.

(a) The presentation shall be made by the association during a meeting of the commission.

(b) The presentation shall be limited to the information contained in the written request and any supplemental information relevant to the commission's determination of the suitability of the wager.

(c) The commission may require an association to clarify or otherwise respond to questions concerning the written request as a condition [te] of approval [ef] for the exotic wager.

(3) The commission may request additional information from an association regarding the exotic wager if the additional information would assist the commission in deciding whether to approve it.

(4) In reviewing a written request for an exotic wager, the commission may consider any information, data, reports, findings, or other factors available which it considers important or relevant to its determination of whether the wager should be approved.

(5) The commission or its designee shall review and test the exotic wager and shall give its approval if it is satisfied that:

(a) The wager does not adversely affect the safety or integrity of horse racing or pari-mutuel wagering in the Commonwealth; and

(b) The wager complies with KRS Chapter 230 and [840] KAR Title 810[Chapter 4].

(6) The commission shall notify the association if it determines that the criteria set forth in subsection (5) of this section are no longer being met and it intends to withdraw approval of a particular exotic wager.

(7) An association shall not implement any change or modification to the practices, procedures, or representations upon which the approval of the exotic wager was based without the prior written approval of the commission.

Section 3. Exotic Wagers on a Live Horse Race.

(1) Except as set forth in subsection (2) of this section, an association shall submit a written request to the commission for permission to offer any exotic wager on a live horse race, which shall include a detailed description of the rules that apply to the wager and the method of calculating payouts.

(2) If the rules have not been modified since the wager was approved by the commission, an association shall not be required to seek the commission's approval to offer the following previously approved exotic wagers on live horse races: Exacta, Perfecta, Quinella, Trifecta, Superfecta, Double Perfecta, Big Q, Twin Trifecta, Daily Double, Super High 5, Pick-3, Pick-4, and Pick-6.

Section 4. Exotic Wagers on a[an] Historical Horse Race.

(1) An association shall submit a written request to the commission for permission to offer any exotic wager on a[an] historical horse race, which shall include:

(a) The types, number, and denominations of pari-mutuel wagers to be offered;

(b) A detailed description of the rules that apply to the pari-mutuel wager and the method of calculating payouts, including how money will be allocated to the seed pool;

(c) The days and hours of operation during which wagering on historical horse races will be offered;

(d) A detailed description of the proposed designated area and the terminal or terminals on which the pari-mutuel wagers will be made, including an architect's rendering of the proposed designated area which describes the size, construction, layout, capacity, number of terminals, and location of surveillance and other security equipment, and at least one (1) photograph of the designated area when construction is completed;

(e) The practices and procedures that will ensure the security, safety, and comfort of patrons in the designated area;

(f) The manufacturer, make, and model of the terminal, including a copy of all literature supplied by the manufacturer of the terminal;

(g) The maintenance and repair procedures that will ensure the integrity of the terminals;

(h) A complete list of individuals who are authorized to examine and repair the terminals for any reason; and

(i) A memorandum outlining the terms of the agreement referenced in Section 6(2) of this administrative regulation between the association and one (1) of the following horsemen's organizations, as applicable:[either] the Kentucky Horsemen's Benevolent and Protective Association, [or] the Kentucky Thoroughbred Association/Kentucky Thoroughbred Owners and Breeders, the Kentucky Harness Horsemen's Association, the Kentucky Harness Association, the Kentucky Quarter Horse Racing Association, the Arabian Jockey Club, or a horsemen's organization representing appaloosa racing[referenced in Section 6(2) of this administrative regulation].

(2)(a) Except as set forth in paragraph (b) of this subsection, each association that is approved by the commission to offer exotic wagering on a[an] historical horse race shall request, in any application submitted for a license, to conduct live horse racing pursuant to KRS 230.300 and 810 KAR 3:010 810[KAR 4:037]:

1. No less than 100 percent of the number of racing days initially requested by the association in its application to conduct [thoroughbred] racing for the 2010 racing year; and

2. No less than 100 percent of the number of races initially requested by the association in its application to conduct [thoroughbred] racing for the 2010 racing year.

(b) An association may apply for less than 100 percent of the number of racing days initially applied for by the association in its application to conduct [thoroughbred] racing for 2010, or the number of races initially applied for by the association in its application to conduct [thoroughbred] racing for 2010, if written approval is obtained from the commission, and from one of the following horsemen's organizations, as applicable:[either] the Kentucky Horsemen's Benevolent and Protective Association, [or] the Kentucky Thoroughbred Association/Kentucky Thoroughbred Owners and Breeders, the Kentucky Harness Association, the Kentucky Harness Horsemen's Association, the Kentucky Quarter

Horse Racing Association, the Arabian Jockey Club, or a horsemen's organization representing appaloosa racing[as appropriate].

Section 5. Terminals Used for Wagering on a[an] Historical Horse Race.

(1) Wagering on historical horse races shall be conducted only on terminals approved by the commission as set forth in Sections 2(5) and 5(2) of this administrative regulation. The commission shall not require any particular make of terminal.

(2)(a) The commission shall require testing of each terminal used for wagering on historical horse races by an independent testing laboratory to ensure the terminal's [its] integrity and proper working order.

(b) The independent testing laboratory shall be chosen by the commission and the expense of the testing shall be paid by the association offering the wagering on historical horse races.

(3) Each terminal for wagering on a[an] historical horse race shall display odds or pool amounts that the patron will receive for a winning wager on each pari-mutuel wagering pool.

Section 6. Takeout.

(1) Each association conducting exotic wagering on historical horse races shall deduct a takeout, which shall not exceed the percentages set forth in KRS 230.3615 or KRS 230.750, as applicable.

(2)(a) Each association shall enter into an agreement with one of the following horsemen's organizations, as applicable, to establish the allocation of the takeout on all exotic wagers on historical horse races offered by the association:[either] the Kentucky Horsemen's Benevolent and Protective Association, [or] the Kentucky Thoroughbred Association/Kentucky Thoroughbred Owners and Breeders, the Kentucky Harness Horsemen's Association, the Kentucky Harness Association, the Kentucky Quarter Horse Racing Association, the Arabian Jockey Club, or a horsemen's organization representing appaloosa racing[as appropriate, establishing the allocation of the takeout on all exotic wagers on historical horse races offered by the association]. The agreement shall apply to all exotic wagers on historical horse races offered, or to be offered, by the association during the term of the agreement.

(b) The agreement shall include provisions allocating a percentage of the takeout to purses on live races run by the association.

(c) Each association shall provide a memorandum outlining the terms of the agreement to the commission.

Section 7. Severability. In the event that any provision or administrative regulation of this chapter is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby.

JONATHAN RABINOWITZ, Chair
KERRY HARVEY, Secretary

APPROVED BY AGENCY: September 8, 2020

FILED WITH LRC: September 9, 2020 at 8:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on November 23, 2020 at Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on November 30, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative

regulation to the contact person below.

CONTACT PERSON: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation clarifies the process for licensed racing associations to request permission from the Kentucky Horse Racing Commission to offer exotic forms of pari-mutuel wagers on live and historical horse races. It includes a process for associations to request permission to offer pari-mutuel wagering on live and historical horse races and establishes criteria for the commission to evaluate such requests.

(b) The necessity of this administrative regulation: This regulation is necessary for the commission to regulate the integrity of pari-mutuel wagering in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) authorizes the commission to regulate the conditions under which racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating pari-mutuel wagering on horse races under the pari-mutuel system of wagering. This regulation establishes the procedures and regulations governing exotic forms of pari-mutuel wagering under KRS Chapter 230 and the commission's administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.361 requires the commission to promulgate administrative regulations governing and regulating pari-mutuel wagering on horse races. This administrative regulation establishes the criteria for determining whether exotic wagers requested by licensed racing association comply with the provisions of KRS Chapter 230 and the commission's administrative regulations.

(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 expands KAR Title 810 to regulate exotic wagering on all types of horse racing, including thoroughbred, standardbred, quarter horse, appaloosa, and Arabian racing. This amendment will continue to bring uniformity to the rules governing exotic wagering for the various breeds.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to reduce the number of regulations applicable to exotic wagering and make the regulations easier to understand.

(c) How the amendment conforms to the content of the authorizing statutes: Exotic wagering is a type of pari-mutuel wagering. KRS 230.215(2) authorizes the commission to regulate the conditions under which racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating pari-mutuel wagering on horse races. This regulation establishes the regulatory framework that applies to all pari-mutuel wagering on live and historical horse races in the Commonwealth.

(d) How the amendment will assist in the effective administration of the statutes: Exotic wagering is a type of pari-mutuel wagering. KRS 230.215(2) authorizes the commission to regulate the conditions under which racing and pari-mutuel wagering thereon shall be conducted in the Commonwealth. This regulation provides the specific rules for pari-mutuel wagering on live and historical horse races in the Commonwealth.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This proposed amendment will affect the seven currently-licensed racing associations in the Commonwealth, any applicant for a racing association license, the owners and trainers who participate in racing in the

Commonwealth, the jockeys who ride in the Commonwealth, the harness drivers who drive in the Commonwealth, the patrons who place exotic wagers on live and historical horse racing in the Commonwealth, and the commission.

(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: This proposed amendment does not change any exotic wagering compliance requirements that were not already in place. Instead, the proposed amendment simply consolidates exotic wagering compliance requirements into one regulation, rather than three. With that in mind, the licensed racing associations will be required to follow the procedure outlined in the regulation to offer exotic wagering.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This proposed amendment does not change any exotic wagering compliance requirements that were not already in place. Instead, the proposed amendment simply consolidates exotic wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission.

(c) As a result of compliance, what benefits will accrue to the entities: The associations will have a defined process to follow if they plan to request exotic wagers. They will be able to offer increased pari-mutuel wagering options to patrons and can expect an increase in on-track attendance and total pari-mutuel handle. The increased revenue can be used to maintain and improve racing association facilities and supplement purses for live races run at each association. The increased purses will help the associations to compete with racing associations in neighboring states that offer expanded gaming options. The owners, trainers, jockeys, and harness drivers will benefit from increased purses, as well as any improvements to an association's facilities. The patrons will benefit from any improvements to an association's facilities, as well as from increased pari-mutuel wagering options.

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

(a) Initially: This proposed amendment does not change any exotic wagering compliance requirements that were not already in place. Instead, the proposed amendment simply consolidates exotic wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission. The racing associations will continue to experience costs due to employee compensation and expenses, as well as equipment maintenance. The commission will be reimbursed by the associations for additional employee compensation and other expenses.

(b) On a continuing basis: This proposed amendment does not change any exotic wagering compliance requirements that were not already in place. Instead, the proposed amendment simply consolidates exotic wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission. The racing associations will continue to experience costs due to employee compensation and expenses, as well as equipment maintenance. The commission will be reimbursed by the associations for additional employee compensation and other expenses pursuant to KRS 230.240.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This proposed amendment does not change any exotic wagering compliance requirements that were not already in place. Instead, the proposed amendment simply consolidates exotic wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission. As a general rule, the commission is reimbursed by the association for additional employee compensation and other expenses pursuant to KRS 230.240.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This proposed amendment does not change any exotic wagering compliance requirements that were not already in place. Instead, the proposed amendment simply consolidates exotic wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This proposed amendment does not change any exotic wagering compliance requirements that were not already in place. Instead, the proposed amendment simply consolidates exotic wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission. However, as in previous version of this regulation, the associations that request and receive permission to offer exotic wagering on historical horse races will be required to reimburse the commission for the cost of compensation of additional employees and expenses pursuant to KRS 230.240.

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to each association.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission and the Department of Revenue.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.210, 230.215, 230.361, 230.370.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This proposed amendment does not change any exotic wagering compliance requirements that were not already in place. Instead, the proposed amendment simply consolidates exotic wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase revenue any more than the current regulatory scheme does. Under the current regulatory scheme, the amount of tax revenue will be dependent on the number of terminals the associations install and operate.

(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 proposed amendment does not change any exotic wagering compliance requirements that were not already in place. Instead, the proposed amendment simply consolidates exotic wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase revenue any more than the current regulatory scheme does. Under the current regulatory scheme, the amount of tax revenue will be dependent on the number of terminals the associations install and operate.

(c) How much will it cost to administer this program for the first year? This proposed amendment does not change any exotic wagering compliance requirements that were not already in place. Instead, the proposed amendment simply consolidates exotic wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase costs any more than the current regulatory scheme does.

Under the current regulatory scheme, the costs largely come from employee compensation and expenses, as well as equipment maintenance. The commission is reimbursed for these costs by the associations.

(d) How much will it cost to administer this program for subsequent years? This proposed amendment does not change any exotic wagering compliance requirements that were not already in place. Instead, the proposed amendment simply consolidates exotic wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase costs any more than the current regulatory scheme does. Under the current regulatory scheme, the costs largely come from employee compensation and expenses, as well as equipment maintenance. The commission is reimbursed for these costs by the associations.

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

Revenues (+/-): None.

Expenditures (+/-): None.

Other Explanation: N/A

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)**

811 KAR 1:005. Definitions.

RELATES TO: KRS 230.215, 230.361[Chapter 230]

STATUTORY AUTHORITY: KRS 230.215, 230.361[230.225(5), 230.260, 230.361(1), 230.370]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing[grants the] Commission [the "commission"][authority] to regulate conditions under which horse[standardbred] racing shall be conducted in Kentucky. KRS 230.260(8) authorizes[grants] the commission [the authority] to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall be conducted in Kentucky[this state]. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating pari-mutuel[mutuel] wagering on horse races under the pari-mutuel system of wagering.

Section 1. Definitions. All definitions are set forth in KRS Chapter 230 and KAR Title 810, Chapter 1. [This administrative regulation defines the terms used in 811 KAR Chapter 1.

Section 1. Definitions. (1) "Added money" means the amount of money, exclusive of trophy, added into a stakes by an association, a sponsor, a state-bred program, or other fund, and which is in addition to those monies gathered by nomination, entry, sustaining and other fees paid by the horsemen.

(2) "Age" means the number of years since a horse was foaled, reckoned as if the horse was foaled in January 1 of the year in which the horse was foaled.

(3) "Also eligible" means:

(a) An eligible horse, properly entered, which is not drawn for inclusion in a race, but which becomes eligible according to preference or lot if another horse is scratched prior to the scratch time deadline; or

(b) The next preferred nonqualifier for the finals, or consolation from a set of elimination trials, which becomes eligible if a finalist is scratched by the judges for a rule violation or is otherwise eligible if written race conditions permit.

(4) "Appeal" means a request for the commission to investigate, consider, and review any decision or ruling of a judge or official of a meeting to deal with placings, penalties, interpretations of the rules, or other questions dealing with the conduct of a race.

(5) "ARCI" means the Association of Racing Commissioners International.

(6) "Arrears" means all sums due by a licensee as reflected by

his or her account with the horseman's bookkeeper, including subscriptions, driver fees, forfeitures, and any default incident to 811-KAR Chapter 1.

(7) "Association" is defined by KRS 230.210(1).

(8) "Bleeder" means a horse known to have bled internally or from its nostrils during a workout or race.

(9) "Bleeder list" means a tabulation of all bleeders to be maintained by the commission.

(10) "Breakage" means the net pool minus payout.

(11) "Breeder" means the owner of the dam of a horse when the horse was conceived.

(12) "Calendar days" means consecutive days counted irrespective of number of racing days.

(13) "Carryover" means nondistributed pool monies which are retained and added to a corresponding pool in accordance with 811-KAR Chapter 1.

(14) "Claiming race" means a race in which ownership of a horse participating in the race may be transferred in conformity with 811-KAR Chapter 1.

(15) "Classified race" means a race in which entries are selected by the racing secretary on the basis of ability or past performance.

(16) "Coggins test" means a medical procedure used to determine if a horse is positive for Equine Infectious Anemia.

(17) "Commission" means:

(a) The Kentucky Horse Racing Commission (formerly known as the Kentucky Horse Racing Authority and defined in KRS 230.210(2)) if used in the context of the administrative agency governing horse racing and pari-mutuel wagering; and

(b) If used in the context of pari-mutuel wagering, the amount an association is authorized to withhold from a pari-mutuel wager pursuant to KRS 230.750.

(18) "Conditioned race" means an overnight race in which eligibility is determined according to specified conditions, which may include the following:

- (a) Age;
- (b) Sex;
- (c) Earnings;
- (d) Number of starts; or
- (e) Positions of finishes.

(19) "Conditions" means qualifications that determine a horse's eligibility to be entered in a race.

(20) "Coupled entry" means two (2) or more horses in a race that are treated as a single betting interest for pari-mutuel wagering purposes.

(21) "Dash" means a race in a single trial or in a series of two (2) or three (3) races governed by one (1) entry fee for the series, in which a horse starts in all dashes with positions drawn for each dash and the number of purse distributions or payouts awarded does exceed the number of starters in the dash.

(22) "Day" means a twenty-four (24) hour period beginning at 12:01 a.m. and ending at midnight.

(23) "Dead heat" means a finish of a race in which the noses of two (2) or more horses reach the finish line at the same time.

(24) "Declaration" means the naming of a particular horse as a starter in a particular race.

(25) "Designated area" means any enclosed area that the commission has approved for the location of terminals used for wagering on an historical horse race.

(26) "Disqualification" means that:

(a) An individual is not allowed to start or drive a horse in a race; or

(b) A horse is not allowed to start in a race.

(27) "Draw" means the process of assigning post positions and the process of selecting horses.

(28) "Driver" means a person who is licensed to drive a horse in a race.

(29) "Early closing race" means a race for a definite amount of money in which entries close at least six (6) weeks prior to the race.

(30) "Electronic ability" means a computer-generated eligibility certificate that records a horse's racing statistics.

(31) "Elimination heat" means an individual heat of a race in

which the contestants qualify for a final heat.

(32) "Entry" means the act of nominating a horse for a race.

(33) "Exhibition race" means a race on which no pari-mutuel wagering is permitted.

(34) "Exotic wager" means any pari-mutuel wager placed on a live or historical horse race other than a win, place, or show wager placed on a live horse race.

(35) "Extended pari-mutuel meeting" means a meeting or series of meetings, at which no agriculture fair is in progress, with an annual total of more than six (6) days duration and during which pari-mutuel wagering is permitted.

(36) "Field" or "mutuel field" means a single betting interest involving more than one (1) horse which is not a mutuel entry.

(37) "Forfeit" means money due from a licensee because of error, fault, neglect of duty, breach of contract, or a penalty imposed by the judges or the commission.

(38) "Futurity" means a stake in which the dam of the competing animal is nominated either when in foal or during the year of foaling.

(39) "Handicap" means a race in which allowances are made according to a horse's:

- (a) Age;
- (b) Sex;
- (c) Claiming price; or
- (d) Performance.

(40) "Handle" means the aggregate of all pari-mutuel pools, excluding refundable wagers.

(41) "Historical horse race" means any horse race that:

- (a) Was previously run at a licensed pari-mutuel facility located in the United States;
- (b) Concluded with official results; and
- (c) Concluded without scratches, disqualifications, or dead-heat finishes.

(42) "Horse" means any equine (including and designated as a mare, filly, stallion, colt, ridgeling, or gelding) registered for racing.

(43) "In harness" means that the performance will be to a sulky.

(44) "Initial seed pool" means a nonrefundable pool of money funded by an association in an amount sufficient to ensure that a patron will be paid the minimum amount required on a winning wager on an historical horse race.

(45) "Inquiry" means an investigation by the judges of a contest prior to declaring the result of the contest official.

(46) "Judge" means a duly appointed racing official with powers and duties specified in 811 KAR 1:015 serving at a current meeting in the Commonwealth.

(47) "Late closing race" means a race for a fixed amount of money in which entries close less than six (6) weeks but not more than three (3) days before the race is to be contested.

(48) "Licensed premises" means the location and physical plant described in response to question P of the "Commonwealth of Kentucky Initial/Renewal Application for License to Conduct Live Horse Racing, Simulcasting, and Pari-mutuel Wagering" filed for racing to be conducted in 2010. Licensed premises may also include real property of an association, if the association receives approval from the commission for a new location at which live racing will be conducted.

(49) "Licensee" means an individual, firm, association, partnership, corporation, trustee, or legal representative that has been duly issued a currently valid license to participate in racing in the Commonwealth.

(50) "Maiden" means a horse that has never won a heat or race at the gate at which it was entered, and for which a purse is offered.

(51) "Maiden race" means a race restricted to maidens.

(52) "Match race" means a race between two (2) horses under conditions agreed upon between the contestants.

(53) "Matinee race" means a race in which no entrance fee is charged and in which the pay-outs, if any, are not money.

(54) "Meeting" means the entire period of consecutive days, exclusive of dark days, granted by the commission to a licensed association for the conduct of live horse racing. A meeting shall begin at 10 a.m. of the first racing day and extend through a period

ending one (1) hour after the last scheduled race of the last day.

(55) "Minus pool" means a pari-mutuel pool in which the amount of money to be distributed on winning wagers exceeds the amount of money contained in the net pool.

(56) "Month" means a calendar month.

(57) "Net pool" means the total amount wagered less refundable wagers and takeout.

(58) "Nomination" means the naming of a horse to a certain race or series of races, generally accompanied by payment of a prescribed fee.

(59) "Objection" means a verbal claim of foul in a race lodged by the horses driver, trainer, or owner before the race is declared official.

(60) "Official order of finish" means the order of finish of the horses in a contest as declared official by the judges.

(61) "Official time" means the elapsed time from the moment the first horse crosses the timing beam until the first horse crosses the finish line.

(62) "Optional claiming race" means a contest restricted to horses entered to be claimed for a stated claiming price, and to horses which have started previously for that claiming price or less.

(63) "Overnight race" means a contest for which entries close at a time set by the commission.

(64) "Pari-mutuel wagering", "mutuel wagering", or "pari-mutuel system of wagering" each means a system or method of wagering approved by the commission in which patrons are wagering among themselves and not against the association and amounts wagered are placed in one or more designated wagering pools and the net pool is returned to the winning patrons.

(65) "Patron" means an individual present at a track or a simulcast facility who observes or wagers on a live or historical horse race.

(66) "Payout" means the amount of the net pool payable to an individual patron on his or her winning wager.

(67) "Post position" means the preassigned position from which a horse will leave the starting gate.

(68) "Post time" means the scheduled starting time for a race.

(69) "Protest" means a written objection charging that a horse is ineligible to race, alleging improper entry procedures, or citing any act of an owner, trainer, driver, or official prohibited by rules, which, if true, would exclude that horse or driver from racing.

(70) "Purse" means the total cash awarded as a prize in a race.

(71) "Race day" means any period of twenty-four (24) hours beginning at 12:01 a.m. and ending at midnight in which live racing is conducted by an association.

(72) "Result" means the part of the official order of finish in a race used to determine the pari-mutuel payoff of pools.

(73) "Scratch" means the act of withdrawing an entered horse from a race after the closing of entries.

(74) "Scratch time" means the deadline set for withdrawal of entries from a scheduled race.

(75) "Seed pool" means a pool of money funded by patrons wagering on an historical horse race that is used to ensure that all patrons are paid the minimum payout on winning wagers.

(76) "Simulcasting" is defined by KRS 230.210(11).

(77) "Single price pool" means an equal distribution of profit to winning betting interests or winning betting combinations through a single payout price.

(78) "Specimen" means a sample of blood, urine, or other biologic sample taken or drawn from a horse for chemical testing.

(79) "Stable name" means a name used other than the actual legal name of an owner or lessee and registered with the United States Trotting Association.

(80) "Stake" means a race which will be contested in a year subsequent to its closing in which the money given by the association conducting the race is added to the money contributed by the nominators, all of which except deductions for breeders or nominator's awards belongs to winner or winners, and in which, except as provided in 811 KAR 1:040, Section 6, all of the money contributed by the nominators belongs to the winner or winners.

(81) "Starter" means a horse which becomes an actual contestant in a race by virtue of the starting gate opening in front of

it upon dispatch by the official starter.

(82) "Sulky" means a dual-wheel racing vehicle with dual shafts not exceeding the height of the horse's withers.

(83) "Takeout" means the total amount of money, excluding breakage and any amounts allocated to a seed pool, withheld from each pari-mutuel pool, as authorized by KRS 230.750 and 811 KAR Chapter 1.

(84) "Terminal" means any self-service totalizator machine or other mechanical equipment used by a patron to place a pari-mutuel wager on a live or historical horse race.

(85) "Totalizator" means the system, including hardware, software, communications equipment, and electronic devices that accepts and processes the cashing of wagers, calculates the odds and prices of the wagers, and records, displays, and stores pari-mutuel wagering information.

(86) "Touting" means the act of soliciting anything of value in exchange for information regarding the outcome of a horse race on which wagers are made at a wagering facility under the jurisdiction of the commission.

(87) "USTA" means the United States Trotting Association.

(88) "Walkover" means a race in which only one (1) horse starts or in which all the starters are owned by the same interest.

~~Section 2. Severability. In the event that any provision or administrative regulation of this chapter is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby.]~~

JONATHAN RABINOWITZ, Chair

KERRY HARVEY, Secretary

APPROVED BY AGENCY: September 8, 2020

FILED WITH LRC: September 9, 2020 at 8:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on November 23, 2020 at Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on November 30, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes that all definitions applicable to pari-mutuel and exotic pari-mutuel wagering have been consolidated within KRS Chapter 230 and KAR Title 810, Chapter 1.

(b) The necessity of this administrative regulation: This regulation is necessary for the commission to regulate the integrity of pari-mutuel and exotic pari-mutuel wagering in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) authorizes the commission to regulate the conditions under which racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating pari-mutuel wagering on

horse races under the pari-mutuel system of wagering. This regulation establishes the procedures and regulations governing exotic forms of pari-mutuel wagering under KRS Chapter 230 and the commission's administrative regulations. This regulation establishes that all definitions for the operation of pari-mutuel and exotic pari-mutuel wagering have been consolidated within KRS Chapter 230 and KAR Title 810, Chapter 1.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.361 requires the commission to promulgate administrative regulations governing and regulating pari-mutuel wagering on horse races. This administrative regulation establishes that all definitions for the operation of pari-mutuel and exotic pari-mutuel wagering have been consolidated within KRS Chapter 230 and KAR Title 810, Chapter 1.

(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 establishes that definitions for pari-mutuel and exotic pari-mutuel wagering on all types of horse racing, including thoroughbred, standardbred, quarter horse, appaloosa, and Arabian racing, will be regulated by KAR Title 810, Chapter 1. This amendment will continue to bring uniformity to the rules governing pari-mutuel wagering for the various breeds.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to reduce the number of regulations applicable to pari-mutuel wagering and make the regulations easier to understand.

(c) How the amendment conforms to the content of the authorizing statutes: Exotic wagering is a type of pari-mutuel wagering. KRS 230.215(2) authorizes the commission to regulate the conditions under which racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating pari-mutuel wagering on horse races. This amendment establishes that all definitions for the operation of pari-mutuel and exotic pari-mutuel wagering have been consolidated within KRS Chapter 230 and KAR Title 810, Chapter 1.

(d) How the amendment will assist in the effective administration of the statutes: Exotic wagering is a type of pari-mutuel wagering. KRS 230.215(2) authorizes the commission to regulate the conditions under which racing and pari-mutuel wagering thereon shall be conducted in the Commonwealth. This amendment establishes that all definitions for the operation of exotic pari-mutuel wagering have been consolidated within KRS Chapter 230 and KAR Title 810, Chapter 1.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This proposed amendment will affect the seven currently-licensed racing associations in the Commonwealth, any applicant for a racing association license, the owners and trainers who participate in racing in the Commonwealth, the jockeys who ride in the Commonwealth, the harness drivers who drive in the Commonwealth, the patrons who place pari-mutuel wagers on live and historical horse racing in the Commonwealth, and the commission.

(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: This proposed amendment does not change any pari-mutuel or exotic pari-mutuel wagering compliance requirements or definitions that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of pari-mutuel and exotic pari-mutuel wagering definitions into one regulation, rather than three.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This proposed amendment does not change any pari-mutuel or exotic pari-mutuel wagering compliance requirements or definitions that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of pari-mutuel and

exotic pari-mutuel wagering definitions into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission.

(c) As a result of compliance, what benefits will accrue to the entities: The associations will have a defined process to follow if they plan to request exotic wagers. They will be able to offer increased pari-mutuel wagering options to patrons and can expect an increase in on-track attendance and total pari-mutuel handle. The increased revenue can be used to maintain and improve racing association facilities and supplement purses for live races run at each association. The increased purses will help the associations to compete with racing associations in neighboring states that offer expanded gaming options. The owners, trainers, jockeys, and harness drivers will benefit from increased purses, as well as any improvements to an association's facilities. The patrons will benefit from any improvements to an association's facilities, as well as from increased pari-mutuel wagering options.

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

(a) Initially: The associations will have a defined process to follow if they plan to request exotic wagers. They will be able to offer increased pari-mutuel wagering options to patrons and can expect an increase in on-track attendance and total pari-mutuel handle. The increased revenue can be used to maintain and improve racing association facilities and supplement purses for live races run at each association. The increased purses will help the associations to compete with racing associations in neighboring states that offer expanded gaming options. The owners, trainers, jockeys, and harness drivers will benefit from increased purses, as well as any improvements to an association's facilities. The patrons will benefit from any improvements to an association's facilities, as well as from increased pari-mutuel wagering options. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission. The racing associations will continue to experience costs due to employee compensation and expenses, as well as equipment maintenance. The commission will be reimbursed by the associations for additional employee compensation and other expenses.

(b) On a continuing basis: This proposed amendment does not change any exotic pari-mutuel or pari-mutuel wagering definitions that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of exotic pari-mutuel wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission. The racing associations will continue to experience costs due to employee compensation and expenses, as well as equipment maintenance. The commission will be reimbursed by the associations for additional employee compensation and other expenses pursuant to KRS 230.240.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This proposed amendment does not change any exotic pari-mutuel wagering definitions that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of pari-mutuel and exotic pari-mutuel wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission. As a general rule, the commission is reimbursed by the association for additional employee compensation and other expenses pursuant to KRS 230.240.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This proposed amendment does not change any pari-mutuel or exotic pari-mutuel wagering definitions that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of pari-mutuel and exotic pari-mutuel wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase

compliance costs for any regulated entity or the commission.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This proposed amendment does not change any pari-mutuel or exotic pari-mutuel wagering definitions that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of pari-mutuel or exotic pari-mutuel wagering definitions into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission.

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to each association.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission and the Department of Revenue.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215, 230.361.

(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 proposed amendment does not change any pari-mutuel or exotic definitions that were not already in place. Instead, the proposed amendment simply helps to consolidate pari-mutuel or exotic wagering definitions into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase revenue any more than the current regulatory scheme does. Under the current regulatory scheme, the amount of tax revenue will be dependent on the number of terminals the associations install and operate.

(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 proposed amendment does not change any pari-mutuel or exotic wagering compliance requirements that were not already in place. Instead, the proposed amendment simply helps to consolidate pari-mutuel or exotic wagering definitions into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase revenue any more than the current regulatory scheme does. Under the current regulatory scheme, the amount of tax revenue will be dependent on the number of terminals the associations install and operate.

(c) How much will it cost to administer this program for the first year? This proposed amendment does not change any pari-mutuel or exotic pari-mutuel wagering definitions that were not already in place. Instead, the proposed amendment simply helps to consolidate pari-mutuel or exotic wagering definitions into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase revenue any more than the current regulatory scheme does. Under the current regulatory scheme, the amount of tax revenue will be dependent on the number of terminals the associations install and operate.

(d) How much will it cost to administer this program for subsequent years? This proposed amendment does not change any pari-mutuel or exotic pari-mutuel wagering definitions that were not already in place. Instead, the proposed amendment simply helps to consolidate pari-mutuel and exotic pari-mutuel wagering definitions into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase revenue any more than the current regulatory scheme does. Under the current regulatory scheme, the amount of tax revenue will be dependent

on the number of terminals the associations install and operate.

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

Revenues (+/-): None.

Expenditures (+/-): None.

Other Explanation: N/A

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)

811 KAR 1:125. Pari-mutuel wagering.

RELATES TO: KRS 230.215, 230.300, 230.361, 230.3615, 230.370, 230.398, 230.750[138.510-138.550, 230.210-230.375, 230.990]

STATUTORY AUTHORITY: KRS 230.215, 230.210, 230.215[230.240, 230.260, 230.280, 230.290, 230.300, 230.310, 230.320], 230.361, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing[grants the] Commission [the "commission"][authority] to regulate conditions under which horse[standardbred] racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.361(1) requires the commission[authority] to promulgate administrative regulations governing and regulating pari-mutuel[mutuel] wagering on horse races under the pari-mutuel system of wagering. This administrative regulation establishes the requirements for the operation of pari-mutuel wagering under KRS Chapter 230 and [814] KAR Title 810, Chapter 1.

Section 1. Pari-mutuel System of Wagering Required. All requirements for the operation of pari-mutuel wagering are set forth in KRS Chapter 230 and KAR Title 810, Chapter 1.[(4) The only wagering permitted on a live or historical horse race shall be under the pari-mutuel system of wagering. All systems of wagering other than pari-mutuel shall be prohibited. Any person participating or attempting to participate in prohibited wagering shall be ejected and excluded from association grounds.

(2) Wagering conducted in conformity with KRS Chapter 230 and 811 KAR Chapter 1 is pari-mutuel.

Section 2. Totalizator or Other Approved Equipment Required.

(1) Pari-mutuel wagering on live and historical horse races shall only be conducted through the use of a totalizator or other similar mechanical equipment approved by the commission pursuant to KRS 230.361.

(2) The totalizator or other mechanical equipment shall be available for testing under the supervision of the commission upon request by the commission to ensure its proper working order.

Section 3. Wagering on an Historical Horse Race Authorized.

(1) Wagering on an historical horse race is hereby authorized and may be conducted in accordance with KRS Chapter 230 and 811 KAR Chapter 1.

(2) Wagering on an historical horse race shall only be conducted by:

(a) An association licensed to conduct a live horse race meet; or

(b) Two (2) or more associations licensed to conduct a live horse race meet:

1. Who form a joint venture; or

2. Pursuant to an agreement between them.

(3) Wagering on an historical horse race shall only be permitted in a designated area on the licensed premises of an association licensed to conduct a live horse race meeting. Wagering on historical horse racing shall not be offered in any other location.

(4) An association may conduct wagering on historical horse races of any horse breed regard less of the type of breed that primarily races in live meets conducted by the association. An

association may conduct wagering on historical races on any days and hours approved by the commission, and shall not be limited to times during which the association is conducting a live horse race meeting.

(5) Any wager placed on an historical horse race is an exotic wager.

(6) Before offering wagering on an historical horse race, an association shall first obtain the commission's written approval of all wagers offered as set forth in 811 KAR 1:250.

(7) All wagering on an historical horse race shall incorporate the following elements:

(a) A patron may only wager on an historical horse race on a terminal approved by the commission;

(b) An association shall at all times maintain at least two (2) terminals offering each type of exotic wager on an historical horse race;

(c) Once a patron deposits the wagered amount in the terminal offering wagering on an historical horse race, an historical horse race shall be chosen at random;

(d) Prior to the patron making his or her wager selections, the terminal shall not display any information that would allow the patron to identify the historical race on which he or she is wagering, including the location of the race, the date on which the race was run, the names of the horses in the race, or the names of the jockeys that rode the horses in the race;

(e) The terminal shall make available true and accurate past performance information on the historical horse race to the patron prior to making his or her wager selections. The information shall be current as of the day the historical horse race was actually run. The information provided to the patron shall be displayed on the terminal in data or graphical form; and

(f) After a patron finalizes his or her wager selections, the terminal shall display a video replay of the race, or a portion thereof, and the official results of the race. The identity of the race shall be revealed to the patron after the patron has placed his or her wager.

Section 4. Payouts Only Out of Pari-mutuel Pools: Seed Pools Required. (1)(a) A wager on an historical horse race, less deductions permitted by KRS Chapter 230 or 811 KAR Chapter 1, shall be placed in pari-mutuel pools approved by the commission.

(b) A payout to a winning patron shall be paid from money wagered by patrons and shall not constitute a wager against the association.

(c) An association conducting wagering on an historical horse race shall not conduct wagering in such a manner that patrons are wagering against the association, or in such a manner that the amount retained by the association as a commission is dependent upon the outcome of any particular race or the success of any particular wager.

(2) An association shall only pay a winning wager on an historical horse race out of the applicable pari-mutuel pool and shall not pay a winning wager out of the association's funds. Payment of a winning wager shall not exceed the amount available in the applicable pari-mutuel pool.

(3) An association offering wagering on an historical horse race shall operate seed pools in a manner and method approved by the commission as set forth in 811 KAR 1:250. For each wager made, an association may assign a percentage of the wager to seed pools. The seed pools shall be maintained and funded so that the amount available at any given time is sufficient to ensure that a patron will be paid the minimum amount required on a winning wager.

(4) An association shall provide the funding for the initial seed pool for each type of exotic wager. The funding for the initial seed pool shall be nonrefundable and in an amount sufficient to ensure that a patron will be paid the minimum amount required on a winning wager.

Section 5. Location of Terminals Used for Wagering on an Historical Horse Race. (1) Terminals offering wagering on historical horse races shall be located within designated areas which have the prior written approval of the commission. Designated areas

shall be established in such a way as to control access by the general public and prevent entry by any patron who is under eighteen (18) years of age or is otherwise not permitted to place wagers.

(2) Each association shall monitor persons entering and leaving the designated areas and shall prevent access to any patron who is under eighteen (18) years of age or is otherwise not permitted to place wagers on historical horse races.

(3) Each association shall provide terminals that are accessible to handicapped patrons.

Section 6. Records to be Maintained. (1) Each association and each simulcast facility authorized under KRS 230.380 shall maintain complete records of all pari-mutuel wagering transactions on live and historical horse races, including the amounts wagered at each betting window, self-service totalizator, mobile pari-mutuel teller, and terminal. (2) A copy of the wagering records shall be retained and safeguarded for a period of not less than two (2) years and shall not be destroyed without the prior written permission of the commission.

Section 7. Equipment. (1) The association and the totalizator provider shall install a primary and secondary device, which activate the stop betting function of the totalizator system. The presiding judge, or his or her designee, shall use the primary device to stop wagering at the start of a live horse race. If wagering is not stopped by the primary device at the start of the race, the totalizator operator shall stop wagering using the secondary device. The secondary device shall be installed in the totalizator room and shall only be used by the totalizator operator.

(2) If there is a complete breakdown of the totalizator or mechanical equipment during the wagering on a live horse race, the wagering on that race shall be declared closed. If the totalizator remains capable of computing payouts, the payouts for that race shall be computed based on the amounts wagered prior to the breakdown. If the totalizator is incapable of computing payouts, then refunds shall be issued for all amounts wagered on that race.

(3) If there is a complete breakdown of a terminal offering wagering on an historical horse race, the association offering the wager shall make a full refund of the patron's balance on the terminal at the time of the breakdown.

Section 8. Entries in a Live Horse Race. (1) The presiding judge shall timely advise an association's pari-mutuel manager, prior to the beginning of wagering on each live horse race, of the horses that will compete in the race.

(2) If two (2) or more horses entered for the same live horse race are determined by the commission to have common ties through ownership or training, they may be joined by the commission as a mutuel entry. The mutuel entry shall become a single betting interest and a wager on one (1) horse in a mutuel entry shall be a wager on all horses in the same mutuel entry. If the number of horses competing in a live horse race exceeds the numbering capacity of the totalizator, the racing secretary shall assign the highest pari-mutuel numbers to horses so that the highest numbered horse within the numbering capacity of the totalizator together with horses of higher numbers, shall be grouped in the mutuel field as a single betting interest, and a wager on one (1) horse in the mutuel field shall be a wager on all horses in the same mutuel field.

(3) A refund at cost value shall be made to all holders of a purchased ticket bearing the number of a horse in any race that has been scratched or withdrawn before the horse has become a starter, unless the horse is part of a mutuel entry, and one (1) or more of the entry starts.

Section 9. Sale of Pari-mutuel Tickets on Live Horse Races. (1) The following types of pari-mutuel wagering shall be permitted on a live horse race at all licensed associations and simulcast facilities:

- (a) Normal win, place, and show wagers on each race;
- (b) Any exotic wager previously approved by the commission; and

(c) Any new exotic wager approved in writing by the commission pursuant to 811 KAR 1:250.

(2) Pari-mutuel tickets on live horse races shall not be sold except by a licensed association or a simulcast facility authorized by KRS 230.380.

(3) Pari-mutuel tickets on a live horse race shall only be sold at regular ticket windows, self-service totalizator machines, by mobile pari-mutuel tellers with hand-held totalizator devices, or by any other method approved in writing by the commission prior to being offered to the public. At least one (1) regular ticket window shall be made accessible to handicapped patrons.

(4)(a) Pari-mutuel stored value cards or cash vouchers may be offered by an association. The dollar amount on the stored value card or cash voucher may be redeemed at any time at any regular ticket window or used to fund additional wagers.

(b) Cash vouchers shall be valid for one (1) year after the date of issuance. Failure to present any cash voucher for redemption within one (1) year of issuance shall constitute a waiver of the right to receive payment on the voucher.

(5) A pari-mutuel wager shall not be made on a race after the totalizator has been locked for that race.

(6) Any claim by a patron that he or she has been issued a pari-mutuel ticket other than that which was requested shall be made before the patron has left the ticket window or before the mobile teller has initiated a transaction with another patron. A claim for an incorrect ticket shall not be honored after the totalizator has been locked.

Section 10. Payment on Pari-mutuel Tickets on Live Horse Races. (1) At the end of each live horse race, the judges shall advise the manager of the pari-mutuel department by the use of the totalizator equipment or by telephone of the official placement of the horses, and payouts shall not be made until the receipt of the notice.

(2) Payment of valid pari-mutuel tickets shall be made on the basis of the order of finish as declared "official" by the judges. A subsequent change in the order of finish or award of purse money that may result from a subsequent ruling by the judges or commission shall not affect the pari-mutuel payout.

(3) Each association shall deduct from each pari-mutuel pool a commission, not exceeding the commission provided by KRS 230.750. The remainder of the pool after the deduction of the commission shall be the net pool for distribution as payouts to ticket holders.

(4) Payment on valid pari-mutuel tickets shall be made only if presented and surrendered within one (1) year following the running of the live horse race on which the wager was made. Failure to present a ticket within one (1) year shall constitute a waiver of the right to receive payment on the ticket.

(5) The association shall be responsible for the correctness of all payout prices posted as "official." If an error is made in posting the payout figures, and ascertained before any tickets are cashed, the posting error shall be corrected, accompanied by a public address announcement, and only the correct amounts shall be used in the payout, irrespective of the initial error.

(6) A mutilated pari-mutuel ticket that is not easily identifiable as being a valid ticket shall not be accepted for payment.

(7) An association shall establish a written procedure for granting patrons an opportunity to file a claim on a lost pari-mutuel ticket and provide a copy to the commission.

(8) Prior to posting payouts, the association's pari-mutuel manager shall require the verification of the winning runners and prices prior to posting official results.

(9)(a) If an error is made in calculating the payout on a winning wager, resulting in overpayment, the association shall be responsible for the amount between the correct payout and the amount paid.

(b) If the error in calculation results in a payout being too low, the amount between the correct payout and the amount paid shall be added to the net pool of the same position in the following race on the same day or, if it is the last race of the day, then it shall be added to the net pool of the same position in the same race on the following day. If an error occurs in computing the daily double pool,

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the underpayment shall be added to the daily double pool of the following day.

(c) If an error occurs causing underpayment on the last race of the entire racing meeting, the amount of the underpayment shall be paid to the Kentucky Revenue Cabinet.

Section 11. Minimum Wagers and Payouts. (1) The minimum wager to be accepted by any licensed association on a live horse race shall be ten (10) cents. The minimum payout on a one (1) dollar wager on a live horse race shall be one (1) dollar and ten (10) cents, unless a minus pool occurs. If a minus pool occurs, the minimum payout for a one (1) dollar wager shall be one (1) dollar and five (5) cents.

(2) The minimum wager to be accepted by any licensed association on an historical horse race shall be ten (10) cents. The minimum payout on any wager shall not be less than the amount wagered.

Section 12. Minors Prohibited from Wagering. A minor shall not be permitted by any licensed association or simulcast facility to purchase or cash a pari-mutuel ticket.

Section 13. Odds and Payouts Posted. (1) Approximate odds for live horse races, based on win pool betting for finishing first for each betting interest, shall be posted on one (1) or more boards or television screens within view of the wagering public at intervals of not more than ninety (90) seconds.

(2) If daily double wagering is conducted on a live horse race, before off-time of the second daily double race, the probable payout for each two (2) dollar daily double wager combining the winner of the first daily double race with every horse or betting interest in the second daily double race shall be posted; except that if a dead heat for first in the first daily double race occurs, or a scheduled starter in the second daily double race is excused so as to cause a consolation daily double pool, then posting of all possible payouts shall not be mandatory, but the association shall make every effort to compute such daily double prices and advise the public by posting or public address announcement as soon as possible and prior to the running of the second daily double race.

(3) For wagering on an historical horse race, approximate odds or payouts for each wagering pool shall be posted on each terminal for viewing by patrons at intervals of no more than ninety (90) seconds.

Section 14. Betting Explanation. (1) Each association shall publish in the daily race program, for each day of live horse racing, a general explanation of pari-mutuel wagering offered on live horse races and an explanation of each type of betting pool offered. The explanation also shall be posted in conspicuous places about the association grounds to adequately inform the public and shall be submitted to the commission prior to publication for approval.

(2) Each association shall post, in conspicuous places in the designated area, a general explanation of pari-mutuel wagering offered on historical horse races and an explanation of each betting pool offered. The explanation shall be submitted to the commission for approval prior to its posting.

Section 15. Prior Approval Required for Number of Live Horse Races. Each association desiring to conduct more than nine (9) live horse races on a single day shall first apply in writing to the commission and obtain specific approval of the number of live horse races to be offered on a single day.

Section 16. Pools Dependent Upon Entries for Live Horse Races. (1) If horses representing five (5) or fewer betting interests qualify to start in a live horse race, the association may prohibit show wagering on that race. If horses representing four (4) or fewer betting interests qualify to start in a live horse race, the association may prohibit both place and show wagering on that race.

(2) If a horse is scratched by the judges after wagering has commenced or a horse is prevented from running in a live horse race because of failure of a starting gate door to open properly,

and the number of actual starters representing different betting interests is: (a) Reduced to five (5), the association may cancel show wagering on that race and the entire show pool shall be refunded upon presentation and surrender of show tickets; or

(b) Reduced to four (4) or fewer, the association may cancel both place and show wagering on that race and the entire place and show pool shall be refunded upon presentation and surrender of place and show tickets.

Section 17. Emergency Situation. If any emergency arises in connection with the operation of the pari-mutuel department not provided for by this administrative regulation, the pari-mutuel manager shall take immediate corrective action and shall by the quickest means possible notify the presiding judge and render a full report to the commission.

Section 18. Severability. In the event that any provision or administrative regulation of this chapter is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby.]

JOHNATHAN RABINOWITZ, Chair

KERRY HARVEY, Secretary

APPROVED BY AGENCY: September 8, 2020

FILED WITH LRC: September 9, 2020 at 8:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on November 23, 2020 at Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on November 30, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes that all requirements for the operation of pari-mutuel wagering have been consolidated within KRS Chapter 230 and KAR Title 810, Chapter 1.

(b) The necessity of this administrative regulation: This regulation is necessary for the commission to regulate the integrity of pari-mutuel wagering in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) authorizes the commission to regulate the conditions under which racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating pari-mutuel wagering on horse races under the pari-mutuel system of wagering. This regulation establishes that all requirements for the operation of pari-mutuel wagering have been consolidated within KRS Chapter 230 and KAR Title 810, Chapter 1.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.361 requires the commission to promulgate administrative regulations governing and regulating pari-mutuel wagering on horse races.

This administrative regulation establishes that KAR Title 810, Chapter 1 will set the criteria for determining whether pari-mutuel wagers requested by licensed racing association comply with the provisions of KRS Chapter 230 and the commission's administrative regulations.

(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 establishes that pari-mutuel wagering on all types of horse racing, including thoroughbred, standardbred, quarter horse, appaloosa, and Arabian racing, will be regulated by KAR Title 810, Chapter 1. This amendment will continue to bring uniformity to the rules governing pari-mutuel wagering for the various breeds.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to reduce the number of regulations applicable to pari-mutuel wagering and make the regulations easier to understand.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215(2) authorizes the commission to regulate the conditions under which racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating pari-mutuel wagering on horse races. This amendment establishes that all requirements for the operation of pari-mutuel wagering have been consolidated within KRS Chapter 230 and KAR Title 810, Chapter 1.

(d) How the amendment will assist in the effective administration of the statutes: KRS 230.361 requires the commission to promulgate administrative regulations governing and regulating pari-mutuel wagering on horse races. This amendment establishes that KAR Title 810, Chapter 1 will set the criteria for determining whether pari-mutuel wagers requested by licensed racing association comply with the provisions of KRS Chapter 230 and the commission's administrative regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This proposed amendment will affect the seven currently-licensed racing associations in the Commonwealth, any applicant for a racing association license, the owners and trainers who participate in racing in the Commonwealth, the jockeys who ride in the Commonwealth, the harness drivers who drive in the Commonwealth, the patrons who place pari-mutuel wagers on live and historical horse racing in the Commonwealth, and the commission.

(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: This proposed amendment does not change any pari-mutuel wagering compliance requirements that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of pari-mutuel wagering compliance requirements into one regulation, rather than three. With that in mind, the licensed racing associations will be required to follow the procedure(s) outlined in KRS Chapter 230 and KAR Title 810, Chapter 1 to offer pari-mutuel wagering.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This proposed amendment does not change any pari-mutuel wagering compliance requirements that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of pari-mutuel wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission.

(c) As a result of compliance, what benefits will accrue to the entities: The associations will have a defined process to follow if they plan to request pari-mutuel wagers. They will be able to offer increased pari-mutuel wagering options to patrons and can expect an increase in on-track attendance and total pari-mutuel handle.

The increased revenue can be used to maintain and improve racing association facilities and supplement purses for live races run at each association. The increased purses will help the associations to compete with racing associations in neighboring states that offer expanded gaming options. The owners, trainers, jockeys, and harness drivers will benefit from increased purses, as well as any improvements to an association's facilities. The patrons will benefit from any improvements to an association's facilities, as well as from increased pari-mutuel wagering options.

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

(a) Initially: This proposed amendment does not change any pari-mutuel wagering compliance requirements that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of pari-mutuel wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission. The racing associations will continue to experience costs due to employee compensation and expenses, as well as equipment maintenance. The commission will be reimbursed by the associations for additional employee compensation and other expenses.

(b) On a continuing basis: This proposed amendment does not change any pari-mutuel wagering compliance requirements that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of pari-mutuel wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission. The racing associations will continue to experience costs due to employee compensation and expenses, as well as equipment maintenance. The commission will be reimbursed by the associations for additional employee compensation and other expenses pursuant to KRS 230.240.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This proposed amendment does not change any pari-mutuel wagering compliance requirements that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of pari-mutuel wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission. As a general rule, the commission is reimbursed by the association for additional employee compensation and other expenses pursuant to KRS 230.240.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This proposed amendment does not change any pari-mutuel wagering compliance requirements that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of pari-mutuel wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This proposed amendment does not change any pari-mutuel wagering compliance requirements that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of pari-mutuel wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission.

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to each association.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will

be impacted by this administrative regulation? The Kentucky Horse Racing Commission and the Department of Revenue.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.210, 230.215, 230.361, 230.370.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This proposed amendment does not change any pari-mutuel wagering compliance requirements that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of pari-mutuel wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase revenue any more than the current regulatory scheme does. Under the current regulatory scheme, the amount of tax revenue will be dependent on the number of terminals the associations install and operate.

(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 proposed amendment does not change any pari-mutuel wagering compliance requirements that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of pari-mutuel wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase revenue any more than the current regulatory scheme does. Under the current regulatory scheme, the amount of tax revenue will be dependent on the number of terminals the associations install and operate.

(c) How much will it cost to administer this program for the first year? This proposed amendment does not change any pari-mutuel wagering compliance requirements that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of pari-mutuel wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase costs any more than the current regulatory scheme does. Under the current regulatory scheme, the costs largely come from employee compensation and expenses, as well as equipment maintenance. The commission is reimbursed for these costs by the associations.

(d) How much will it cost to administer this program for subsequent years? This proposed amendment does not change any pari-mutuel wagering compliance requirements that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of pari-mutuel wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase costs any more than the current regulatory scheme does. Under the current regulatory scheme, the costs largely come from employee compensation and expenses, as well as equipment maintenance. The commission is reimbursed for these costs by the associations.

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

Revenues (+/-): None.

Expenditures (+/-): None.

Other Explanation: N/A

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)**

811 KAR 1:250. Exotic wagering.

RELATES TO: KRS 230.300, 230.361, 230.370, 230.398,

230.750[230.210-230.375, 230.750, 230.990]

STATUTORY AUTHORITY: KRS 230.210, 230.215, 230.361, [230.215(2), 230.240, 230.260, 230.280, 230.290, 230.300, 230.310, 230.320, 230.361(1), 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission (the "commission") to regulate conditions under which horse[Standardbred] racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating pari-mutuel wagering on horse races under the pari-mutuel system of wagering. ~~[This administrative regulation establishes the procedures and regulations governing exotic wagering under KRS Chapter 230 and 811 KAR Chapter 1.]~~

Section 1. The procedures and regulations governing exotic wagering are established under KRS Chapter 230 and KAR Title 810, Chapter 1.~~[All Pari-mutuel Wagers on an Historical Horse Race Are Exotic Wagers. All pari-mutuel wagers other than win, place, or show wagers on a live horse race are exotic wagers.~~

Section 2. Exotic Wagers to Be Approved by Commission.

~~(1) An association shall not offer an exotic wager on any live or historical horse race without the prior written approval of the commission.~~

~~(2) An association making a request to offer an exotic wager on a live or historical horse race may make an oral presentation to the commission regarding the wager, prior to the commission deciding on the request.~~

~~(a) The presentation shall be made by the association during a meeting of the commission.~~

~~(b) The presentation shall be limited to the information contained in the written request and any supplemental information relevant to the commission's determination of the suitability of the wager.~~

~~(c) The commission may require an association to clarify or otherwise respond to questions concerning the written request as a condition to approval of the exotic wager.~~

~~(3) The commission may request additional information from an association regarding the exotic wager if the additional information would assist the commission in deciding whether to approve it.~~

~~(4) In reviewing a written request for an exotic wager, the commission may consider any information, data, reports, findings, or other factors available which it considers important or relevant to its determination of whether the wager should be approved.~~

~~(5) The commission or its designee shall review and test the exotic wager and shall give its approval if it is satisfied that:~~

~~(a) The wager does not adversely affect the safety or integrity of horse racing or pari-mutuel wagering in the Commonwealth; and~~

~~(b) The wager complies with KRS Chapter 230 and 811 KAR Chapter 1.~~

~~(6) The commission shall notify the association if it determines that the criteria established in subsection (5) of this section are no longer being met and it intends to withdraw approval of a particular exotic wager.~~

~~(7) An association shall not implement any change or modification to the practices, procedures, or representations upon which the approval of the exotic wager was based without the prior written approval of the commission.~~

Section 3. Exotic Wagers on a Live Horse Race.

~~(1) Except as established in subsection (2) of this section, an association shall submit a written request to the commission for permission to offer any exotic wager on a live horse race, which shall include a detailed description of the rules that apply to the wager and the method of calculating payouts.~~

~~(2) If the rules have not been modified since the wager was approved by the commission, an association shall not be required to seek the commission's approval to offer the following previously approved exotic wagers on live horse races: Exacta, Perfecta, Quinella, Trifecta, Superfecta, Double Perfecta, Big Q, Twin Trifecta, Daily Double, Super High 5, Pick-3, Pick-4, and Pick-6.~~

Section 4. Exotic Wagers on an Historical Horse Race.

(1) An association shall submit a written request to the commission for permission to offer any exotic wager on an historical horse race, which shall include:

(a) The types, number, and denominations of pari-mutuel wagers to be offered;

(b) A detailed description of the rules that apply to the pari-mutuel wager and the method of calculating payouts, including how money will be allocated to the seed pool;

(c) The days and hours of operation during which wagering on historical horse races will be offered;

(d) A detailed description of the proposed designated area and the terminal or terminals on which the pari-mutuel wagers will be made, including an architect's rendering of the proposed designated area that describes the size, construction, layout, capacity, number of terminals, and location of surveillance and other security equipment, and at least one (1) photograph of the designated area when construction is completed;

(e) The practices and procedures that will ensure the security, safety, and comfort of patrons in the designated area;

(f) The manufacturer, make, and model of the terminal, including a copy of all literature supplied by the manufacturer of the terminal;

(g) The maintenance and repair procedures that will ensure the integrity of the terminals;

(h) A complete list of individuals who are authorized to examine and repair the terminals for any reason; and

(i) A memorandum outlining the terms of the agreement between the association and the Kentucky Harness Horsemen's Association or the Kentucky Harness Association referenced in Section 6(2) of this administrative regulation.

(2)(a) Except as established in paragraph (b) of this subsection, each association that is approved by the commission to offer exotic wagering on an historical horse race shall request, in any application submitted for a license to conduct live horse racing pursuant to KRS 230.300 and 810 KAR 3:010:

1. No less than 100 percent of the number of racing days initially requested by the association in its application to conduct standardbred racing for the 2010 racing year; and

2. No less than 100 percent of the number of races initially requested by the association in its application to conduct standardbred racing for the 2010 racing year.

(b) An association may apply for less than 100 percent of the number of racing days initially applied for by the association in its application to conduct standardbred racing for 2010, or the number of races initially applied for by the association in its application to conduct standardbred racing for 2010, if written approval is obtained from the commission and the Kentucky Harness Horsemen's Association or the Kentucky Harness Association.

Section 5. Terminals Used for Wagering on an Historical Horse Race.

(1) Wagering on historical horse races shall be conducted only on terminals approved by the commission as established in Sections 2(5) and 5(2) of this administrative regulation. The commission shall not require any particular make of terminal.

(2)(a) The commission shall require testing of each terminal used for wagering on historical horse races by an independent testing laboratory to ensure its integrity and proper working order.

(b) The independent testing laboratory shall be chosen by the commission and the expense of the testing shall be paid by the association offering the wagering on historical horse races.

(3) Each terminal for wagering on an historical horse race shall display odds or pool amounts that the patron will receive for a winning wager on each pari-mutuel wagering pool.

Section 6. Takeout.

(1) Each association conducting exotic wagering on historical horse races shall deduct a takeout, which shall not exceed the percentages established in KRS 230.750.

(2)(a) Each association shall enter into an agreement with the Kentucky Harness Horsemen's Association or the Kentucky Harness Association establishing the allocation of the takeout on

~~all exotic wagers on historical horse races offered by the association. The agreement shall apply to all exotic wagers on historical horse races offered, or to be offered, by the association during the term of the agreement.~~

~~(b) The agreement shall include provisions allocating a percentage of the takeout to purses on live races run by the association.~~

~~(c) Each association shall provide a memorandum outlining the terms of the agreement to the commission.~~

~~Section 7. Severability. If any provision or administrative regulation of this chapter is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby.]~~

JOHNATHAN RABINOWITZ, Chair

KERRY HARVEY, Secretary

APPROVED BY AGENCY: September 8, 2020

FILED WITH LRC: September 9, 2020 at 8:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on November 23, 2020 at Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on November 30, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, phone (859) 246-2039, email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes that all requirements for the operation of exotic wagering have been consolidated within KRS 230 and KAR Title 810, Chapter 1.

(b) The necessity of this administrative regulation: This regulation is necessary for the commission to regulate the integrity of exotic pari-mutuel wagering in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) authorizes the commission to regulate the conditions under which racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating pari-mutuel wagering on horse races under the pari-mutuel system of wagering. This regulation establishes the procedures and regulations governing exotic forms of pari-mutuel wagering under KRS Chapter 230 and the commission's administrative regulations. This regulation establishes that all requirements for the operation of exotic pari-mutuel wagering have been consolidated within KRS Chapter 230 and KAR Title 810, Chapter 1.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.361 requires the commission to promulgate administrative regulations governing and regulating pari-mutuel wagering on horse races. This administrative regulation establishes that all requirements for the operation of exotic pari-mutuel wagering have been consolidated within KRS Chapter 230 and KAR Title 810, Chapter 1.

(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 establishes that exotic pari-mutuel wagering on all types of horse racing, including thoroughbred, standardbred, quarter horse, appaloosa, and Arabian racing, will be regulated by KAR Title 810, Chapter 1. This amendment will continue to bring uniformity to the rules governing pari-mutuel wagering for the various breeds.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to reduce the number of regulations applicable to pari-mutuel wagering and make the regulations easier to understand.

(c) How the amendment conforms to the content of the authorizing statutes: Exotic wagering is a type of pari-mutuel wagering. KRS 230.215(2) authorizes the commission to regulate the conditions under which racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating pari-mutuel wagering on horse races. This amendment establishes that all requirements for the operation of exotic pari-mutuel wagering have been consolidated within KRS Chapter 230 and KAR Title 810, Chapter 1.

(d) How the amendment will assist in the effective administration of the statutes: Exotic wagering is a type of pari-mutuel wagering. KRS 230.215(2) authorizes the commission to regulate the conditions under which racing and pari-mutuel wagering thereon shall be conducted in the Commonwealth. This amendment establishes that all requirements for the operation of exotic pari-mutuel wagering have been consolidated within KRS Chapter 230 and KAR Title 810, Chapter 1.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This proposed amendment will affect the seven currently-licensed racing associations in the Commonwealth, any applicant for a racing association license, the owners and trainers who participate in racing in the Commonwealth, the jockeys who ride in the Commonwealth, the harness drivers who drive in the Commonwealth, the patrons who place pari-mutuel wagers on live and historical horse racing in the Commonwealth, and the commission.

(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: This proposed amendment does not change any exotic wagering compliance requirements that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of exotic pari-mutuel wagering compliance requirements into one regulation, rather than three. With that in mind, the licensed racing associations will be required to follow the procedure(s) outlined in KRS Chapter 230 and KAR Title 810, Chapter 1 to offer exotic pari-mutuel wagering.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This proposed amendment does not change any exotic wagering compliance requirements that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of exotic pari-mutuel wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission.

(c) As a result of compliance, what benefits will accrue to the entities: The associations will have a defined process to follow if they plan to request exotic wagers. They will be able to offer increased pari-mutuel wagering options to patrons and can expect an increase in on-track attendance and total pari-mutuel handle. The increased revenue can be used to maintain and improve racing association facilities and supplement purses for live races run at each association. The increased purses will help the associations to compete with racing associations in neighboring states that offer expanded gaming options. The owners, trainers, jockeys, and harness drivers will benefit from increased purses, as well as any

improvements to an association's facilities. The patrons will benefit from any improvements to an association's facilities, as well as from increased pari-mutuel wagering options.

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

(a) Initially: This proposed amendment does not change any exotic pari-mutuel wagering compliance requirements that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of exotic pari-mutuel wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission. The racing associations will continue to experience costs due to employee compensation and expenses, as well as equipment maintenance. The commission will be reimbursed by the associations for additional employee compensation and other expenses.

(b) On a continuing basis: This proposed amendment does not change any exotic pari-mutuel wagering compliance requirements that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of exotic pari-mutuel wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission. The racing associations will continue to experience costs due to employee compensation and expenses, as well as equipment maintenance. The commission will be reimbursed by the associations for additional employee compensation and other expenses pursuant to KRS 230.240.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This proposed amendment does not change any exotic pari-mutuel wagering compliance requirements that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of exotic pari-mutuel wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission. As a general rule, the commission is reimbursed by the association for additional employee compensation and other expenses pursuant to KRS 230.240.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This proposed amendment does not change any exotic pari-mutuel wagering compliance requirements that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of exotic pari-mutuel wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This proposed amendment does not change any exotic pari-mutuel wagering compliance requirements that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of exotic pari-mutuel wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission.

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to each association.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission and the Department of Revenue.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.210, 230.215, 230.361, 230.370.

(3) Estimate the effect of this administrative regulation on the

expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This proposed amendment does not change any exotic wagering compliance requirements that were not already in place. Instead, the proposed amendment simply helps to consolidate exotic wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase revenue any more than the current regulatory scheme does. Under the current regulatory scheme, the amount of tax revenue will be dependent on the number of terminals the associations install and operate.

(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 proposed amendment does not change any exotic wagering compliance requirements that were not already in place. Instead, the proposed amendment simply helps to consolidate exotic wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase revenue any more than the current regulatory scheme does. Under the current regulatory scheme, the amount of tax revenue will be dependent on the number of terminals the associations install and operate.

(c) How much will it cost to administer this program for the first year? This proposed amendment does not change any exotic wagering compliance requirements that were not already in place. Instead, the proposed amendment simply helps to consolidate exotic wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase revenue any more than the current regulatory scheme does. Under the current regulatory scheme, the costs largely come from employee compensation and expenses, as well as equipment maintenance. The commission is reimbursed for these costs by the associations.

(d) How much will it cost to administer this program for subsequent years? This proposed amendment does not change any exotic wagering compliance requirements that were not already in place. Instead, the proposed amendment simply helps to consolidate exotic wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase revenue any more than the current regulatory scheme does. Under the current regulatory scheme, the costs largely come from employee compensation and expenses, as well as equipment maintenance. The commission is reimbursed for these costs by the associations.

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

Revenues (+/-): None.
Expenditures (+/-): None.
Other Explanation: N/A

PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)

811 KAR 2:010. Definitions.

RELATES TO: KRS 230.215, 230.361[Chapter 230]
STATUTORY AUTHORITY: KRS 230.215, 230.361[230.225(5), 230.260, 230.361(1), 230.370]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission ("the commission") [grants the commission] the authority to regulate conditions under which [quarter] horse[, appaloosa and Arabian] racing shall be conducted in Kentucky. KRS 230.260(8) authorizes[grants] the commission [the authority] to prescribe

necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall be conducted in Kentucky[this state]. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating pari-mutuel[mutuel] wagering on horse races under the pari-mutuel system of wagering. [This administrative regulation defines the terms used in 811 KAR Chapter 2.]

Section 1. Definitions. All definitions are set forth in KRS Chapter 230 and KAR Title 810, Chapter 1. (1) "Added money" means cash, exclusive of trophy or other award, added by the association to stake fees paid by subscribers to form the total purse for a stakes race.

(2) "Age" means the number of years since a horse was foaled, reckoned as if the horse was foaled on January 1 of the year in which the horse is foaled.

(3) "Allowance race" means a race in which contestants receive weight allowance based on performance or winnings as stipulated in the conditions of the race.

(4) "Appaloosa horse" means a horse duly registered with the Appaloosa Horse Club, Inc., Moscow, Idaho.

(5) "Arabian horse" means a horse duly registered with the Arabian Horse Club Registry of America.

(6) "Arrears" means money due for entrance fees, jockey fees, nomination or supplemental fees in stake races, fines, purchase money in claiming races, and any default incidental to 811 KAR Chapter 2.

(7) "Association" is defined by KRS 230.210(1).

(8) "Authorized agent" means an agent appointed by a notarized document signed by the owner or jockey and filed annually with the commission.

(9) "Betting interest" means a single horse or more than one (1) horse joined as a mutuel entry or joined in the mutuel field, on which a single pari-mutuel wager may be placed.

(10) "Bleeder" means any horse known to have bled internally or from its nostrils during a workout or race.

(11) "Breakage" means the net pool minus the payout.

(12) "Bred" means the place at which a horse is foaled.

(13) "Breeder" means the owner of the dam of a horse when serviced.

(14) "Calendar days" means consecutive days counted irrespective of number of racing days.

(15) "Carryover" means nondistributed pool monies which are retained and added to a corresponding pool in accordance with 811 KAR Chapter 2.

(16) "Claiming race" means any race in which every horse running in the race may be transferred in conformity with 811 KAR Chapter 2.

(17) "Closing" means the time published by the association after which entries for a race will not be accepted.

(18) "Commission" means:

(a) The Kentucky Horse Racing Commission (formerly known as the Kentucky Horse Racing Authority and defined in KRS 230.210(2)) if used in the context of the administrative agency governing horse racing and pari-mutuel wagering; and

(b) If used in the context of pari-mutuel wagering, the amount an association is authorized to withhold from a pari-mutuel wager pursuant to KRS 230.3615.

(19) "Corrupt practice" means any attempt to enrich oneself or one's associates or gain an advantage, through unfair, unlawful, or dishonest behavior in connection with the racing of horses.

(20) "Day" means any twenty-four (24) hour period beginning at 12:01 a.m. and ending at midnight.

(21) "Dead heat" means a finish of a race in which the noses of two (2) or more horses reach the finish line at the same time.

(22) "Declaration" means withdrawal of a horse entered in a race prior to the time of closing of entries for the race in conformance with 811 KAR Chapter 2.

(23) "Designated area" means any enclosed area that the commission has approved for the location of terminals used for wagering on an historical horse race.

(24) "Directive" means an official order issued by the commission.

(25) "Disciplinary action" means action taken by the stewards or the commission for a violation of KRS Chapter 230 or 811 KAR Chapter 2 and can include:

- (a) Refusal to issue or renew a license;
- (b) Revocation or suspension of a license;
- (c) Imposition of probationary conditions on a license;
- (d) Issuance of a written reprimand or admonishment;
- (e) Imposition of fines or penalties;
- (f) Denial of purse money;
- (g) Forfeiture of purse money; or

(h) Any combination of paragraphs (a) through (g) of this subsection.

(26) "Disqualification" means an order of the stewards or commission revising the order of finish of a race.

(27) "Entry" means the act of nominating a horse for a race in conformance with 811 KAR Chapter 2.

(28) "Equipment" means accoutrements other than ordinary saddle, girth, pad, saddle cloth, and bridle carried by a horse, and includes whip, blinkers, tongue strap, muzzle, hood, noseband, bit, shadow roll, martingale, breast plate, bandages, boots, and racing plates or shoes.

(29) "Exhibition race" means a race between horses of diverse ownership for which a purse is offered by the association, but on which no pari-mutuel wagering is permitted.

(30) "Exotic wager" means any pari-mutuel wager placed on a live or historical horse race other than a win, place, or show wager placed on a live horse race.

(31) "Field" or "mutuel field" means a single betting interest involving more than one (1) horse which is not a mutuel entry.

(32) "Forfeit" means money due by a licensee because of an error, fault, neglect of duty, breach of contract, or alternative order of the stewards or commission.

(33) "Foul" means any action by any jockey that tends to hinder another jockey or any horse in the proper running of the race.

(34) "Free handicap" means a handicap for which no nominating fee is required to be weighted, but an entrance or starting fee may be required for starting in the race.

(35) "Handicap race" means a race in which the weights to be carried by the horses are assigned by the association handicapper with the intent of equalizing the chances of winning for all horses entered in the race.

(36) "Handle" means the aggregate of all pari-mutuel pools, excluding refundable wagers.

(37) "Historical horse race" means any horse race that:

(a) Was previously run at a licensed pari-mutuel facility located in the United States;

(b) Concluded with official results; and

(c) Concluded without scratches, disqualifications, or dead-heat finishes. (38) "Horse" means a quarter horse, appaloosa, or Arabian registered as such with the American Quarter Horse Association in Amarillo, Texas, or the Appaloosa Horse Club, Inc., in Moscow, Idaho, irrespective of age or sex designation.

(39) "Ineligible" means a horse or person not qualified under 811 KAR Chapter 2 or conditions of a race to participate in a specified racing activity.

(40) "Initial seed pool" means a nonrefundable pool of money funded by an association in an amount sufficient to ensure that a patron will be paid the minimum amount required on a winning wager on an historical horse race.

(41) "Jockey" means rider currently licensed to ride in races as a jockey, amateur jockey, or a provisional jockey permitted by the stewards to ride in two (2) races prior to applying for a license.

(42) "Kentucky bred" means a foal dropped by a mare after being bred in Kentucky.

(43) "Kentucky race" means a race in which the contestants are Kentucky bred and foaled horses as stipulated in the conditions of the race.

(44) "Lessee" means licensed owner whose interest in a horse is a leasehold.

(45) "Licensed premises" means the location and physical plant described in response to question P of the "Commonwealth of Kentucky Initial/Renewal Application for License to Conduct Live

Horse Racing, Simulcasting, and Pari-Mutuel Wagering" filed for racing to be conducted in 2010. Licensed premises may also include real property of an association, if the association receives approval from the commission for a new location at which live racing will be conducted.

(46) "Licensee" means an individual, firm, association, partnership, corporation, trustee, or legal representative that has been duly issued a currently valid license to participate in racing in the Commonwealth.

(47) "Maiden" means a horse which shows in the Daily Racing Form, the American Quarter Horse Chart Book, or the Appaloosa Chart Book as never having won a race on a track recognized by the commission. A maiden which has been disqualified after finishing first in a race is still a maiden.

(48) "Match race" means a race between two (2) horses for which no other horses are eligible.

(49) "Meeting" means the entire period of consecutive days, exclusive of Sundays and dark days, granted by the commission to a licensed association for the conduct of live horse racing, beginning at 10 a.m. of the first racing day and extending through a period ending one (1) hour after the last scheduled race of the last day.

(50) "Minus pool" means a pari-mutuel pool in which the amount of money to be distributed on winning wagers exceeds the amount of money contained in the net pool.

(51) "Month" means calendar month.

(52) "Mutuel entry" means a single betting interest involving two (2) or more horses entered in the same race and joined for pari-mutuel purposes because of common ties as to ownership or training so that a wager on one (1) horse joined in a "mutuel entry" is a wager on all horses joined in the same "mutuel entry."

(53) "Net pool" means the total amount wagered less refundable wagers and takeout.

(54) "Nomination fee" means a fee to keep a horse eligible to run in a stakes race.

(55) "Nominator" means any person in whose name a horse is entered for a stake race.

(56) "Off time" means the moment at which, on signal of the starter, the horses break and run.

(57) "Owner" means any person who holds, in whole or in part, any right, title, or interest in a horse, or any lessee of a horse, who has been duly issued a currently valid owner's license as a person responsible for the horse.

(58) "Pari-mutuel wagering", "mutuel wagering", or "pari-mutuel system of wagering" each mean a system or method of wagering approved by the commission in which patrons are wagering among themselves and not against the association and amounts wagered are placed in one (1) or more designated wagering pools and the net pool is returned to the winning patrons. (59) "Patron" means an individual present at a track or a simulcast facility who observes or wagers on a live or historical horse race.

(60) "Payout" means the amount of the net pool payable to an individual patron on his or her winning wager.

(61) "Place" if used in the context of a single position in the order of finish in a race, means second; if used in the context of pari-mutuel wagering, a "place" wager is one involving a payoff on a betting interest which finished first or second in a race; if used in the context of multiple positions in the order of finish in a race, "place or placing" means finishing first, second, or third.

(62) "Post" means the starting point of a race.

(63) "Post position" means the relative place assigned to each horse, numbered from the inner rail across the track at the starting line, from which each horse is to start a race.

(64) "Post time" means the time set for the arrival at the starting point of the horses in a race.

(65) "Prize" means the combined total of any cash, premium, trophy, and object of value awarded to the owners of horses according to order of finish in a race.

(66) "Purse" means the gross cash portion of the prize for which a race is run.

(67) "Purse race" means any race for which entries close at a time designated by the racing secretary, and for which owners of horses entered are not required by its conditions to contribute

money toward its purse.

(68) "Quarter horse" means a horse registered with the American Quarter Horse Association of Amarillo, Texas.

(69) "Race" means a running contest between horses, ridden by jockeys, over a prescribed course free of obstacles or jumps, at a recognized meeting, during regular racing hours, for a prize.

(70) "Race day" means any period of twenty-four (24) hours beginning at 12:01 a.m. and ending at midnight in which live racing is conducted by an association.

(71) "Racing official" means a racing commission member, commission staff as duties require, and all association racing department employees, as duties require.

(72) "Recognized meeting" means any race meeting conducted under jurisdiction of any legally constituted board or commission conducted with approval of the American Quarter Horse Association of Amarillo, Texas, or the Appaloosa Horse Club, Inc., of Moscow, Idaho.

(73) "Recognized tracks" means tracks that are conducting recognized meetings.

(74) "Registration certificate" means the document issued by the American Quarter Horse Association of Amarillo, Texas, or the Appaloosa Horse Club, Inc., of Moscow, Idaho, certifying the name, age, color, sex, pedigree, and breeder of a horse as registered by number with the American Quarter Horse Association or the Appaloosa Horse Club.

(75) "Result" means the part of the official order of finish in a race used to determine the pari-mutuel payoff of pools.

(76) "Ruled off" means denial of entrance to premises of any association under jurisdiction of the commission.

(77) "Rulings" means all determinations, decisions, or orders of the stewards or of the commission duly issued in writing and posted.

(78) "Schooling race" means a race designed to correct deficiencies in horses before being eligible for entry.

(79) "Scratch" means withdrawal of a horse entered for a race after time of closing of entries for the race in conformance with 814 KAR Chapter 2.

(80) "Scratch time" means time set by the racing secretary as a deadline for horsemen to indicate their desire to scratch out of a race.

(81) "Secretary" means duly appointed and currently serving secretary of the commission.

(82) "Seed pool" means a pool of money funded by patrons wagering on an historical horse race that is used to ensure that all patrons are paid the minimum payout on winning wagers.

(83) "Specimen" means a sample of blood, urine, or other biologic sample taken or drawn from a horse for chemical testing.

(84) "Stakes" mean all fees paid by subscribers to an added-money or stakes race for nominating, eligibility, entrance, or starting, as may be required by the conditions of the race, the fees to be included in the purse.

(85) "Stakes race" means a race which closes more than seventy-two (72) hours in advance of its running and for which subscribers contribute money towards its purse.

(86) "Starter" means either:

(a) An official who dispatches the horses from the starting gate; or

(b) A horse in a race when the starting gate doors open in front of it at the moment the starter dispatches the horses for the race.

(87) "Steward" means a duly appointed racing official with powers and duties set out in 814 KAR 2:025 serving at a current meeting in the Commonwealth.

(88) "Subscription" means a fee to keep a horse eligible to run in a stakes race.

(89) "Suspended" means withdrawal by the steward or commission of racing privileges.

(90) "Takeout" means the total amount of money, excluding breakage and any amounts allocated to a seed pool, withheld from each pari-mutuel pool, as authorized by KRS 230.3615 and 814 KAR Chapter 2.

(91) "Terminal" means any self-service totalizator machine or other mechanical equipment used by a patron to place a pari-mutuel wager on a live or historical horse race.

(92) "Totalizator" means the system, including hardware, software, communications equipment, and electronic devices that accepts and processes the cashing of wagers; calculates the odds and prices of the wagers; and records, displays, and stores pari-mutuel wagering information.

(93) "Tote" or "tote board" means the totalizator.

(94) "Trial race" means a race designed primarily to determine the class of competing horses. A trial may be run as a purse race or stakes, or it may be run as a "time trial" with no purse at all. If a trial is run for a purse or stakes so small that the value to the winner is less than fifty (50) dollars, the winning of the race shall not be counted against the winner in calculating the weight he shall carry under the conditions of a subsequent race.

(95) "Unplaced" means a horse finishing a race outside the pari-mutuel payoff.

(96) "Walkover" means race in which the only starter or all starters represent single ownership.

(97) "Weigh in" means presentation of a jockey to the clerk of scales for weighing after a race.

(98) "Weigh out" means a presentation of a jockey to the clerk of scales for weighing prior to a race.

(99) "Weight" means the number of pounds carried or to be carried in a race and includes the jockey, his silks, breeches, and boots, saddle, pad and cloth but excludes the protective helmet, whip, and bridle.

(100) "Workout" means training exercise of a horse on the training track or main track of an association during which the horse is timed for speed over a specified distance.

(101) "Year" means twelve (12) consecutive months beginning with January and ending with December.

Section 2. Severability. In the event that any provision or administrative regulation of this chapter is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby.]

JOHNATHAN RABINOWITZ, Chair

KERRY HARVEY, Secretary

APPROVED BY AGENCY: September 8, 2020

FILED WITH LRC: September 9, 2020 at 8:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on November 23, 2020 at Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on November 30, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes that all definitions applicable to pari-mutuel and exotic pari-mutuel wagering have been consolidated within KRS Chapter 230 and KAR Title 810, Chapter 1.

(b) The necessity of this administrative regulation: This regulation is necessary for the commission to regulate the integrity

of pari-mutuel and exotic pari-mutuel wagering in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) authorizes the commission to regulate the conditions under which racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating pari-mutuel wagering on horse races under the pari-mutuel system of wagering. This regulation establishes the procedures and regulations governing exotic forms of pari-mutuel wagering under KRS Chapter 230 and the commission's administrative regulations. This regulation establishes that all definitions for the operation of pari-mutuel and exotic pari-mutuel wagering have been consolidated within KRS Chapter 230 and KAR Title 810, Chapter 1.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.361 requires the commission to promulgate administrative regulations governing and regulating pari-mutuel wagering on horse races. This administrative regulation establishes that all definitions for the operation of pari-mutuel and exotic pari-mutuel wagering have been consolidated within KRS Chapter 230 and KAR Title 810, Chapter 1.

(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 establishes that definitions for pari-mutuel and exotic pari-mutuel wagering on all types of horse racing, including thoroughbred, standardbred, quarter horse, appaloosa, and Arabian racing, will be regulated by KAR Title 810, Chapter 1. This amendment will continue to bring uniformity to the rules governing pari-mutuel wagering for the various breeds.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to reduce the number of regulations applicable to pari-mutuel wagering and make the regulations easier to understand.

(c) How the amendment conforms to the content of the authorizing statutes: Exotic wagering is a type of pari-mutuel wagering. KRS 230.215(2) authorizes the commission to regulate the conditions under which racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating pari-mutuel wagering on horse races. This amendment establishes that all definitions for the operation of pari-mutuel and exotic pari-mutuel wagering have been consolidated within KRS Chapter 230 and KAR Title 810, Chapter 1.

(d) How the amendment will assist in the effective administration of the statutes: Exotic wagering is a type of pari-mutuel wagering. KRS 230.215(2) authorizes the commission to regulate the conditions under which racing and pari-mutuel wagering thereon shall be conducted in the Commonwealth. This amendment establishes that all definitions for the operation of exotic pari-mutuel wagering have been consolidated within KRS Chapter 230 and KAR Title 810, Chapter 1.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This proposed amendment will affect the seven currently-licensed racing associations in the Commonwealth, any applicant for a racing association license, the owners and trainers who participate in racing in the Commonwealth, the jockeys who ride in the Commonwealth, the harness drivers who drive in the Commonwealth, the patrons who place pari-mutuel wagers on live and historical horse racing in the Commonwealth, and the commission.

(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: This proposed amendment does not change any pari-mutuel or exotic pari-mutuel wagering compliance requirements or definitions that were not already in place. Instead, the proposed amendment simply helps to

establish the consolidation of pari-mutuel and exotic pari-mutuel wagering definitions into one regulation, rather than three.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This proposed amendment does not change any pari-mutuel or exotic pari-mutuel wagering compliance requirements or definitions that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of pari-mutuel and exotic pari-mutuel wagering definitions into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission.

(c) As a result of compliance, what benefits will accrue to the entities: The associations will have a defined process to follow if they plan to request exotic wagers. They will be able to offer increased pari-mutuel wagering options to patrons and can expect an increase in on-track attendance and total pari-mutuel handle. The increased revenue can be used to maintain and improve racing association facilities and supplement purses for live races run at each association. The increased purses will help the associations to compete with racing associations in neighboring states that offer expanded gaming options. The owners, trainers, jockeys, and harness drivers will benefit from increased purses, as well as any improvements to an association's facilities. The patrons will benefit from any improvements to an association's facilities, as well as from increased pari-mutuel wagering options.

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

(a) Initially: The associations will have a defined process to follow if they plan to request exotic wagers. They will be able to offer increased pari-mutuel wagering options to patrons and can expect an increase in on-track attendance and total pari-mutuel handle. The increased revenue can be used to maintain and improve racing association facilities and supplement purses for live races run at each association. The increased purses will help the associations to compete with racing associations in neighboring states that offer expanded gaming options. The owners, trainers, jockeys, and harness drivers will benefit from increased purses, as well as any improvements to an association's facilities. The patrons will benefit from any improvements to an association's facilities, as well as from increased pari-mutuel wagering options. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission. The racing associations will continue to experience costs due to employee compensation and expenses, as well as equipment maintenance. The commission will be reimbursed by the associations for additional employee compensation and other expenses.

(b) On a continuing basis: This proposed amendment does not change any exotic pari-mutuel or pari-mutuel wagering definitions that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of exotic pari-mutuel wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission. The racing associations will continue to experience costs due to employee compensation and expenses, as well as equipment maintenance. The commission will be reimbursed by the associations for additional employee compensation and other expenses pursuant to KRS 230.240.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This proposed amendment does not change any exotic pari-mutuel wagering definitions that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of pari-mutuel and exotic pari-mutuel wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission. As a general rule, the commission is reimbursed by the association for additional employee compensation and other expenses pursuant to KRS 230.240.

(7) Provide an assessment of whether an increase in fees or

funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This proposed amendment does not change any pari-mutuel or exotic pari-mutuel wagering definitions that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of pari-mutuel and exotic pari-mutuel wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This proposed amendment does not change any pari-mutuel or exotic pari-mutuel wagering definitions that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of pari-mutuel or exotic pari-mutuel wagering definitions into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission.

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to each association.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission and the Department of Revenue.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215, 230.361.

(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 proposed amendment does not change any pari-mutuel or exotic definitions that were not already in place. Instead, the proposed amendment simply helps to consolidate pari-mutuel or exotic wagering definitions into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase revenue any more than the current regulatory scheme does. Under the current regulatory scheme, the amount of tax revenue will be dependent on the number of terminals the associations install and operate.

(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 proposed amendment does not change any pari-mutuel or exotic wagering compliance requirements that were not already in place. Instead, the proposed amendment simply helps to consolidate pari-mutuel or exotic wagering definitions into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase revenue any more than the current regulatory scheme does. Under the current regulatory scheme, the amount of tax revenue will be dependent on the number of terminals the associations install and operate.

(c) How much will it cost to administer this program for the first year? This proposed amendment does not change any pari-mutuel or exotic pari-mutuel wagering definitions that were not already in place. Instead, the proposed amendment simply helps to consolidate pari-mutuel or exotic wagering definitions into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase revenue any more than the current regulatory scheme does. Under the current regulatory scheme, the amount of tax revenue will be dependent on the number of terminals the associations install and operate.

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

subsequent years? This proposed amendment does not change any pari-mutuel or exotic pari-mutuel wagering definitions that were not already in place. Instead, the proposed amendment simply helps to consolidate pari-mutuel or exotic wagering definitions into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase revenue any more than the current regulatory scheme does. Under the current regulatory scheme, the amount of tax revenue will be dependent on the number of terminals the associations install and operate.

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

Revenues (+/-): None.

Expenditures (+/-): None.

Other Explanation: N/A

PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (Amendment)

811 KAR 2:060. Pari-Mutuel wagering.

RELATES TO: KRS 230.300, 230.361, 230.3615, 230.370, 230.398, 230.750[138.510-138.550, 230.210-230.375, 230.990]

STATUTORY AUTHORITY: KRS 230.210, 230.215[230.245, 230.240, 230.260, 230.280, 230.290, 230.300, 230.310, 230.320], 230.361, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing[grants the] Commission (the "commission")[authority] to regulate conditions under which [quarter] horse[.] [appaloosa and Arabian] racing and pari-mutuel[pari-mutuel] wagering thereon shall be conducted in Kentucky. KRS 230.361(1) requires the commission[authority] to promulgate administrative regulations governing and regulating pari-mutuel[mutuel] wagering on horse races under the pari-mutuel[pari-mutuel] system of wagering. This administrative regulation establishes the requirements for the operation of pari-mutuel[pari-mutuel] wagering under KRS Chapter 230 and [814] KAR Title 810, Chapter 1[2].

Section 1. Pari-Mutuel[Par-Mutuel] System of Wagering Required. All requirements for the operation of pari-mutuel wagering are set forth in KRS Chapter 230 and KAR Title 810, Chapter 1. [(4) The only wagering permitted on a live or historical horse race shall be under the pari-mutuel system of wagering. All systems of wagering other than pari-mutuel shall be prohibited. Any person participating or attempting to participate in prohibited wagering shall be ejected and excluded from association grounds.

(2) Wagering conducted in conformity with KRS Chapter 230 and 811 KAR Chapter 2 is pari-mutuel.

Section 2. Totalizer or Other Approved Equipment Required.
(1) Pari-Mutuel wagering on live and historical horse races shall only be conducted through the use of a totalizer or other similar mechanical equipment approved by the commission pursuant to KRS 230.361.

(2) The totalizer or other mechanical equipment shall be available for testing under the supervision of the commission upon request by the commission to ensure its proper working order.

Section 3. Wagering on an Historical Horse Race Authorized.
(1) Wagering on an historical horse race is hereby authorized and may be conducted in accordance with KRS Chapter 230 and 811 KAR Chapter 2.

(2) Wagering on an historical horse race shall only be conducted by:

(a) An association licensed to conduct a live horse race meet;
or

(b) Two (2) or more associations licensed to conduct a live horse race meet:

1. Who form a joint venture; or

2. Pursuant to an agreement between them.

(3) Wagering on an historical horse race shall only be permitted in a designated area on the licensed premises of an association licensed to conduct a live horse race meeting. Wagering on historical horse racing shall not be offered in any other location.

(4) An association may conduct wagering on historical horse races of any horse breed regardless of the type of breed that primarily races in live meets conducted by the association. An association may conduct wagering on historical races on any days and hours approved by the commission, and shall not be limited to times during which the association is conducting a live horse race meeting.

(5) Any wager placed on an historical horse race is an exotic wager.

(6) Before offering wagering on an historical horse race, an association shall first obtain the commission's written approval of all wagers offered as set forth in 811 KAR 2:160.

(7) All wagering on an historical horse race shall incorporate the following elements:

(a) A patron may only wager on an historical horse race on a terminal approved by the commission;

(b) An association shall at all times maintain at least two (2) terminals offering each type of exotic wager on an historical horse race;

(c) Once a patron deposits the wagered amount in the terminal offering wagering on an historical horse race, an historical horse race shall be chosen at random;

(d) Prior to the patron making his or her wager selections, the terminal shall not display any information that would allow the patron to identify the historical race on which he or she is wagering, including the location of the race, the date on which the race was run, the names of the horses in the race, or the names of the jockeys that rode the horses in the race;

(e) The terminal shall make available true and accurate past performance information on the historical horse race to the patron prior to making his or her wager selections. The information shall be current as of the day the historical horse race was actually run. The information provided to the patron shall be displayed on the terminal in data or graphical form; and

(f) After a patron finalizes his or her wager selections, the terminal shall display a video replay of the race, or a portion thereof, and the official results of the race. The identity of the race shall be revealed to the patron after the patron has placed his or her wager.

Section 4. Payouts Only Out of Pari-Mutuel Pools: Seed Pools Required. (1)(a) A wager on an historical horse race, less deductions permitted by KRS Chapter 230 or 811 KAR Chapter 2, shall be placed in pari-mutuel pools approved by the commission.

(b) A payout to a winning patron shall be paid from money wagered by patrons and shall not constitute a wager against the association.

(c) An association conducting wagering on an historical horse race shall not conduct wagering in such a manner that patrons are wagering against the association, or in such a manner that the amount retained by the association as a commission is dependent upon the outcome of any particular race or the success of any particular wager.

(2) An association shall only pay a winning wager on an historical horse race out of the applicable pari-mutuel pool and shall not pay a winning wager out of the association's funds. Payment of a winning wager shall not exceed the amount available in the applicable pari-mutuel pool.

(3) An association offering wagering on an historical horse race shall operate seed pools in a manner and method approved by the commission as set forth in 811 KAR 2:160. For each wager made, an association may assign a percentage of the wager to seed pools. The seed pools shall be maintained and funded so that the amount available at any given time is sufficient to ensure that a patron will be paid the minimum amount required on a winning wager.

(4) An association shall provide the funding for the initial seed pool for each type of exotic wager. The funding for the initial seed

pool shall be nonrefundable and in an amount sufficient to ensure that a patron will be paid the minimum amount required on a winning wager.

Section 5. Location of Terminals Used for Wagering on an Historical Horse Race. (1) Terminals offering wagering on historical horse races shall be located within designated areas which have the prior written approval of the commission. Designated areas shall be established in such a way as to control access by the general public and prevent entry by any patron who is under eighteen (18) years of age or is otherwise not permitted to place wagers.

(2) Each association shall monitor persons entering and leaving the designated areas and shall prevent access to any patron who is under eighteen (18) years of age or is otherwise not permitted to place wagers on historical horse races.

(3) Each association shall provide terminals that are accessible to handicapped patrons.

Section 6. Records to be Maintained. (1) Each association and each simulcast facility authorized under KRS 230.380 shall maintain complete records of all pari-mutuel wagering transactions on live and historical horse races, including the amounts wagered at each betting window, self-service totalizator, mobile pari-mutuel teller, and terminal. (2) A copy of the wagering records shall be retained and safeguarded for a period of not less than two (2) years and shall not be destroyed without the prior written permission of the commission.

Section 7. Equipment. (1) The association and the totalizator provider shall install a primary and secondary device, which activate the stop betting function of the totalizator system. The chief state steward, or his or her designee, shall use the primary device to stop wagering at the start of a live horse race. If wagering is not stopped by the primary device at the start of the race, the totalizator operator shall stop wagering using the secondary device. The secondary device shall be installed in the totalizator room and shall only be used by the totalizator operator.

(2) If there is a complete breakdown of the totalizator or mechanical equipment during the wagering on a live horse race, the wagering on that race shall be declared closed. If the totalizator remains capable of computing payouts, the payouts for that race shall be computed based on the amounts wagered prior to the breakdown. If the totalizator is incapable of computing payouts, then refunds shall be issued for all amounts wagered on that race.

(3) If there is a complete breakdown of a terminal offering wagering on an historical horse race, the association offering the wager shall make a full refund of the patron's balance on the terminal at the time of the breakdown.

Section 8. Entries in a Live Horse Race. (1) The chief state steward shall timely advise an association's pari-mutuel manager, prior to the beginning of wagering on each live horse race, of the horses that will compete in the race.

(2) If two (2) or more horses entered for the same live horse race are determined by the commission to have common ties through ownership or training, they may be joined by the commission as a mutual entry. The mutual entry shall become a single betting interest and a wager on one (1) horse in a mutual entry shall be a wager on all horses in the same mutual entry. If the number of horses competing in a live horse race exceeds the numbering capacity of the totalizator, the racing secretary shall assign the highest pari-mutuel numbers to horses so that the highest numbered horse within the numbering capacity of the totalizator together with horses of higher numbers, shall be grouped in the mutual field as a single betting interest, and a wager on one (1) horse in the mutual field shall be a wager on all horses in the same mutual field.

(3) A refund at cost value shall be made to all holders of a purchased ticket bearing the number of a horse in any race that has been scratched or withdrawn before the horse has become a starter, unless the horse is part of a mutual entry, and one (1) or more of the entry starts.

Section 9. Sale of Pari-Mutuel Tickets on Live Horse Races.

(1) The following types of pari-mutuel wagering shall be permitted on a live horse race at all licensed associations and simulcast facilities:

(a) Normal win, place, and show wagers on each race;
(b) Any exotic wager previously approved by the commission; and

(c) Any new exotic wager approved in writing by the commission pursuant to 811 KAR 2:160.

(2) Pari-Mutuel tickets on live horse races shall not be sold except by a licensed association or a simulcast facility authorized by KRS 230.380.

(3) Pari-Mutuel tickets on a live horse race shall only be sold at regular ticket windows, self-service totalizator machines, by mobile pari-mutuel tellers with hand-held totalizator devices, or by any other method approved in writing by the commission prior to being offered to the public. At least one (1) regular ticket window shall be made accessible to handicapped patrons.

(4)(a) Pari-Mutuel stored value cards or cash vouchers may be offered by an association. The dollar amount on the stored value card or cash voucher may be redeemed at any time at any regular ticket window or used to fund additional wagers.

(b) Cash vouchers shall be valid for one (1) year after the date of issuance. Failure to present any cash voucher for redemption within one (1) year of issuance shall constitute a waiver of the right to receive payment on the voucher.

(5) A pari-mutuel wager shall not be made on a race after the totalizator has been locked for that race.

(6) Any claim by a patron that he or she has been issued a pari-mutuel ticket other than that which was requested shall be made before the patron has left the ticket window or before the mobile teller has initiated a transaction with another patron. A claim for an incorrect ticket shall not be honored after the totalizator has been locked.

Section 10. Payment on Pari-Mutuel Tickets on Live Horse Races. (1) At the end of each live horse race, the placing judges shall advise the manager of the pari-mutuel department by the use of the totalizator equipment or by telephone of the official placement of the horses, and payouts shall not be made until the receipt of the notice.

(2) Payment of valid pari-mutuel tickets shall be made on the basis of the order of finish as declared "official" by the stewards. A subsequent change in the order of finish or award of purse money that may result from a subsequent ruling by the stewards or commission shall not affect the pari-mutuel payout.

(3) Each association shall deduct from each pari-mutuel pool a commission, not exceeding the commission provided by KRS 230.3615. The remainder of the pool after the deduction of the commission shall be the net pool for distribution as payouts to ticket holders.

(4) Payment on valid pari-mutuel tickets shall be made only if presented and surrendered within one (1) year following the running of the live horse race on which the wager was made. Failure to present a ticket within one (1) year shall constitute a waiver of the right to receive payment on the ticket.

(5) The association shall be responsible for the correctness of all payout prices posted as "official". If an error is made in posting the payout figures, and ascertained before any tickets are cashed, the posting error shall be corrected, accompanied by a public address announcement, and only the correct amounts shall be used in the payout, irrespective of the initial error.

(6) A mutilated pari-mutuel ticket that is not easily identifiable as being a valid ticket shall not be accepted for payment.

(7) An association shall establish a written procedure for granting patrons an opportunity to file a claim on a lost pari-mutuel ticket and provide a copy to the commission.

(8) Prior to posting payouts, the association's pari-mutuel manager shall require the verification of the winning runners and prices prior to posting official results.

(9)(a) If an error is made in calculating the payout on a winning wager, resulting in overpayment, the association shall be

responsible for the amount between the correct payout and the amount paid.

(b) If the error in calculation results in a payout being too low, the amount between the correct payout and the amount paid shall be added to the net pool of the same position in the following race on the same day or, if it is the last race of the day, then it shall be added to the net pool of the same position in the same race on the following day. If an error occurs in computing the daily double pool, the underpayment shall be added to the daily double pool of the following day.

(c) If an error occurs causing underpayment on the last race of the entire racing meeting, the amount of the underpayment shall be paid to the Kentucky Revenue Cabinet.

Section 11. Minimum Wagers and Payouts. (1) The minimum wager to be accepted by any licensed association on a live horse race shall be ten (10) cents. The minimum payout on a one (1) dollar wager on a live horse race shall be one dollar and ten (10) cents, unless a minus pool occurs. If a minus pool occurs, the minimum payout for a one (1) dollar wager shall be one (1) dollar and five (5) cents.

(2) The minimum wager to be accepted by any licensed association on an historical horse race shall be ten (10) cents. The minimum payout on any wager shall not be less than the amount wagered.

Section 12. Minors Prohibited from Wagering. A minor shall not be permitted by any licensed association or simulcast facility to purchase or cash a pari-mutuel ticket.

Section 13. Odds and Payouts Posted. (1) Approximate odds for live horse races, based on win pool betting for finishing first for each betting interest, shall be posted on one (1) or more boards or television screens within view of the wagering public at intervals of not more than ninety (90) seconds.

(2) If daily double wagering is conducted on a live horse race, before off-time of the second daily double race, the probable payout for each two (2) dollar daily double wager combining the winner of the first daily double race with every horse or betting interest in the second daily double race shall be posted; except that if a dead heat for first in the first daily double race occurs, or a scheduled starter in the second daily double race is excused so as to cause a consolation daily double pool, then posting of all possible payouts shall not be mandatory, but the association shall make every effort to compute such daily double prices and advise the public by posting or public address announcement as soon as possible and prior to the running of the second daily double race.

(3) For wagering on an historical horse race, approximate odds or payouts for each wagering pool shall be posted on each terminal for viewing by patrons at intervals of no more than ninety (90) seconds.

Section 14. Betting Explanation. (1) Each association shall publish in the daily race program, for each day of live horse racing, a general explanation of pari-mutuel wagering offered on live horse races and an explanation of each type of betting pool offered. The explanation also shall be posted in conspicuous places about the association grounds to adequately inform the public and shall be submitted to the commission prior to publication for approval.

(2) Each association shall post, in conspicuous places in the designated area, a general explanation of pari-mutuel wagering offered on historical horse races and an explanation of each betting pool offered. The explanation shall be submitted to the commission for approval prior to its posting.

Section 15. Prior Approval Required for Number of Live Horse Races. Each association desiring to conduct more than nine (9) live horse races on a single day shall first apply in writing to the commission and obtain specific approval of the number of live horse races to be offered on a single day.

Section 16. Pools Dependent Upon Entries for Live Horse Races. (1) If horses representing five (5) or fewer betting interests

~~qualify to start in a live horse race, the association may prohibit show wagering on that race. If horses representing four (4) or fewer betting interests qualify to start in a live horse race, the association may prohibit both place and show wagering on that race.~~

~~(2) If a horse is scratched by the stewards after wagering has commenced or a horse is prevented from running in a live horse race because of failure of a starting gate door to open properly, and the number of actual starters representing different betting interests is: (a) Reduced to five (5), the association may cancel show wagering on that race and the entire show pool shall be refunded upon presentation and surrender of show tickets; or~~

~~(b) Reduced to four (4) or fewer, the association may cancel both place and show wagering on that race and the entire place and show pool shall be refunded upon presentation and surrender of place and show tickets.~~

~~Section 17. Emergency Situation. If any emergency arises in connection with the operation of the pari-mutuel department not provided for by this administrative regulation, the pari-mutuel manager shall take immediate corrective action and shall by the quickest means possible notify the chief state steward and render a full report to the commission.~~

~~Section 18. Severability. In the event that any provision or administrative regulation of this chapter is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby.]~~

JOHNATHAN RABINOWITZ, Chair
KERRY HARVEY, Secretary

APPROVED BY AGENCY: September 8, 2020

FILED WITH LRC: September 9, 2020 at 8:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on November 23, 2020 at Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on November 30, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes that all requirements for the operation of pari-mutuel wagering have been consolidated within KRS Chapter 230 and KAR Title 810, Chapter 1.

(b) The necessity of this administrative regulation: This regulation is necessary for the commission to regulate the integrity of pari-mutuel wagering in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) authorizes the commission to regulate the conditions under which racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating pari-mutuel wagering on

horse races under the pari-mutuel system of wagering. This regulation establishes that all requirements for the operation of pari-mutuel wagering have been consolidated within KRS Chapter 230 and KAR Title 810, Chapter 1.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.361 requires the commission to promulgate administrative regulations governing and regulating pari-mutuel wagering on horse races. This administrative regulation establishes that KAR Title 810, Chapter 1 will set the criteria for determining whether pari-mutuel wagers requested by licensed racing association comply with the provisions of KRS Chapter 230 and the commission's administrative regulations.

(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 establishes that pari-mutuel wagering on all types of horse racing, including thoroughbred, standardbred, quarter horse, appaloosa, and Arabian racing, will be regulated by KAR Title 810, Chapter 1. This amendment will continue to bring uniformity to the rules governing pari-mutuel wagering for the various breeds.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to reduce the number of regulations applicable to pari-mutuel wagering and make the regulations easier to understand.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215(2) authorizes the commission to regulate the conditions under which racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating pari-mutuel wagering on horse races. This amendment establishes that all requirements for the operation of pari-mutuel wagering have been consolidated within KRS Chapter 230 and KAR Title 810, Chapter 1.

(d) How the amendment will assist in the effective administration of the statutes: KRS 230.361 requires the commission to promulgate administrative regulations governing and regulating pari-mutuel wagering on horse races. This amendment establishes that KAR Title 810, Chapter 1 will set the criteria for determining whether pari-mutuel wagers requested by licensed racing association comply with the provisions of KRS Chapter 230 and the commission's administrative regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This proposed amendment will affect the seven currently-licensed racing associations in the Commonwealth, any applicant for a racing association license, the owners and trainers who participate in racing in the Commonwealth, the jockeys who ride in the Commonwealth, the harness drivers who drive in the Commonwealth, the patrons who place pari-mutuel wagers on live and historical horse racing in the Commonwealth, and the commission.

(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: This proposed amendment does not change any pari-mutuel wagering compliance requirements that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of pari-mutuel wagering compliance requirements into one regulation, rather than three. With that in mind, the licensed racing associations will be required to follow the procedure(s) outlined in KRS Chapter 230 and KAR Title 810, Chapter 1 to offer pari-mutuel wagering.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This proposed amendment does not change any pari-mutuel wagering compliance requirements that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of pari-mutuel wagering compliance requirements

into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission.

(c) As a result of compliance, what benefits will accrue to the entities: The associations will have a defined process to follow if they plan to request pari-mutuel wagers. They will be able to offer increased pari-mutuel wagering options to patrons and can expect an increase in on-track attendance and total pari-mutuel handle. The increased revenue can be used to maintain and improve racing association facilities and supplement purses for live races run at each association. The increased purses will help the associations to compete with racing associations in neighboring states that offer expanded gaming options. The owners, trainers, jockeys, and harness drivers will benefit from increased purses, as well as any improvements to an association's facilities. The patrons will benefit from any improvements to an association's facilities, as well as from increased pari-mutuel wagering options.

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

(a) Initially: This proposed amendment does not change any pari-mutuel wagering compliance requirements that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of pari-mutuel wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission. The racing associations will continue to experience costs due to employee compensation and expenses, as well as equipment maintenance. The commission will be reimbursed by the associations for additional employee compensation and other expenses.

(b) On a continuing basis: This proposed amendment does not change any pari-mutuel wagering compliance requirements that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of pari-mutuel wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission. The racing associations will continue to experience costs due to employee compensation and expenses, as well as equipment maintenance. The commission will be reimbursed by the associations for additional employee compensation and other expenses pursuant to KRS 230.240.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This proposed amendment does not change any pari-mutuel wagering compliance requirements that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of pari-mutuel wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission. As a general rule, the commission is reimbursed by the association for additional employee compensation and other expenses pursuant to KRS 230.240.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This proposed amendment does not change any pari-mutuel wagering compliance requirements that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of pari-mutuel wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This proposed amendment does not change any pari-mutuel wagering compliance requirements that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of pari-mutuel wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission.

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to each association.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission and the Department of Revenue.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.210, 230.215, 230.361, 230.370.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This proposed amendment does not change any pari-mutuel wagering compliance requirements that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of pari-mutuel wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase revenue any more than the current regulatory scheme does. Under the current regulatory scheme, the amount of tax revenue will be dependent on the number of terminals the associations install and operate.

(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 proposed amendment does not change any pari-mutuel wagering compliance requirements that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of pari-mutuel wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase revenue any more than the current regulatory scheme does. Under the current regulatory scheme, the amount of tax revenue will be dependent on the number of terminals the associations install and operate.

(c) How much will it cost to administer this program for the first year? This proposed amendment does not change any pari-mutuel wagering compliance requirements that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of pari-mutuel wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase costs any more than the current regulatory scheme does. Under the current regulatory scheme, the costs largely come from employee compensation and expenses, as well as equipment maintenance. The commission is reimbursed for these costs by the associations.

(d) How much will it cost to administer this program for subsequent years? This proposed amendment does not change any pari-mutuel wagering compliance requirements that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of pari-mutuel wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase costs any more than the current regulatory scheme does. Under the current regulatory scheme, the costs largely come from employee compensation and expenses, as well as equipment maintenance. The commission is reimbursed for these costs by the associations.

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

Revenues (+/-): None.

Expenditures (+/-): None.

Other Explanation: N/A

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)**

811 KAR 2:120. Kentucky Horse Breeders' Incentive Fund.

RELATES TO: KRS 230.225(5)(c)[(7)(b), (7)(e)], 230.330, 230.804, [EO-2008-668,] 15 U.S.C. 1821-1831

STATUTORY AUTHORITY: KRS 230.804(2)(b)[, EO-2008-668]

NECESSITY, FUNCTION AND CONFORMITY: KRS. 230.804 establishes the Kentucky Horse Breeders' Incentive Fund. KRS 230.804(2)(b) authorizes the Kentucky Horse Racing Commission (the "commission")[Authority] to promulgate administrative regulations establishing the conditions and criteria for the distribution of moneys from the fund. [EO-2008-668, effective July 3, 2008, established the Kentucky Horse Racing Commission and transferred all authority, function, and responsibilities of the Kentucky Horse Racing Authority to Commission.] This administrative regulation establishes eligibility standards, administrative practices to enforce the standards, and the procedures for paying incentive awards from the fund.

Section 1. Definitions.

(1) "Applicant" means a Kentucky affiliate representing a breed of horses which is eligible to register with the commission to participate in the Kentucky Horse Breeders' Incentive Fund.

(2) "Award distribution plan" means a plan submitted by a Kentucky affiliate to the commission outlining the procedures by which the Kentucky affiliate will award funds from the Kentucky Horse Breeders' Incentive Fund to incentive winners who are members of the Kentucky affiliate.

(3) "Breed" means a subspecies of horse with particular physical characteristics common to the subspecies which are used in establishing the identity of a horse by a registry recognized by the commission[Commission].

(4) "Breeder" means:

(a) A person or persons engaged in the breeding of horses eligible for the Kentucky Horse Breeders' Incentive Fund[KHBIF], as defined by the national association of the Kentucky affiliate recognized by the commission as a participant in the Kentucky Horse Breeders' Incentive Fund[KHBIF] program; or

(b) If the national association does not define "breeder", the owner of the dam of a horse when the horse was foaled.

(5) "Closed breed registry" means the restrictions of the official national breed registry recognized by the Kentucky Horse Breeders' Incentive Fund[KHBIF].

(6) "Contest" means a competitive event with an outcome which qualifies the owner of a horse as an incentive winner under a Kentucky affiliate's award distribution plan.

(7) "Incentive winner" means a person whose horse's performance in a contest entitles that person to an award from the Kentucky Horse Breeders' Incentive Fund.

(8) "Kentucky affiliate" means the Kentucky organization that is recognized by a national breed organization representing that particular breed of horse in Kentucky.

(9) "Kentucky Horse Breeders' Incentive Fund" means the trust and revolving fund established by KRS 230.804.

(10) "KHBIF" means the Kentucky Horse Breeders' Incentive Fund.

Section 2. Registration of Kentucky Affiliate.

(1) Only a Kentucky affiliate may register to participate in the KHBIF.

(2) To become eligible to receive funds from the KHBIF, a Kentucky affiliate shall register with the commission by:

(a) Filing an "Application for Registration of Kentucky Affiliate with the Kentucky Horse Breeders' Incentive Fund", KHRA Form HB-1, (12/08); and

(b) Filing with the application an award distribution plan to be reviewed and approved by the commission.

(3) A thoroughbred breed shall not be eligible for registration

with the KHBIF.

(4) A standardbred breed shall not be eligible for registration with the KHBIF, unless the standardbred breed consists exclusively of show horses.

(5) The color of a breed of horses shall not be the sole criterion used to define that breed for purposes of registration with the KHBIF.

(6) The commission [authority] may establish, under its [the] general jurisdiction[of the Kentucky Horse Racing Commission], the KHBIF Advisory Committee [Kentucky Horse Breeders' Incentive Fund] the "advisory committee". If established, the advisory committee shall consist of three (3) members appointed by the chairman of the commission by July 1 of each year. One (1) member shall be recommended to the chairman for appointment by the Kentucky Equine Education Project (KEEP). If KEEP has not recommended a member for appointment by July 1 of a given year, the Chairman of the commission[Kentucky Horse Racing Commission] shall make the appointment without the recommendation. Each member of the advisory committee shall serve from July 1 through June 30 of the following year. Each member of the advisory committee shall be a resident of Kentucky. Each member of the advisory committee shall serve without compensation, but shall be entitled to reimbursement for all expenses incurred in the discharge of official business. The advisory committee shall select a chairman from its membership annually.

(7)(a) The KHBIF advisory committee[Kentucky Horse Breeders' Incentive Fund Advisory Committee] shall advise and assist the commission[Kentucky Horse Racing Commission] in the registration process described in this section. The advisory committee shall make a recommendation of approval or denial to the commission for each applicant based upon the application and compliance with the requirements established in subsection (13) of this section.

(b) The commission[Kentucky Horse Racing Commission] shall employ qualified personnel necessary to assist the commission and the advisory committee in carrying out the provisions of this administrative regulation. These personnel shall serve at the pleasure of the commission, and compensation for these personnel shall be fixed by the commission.

(8) After the advisory committee recommends to the commission the approval or denial of an application, the commission shall consider the recommendation and whether or not the requirements of this administrative regulation have been met, and shall:

(a) Approve the application;

(b) Deny the application; or

(c) Defer consideration of the application for a reasonable time for the purpose of conducting further investigation of the application.

(9) Registration shall be effective for three (3) years. The first three (3) year registration period shall consist of the period beginning January 1, 2006, and ending December 31, 2008.

(10) For the first registration period a Kentucky affiliate shall register with the commission on or prior to March 31, 2007.

(11) For each three (3) year period beginning on or after January 1, 2009, a Kentucky affiliate shall register with the commission on or prior to November 1 of the calendar year immediately preceding January 1 of the first year of the three (3) year registration period.

(12) A Kentucky affiliate shall have until December 31 following the November 1 deadline set forth in subsection (11) of this section to revise and update any information previously provided to the commission on or before the November 1 deadline.

(13) The application and the accompanying award distribution plan provided to the commission shall set forth the following information:

(a) The name of the breed of horse covered by the plan;

(b) The name of the Kentucky affiliate;

(c) A letter from the national breed organization representing the breed certifying that the Kentucky affiliate is the recognized representative in Kentucky of that breed, and certifying the number of horses twenty-five (25) years of age and younger in the breed

residing in Kentucky;

(d) A letter from the nation breed organization representing the breed certifying that the breed has a closed breed registry; and

(e) The award distribution plan pursuant to which awards will be distributed to KHBIF incentive winners who are breeders or owners of horses bred and foaled in Kentucky. The award distribution plan shall specify:

1. The scoring method or point system to be utilized in contests to determine the incentive winner of each contest as certified by the national breed organization;

2. The identity of the scoring person or body that will judge each contest as certified by the national breed organization;

3. The rules of the contests in which the horses of the breed will participate as certified by the national breed organization; and

4. The percentage distribution formula by which the Kentucky affiliate shall grant awards to incentive winners.

(14)(a) The commission shall be recognized and designated as the sole official registrar of the ~~KHBIF~~[Kentucky Horse Breeders' Incentive Fund] for the purposes of registering the application and award distribution plan for each breed in accordance with the terms of this administrative regulation.

(b) The records of each national breed organization shall be used as the official records of the commission for determining the following information:

1. The identity of the Kentucky affiliate representing the breed in Kentucky; and

2. The number of horses of the breed twenty-five (25) years of age and younger registered with the national breed organization and currently residing in Kentucky.

(15) If the information on an application form required under this section is found to be inaccurate, or becomes inaccurate, or changes, the organization identified as the Kentucky affiliate shall promptly notify the commission of the correct information within thirty (30) days of discovering the inaccuracy or the circumstances causing the information to become inaccurate or to change.

Section 3. Timing and Distribution of Awards.

(1) The events eligible for awards from the ~~KHBIF~~[Kentucky Horse Breeders' Incentive Fund], as set forth in each award distribution plan, shall be those occurring on or after January 1, 2006.

(2) Awards to incentive winners shall be calculated and distributed each year.

(3) The commission, with the cooperation of each Kentucky affiliate shall, after the end of each calendar year, calculate the funds due to each Kentucky affiliate for that year.

(4) The amount allocated to a Kentucky affiliate participating in the KHBIF shall be calculated by:

(a) Dividing the number of horses of the breed twenty-five (25) years of age and younger and currently residing in Kentucky as certified by the national breed organization pursuant to Section 2(13)(c) of this administrative regulation, by the total number of horses from all Kentucky affiliates certified pursuant to Section 2(13)(c) of this administrative regulation; The number of horses in each case shall be the number of horses recorded on each Kentucky affiliate's application form on the December 31 deadline preceding the three (3) year registration period; and

(b) Multiplying the fraction obtained in paragraph (a) by the total amount of money allocated to all Kentucky affiliates during the year.

(5) An award to an incentive winner from the KHBIF shall be determined based on the award distribution plan submitted by the Kentucky affiliate representing the breed to the commission pursuant to Section 2(2)(b) of this administrative regulation.

(6) The Kentucky affiliate shall, by March 1 of each year, determine the names of the incentive winners who are entitled to awards for contests held during the previous year and provide the names of the incentive winners to the commission.

(7) The commission shall, by June 1 of each year, notify each incentive winner of the amount of the award to which the incentive winner is entitled by notice sent to the last known address provided to the commission by the Kentucky affiliate.

(8) After receiving notification of an award, each incentive

winner shall return an enclosed claim form for the award that certifies that the incentive winner is entitled to the award and that certifies the incentive winner's taxpayer ID number or Social Security number. The claim form shall be delivered to the commission no later than December 31 of the same year in which the commission notified the incentive winner of the award pursuant to subsection (7) of this section.

(9) The claim form shall be the form "Claim Form of Incentive Winner for Award from the Kentucky Horse Breeders' Incentive Fund", KHRA Form HB-2, (12/06).

(10) Any award owing to an incentive winner who cannot be located by December 31 of the year in which the commission attempted to notify the incentive winner of the award pursuant to subsection (7) of this section[,] shall lapse to the KHBIF.

(11) Failure to return the claim form required by subsection (8) of this section by December 31 of the year in which the incentive winner was notified of the award pursuant to subsection (7) of this section shall result in forfeiture of the award, and the award money shall lapse to the KHBIF.

(12) An award from the KHBIF shall not be granted to any incentive winner who is not in good standing with the national breed organization or Kentucky affiliate.

Section 4. Semiannual Reports.

(1) A semiannual status report describing a Kentucky affiliate's progress and participation in the award distribution plan shall be filed with the advisory committee by each Kentucky affiliate on or before July 31 and January 31. If that date is on a Saturday, Sunday, or legal holiday, the report shall be due on the first business day thereafter.

(2) The semiannual report shall also include:

(a) A list of all stallions presently breeding horses eligible to participate in the fund, and the farm locations on which the stallions stand; and

(b) A schedule of all state and national contests for that year in which horses eligible to participate in the KHBIF are scheduled to participate.

Section 5. Disputes.

(1) Any dispute between the commission and a Kentucky affiliate or national breed organization arising under this administrative regulation shall be raised by the aggrieved party filing a petition seeking relief with the executive director of the commission, within thirty (30) days of the action or the inaction leading to the dispute.

(2) If the executive director and the aggrieved party do not agree on a resolution of the dispute, the executive director shall assign the case to a hearing officer who shall conduct a hearing pursuant to KRS Chapter 13B.

Section 6. Disciplinary Procedures.

(1) The commission may deny or revoke the registration of a Kentucky affiliate or national breed organization if the Kentucky affiliate or national breed organization:

(a) Knowingly provides the commission with incorrect, false, or misleading information concerning any aspect of the registration of the breed represented by the Kentucky affiliate with the commission;

(b) Knowingly fails to furnish within thirty (30) days information the commission has requested relating to the registration; or

(c) Knowingly violates any provision of KRS Chapter 230 or KAR Title 810 [or 811-KAR] in any other manner.

(2) If the commission denies or revokes the registration of a Kentucky affiliate or national breed organization, the Kentucky affiliate or national organization may request, and the commission shall schedule, a hearing to be conducted pursuant to KRS Chapter 13B.

(3) At the conclusion of the KRS Chapter 13B hearing, the commission shall, in its final order, determine whether the Kentucky affiliate or national breed organization has knowingly provided the commission with incorrect, false, or misleading information, or has knowingly failed to provide the commission with requested information, or has knowingly violated any provision of

KRS Chapter 230 or KAR Title 810 [~~or 811-KAR~~] in any other manner, and may take one (1) or more of the following actions:

- (a) Deny or revoke the registration;
- (b) Uphold the denial or revocation of the registration;
- (c) Rescind the denial or revocation of the registration;
- (d) Bar the Kentucky affiliate or national breed organization which violated subsection (1) of this section from registering for a period of from one (1) to ten (10) years, based on the seriousness of the violation, beginning with the date on which the final order becomes effective;

(e) Withhold~~Without~~ funds due to be allocated to the Kentucky affiliate; or

(f) Withdraw funds previously allocated to the Kentucky affiliate.

(4) If a Kentucky affiliate's designee or representative fails to appear at the hearing, the commission may take one (1) or more of the following actions:

- (a) Deny or revoke the registration; or
- (b) Bar the Kentucky affiliate which failed to respond to the summons from registering foals to the fund for a period of from one (1) to ten (10) years, based on the seriousness of the violation, beginning with the date on which the final order becomes effective;

(c) Withdraw funds previously allocated to the Kentucky~~state~~ affiliate;

(d) Withhold funds due to be allocated to the Kentucky affiliate; or

(e) Reschedule the hearing.

(5) For a second or subsequent violation of subsection (1) of this section, the commission may bar the Kentucky affiliate or national breed organization from eligibility to receive an incentive from the KHBIF for period of from one (1) to twenty (20) years.

(6) The commission shall notify the Kentucky affiliate in writing of the action taken by the commission.

(7) If the evidence available to the commission indicates that an individual who is a member of, or acting on behalf of, a Kentucky affiliate or national breed organization has, without the knowledge or consent of the Kentucky affiliate or national breed organization, knowingly provided the commission with incorrect, false, or misleading information, knowingly failed to provide the commission~~Authority~~ with requested information, or knowingly violated the federal Horse Protection Act, 15 U.S.C. Sections 1821 through 1831, or any other federal or state law pertaining to the breeding, racing, or showing of horses, or reflecting on the honesty and trustworthiness of the individual to participate in the KHBIF, the commission may take one (1) or more of the following actions:

(a) Condition the continuing registration of the Kentucky affiliate in the KHBIF upon the exclusion of that individual from any further participation in work related to the KHBIF;

(b) Withdraw funds previously allocated to the individual;

(c) Withhold funds due to be allocated to the individual; or

(d) Bar the individual from further participation in the KHBIF for a period of time proportionate to the seriousness of the violation.

(8) An individual against whom disciplinary action has been taken under subsection (7) of this section may appeal the matter to the commission pursuant to KRS Chapter 13B.

Section 7. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Registration of State Affiliate with the Kentucky Horse Breeders' Incentive Fund", KHRA Form HB-1, (12/08); and

(b) "Claim Form of Incentive Winner for Award from the Kentucky Horse Breeders' Incentive Fund", KHRA Form HB-2, (12/08).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the KHRC Web site at www.khrc.ky.gov.

JOHNATHAN RABINOWITZ, Chair
KERRY HARVEY, Secretary

APPROVED BY AGENCY: September 8, 2020

FILED BY LRC: September 9, 2020 at 8:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on November 23, 2020 at Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on November 30, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the conditions and criteria for the distribution of money from the Kentucky Horse Breeders' Incentive Fund.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the conditions and criteria for the distribution of money from the Kentucky Horse Breeders' Incentive Fund.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.804 establishes the Kentucky Horse Breeders' Incentive Fund and authorizes the Kentucky Horse Racing Commission to promulgate administrative regulations establishing the conditions and criteria for the distribution of money from the fund.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the conditions and criteria for distributing the Kentucky Horse Breeders' Incentive Fund money, which is required by KRS 230.804.

(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 existing regulation by fixing some technical deficiencies. For example, obsolete references to the "Kentucky Horse Racing Authority" are replaced by references to the "Kentucky Horse Racing Commission."

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary because this regulation will expire if it is not amended on or before September 18, 2020, pursuant to Kentucky's regulatory sunset provision.

(c) How the amendment conforms to the content of the authorizing statutes: This regulation establishes the conditions and criteria for distributing the Kentucky Horse Breeders' Incentive Fund money, which is required by KRS 230.804.

(d) How the amendment will assist in the effective administration of the statutes: This regulation establishes the conditions and criteria for distributing the Kentucky Horse Breeders' Incentive Fund money, which is required by KRS 230.804.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky affiliates and their members will be affected by this regulation.

(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: The regulated entities will have to take no new actions. This amendment simply makes technical changes to the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: No new costs are anticipated as a result of this proposed amendment. This amendment simply makes technical changes to the regulation.

(c) As a result of compliance, what benefits will accrue to the entities: Compliance with this regulation will allow Kentucky affiliates and incentive winners to take part in the funds distributed from the Kentucky Breeders Incentive Fund.

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

(a) Initially: No new costs are anticipated as a result of this proposed amendment. This amendment simply makes technical changes to the regulation.

(b) On a continuing basis: No new costs are anticipated as a result of this proposed amendment. This amendment simply makes technical changes to the regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No new costs are anticipated as a result of this proposed amendment. This amendment simply makes technical changes to the regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No new costs are anticipated as a result of this proposed amendment. This amendment simply makes technical changes to the regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new costs are anticipated as a result of this proposed amendment. This amendment simply makes technical changes to the regulation.

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to each racing association.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.804.

(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 any revenue for state or local governments.

(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 new revenue is anticipated as a result of this proposed amendment. This amendment simply makes technical changes to the regulation.

(c) How much will it cost to administer this program for the first year? No new costs are anticipated as a result of this proposed amendment. This amendment simply makes technical changes to the regulation.

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

subsequent years? No new costs are anticipated as a result of this proposed amendment. This amendment simply makes technical changes to the regulation.

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

Revenues (+/-): None.

Expenditures (+/-): None.

Other Explanation: N/A

PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (Amendment)

811 KAR 2:160. Exotic wagering.

RELATES TO: KRS 230.300, 230.361, 230.370, 230.398, 230.750[230.240-230.375, 230.990]

STATUTORY AUTHORITY: KRS 230.210, 230.215, [230.240, 230.260, 230.280, 230.290, 230.300, 230.310, 230.320,] 230.361, 230.370

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission ("the commission")~~[grants the commission]~~ the authority to regulate conditions under which [quarter] horse~~[, appaloosa and Arabian]~~ racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating pari-mutuel~~[mutuel]~~ wagering on horse races under the pari-mutuel system of wagering. ~~[This administrative regulation establishes the procedures and regulations governing exotic wagering under KRS Chapter 230 and 811 KAR Chapter 2.]~~

Section 1. The procedures and regulations governing exotic wagering are established under KRS Chapter 230 and KAR Title 810, Chapter 1.~~[All Pari-mutuel Wagers on an Historical Horse Race Are Exotic Wagers. All pari-mutuel wagers other than win, place, or show wagers on a live horse race are exotic wagers.]~~

Section 2. Exotic Wagers to Be Approved by Commission. (1) ~~An association shall not offer an exotic wager on any live or historical horse race without the prior written approval of the commission.~~

(2) ~~An association making a request to offer an exotic wager on a live or historical horse race may make an oral presentation to the commission regarding the wager, prior to the commission deciding on the request.~~

(a) ~~The presentation shall be made by the association during a meeting of the commission.~~

(b) ~~The presentation shall be limited to the information contained in the written request and any supplemental information relevant to the commission's determination of the suitability of the wager.~~

(c) ~~The commission may require an association to clarify or otherwise respond to questions concerning the written request as a condition to approval of the exotic wager.~~

(3) ~~The commission may request additional information from an association regarding the exotic wager if the additional information would assist the commission in deciding whether to approve it.~~

(4) ~~In reviewing a written request for an exotic wager, the commission may consider any information, data, reports, findings, or other factors available which it considers important or relevant to its determination of whether the wager should be approved.~~

(5) ~~The commission or its designee shall review and test the exotic wager and shall give its approval if it is satisfied that:~~

(a) ~~The wager does not adversely affect the safety or integrity of horse racing or pari-mutuel wagering in the Commonwealth; and~~

(b) ~~The wager complies with KRS Chapter 230 and 811 KAR Chapter 2.~~

(6) ~~The commission shall notify the association if it determines that the criteria set forth in subsection (5) of this section are no~~

longer being met and it intends to withdraw approval of a particular exotic wager.

(7) An association shall not implement any change or modification to the practices, procedures, or representations upon which the approval of the exotic wager was based without the prior written approval of the commission.

Section 3. Exotic Wagers on a Live Horse Race. (1) Except as set forth in subsection (2) of this section, an association shall submit a written request to the commission for permission to offer any exotic wager on a live horse race, which shall include a detailed description of the rules that apply to the wager and the method of calculating payouts.

(2) If the rules have not been modified since the wager was approved by the commission, an association shall not be required to seek the commission's approval to offer the following previously approved exotic wagers on live horse races: Exacta, Perfecta, Quinella, Trifecta, Superfecta, Double Perfecta, Big Q, Twin Trifecta, Daily Double, Super High 5, Pick-3, Pick-4, and Pick-6.

Section 4. Exotic Wagers on an Historical Horse Race. (1) An association shall submit a written request to the commission for permission to offer any exotic wager on an historical horse race, which shall include:

(a) The types, number, and denominations of pari-mutuel wagers to be offered;

(b) A detailed description of the rules that apply to the pari-mutuel wager and the method of calculating payouts, including how money will be allocated to the seed pool;

(c) The days and hours of operation during which wagering on historical horse races will be offered;

(d) A detailed description of the proposed designated area and the terminal or terminals on which the pari-mutuel wagers will be made, including an architect's rendering of the proposed designated area which describes the size, construction, layout, capacity, number of terminals, and location of surveillance and other security equipment, and at least one (1) photograph of the designated area when construction is completed;

(e) The practices and procedures that will ensure the security, safety, and comfort of patrons in the designated area;

(f) The manufacturer, make, and model of the terminal, including a copy of all literature supplied by the manufacturer of the terminal;

(g) The maintenance and repair procedures that will ensure the integrity of the terminals;

(h) A complete list of individuals who are authorized to examine and repair the terminals for any reason; and

(i) A memorandum outlining the terms of the agreement referenced in Section 6 (2) of this administrative regulation between the association and one of the following horsemen's organizations, as applicable: the Kentucky Quarter Horse Racing Association; the Arabian Jockey Club; or, a horsemen's organization representing appaloosa racing.

(2)(a) Except as set forth in paragraph (b) of this subsection, each association that is approved by the commission to offer exotic wagering on an historical horse race shall request, in any application submitted for a license to conduct live horse racing pursuant to KRS 230.300 and 811 KAR 2:140:

1. No less than 100 percent of the number of racing days initially requested by the association in its application to conduct quarter horse, appaloosa or Arabian racing for the 2010 racing year; and

2. No less than 100 percent of the number of races initially requested by the association in its application to conduct quarter horse, appaloosa or Arabian racing for the 2010 racing year.

(b) An association may apply for less than 100 percent of the number of racing days initially applied for by the association in its application to conduct quarter horse, appaloosa and Arabian racing for 2010, or the number of races initially applied for by the association in its application to conduct quarter horse, appaloosa and Arabian racing for 2010, if written approval is obtained from the commission and one of the following horsemen's organizations, as applicable: the Kentucky Quarter Horse Racing Association; the

Arabian Jockey Club; or a horsemen's organization representing appaloosa racing.

Section 5. Terminals Used for Wagering on an Historical Horse Race. (1) Wagering on historical horse races shall be conducted only on terminals approved by the commission as set forth in Sections 2(5) and 5(2) of this administrative regulation. The commission shall not require any particular make of terminal.

(2)(a) The commission shall require testing of each terminal used for wagering on historical horse races by an independent testing laboratory to ensure its integrity and proper working order.

(b) The independent testing laboratory shall be chosen by the commission and the expense of the testing shall be paid by the association offering the wagering on historical horse races.

(3) Each terminal for wagering on an historical horse race shall display odds or pool amounts that the patron will receive for a winning wager on each pari-mutuel wagering pool.

Section 6. Takeout. (1) Each association conducting exotic wagering on historical horse races shall deduct a takeout, which shall not exceed the percentages set forth in KRS 230.3615.

(2)(a) Each association shall enter into an agreement with one of the following horsemen's organizations, as applicable, to establish the allocation of the takeout on all exotic wagers on historical horse races offered by the association: the Kentucky Quarter Horse Racing Association; the Arabian Jockey Club; or a horsemen's organization representing appaloosa racing. The agreement shall apply to all exotic wagers on historical horse races offered, or to be offered, by the association during the term of the agreement.

(b) The agreement shall include provisions allocating a percentage of the takeout to purses on live races run by the association.

(c) Each association shall provide a memorandum outlining the terms of the agreement to the commission.

Section 7. Severability. In the event that any provision or administrative regulation of this chapter is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby.]

JONATHAN RABINOWITZ, Chair
KERRY HARVEY, Secretary

APPROVED BY AGENCY: September 8, 2020

FILED WITH LRC: September 9, 2020 at 8:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on November 23, 2020 at Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on November 30, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation

establishes that all requirements for the operation of exotic wagering have been consolidated within KRS 230 and KAR Title 810, Chapter 1.

(b) The necessity of this administrative regulation: This regulation is necessary for the commission to regulate the integrity of exotic pari-mutuel wagering in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) authorizes the commission to regulate the conditions under which racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating pari-mutuel wagering on horse races under the pari-mutuel system of wagering. This regulation establishes the procedures and regulations governing exotic forms of pari-mutuel wagering under KRS Chapter 230 and the commission's administrative regulations. This regulation establishes that all requirements for the operation of exotic pari-mutuel wagering have been consolidated within KRS Chapter 230 and KAR Title 810, Chapter 1.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 230.361 requires the commission to promulgate administrative regulations governing and regulating pari-mutuel wagering on horse races. This administrative regulation establishes that all requirements for the operation of exotic pari-mutuel wagering have been consolidated within KRS Chapter 230 and KAR Title 810, Chapter 1.

(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 establishes that exotic pari-mutuel wagering on all types of horse racing, including thoroughbred, standardbred, quarter horse, appaloosa, and Arabian racing, will be regulated by KAR Title 810, Chapter 1. This amendment will continue to bring uniformity to the rules governing pari-mutuel wagering for the various breeds.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to reduce the number of regulations applicable to pari-mutuel wagering and make the regulations easier to understand.

(c) How the amendment conforms to the content of the authorizing statutes: Exotic wagering is a type of pari-mutuel wagering. KRS 230.215(2) authorizes the commission to regulate the conditions under which racing and pari-mutuel wagering thereon shall be conducted in Kentucky. KRS 230.361(1) requires the commission to promulgate administrative regulations governing and regulating pari-mutuel wagering on horse races. This amendment establishes that all requirements for the operation of exotic pari-mutuel wagering have been consolidated within KRS Chapter 230 and KAR Title 810, Chapter 1.

(d) How the amendment will assist in the effective administration of the statutes: Exotic wagering is a type of pari-mutuel wagering. KRS 230.215(2) authorizes the commission to regulate the conditions under which racing and pari-mutuel wagering thereon shall be conducted in the Commonwealth. This amendment establishes that all requirements for the operation of exotic pari-mutuel wagering have been consolidated within KRS Chapter 230 and KAR Title 810, Chapter 1.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This proposed amendment will affect the seven currently-licensed racing associations in the Commonwealth, any applicant for a racing association license, the owners and trainers who participate in racing in the Commonwealth, the jockeys who ride in the Commonwealth, the harness drivers who drive in the Commonwealth, the patrons who place pari-mutuel wagers on live and historical horse racing in the Commonwealth, and the commission.

(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: This proposed amendment does not change any exotic wagering compliance requirements that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of exotic pari-mutuel wagering compliance requirements into one regulation, rather than three. With that in mind, the licensed racing associations will be required to follow the procedure(s) outlined in KRS Chapter 230 and KAR Title 810, Chapter 1 to offer exotic pari-mutuel wagering.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This proposed amendment does not change any exotic wagering compliance requirements that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of exotic pari-mutuel wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission.

(c) As a result of compliance, what benefits will accrue to the entities: The associations will have a defined process to follow if they plan to request exotic wagers. They will be able to offer increased pari-mutuel wagering options to patrons and can expect an increase in on-track attendance and total pari-mutuel handle. The increased revenue can be used to maintain and improve racing association facilities and supplement purses for live races run at each association. The increased purses will help the associations to compete with racing associations in neighboring states that offer expanded gaming options. The owners, trainers, jockeys, and harness drivers will benefit from increased purses, as well as any improvements to an association's facilities. The patrons will benefit from any improvements to an association's facilities, as well as from increased pari-mutuel wagering options.

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

(a) Initially: This proposed amendment does not change any exotic pari-mutuel wagering compliance requirements that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of exotic pari-mutuel wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission. The racing associations will continue to experience costs due to employee compensation and expenses, as well as equipment maintenance. The commission will be reimbursed by the associations for additional employee compensation and other expenses.

(b) On a continuing basis: This proposed amendment does not change any exotic pari-mutuel wagering compliance requirements that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of exotic pari-mutuel wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission. The racing associations will continue to experience costs due to employee compensation and expenses, as well as equipment maintenance. The commission will be reimbursed by the associations for additional employee compensation and other expenses pursuant to KRS 230.240.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This proposed amendment does not change any exotic pari-mutuel wagering compliance requirements that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of exotic pari-mutuel wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission. As a general rule, the commission is reimbursed by the association for additional employee compensation and other expenses pursuant to KRS 230.240.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This

proposed amendment does not change any exotic pari-mutuel wagering compliance requirements that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of exotic pari-mutuel wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This proposed amendment does not change any exotic pari-mutuel wagering compliance requirements that were not already in place. Instead, the proposed amendment simply helps to establish the consolidation of exotic pari-mutuel wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase compliance costs for any regulated entity or the commission.

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to each association.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission and the Department of Revenue.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.210, 230.215, 230.361, 230.370.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This proposed amendment does not change any exotic wagering compliance requirements that were not already in place. Instead, the proposed amendment simply helps to consolidate exotic wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase revenue any more than the current regulatory scheme does. Under the current regulatory scheme, the amount of tax revenue will be dependent on the number of terminals the associations install and operate.

(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 proposed amendment does not change any exotic wagering compliance requirements that were not already in place. Instead, the proposed amendment simply helps to consolidate exotic wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase revenue any more than the current regulatory scheme does. Under the current regulatory scheme, the amount of tax revenue will be dependent on the number of terminals the associations install and operate.

(c) How much will it cost to administer this program for the first year? This proposed amendment does not change any exotic wagering compliance requirements that were not already in place. Instead, the proposed amendment simply helps to consolidate exotic wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase revenue any more than the current regulatory scheme does. Under the current regulatory scheme, the costs largely come from employee compensation and expenses, as well as equipment maintenance. The commission is reimbursed for these costs by the associations.

(d) How much will it cost to administer this program for subsequent years? This proposed amendment does not change

any exotic wagering compliance requirements that were not already in place. Instead, the proposed amendment simply helps to consolidate exotic wagering compliance requirements into one regulation, rather than three. Therefore, this proposed amendment is not anticipated to increase revenue any more than the current regulatory scheme does. Under the current regulatory scheme, the costs largely come from employee compensation and expenses, as well as equipment maintenance. The commission is reimbursed for these costs by the associations.

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

Revenues (+/-): None.

Expenditures (+/-): None.

Other Explanation: N/A

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

921 KAR 3:042. Supplemental Nutrition Assistance Program Employment and Training Program.

RELATES TO: 7 C.F.R. 273.7, 273.24, 7 U.S.C. 2015(d)

STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. 273.7
NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services is required by 7 C.F.R. 273.7 to administer a Supplemental Nutrition Assistance Program (SNAP) Employment and Training Program. KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services 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 technical eligibility requirements used by the cabinet in the administration of the SNAP Employment and Training (E&T) Program(E&T)].

Section 1. Definitions. (1) "Basic education" means an activity necessary to attain a high school diploma or equivalent and may include:

(a) Adult basic skills;

(b) English as a Second Language; and

(c) Foundational skills instruction ["Vocational—Educational Skills Training" or "VEST" means a program in which a participant receives training in order to meet a work requirement].

(2) "Employment readiness training" means an intensive program focusing on skill assessment and educational remediation services that prepare an individual for the workforce.

(3) "Integrated education and training" means a program that provides adult education and literacy activities alongside training for a specific occupation for the goal of obtaining self-sufficiency.

(4) "Job retention services" means continuous ongoing case management for a period of thirty (30) to ninety (90) days while the participant is transitioning into employment.

(5) "Vocational training" means a component that improves the employability of participants by providing training in a skill or trade to meet the needs of current or emerging industries and occupations.

(6) "Work experience" means a program in which a participant receives occupational experience and may include:

(a) Job training;

(b) An internship;

(c) An apprenticeship; and

(d) Job shadowing.

(7) "Workfare" means an unpaid activity that provides an individual with an opportunity to gain work experience and useful workplace skills at a supervised worksite["Work—Experience Program" or "WEP" means a program in which a participant receives work experience in order to meet a work requirement].

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Section 2. E&T Participation. (1)(a) An individual may volunteer to participate in the E&T Program.

(b) A voluntary participant in the E&T shall not be penalized by a discontinuance or reduction of SNAP benefits.

(2) An E&T participant shall:

(a) Complete an initial assessment interview;

(b) Be placed in an approved SNAP E&T component; and

(c) 1. Complete and return to the cabinet a SNET-145 [FSET-145;] Employment and Training Participation [Program Activity] Report, in order to verify participation; or

2. Enter participation information in the case management system to be verified by a SNAP E&T provider.

(3) Payment for transportation, up to twenty-five (25) dollars per month, shall be provided to an individual participating in the E&T program if the individual:

(a) Incurs or plans to incur a transportation expense in order to participate; and

(b) Completes and returns to the cabinet verification of the job search in accordance with Section 3(3)(b) and (c) of this administrative regulation or reports participation in accordance with subsection (2)(c) of this section stating the anticipated need.

(4) The ongoing transportation payment shall be requested by the individual by submitting the completed SNET-145 form and indicating the amount of the request. If the participant does not request the transportation payment, the payment shall not be issued [A transportation payment shall not be made if the participant is not in compliance with an E&T activity in accordance with this administrative regulation].

(5) Case management shall be provided by an E&T provider or partner.

Section 3. Components. (1) The [A county offering the] E&T program [Program] shall contain components from [offer] the following federally-approved services and activities:

(a) Employment readiness training;

(b) Work experience;

(c) Vocational training;

(d) Basic education;

(e) Integrated education and training;

(f) Job retention services; or

(g) Workfare.

(2) An individual participating in the E&T program shall actively participate in a component weekly. All components shall be built for twenty (20) hours per week or eighty (80) hours per month [The VEST Program consisting of:

1. Vocational school; or

2. On-the-job training; and

(b) The WEP Program consisting of:

1. Job search; and

2. Work placement.

(2) An individual participating in VEST shall:

(a) Attend training courses for at least twenty (20) hours per week; and

(b) Participate in the WEP component until a VEST placement is available].

(3) An individual participating in workfare [WEP] shall:

(a) Complete an initial assessment and develop an employability plan;

(b) Participate in the initial thirty (30) days of job search, including twelve (12) contacts with prospective employers;

(c) Complete and file with the cabinet verification of the job search in accordance with paragraph (b) of this subsection;

(d) Provide written verification by the workfare [WEP] provider of E&T Program activities to the cabinet; and

(e) Satisfy the work requirement, in accordance with 921 KAR 3:025, Section 3(8), by:

1. Accepting the offer of a work site placement; and

2. Working at the assigned work site placement for the minimum monthly number of hours required by subsection (4) or (5) of this section.

(4) The minimum number of hours that a workfare [WEP] participant shall perform each month to satisfy the work requirement of 921 KAR 3:025, Section 3(8), shall be determined

by the participant's monthly SNAP allotment divided by the current federal minimum wage.

(5) If the SNAP household's active members include more than one (1) individual who wants to satisfy the work requirement of 921 KAR 3:025, Section 3(8), through workfare [WEP], the minimum monthly number of work hours that each individual is required to perform shall be determined by dividing the:

(a) SNAP allotment by the number of individuals who are subject to the work requirement; and

(b) Individual pro rata share of the SNAP allotment by the current federal minimum wage.

Section 4. Hearing Process. If aggrieved by an action or inaction that affects participation, a SNAP participant may request a hearing in accordance with 921 KAR 3:070.

Section 5. Reimbursement. An individual shall complete and file with the cabinet a written request to have a reimbursement check for employment or training replaced after loss or theft.

Section 6. Incorporation by Reference. (1) "SNET-145[FSET-145], Employment and Training Participation [Program Activity] Report", 9/20 [10/17], 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: September 10, 2020

FILED WITH LRC: September 14, 2020 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 23, 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 November 16, 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 November 30, 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 requirements used by the cabinet in the administration of the Supplemental Nutrition Assistance Program (SNAP) Employment and Training Program (E&T).

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to establish uniform standards for SNAP E&T.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of SNAP E&T requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the requirements for SNAP E&T in accordance with 7 C.F.R. 273.7.

(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 to the administrative regulation will remove references to WEP and components no longer utilized in the employment and training program. This administrative regulation amendment adds components established in the Agriculture Improvement Act of 2018 (2018 Farm Act) for education and training programs and removes references to the Work Experience Program (WEP) and components that are no longer utilized. The amendment also revises the incorporated form. The amendment conforms to federal law by operating a SNAP educational and training program consistent with 7 C.F.R. 273.7.

(b) The necessity of the amendment to this administrative regulation: The amendment to the administrative regulation is necessary to comply with the federal Farm Act of 2018.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by implementing federal requirements established by 7 C.F.R. 237.7 and the Farm Act of 2018.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by removing educational and training components no longer utilized and replacing them with components developed to match federal requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment to the administrative regulation will affect Kentucky SNAP recipients who volunteer to participate in the employment and training program. SNAP recipients between the ages of 16 and 59 are eligible to volunteer to participate in the SNAP employment and training program and ultimately, improve their job prospects and reduce their reliance upon SNAP. In December 2019, there were 175,084 SNAP recipients meeting this criteria and potentially eligible for the program.

(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 additional actions on the part of participants or applicants in the SNAP E&T.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Neither the administrative regulation nor the amendment involves a cost to E&T applicants or participants.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): E&T program participants will benefit by continuing to participate in training programs designed to improve their job prospects and promote self-sufficiency.

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

(a) Initially: No costs are associated with this amendment as Kentucky is already operating a SNAP E&T program.

(b) On a continuing basis: No costs are associated with this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The SNAP E&T is funded by an annual grant provided by the U.S. Department of Agriculture, Food and Nutrition Service, to cover 100% of operational costs. Transportation expenses are 50% federally funded and 50% state funded, which 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: The amendment to this administrative regulation will not create a need for fees or additional funding.

(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 is not applied since application of policy is applied in a like manner for all individuals statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 273.7

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

3. Minimum or uniform standards contained in the federal mandate. 7 C.F.R. 273.7. 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 will not impose stricter requirements, or 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. The amendment does not impose a stricter standard, or additional or different responsibilities or 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? The Department for Community Based Services will be impacted by this administrative regulation amendment.

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), 7 C.F.R. 273.7

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 the state or local government during the first year.

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

(c) How much will it cost to administer this program for the first year? No additional costs are necessary to administer this program during the first year. The SNAP E&T is funded by an annual grant provided by the U.S. Department of Agriculture, Food and Nutrition Service, to cover 100% of operational costs.

(d) How much will it cost to administer this program for subsequent years? No additional costs are necessary to administer this program in subsequent years. The SNAP E&T is funded by an annual grant provided by the U.S. Department of Agriculture, Food and Nutrition Service, to cover 100% of operational 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:

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](#).

BOARDS AND COMMISSIONS
Board of Chiropractic Examiners
(Repealer)

201 KAR 21:061. Repeal of 201 KAR 21:060.

RELATES TO: KRS 312.019

STATUTORY AUTHORITY: KRS 312.019

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation set forth requirements for chiropractic clinics and offices. The board has determined that 201 KAR 21:060 is outdated and unnecessary, and as such should be repealed.

Section 1. The regulation specifically relating to clinics and offices is hereby repealed.

JEFF SMITH, Board Chair

APPROVED BY AGENCY: June 26, 2020

FILED WITH LRC: September 11, 2020 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on November 23, 2020, at 10:00 a.m. in Room 127, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 2020, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until November 30, 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: David C. Trimble, Board Attorney, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 782-8823, fax +1 (502) 564-3969, email DavidC.Trimble@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David C. Trimble

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This repealer eliminates an unnecessary regulation relating to chiropractic offices and clinics.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 312.019.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This repealer eliminates an unnecessary regulation.

(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 Chapter 312 by

carrying out the legislative mandate for the board to establish regulations for the practice of chiropractic.

(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 repealer eliminates an unnecessary regulation.

(b) The necessity of the amendment to this administrative regulation: This repealer eliminates an unnecessary regulation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This repealer eliminates an unnecessary regulation.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists in the effective administration of KRS Chapter 312 by carrying out the legislative mandate for the board to establish requirements for the practice of chiropractic.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect 1,078 licensed chiropractors practicing in the Commonwealth of Kentucky, as well as an unknown number of their patients who depend on their chiropractor remaining current with their training.

(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: This repealer eliminates an unnecessary regulation.

(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 chiropractor.

(c) As a result of compliance, what benefits will accrue to the entities: This repealer eliminates an unnecessary regulation.

(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.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Chiropractic Examiners 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 licensees 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 Kentucky Board of Chiropractic Examiners.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 312

(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 the agency beyond regular monitoring of continuing education for license renewals.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to the agency beyond regular monitoring of continuing education for license renewals.

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

**PUBLIC PROTECTION CABINET
Department of Insurance
Agent Licensing Division
(New Administrative Regulation)**

806 KAR 9:370. Preneed funeral agent license.

RELATES TO: KRS 204.1-050(2), 304.4-010, 304.9-020(1), 304.9-230, 304.9-260 304.12-240(1)(a).

STATUTORY AUTHORITY: KRS 304.2-110, 304.9-230.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.9-230 authorizes the commissioner to issue an agent's license with the limited line of authority for other limited lines of authority, and requires the commissioner to promulgate administrative regulations to establish the requirements, if any, for pre-licensing courses of instruction and examination for each limited line of authority. This administrative regulation establishes the preneed funeral limited line of authority and the requirements for licensure.

Section 1. Definitions.

(1) "Agent" is defined in KRS 304.9-020(1).

(2) "Department" is defined in KRS 304.1-050(2).

(3) "Preneed funeral contract or prearrangement" is defined in KRS 304.12-240(1)(a).

(4) "Preneed funeral insurance" means a life insurance or annuity contract used solely to fund a preneed funeral contract or prearrangement.

Section 2. An agent license with a limited line of authority for preneed funeral insurance shall only sell, solicit, or negotiate preneed funeral insurance with a face amount that does not exceed \$25,000.

Section 3. License Application. To apply for an agent license with a preneed funeral insurance limited line of authority, an applicant shall submit to the department the following information:

(1) (a) For individual applicants, Form 8301, incorporated by reference in 806 KAR 9:025 including all applicable attachments; and

(b) For business entity applicants, Form 8301-BE, incorporated by reference in 806 KAR 9:025 including all applicable attachments; and

(2) The corresponding fees established by 806 KAR 4:010.

Section 4. Pre-licensing training. An applicant for an agent license with a preneed funeral insurance limited line of authority shall not be required to complete pre-licensing training.

Section 5. Examination. An applicant for an agent license with a preneed funeral insurance limited line of authority shall not be required to complete an examination.

Section 6. License renewal. An agent with a preneed funeral insurance limited line of authority shall renew in accordance with KRS 304.9-260.

SHARON P. CLARK, Commissioner

KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: August 14, 2020

FILED WITH LRC: August 17, 2020 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. November 24th, 2020 at 500 Mero Street, Frankfort, Kentucky 40602. 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 p.m. on November 30, 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: DJ Wasson, Deputy Commissioner, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email dj.wasson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes a limited lines agent license for the sale of preneed funeral insurance only.

(b) The necessity of this administrative regulation: This is a limited insurance product sold only for the purpose of funding prearranged funerals. Allowing for a limited lines license to sell this product will allow those selling this product to obtain a license to sell this product only rather than the more comprehensive life insurance license. This is similar to license options for other limited products.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.9-230 authorizes the commissioner to issue an agent's license with the limited line of authority for other limited lines of authority, and requires the commissioner to promulgate administrative regulations to establish the requirements, if any, for pre-licensing courses of instruction and examination for each limited line of authority. This administrative regulation establishes the preneed funeral limited line of authority and the requirements for licensure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This limited insurance product is sold primarily by those in the funeral home

business. Agents in that business do not typically sell other life insurance products or annuities. This limited lines license will allow for proper licensure and oversight of those selling this limited insurance product without requiring the individual to be licensed to sell all types of life insurance and annuities.

(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 administrative regulation will affect an unknown number of applicants for this newly created limited lines license.

(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) Individuals wanting to obtain and maintain an agent license with a preneed funeral insurance limited line of authority must complete the requirements listed in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: The cost to apply for an agent license is \$40 for an individual and \$100 for a business entity.

(c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance, individuals and business entities will be properly licensed to sell preneed funeral insurance in Kentucky.

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

(a) Initially: Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance.

(b) On a continuing basis: Implementation of this amendment is not anticipated to have an on-going cost on the Department of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks 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 of fees will not be necessary because additional personnel is likely unnecessary.

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

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all applicants for an agent license with a preneed funeral insurance limited line of authority.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Insurance 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 304.2-110 and KRS 304.9-230

(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?

(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?

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

(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.

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: This administrative regulation creates a new limited license for the sale of preneed funeral insurance. The application fee is \$40 for an individual and \$100 for a business entity. It is unknown how many applications will be received. The system logic to offer limited licenses is already in place and the review of the application will be handled by existing staff, so there will not be any new expenditures related to this administrative regulation.

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Epidemiology and Health Planning (New Administrative Regulation)

902 KAR 2:220. School notification standards related to COVID-19.

RELATES TO: KRS 158.160, 214.010, 214.020

STATUTORY AUTHORITY: KRS 158.160(1), 194A.050(1), 211.025, 211.180(1)(e), 214.020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.160(1) authorizes the Cabinet for Health and Family Services to promulgate an administrative regulation to define medical conditions that threaten the safety of students or others in a school setting. KRS 211.180(1)(e) authorizes the cabinet to formulate, promote, establish, and execute policies, plans, and comprehensive programs relating to all matters of public health, including the protection and improvement of the health of infants, preschool, and school-age children. This administrative regulation establishes the school notification standards for reporting students and school personnel diagnosed with Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) (the virus that causes COVID-19).

Section 1. Definitions. (1) "COVID-19 exposure" means a high-risk exposure as determined by the local health department having jurisdiction after consultation with the school, the exposed person, or the student's parent, legal guardian, or other person or agency responsible for the student.

(2) "Instructional style" means the primary method of learning utilized by the school and includes in-person only, virtual only, or a hybrid of in-person and virtual.

(3) "Reported COVID-19 positive" means the school has received a report from:

(a) A parent, legal guardian, or other person or agency responsible for a student attending the school that the student has tested positive for COVID-19; or

(b) School personnel that have tested positive for COVID-19.

Section 2. School Notification Standards. (1) Each public or private elementary or secondary school shall provide notice to a parent, legal guardian, or other person or agency responsible for a student that, in accordance with KRS 158.160:

(a) The individual responsible for a student shall notify the

student's school if the student has any medical condition that threatens the safety of the student or others in the school; and

(b) Notification shall be made within twenty-four (24) hours following the positive diagnosis of Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) (the virus that causes COVID-19) in the method determined by the school.

(2) Each public or private elementary or secondary school shall submit the information required by this subsection to the Kentucky Department for Public Health as required by subsections (3) and (4) of this section.

(a) No later than September 28, 2020, each school shall submit an initial data submission, which shall include for the preceding twenty-four (24) hours:

1. The total number of reported COVID-19 positive students;
2. The total number of reported COVID-19 positive school personnel;
3. The total number of students quarantined for COVID-19 exposure related to school activities;
4. The total number of school personnel quarantined for COVID-19 exposure related to school activities; and
5. The instructional style of the school on the date of data submission.

(b) Following the initial data submission, each public or private elementary or secondary school shall submit:

1. The total number of new reported COVID-19 positive students since the last data submission;
2. The total number of new reported COVID-19 positive school personnel since the last data submission;
3. The total number of new students quarantined for COVID-19 exposure related to school activities since the last data submission;
4. The total number of new school personnel quarantined for COVID-19 exposure related to school activities since the last data submission; and
5. The instructional style of the school on the date of data submission.

(3) Each school shall report the data elements required by subsection (2) of this section:

(a) Each day the school is in session, Monday through Friday, even if the data element is zero; and

(b) Regardless of instructional style utilized on the day of data submission.

(4) The report shall be submitted in two (2) steps as established in this subsection.

(a) The school reporting official shall use the electronic reporting system provided by the Kentucky Department for Public Health to submit the initial and daily information required by subsection (2) of this section.

(b) If a public or private elementary or secondary school reports a data element with a value greater than zero for new reported COVID-19 students or school personnel, the school reporting official shall contact the local health department having jurisdiction and provide the following for each new reported COVID-19 student or school personnel:

1. Name;
2. Address;
3. Date of birth;
4. Gender; and

5.a. If the information is for school personnel, the person's contact telephone number; or

b. If the information is for a student, the name and contact telephone number of the parent, legal guardian, or other person or agency responsible for the student.

(5) The local health department having jurisdiction shall provide public health guidance necessary to:

- (a) Minimize the spread of infection within the school; and
- (b) Promote the health, safety, and welfare of students and personnel.

STEVEN J. STACK, MD, MBA, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: September 14, 2020

FILED WITH LRC: September 14, 2020 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall, if requested, be held on November 23, 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 November 16, 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 November 30, 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 school notification standards for reporting students diagnosed with Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) (the virus that causes COVID-19).

(b) The necessity of this administrative regulation: In order to provide clear guidance to the Kentucky Department of Education (KDE) and local schools on the return to in person instructional methods, the Kentucky Department for Public Health (KDPH) needs adequate and timely data on the spread of COVID-19 in the school setting. This data will be made available to the public on a daily basis.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 158.160(1) authorizes the Cabinet for Health and Family Services to define by administrative regulation medical conditions that threaten the safety of students or others in a school setting. KRS 211.180(1)(e) authorizes the cabinet to formulate, promote, establish, and execute policies, plans, and comprehensive programs relating to all matters of public health, including the protection and improvement of the health of infants, preschool, and school-age children.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide data on the spread of COVID-19 in the school setting, which will allow the KDPH and KDE to make informed decisions when changes in instructional style need to be implemented to protect the health of students and school personnel.

(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 administrative regulation impacts KDPH; KDE; local school boards; local health departments; and approximately 1,220 public and private elementary and secondary schools; and the children that enroll in or participate at these

facilities.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: All public and private elementary and secondary schools will need to submit the required data elements to KDPH on a daily basis, regardless of instructional style on the day of data submission. KDPH will make this daily report available to the general public, and may seek the support of the KDE to ensure all schools are participating in the data reporting.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): The costs associated with compliance is unknown. The reporting program will be provided to each school at no costs. Each school will need to have a staff person responsible for data submission.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, KDPH and KDE will be able to track the incidence of COVID-19 among schools and be able to provide guidance and support to schools.

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

(a) Initially: There is no initial costs associated with this administrative regulation.

(b) On a continuing basis: There is no increase in ongoing costs 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: Any funding necessary to implement this administrative regulation will be from 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 or funding is not necessary to implement the changes with 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 contain fees.

(9) TIERING: Is tiering applied? (Explain why or why not.) Tiering is not applied. All schools will be required to report data on a daily basis.

subsequent years? There are no costs to administer this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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 KDPH; KDE; local school boards; local health departments; and approximately 1,220 public and private elementary and secondary schools.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 158.160(1), 194A.050(1), 211.025, 211.180(1)(e), and 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? There are no costs to administer this program in the first year.

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

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of September 8, 2020

Call to Order and Roll Call

The September meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, September 8 at 1 p.m. In Room 171 of the Capitol Annex. Senator West, Co-Chair, called the meeting to order, the roll call was taken. The minutes from the August 2020 meeting were approved.

Present were:

Members: Senators Julie Raque Adams, Alice Forgy Kerr, Reginald Thomas, and Stephen West. 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: Kathryn Gabhart, Executive Branch Ethics, Stephen McMurray, University of Kentucky Agriculture Experiment Station; David Trimble, Board of Podiatry; Bryan Morrow, Dr. Shawn Oak, Board of Licensure of Marriage and Family Therapists; Carson Kerr, Elizabeth Morgan, Board of Medical Imaging and Radiation Therapy; Clint Quarles, Department of Agriculture; Amy Barker, Jennifer Bogard, Department of Corrections; Jon Akers, Todd Allen, Whitney Crowe, Matt Ross, Ben Wilcox, Department of Education; Heather Dearing, Terry Manuel, Alicia McGrath, Beth Milburn, Department for Libraries and Archives; Laura Begin, Julie Brooks, Kara Daniel, Wes Duke, Lisa Lee, Adam Mather, Jonathan Scott, Miranda Stocker, Emily Tamas, Todd Trapp, Cabinet for Health and Family Services; Sheena Burch, Angie Clemons, Joan Geohegan, April Sexton McKinney, Brenda Packard, Karen Pendleton, Deanna Picklesimer, Tricia Oliver, Heidi Schissler, Kimberly Turner, Chris Weist, and Tony Wheatley.

The Administrative Regulation Review Subcommittee met on Tuesday, September 8, 2020, and submits this report:

Effective Administrative Regulation Reviewed by the Subcommittee Pursuant to KRS 13A.030(3) and 13A.290(1)(b)3.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Division of Epidemiology: Communicable Diseases

902 KAR 2:210E. Covering the face in response to declared national or state public health emergency. Wes Duke, general counsel, represented the division. Sheena Burch, Angie Clemons, Joan Geohegan, April McKinney, Brenda Packard, Jenny Patten, Karen Pendleton, Deanna Picklesimer, Tricia Oliver, Kimberly Turner, Tony Wheatley, and Chris Weist appeared in opposition to this administrative regulation.

In response to questions by Co-Chair West, Mr. Duke stated that this emergency administrative regulation was promulgated to replace the previous emergency administrative regulation requiring face coverings. The previous emergency administrative regulation's requirements expired thirty (30) days after filing. This emergency administrative regulation was substantively the same as the previous version, except that it established an exception for the deaf, hard of hearing, and those actively communicating with the deaf or hard of hearing. Individuals exercising this exemption were to maintain at least six (6) feet of distance from those who were not members of that person's household. Mr. Duke was unsure as to why Secretary Friedlander and Dr. Stack were not present to testify. He was also unsure as to why Dr. Stack had not submitted the data regarding face covering efficacy, which Dr. Stack agreed to submit at the July 13 subcommittee meeting. Mr. Duke stated that he had emailed the subcommittee the legal analysis for the statutory authority for this emergency administrative regulation, to which he had agreed at the July meeting. He apologized to the members if it had not been received and stated that he would investigate why the subcommittee had not received that communication. He agreed to follow up with the subcommittee regarding the legal analysis for the statutory authority for this emergency administrative regulation and Dr. Stack's face covering efficacy data. Mr. Duke stated that, because of the nature of the pandemic, this emergency administrative regulation did not allow for the traditional public comment period. The public hearing was scheduled for October 26 at 9 a.m. While the requirements of this emergency administrative regulation would expire thirty (30) to sixty (60) days before the public hearing, the public hearing date was a statutory requirement. Mr. Duke stated that he was uncomfortable speculating whether or not the cabinet could hold an additional public hearing outside of the KRS Chapter 13A process. He believed that the current hearing was timely and that the cabinet made the right choice. The citation form being

used by Local Health Departments was compliant with this current emergency administrative regulation but was not incorporated by reference in this emergency administrative regulation. There was a first-violation warning and a fine for a

second violation. Mr. Duke stated that it did not seem necessary to incorporate the citation by reference. He was unaware that there was a citation circulated on the internet that showed the wrong administrative regulation number. The cabinet believed that several statutes and administrative regulations established authority for fines for more than one (1) violation, including from KRS Chapters 211 and 212 and KRS 214.020 and 214.990. This emergency administrative regulation was officially filed with LRC on August 10, 2020, at 8 a.m. An emergency administrative regulation would not become effective before being officially filed with LRC. Co-Chair West stated that, although this emergency administrative regulation was filed on August 10, language within this emergency administrative regulation included an effective date of 5 p.m., August 7.

In response to a question by Representative Frazier, Mr. Duke stated that cited individuals and businesses could appeal through the KRS Chapter 13B hearing process. To Mr. Duke's knowledge, no one had sought an appeal at this time.

In response to a question by Senator Raque Adams, Mr. Duke stated that, as of today, there had been sixty-seven (67) citations for violations issued. Sixty-six (66) of those were first-violation warnings, and there had been one (1) second-violation citation with a fine.

Co-Chair Hale stated that, while he appreciated Mr. Duke's availability for testimony, the subcommittee would have been grateful to also hear from Dr. Stack and Secretary Friedlander. Like Co-Chair West, Co-Chair Hale also did not receive Mr. Duke's email with his legal analysis of the authority for this emergency administrative regulation. Mr. Duke stated that he would continue searching for the email.

In response to questions by Senator Thomas, Mr. Duke stated that Kentucky had authority to issue administrative regulations through its policing powers, and this was a safety-based emergency administrative regulation. KRS 214.020 authorized the cabinet to take action to prevent the spread of infectious diseases. KRS Chapter 39A and other grants of authority through the cabinet authorized this action. Mr. Duke stated that Dr. Stack had stated on multiple occasions that he was an advocate for face coverings because the science demonstrated efficacy in reducing the spread of coronavirus (Covid-19).

Co-Chair West stated that KRS 214.020 established penalties to be misdemeanors, which provided due process through the court system. In response to a question by Senator Thomas, Co-

Chair West stated that a fine might be statutorily considered a violation, rather than a misdemeanor; however, the statute seemed to require misdemeanors. Co-Chair West allowed those appearing in opposition to this emergency administrative regulation to begin their testimonies.

Mr. Weist stated that some citations for face covering violations were being contested in the Kentucky Supreme Court and he represented some of the litigants involved. One (1) of his clients, April McKinney, was the owner of the Richmond Athletic Club, which had received a citation for a face covering violation from the Local Health Department because a client had walked from one (1) piece of exercise equipment to another in the active act of exercising. Upon requesting a hearing, he was told by a Local Health Department representative that there was no right to a hearing. If the KRS Chapter 13B hearing process was being used, that message had not been received by all of the Local Health Departments. This emergency administrative regulation did not properly incorporate material by reference, in contravention of statutory requirements. This emergency administrative regulation did not contain the cost analysis required by KRS 13A.240(1)(f)2. This emergency administrative regulation did not include the number and types of entities affected, as required by KRS 13A.240(1)(e). This emergency administrative regulation did not include a reference to the KRS Chapter 13B hearing process. There was no statutory authority that allowed the issuance of a citation.

Ms. McKinney stated that Richmond Athletic Club was cited for a face covering violation by the Madison County Health Department. No due process was offered. Active exercise was taking place, which was supposed to be an exemption. She was told by an inspector that there were no exemptions and that fines for her business would be payable directly to the Local Health Department, based on one (1) person's interpretation of this emergency administrative regulation. This was in violation of the American's with Disabilities Act and HIPPA. The business was threatened with closure unless a violator submitted proof of exemption. After contact with the inspector's supervisor, the interpretation was reversed and the business was told that there was no proof that the Executive Order could override federal law for those unable to wear facial coverings.

Ms. Packard stated that she was a disabled veteran, former business owner of thirty (30) years, and the single mother of a disabled child. The measures taken during the pandemic were affecting people more negatively than coronavirus (Covid-19) itself. After spinal surgery that made her pain worse, telehealth was her only option for seeking pain relief. There was basically no follow-up care because of the shutdown. Laser eye surgery services had also been shut down. Abortion clinics never shut down during the pandemic. Wearing a mask caused Post Traumatic Stress Disorder symptoms for her because of past trauma. The government made those unable to wear a facial covering seem less patriotic and unsympathetic. Even going to the grocery store resulted in public shaming, occasional photographing, and reports to the Governor's hotline. This situation exacerbated depression in some. A veteran in Pendleton County passed away, and his family was forced, because of the pandemic, to bury him in a rogue cemetery, with the goal of exhumation and reburial in a veterans' cemetery after the pandemic issues were resolved.

Mr. Wheatley stated that these mandates were about more than just masks. His friend, Mary Howard was involved in the unemployment situation that resulted from the pandemic shutdown. Claims were at an all-time high, and Kentucky experienced 451,000 claims during a forty-five (45) day period. Half of those remained unemployed at this time. 7,500 claims from that initial group had still not received processing. Civilian labor had decreased, while unemployment had increased. Mary Howard was out of money and was about to lose her home. These statistics represented real people like Mary Howard, who were suffering under these mandates. Kentucky's economy was deteriorating. Forty-eight (48) percent of those with the initial 451,000 claims had exhausted the allowed length of time for unemployment relief.

Ms. Oliver stated that she was the mother of a son with epilepsy and autism. On July 10, when the face covering

emergency administrative regulation became effective, the struggle to keep a mask on her son began. On July 28, he removed his mask and began to have a seizure while in a restaurant. Restaurant employees stated that they would refuse service if her son did not put the mask on; therefore, she removed her son outside of the restaurant. Medical data determined that, during the two (2) weeks of wearing the mask, her son had experienced over 1,000 seizures. Wearing the mask seemed to have significantly exacerbated his medical condition. This situation caused his cognitive development to be severely set back. Her daughter was hearing impaired and had also experienced difficulty in public settings. A local restaurant demanded that her daughter disclose her medical condition in front of the public in order to prove that she was exempt from the face covering mandate.

Ms. Clemons stated that her six (6) year-old grandson represented the devastation of many Kentucky citizens because of the pandemic shutdown. Her grandson had lost his friends due to the social distancing mandates, isolation, and fear. The Governor was dividing people due to their political affiliations, which led to an elementary school teacher committing a hate crime against her grandson. The teacher ostracized him and inflicted emotional and mental abuse on him because his parents were Republicans. Her grandson was afraid to get near her because of fear that he would cause her to die from coronavirus (Covid-19). Despite new evidence confirming that most of those who had died had not died from coronavirus (Covid-19), the Governor threatened to again shut down Kentucky if citizens did not wear face coverings or if infection cases increased. The Governor's mandates had lost in the courts; therefore, why did these requirements remain in place? The Governor had set up a "snitch" hotline to encourage citizens to tell on each other. As a result, children were being harmed. One (1) of her grandson's friends tried to drown him in a pool because his parents taught him to hate. Governor Beshear had infringed on citizens' civil rights and civil liberties. Law-abiding citizens were being denied due process. When did it become acceptable to force children to wear a mask, especially if those children did not have the mental capacity to understand the purpose? Any child under ten (10) did not have the capacity to grasp this situation. Children should not be denied the right to attend school. Many families were unequipped to school children from home, and the result was children showing signs of anxiety and emotional distress. Some children were having emotional outbursts as a result. When did it become acceptable for a teacher to ostracize a young child? When did it become acceptable to force parents to choose between staying at home to supervise their child who was unable to attend school or going to work, especially when paychecks were desperately needed? When did it become acceptable to tell a child that he could not go near his grandmother but that he could go to a hardware store to buy paint? When did it become acceptable to isolate children at home for months, potentially exposing them to abuse? Some households were abusive. When did it become acceptable to psychologically abuse our children by telling them that they might kill their grandparents? This is child abuse. The new normal is to abuse our children. This trauma will follow these children throughout their lives. Many will never feel safe again in America. You could end this suffering and save Kentucky children by stopping our Governor.

Ms. Pendleton stated that she appreciated the subcommittee allowing public comments on this emergency administrative regulation. In the beginning of the pandemic, there was much that we did not know. Now we knew more, and it was clear that the government got some things wrong. We had never passed this way before. Now we knew about coronavirus (Covid-19). We knew how to treat it and that it was not very lethal. It was time to allow Kentuckians to follow the dictates of their own consciences. The time for restrictions was over, and the government of the Commonwealth of Kentucky needed to acknowledge that so that Kentucky could thrive. The government should be as good as its people.

Co-Chair West stated that he had deliberately made as much time available as possible for public comments pertaining to this emergency administrative regulation because, up until this time, no opportunity for public comments had been provided.

Ms. Burch stated that this emergency administrative regulation was supposed to enhance the prevention of the spread of the so-called infectious disease, coronavirus (Covid-19). There was no double-line evidence that wearing any old cloth over the nose and mouth did anything to enhance the prevention of the spread of coronavirus (Covid-19) or other so-called infectious diseases, including the disease called flu. There was no evidence that it was even healthy or safe to wear a face covering during an eight (8) hour shift for a workday, for children all day during school, or for CDL drivers, such as bus drivers. Wearing a face mask in public was only for specific religions, Halloween, or for criminal activity. This statement was corroborated by 200 KAR 3:020, Section 3(1)(j). Face masks and coverings promoted and supported criminal activity, such as child abductions, human trafficking, shoplifting, looting, and other criminal activity. This was a planned attack on our freedoms and the Constitution. The Centers for Disease Control (CDC) planned prior to 2010 to get states to implement their fascist laws in accordance with their Social Distancing Law Project, but thankfully the CDC was not the law of the land. This emergency administrative regulation was highly unscientific and was, most importantly, in violation of federal and state constitutionally protected rights. Sixteenth Amendment (2)(d) {sic} jurisprudence concluded that no emergency had just cause to suppress the Constitution. This emergency administrative regulation was an example of severe government overreach. She requested that this emergency administrative regulation be hastily denied, removed, and stricken.

Ms. Turner stated that she was here on behalf of her people, family, community, and church. She had a disability, and the disability-related inability to wear a face covering caused her to lose her job. She had been shamed in public for not wearing a face covering. People should not be denied public accommodations because of a pandemic. We were prepped for this. On April 29, WDRB stated that citizens should treat each other as enemies if not in uniform, which was the face covering.

Ms. Patten stated that the decisions made today would affect us into the future. She filed an open records request in July for face covering supporting data referenced by the Governor in a press conference. The Office of the Governor's response was that zero records were available. She then filed an appeal with the Office of the Attorney General, which also resulted in a response that zero records were available. How was this not a violation of our constitutional rights because the mandate was unsupported by evidence? All claims must be substantiated by evidence and not just opinion, but we had nothing supporting the efficacy of mask wearing. In fact, numerous studies indicated otherwise. Zero peer-reviewed data indicated that masks prevented viral spread. Masks were nothing more than a symbolic gesture pursuant to the New England Journal of Medicine, which also stated that focusing on universal masking might paradoxically result in more transmission of coronavirus (Covid-19). The Center for Infectious Disease Research and Policy stated that cloth masks rated very low in efficiency in preventing very small particles from being inhaled by the wearer, even if the cloth mask was well fitted. The Journal of Orthopedic Translation's research indicated that cloth masks were intended to keep particles from one (1) micron from being inhaled. Coronavirus (Covid-19) particles were 0.125 microns in size; therefore, wearing a mask with the expectation of avoiding infection was irresponsible at best. Mask wearing could cause a condition called mask mouth, which could cause an increase in cavities, inflammation in the mouth, gum disease, and risk of stroke and heart attack. Studies demonstrated that mask use could increase fear response in wearers due to increased inhalation of CO₂, especially those who experience panic attacks or have trauma-related conditions. Stop looking at citizens as viruses. She stated that her rights did not end where others' fears began. Decisions must be based on evidence, proof, and scientific data.

Ms. Picklesimer stated that she was a Christ follower foremost and a wife and mother of two (2) children. Remote learning was not working for her elementary-aged children. As a former state employee, the government should serve the people through their collective representatives and for the common good. This was a democracy and a commonwealth. People were using science to

substantiate their own personal opinions and feelings to defend these mandates; this was worldly thinking, not Kingdom thinking. The government was infringing on personal liberty and freedom. People should do what each believed was personally best, and the government should not try to control their decisions. This began as flattening the curve in order to not overwhelm medical facilities, but had become a perversion of the Christian concept of loving your neighbor as yourself. Kentuckians did not need protection of this level because only a very small percentage of infected people died. Insinuating that those who did not wear a mask did not love their neighbor was foolish and divisive. Everyone should be allowed to express their viewpoints. The people should have the choice of wearing a mask and of in-person schooling. She did not think masks were effective, but she was following the rule. Coronavirus (Covid-19) had high recovery rates. We should face this virus fearlessly with love and should not worry unless medical facilities began to be overwhelmed. There should not be a mandatory vaccine.

Ms. Geohegan, a registered nurse and certified diabetes education specialist, stated that it had been emphasized that patients had the right to self-determination. The citizens of Kentucky should all have the right to self-determination and all have the right to choose to wear a mask or go without. We could help those with underlying health conditions through education, but that was not happening. The information on the Administrative Reference Web site regarding how to manage diabetes was very outdated.

In response to a question by Co-Chair West, Mr. Duke stated that the legal analysis he had agreed to send to the subcommittee in July had been sent by messenger mail and must have been lost in transit. He apologized and stated that he would resubmit that information by email immediately after this subcommittee meeting. This emergency administrative regulation was properly promulgated by all applicable statutes. KRS 214.020 authorized the cabinet to prevent contagious diseases and enforce quarantine powers. This was a proper extension of Executive Branch power in accordance with KRS Chapter 39A.

Representative Marzian stated that wearing a mask was a small measure for our citizens and commonwealth to protect each other. Representative Marzian was a registered nurse who believed in and used science. We had passed this way before during the Spanish influenza of 1918. We have had approximately 200,000 people die from coronavirus (Covid-19) in this country. In the 1940s and 1950s, we experienced a tuberculosis epidemic in which her mother was quarantined for nineteen (19) months. Her grandmother was also quarantined and died from tuberculosis. At that time, tuberculosis was a deadly disease without a cure, just as coronavirus (Covid-19) was a deadly disease without a cure. She did not believe that our children were being abused due to these mandates. These measures would protect children and each other.

Co-Chair Hale stated that he appreciated those testifying today and the opportunity for their testimony. The administration did not give any opportunity for public comments regarding this emergency administrative regulation. Subcommittee members had received many emails from the public regarding this emergency administrative regulation. He wore his face covering, as most Kentuckians did; however, the majority of Kentuckians did not want to be ordered to wear face coverings. He respected the Governor, Dr. Stack, and Mr. Duke, but this seemed like an unconstitutional mandate. If given a choice, most Kentuckians would continue to wear the face coverings without an order.

Senator Thomas stated that, in many southern states, the incidence of coronavirus (Covid-19) deaths had increased. Kentucky led the way with the fewest cases and deaths due to the Governor's leadership and commitment to prevent infection spread through these mandates, including face covering requirements. This mandate had saved countless lives. We all wanted to save lives, although we disagreed on how to achieve that. Science supported this policy. Wearing a face covering was the right thing to do for Kentucky.

A motion was made by Co-Chair Hale and seconded by Representative Frazier, to find this emergency administrative regulation deficient. Co-Chair West initiated discussion on the

motion.

In response to a question by Mr. Duke, Co-Chair West stated that a motion of deficiency was the vehicle the subcommittee used to request that the Governor withdraw this emergency administrative regulation in accordance with KRS 13A.190.

Co-Chair West stated that this motion was not preplanned, but was the natural result of the testimony. The subcommittee had had a thorough discussion of this emergency administrative regulation, which affected every Kentuckian on a daily basis. This emergency administrative regulation seemed to arbitrarily single out specific businesses for the mandate. There were arbitrary exceptions to the mandate. This emergency administrative regulation mandated business practices and put businesses in the position of enforcing hastily promulgated requirements. Penalties in this emergency administrative regulation were arbitrary, and there was no provision for due process. There was inconclusive evidence of the efficacy of face coverings to prevent the spread of infection. No evidence had been provided to the subcommittee after an agreement at the July subcommittee meeting to provide evidence. The authorizing statutes did not provide for fines or business closures. The most egregious failure was the lack of opportunity for public comments. KRS Chapter 39A cited fifty-one (51) reasons for these powers; however, a pandemic was not a listed reason. The list did include "other biological occurrence"; therefore, Co-Chair West would give the Governor the benefit of the doubt regarding this issue. It was clear that the Governor had no intent of working with the legislature on these issues. The legislature had been entirely left out of the development of these policies. The legislature expected there to at least be an opportunity for public comments, but there had not been.

A roll call vote was taken. There being three (3) votes to find this emergency administrative regulation deficient, and five (5) votes against a finding of deficiency, the motion failed.

Senator Raque Adams explained her no vote. Jefferson County was very heavily populated, and most citizens had accepted mask wearing. Today's testimony demonstrated that this emergency administrative regulation was not flexible enough. There was no due process provided. Exempted individuals were experiencing public shaming. A public comment process was needed sooner, rather than later. It was possible that, due to lack of coordination, the courts would have to settle this matter.

Representative Frazier explained her yes vote. This vote was not political or about the safety of masks. This emergency administrative regulation was a problem because due process was not provided.

Senator Thomas explained his no vote. We were still learning about coronavirus (Covid-19). The safest way to deal with this pandemic was through face coverings. Approximately 200,000 US lives had been lost, and six (6) million US citizens had been infected. In many southern states, the incidence of coronavirus (Covid-19) deaths had increased, but Kentucky led the way with the fewest cases and deaths due to the Governor's leadership and commitment to prevent infection spread through these mandates, including face covering requirements.

Administrative Regulations Reviewed by the Subcommittee:

FINANCE AND ADMINISTRATION CABINET: Executive Branch Ethics Commission

9 KAR 1:010. Statement of financial disclosure. Kathryn Gabhart, executive director, represented the commission.

9 KAR 1:040 & 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.

AGRICULTURAL EXPERIMENT STATION: Seed

12 KAR 1:116. Sampling, analyzing, testing, and tolerances. Stephen McMurtry, program director, represented the Agricultural Experiment Station.

12 KAR 1:120. Noxious weed seed.

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

12 KAR 1:125. Identification of seed not for sale.

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

12 KAR 1:130. Labeling of seed mixtures.

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

12 KAR 1:140. Permits, reports, and fees for persons using own tags.

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

12 KAR 1:155. Schedule of charges for samples submitted for testing.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

12 KAR 1:160. Seed not required to be labeled by variety name.

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

12 KAR 1:170. Germination standards for flower seed.

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

12 KAR 1:175. Seed certification in Kentucky.

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

BOARDS AND COMMISSIONS: Board of Podiatry

201 KAR 25:011. Approved schools; licensure application; fees. David Trimble, counsel, represented the board.

In response to a question by Representative Frazier, Mr. Trimble stated that requirements regarding educational venues had not changed with these amendments.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 4 through 6 to comply with the drafting requirements of KRS Chapter 13A; and (2) to update the Application for Podiatry License to include the increased fee amount of \$300. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 25:021. Annual renewal of licenses, fees.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 3, and 4 to comply with the drafting requirements of KRS Chapter 13A; and (2) to update the Application for Annual License Renewal to include the increased renewal fee amount of \$200. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 25:031. Continuing education.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Licensure of Marriage and Family Therapists

201 KAR 32:110 & E. Telehealth. Dr. C. Shawn Oak, chair, and Bryan Morrow, counsel, represented the board.

In response to questions by Co-Chair Hale, Mr. Morrow stated that treatment may be provided to a minor pursuant to KRS 214.185. The treatment included life-saving interventions. Dr. Oak stated that life-saving interventions included situations in which a minor exhibited suicidal ideation and a guardian was not accessible.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1 through 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Board of Medical Imaging and Radiation Therapy

201 KAR 46:010. Definitions for 201 KAR Chapter 046. Carson Kerr, counsel, and Elizabeth Morgan, executive director, represented the board.

201 KAR 46:035. Practice standards, scopes of practice, and ethical standards.

A motion was made and seconded to approve the following amendments: to amend Sections 3 and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 46:040. Medical imaging technologist, advanced imaging professional, radiographer, nuclear medicine technologist, and radiation therapist licenses.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 2, 3, 6, and 7 for applicants who qualify for licensure pursuant to KRS 12.245, 12.354, or 12.357, and for consistency with KRS 311B.140; (2) to amend Sections 3 and 15 to comply with the drafting and formatting requirements of KRS Chapter 13A; (3) to update KBMIRT Forms 1 and 2 to: (a) update the question on the forms relating to KRS 12.245; and (b) clarify that, pursuant to KRS 311B.140, licensure fees shall be waived if the conditions were met; and (4) to add a new Section 9 to: (a) clarify that a licensee shall not allow a credential to lapse while the license is active; (b) require that if a licensee's credential is suspended, revoked, or otherwise discontinued by a national organization, the licensee shall immediately notify the board; and (c) establish what a licensee seeking reinstatement following a lapse in credential shall submit. Without objection, and with agreement of the agency, the amendments were approved.

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.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 3, 4, and 11 through 13 for applicants who qualify for licensure pursuant to KRS 12.245, 12.354, or 12.357, and for consistency with KRS 311B.140; (2) to add a new Section 5 to establish the requirements for an Initial limited X-ray machine operator license; (3) to amend Sections 3 and 13 to comply with the drafting and formatting requirements of KRS Chapter 13A; (4) to update KBMIRT Forms 4 through 6 to: (a) update the question on the forms relating to KRS 12.245; and (b) clarify that, pursuant to KRS 311B.140, licensure fees shall be waived if the conditions were met; (5) to amend Section 1 to delete what limited diagnostic radiography shall include, which is established in Section 8 of this administrative regulation pertaining to approved procedures; (6) to amend Section 7 to clarify the curricular standards for programs for general limited x-ray machine operators, limited podiatry x-ray machine operators, and limited bone densitometry x-ray machine operators; and (7) to add material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 46:100. Medical Imaging and Radiation Therapy Scholarship and Continuing Education Fund.

In response to questions by Co-Chair Hale, Ms. Morgan stated that the Medical Imaging and Radiation Therapy Scholarship and Continuing Education Fund would be funded through licensing fees after other daily operating expenses and appropriations had been made. This was a new fund.

A motion was made and seconded to approve the following amendments: (1) to amend Section 5 to establish: (a) that repayment may be deferred if an active duty member of the US Armed Forces; and (b) what a request for deferral required; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 3 through 7 to comply with the drafting requirements of KRS Chapter 13A; and (3) to update material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT CABINET: Department of Agriculture: Office of Agriculture Marketing

302 KAR 60:010. Produce safety. Clint Quarles, counsel, represented the department.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

501 KAR 6:220. Treatment for sex offenders. Amy Barker, assistant general counsel, represented the department.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION AND WORKFORCE DEVELOPMENT: Board of Education: Department of Education: Charter Schools

701 KAR 8:020. Evaluation of charter school authorizers. Todd Allen, general counsel, represented the department.

In response to a question by Senator Thomas, Mr. Allen stated that, while no appropriation had been made, the authorizing statute required the department to promulgate this administrative regulation. Despite the lack of funding, the department had received one (1) application; however, that school did not open.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 2, and 4 through 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Office of District Support Services: General Admission

702 KAR 1:180. School security risk assessment tool.

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

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Department for Libraries and Archives: Division of Library Services: Libraries

725 KAR 2:060. Certification of public librarians. Terry Manuel, commissioner, represented the division.

A motion was made and seconded to approve the following amendments: to amend Sections 3, 4, and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

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. Kara Daniel, deputy inspector general, and Adam Mather, inspector general, represented the division.

Department for Public Health: Division of Maternal and Child Health

902 KAR 4:140E. Enhanced HANDS services in response to declared national or state public health emergency. Julie Brooks, regulation coordinator, represented the division.

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 questions by Co-Chair West, Ms. Lee stated that the agency amendment changed the division's initial policy regarding eliminating copays. The initial policy to eliminate copays was due to administrative burden to providers and due to the lack of federal funding the copays created. There was concern that this policy was in conflict with KRS 205.6312, which required copays. An actuarial analysis calculated that the cost would be approximately \$20 million, with \$16 million in the form of federal funds and \$4 million in the form of state funds. The copays would cause Kentucky to lose the \$16 million in federal matching funds. Providers were prohibited from refusing treatment for Medicaid patients who did not pay their copayments; therefore, providers were the primary entity losing funds. Providers had a substantive administrative burden regarding collecting copays, and providers were losing the federal matching funds. The implementation of copays would cause Kentucky to lose federal matching funds; therefore, it would cost the state more with the copays than without.

Senator Thomas stated that he supported this administrative regulation. Copays were a barrier to healthcare accessibility. Eliminating barriers to healthcare accessibility was especially important during this coronavirus (Covid-19) pandemic.

In response to questions by Co-Chair Hale, Mr. Scott stated that the copay prior to the initial amendment averaged three (3) dollars, with some prescription copays as high as eight (8) dollars and a fifty (50) dollar copay for inpatient hospitalization. Ms. Lee stated that the average copay prior to the initial amendment averaged three (3) to four (4) dollars. There were approximately

250,000 individuals who qualified for these copays.

A motion was made and seconded to approve the following amendments: to amend Sections 2 through 6 to: (1) establish one (1) dollar copayments for: (a) non-emergency uses of the ER; (b) prescription and over-the-counter drugs; and (c) ambulance transportation for non-emergency health services; (2) exempt certain types of medication from the copayment requirement; (3) exempt all other copayments for the calendar year after a recipient has paid an initial copayment for any product or service; (4) exempt certain categories of recipients, such as foster children and pregnant women; (5) prohibit an unpaid copayment from being considered a debt to the provider; (6) authorize the department to waive all cost-sharing if there is a declared health-related emergency; and (7) authorize an MCO to impose a lower copayment or no copayment. Without objection, and with agreement of the agency, the amendments were approved.

Department for Community Based Services: Division of Family Support: Energy Assistance Program/Weatherization

921 KAR 4:116 & E. Low Income Home Energy Assistance Program or "LIHEAP." Laura Begin, regulation coordinator, and Todd Trapp, assistant director, represented the division.

Community Action Agencies

922 KAR 6:010 & E. Standards for community action agencies.

Division of Protection and Permanency: Rape Crisis Centers

922 KAR 8:010. Standards for rape crisis centers. Laura Begin, regulation coordinator, and Emily Tamas, program coordinator, represented the division. Heidi Schissler, legal director, Kentucky Protection and Advocacy, appeared in opposition to this administrative regulation.

In response to a question by Co-Chair West, Ms. Begin stated that the division was under the impression that Ms. Schissler's concerns were statutory, rather than regulatory.

In response to questions by Co-Chair West, Ms. Schissler stated that Kentucky Protection and Advocacy requested that this administrative regulation include as part of background check provisions, a check of the Caregiver Misconduct Registry. After investigation, there did not seem to be statutory authority to add that at this time. A statutory change was needed and recommended. Ms. Begin stated that the division was not seeking deferral. Adding this registry would be a good amendment, but was not currently possible due to statutory constraints. The division would not oppose a future statutory amendment to make this change.

The following administrative regulations were deferred or removed from the September 8, 2020, subcommittee agenda:

AGRICULTURAL EXPERIMENT STATION: Fertilizer

12 KAR 4:075. Licenses and fertilizer product registration.

12 KAR 4:080. Plant nutrient guarantees and labeling.

12 KAR 4:091. Repeal of 012 KAR 004:090, 004:120, and 004:160.

12 KAR 4:100. Slowly released nutrients; labeling.

12 KAR 4:110. Definitions for 012 KAR Chapter 004.

12 KAR 4:130. Investigational allowances.

12 KAR 4:140. Monetary penalties.

12 KAR 4:170. Maximum chlorine guarantees for tobacco fertilizers.

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 2:050. Licenses and permits; fees.

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201 KAR 2:105. Requirements for wholesalers, medical gas wholesalers, wholesale distributors, and virtual wholesale distributors.

201 KAR 2:106. Licensed or permitted facility closures.

201 KAR 2:240. Special limited pharmacy permit- charitable.

201 KAR 2:311. Compounding for veterinary use.

201 KAR 2:320. Requirements for manufacturers and virtual manufacturers.

Board of Chiropractic Examiners

201 KAR 21:041. Licensing, standards, fees.

201 KAR 21:042. Standards, application and approval of continuing education.

201 KAR 21:095. Licensure, registration, and standards of persons performing peer review.

COMMUNITY AND TECHNICAL COLLEGE SYSTEM: Board of Emergency Medical Services

202 KAR 7:201. Emergency Medical Responders.

202 KAR 7:301. Emergency Medical Technician.

202 KAR 7:330. Advanced Emergency Medical Technician.

202 KAR 7:401. Paramedics.

202 KAR 7:601. Training, education and continuing education.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

501 KAR 6:120. Blackburn Correctional Complex.

PUBLIC PROTECTION CABINET: Department of Charitable Gaming

820 KAR 1:050 & E. Raffles.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Division of Epidemiology and Health Planning: Communicable Diseases

902 KAR 2:020 & E. Reportable disease surveillance.

Division of Maternal and Child Health

902 KAR 4:030. Newborn Screening Program.

Office of Inspector General: 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 Public Health Protection and Safety: Food and Cosmetics

902 KAR 45:110. Permits and fees for retail food establishments, vending machine companies, and restricted food concessions.

902 KAR 45:180. 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: 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.

The subcommittee adjourned at 3:25 p.m. The next meeting of the subcommittee is tentatively scheduled for October 13, 2020, at 1 p.m.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(10), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON AGRICULTURE
Meeting of September 17, 2020

The following administrative regulation was available for consideration and placed on the agenda of the Interim Joint Committee on Agriculture for its meeting of September 17, 2020, having been referred to the Committee on July 1, 2020, pursuant to KRS 13A.290(6):

302 KAR 022:050

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Agriculture for its meeting of September 17, 2020, having been referred to the Committee on August 5, 2020, pursuant to KRS 13A.290(6):

302 KAR 050:012
302 KAR 050:020
302 KAR 050:030
302 KAR 050:055
302 KAR 050:060

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

none

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

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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

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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

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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

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A list of administrative regulations that have had technical, non-substantive amendments made during this Register year. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.2255(2), 13A.312(2), or 13A.320(1)(d). Because these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published in the Administrative Register of Kentucky; however, they are usually available for a short time on the Legislative Research Commission’s Web site.

Subject Index

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A general index of administrative regulations published during this Register year, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

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.

EMERGENCY ADMINISTRATIVE REGULATIONS

NOTE: 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.

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
031 KAR 004:190E	46 Ky.R. 2865	5-5-2020
Withdrawn		7-13-2020
031 KAR 004:192E	47 Ky.R. 678	8-28-2020
101 KAR 002:120E	46 Ky.R. 1771	10-22-2019
Replaced	2686	6-2-2020
101 KAR 002:210E	47 Ky.R. 682	9-15-2020
101 KAR 006:010E	47 Ky.R. 246	7-15-2020
105 KAR 001:149E	46 Ky.R. 1775	11-15-2019
Replaced	2391	6-2-2020
201 KAR 020:225E	46 Ky.R. 2769	3-31-2020
Withdrawn		8-31-2020
201 KAR 020:470E	46 Ky.R. 2771	3-31-2020
Withdrawn		8-31-2020
201 KAR 032:110E	46 Ky.R. 2776	3-30-2020
501 KAR 001:040E	46 Ky.R. 1780	10-21-2019
Replaced	2663	8-4-2020
501 KAR 001:071E	46 Ky.R. 1786	10-21-2019
601 KAR 002:232	47 Ky.R. 247	6-30-2020
702 KAR 001:190E	47 Ky.R. 503	8-12-2020
702 KAR 003:270	47 Ky.R. 254	7-14-2020
702 KAR 007:125	47 Ky.R. 258	7-14-2020
702 KAR 007:140E	47 Ky.R. 505	8-12-2020
787 KAR 001:350E	46 Ky.R. 2867	5-1-2020
Withdrawn		7-22-2020
800 KAR 001:010E	46 Ky.R. 2872	5-12-2020
802 KAR 001:010E	47 Ky.R. 684	9-2-2020
802 KAR 002:010E	47 Ky.R. 687	9-2-2020
802 KAR 003:010E	47 Ky.R. 691	9-2-2020
803 KAR 025:089	47 Ky.R. 264	7-1-2020
810 KAR 002:090E	46 Ky.R. 2779	3-20-2020
Replaced	47 Ky.R. 319	8-25-2020
820 KAR 001:050E	47 Ky.R. 10	5-22-2020
895 KAR 001:002E	46 Ky.R. 2211	12-27-2019
900 KAR 006:075E	46 Ky.R. 2213	1-2-2020
Replaced	2332	7-30-2020
902 KAR 002:020	47 Ky.R. 12	6-15-2020
902 KAR 002:190E	47 Ky.R. 266	7-10-2020
Withdrawn		8-10-2020
902 KAR 002:210E	47 Ky.R. 508	8-10-2020
902 KAR 002:220E	47 Ky.R. 693	9-14-2020

902 KAR 004:140E	47 Ky.R. 21	5-19-2020
902 KAR 008:160	47 Ky.R. 268	7-10-2020
902 KAR 008:170	47 Ky.R. 272	7-10-2020
902 KAR 030:010E	46 Ky.R. 2780	3-23-2020
907 KAR 001:604E	46 Ky.R. 2593	3-13-2020
907 KAR 003:300E	46 Ky.R. 2782	3-19-2020
907 KAR 010:840E	46 Ky.R. 1787	10-30-2019
Replaced	2456	6-2-2020
921 KAR 002:015E	46 Ky.R. 2216	12-27-2019
Replaced	47 Ky.R. 84	7-30-2020
921 KAR 003:025E	46 Ky.R. 2784	4-15-2020
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
Withdrawn		9-1-2020
922 KAR 002:405E	47 Ky.R. 695	9-1-2020
922 KAR 006:010E	47 Ky.R. 30	5-21-2020

ORDINARY ADMINISTRATIVE REGULATIONS

009 KAR 001:010		
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009 KAR 001:040		
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010 KAR 001:011	46 Ky.R. 3059	
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012 KAR 001:116		
Amended	47 Ky.R. 94	
012 KAR 001:120		
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012 KAR 001:160		
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012 KAR 001:175		
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012 KAR 004:075	47 Ky.R. 224	
012 KAR 004:080		
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012 KAR 004:130			103 KAR 026:110		
Amended	47 Ky.R. 114		Amended	46 Ky.R. 1282	
012 KAR 004:140			103 KAR 026:120		
Amended	47 Ky.R. 116		Amended	46 Ky.R. 1920	
012 KAR 004:170			As Amended	2389	6-2-2020
Amended	47 Ky.R. 118		103 KAR 027:020		
012 KAR 005:010			Amended	46 Ky.R. 1922	
Amended	47 Ky.R. 740		As Amended	2390	6-2-2020
012 KAR 005:020			103 KAR 027:080		
Amended	47 Ky.R. 741		Amended	46 Ky.R. 1284	
012 KAR 005:030			103 KAR 027:100		
Amended	47 Ky.R. 744		Amended	46 Ky.R. 1285	
012 KAR 005:040			103 KAR 027:120		
Amended	47 Ky.R. 745		Amended	46 Ky.R. 1923	
012 KAR 005:050			As Amended	2391	6-2-2020
Amended	47 Ky.R. 747		103 KAR 028:090		
012 KAR 005:060			Amended	46 Ky.R. 1288	
Amended	47 Ky.R. 749		103 KAR 030:170		
012 KAR 005:070			Amended	46 Ky.R. 2105	6-30-2020
Amended	47 Ky.R. 750		103 KAR 040:050		
013 KAR 001:050			Amended	46 Ky.R. 2107	6-30-2020
Amended	46 Ky.R. 2977		103 KAR 043:100		
As Amended	47 Ky.R. 515		Repealed	46 Ky.R. 1996	6-2-2020
013 KAR 004:010			103 KAR 043:101(r)	46 Ky.R. 1996	6-2-2020
Amended	46 Ky.R. 1913		105 KAR 001:149	46 Ky.R. 1997	
Am Comments	2458		As Amended	2391	6-2-2020
As Amended	2597	6-30-2020	Amended	47 Ky.R. 753	
016 KAR 003:090			105 KAR 001:250		
Amended	47 Ky.R. 355		Amended	46 Ky.R. 1925	
016 KAR 005:020			As Amended	2395	6-2-2020
Amended	46 Ky.R. 2487		105 KAR 001:445	46 Ky.R. 2001	
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016 KAR 009:010			201 KAR 002:050	46 Ky.R. 2682	
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016 KAR 009:060			Amended	45 Ky.R. 3405	
Amended	46 Ky.R. 2100		As Amended	46 Ky.R. 2881	7-3-2020
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016 KAR 009:071(r)	46 Ky.R. 2160	6-30-2020	Amended	47 Ky.R. 119	
017 KAR 001:030	46 Ky.R. 3061		201 KAR 002:106		
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017 KAR 003:050	47 Ky.R. 598		As Amended	47 Ky.R. 41	7-29-2020
017 KAR 004:030	47 Ky.R. 601		201 KAR 002:225		
017 KAR 004:040	47 Ky.R. 603		Amended	47 Ky.R. 362	
017 KAR 005:020	47 Ky.R. 605		201 KAR 002:230	46 Ky.R. 2292	
030 KAR 008:005	46 Ky.R. 2349		As Amended	47 Ky.R. 41	7-29-2020
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031 KAR 004:120			201 KAR 002:311	46 Ky.R. 3063	
Amended	45 Ky.R. 2152		Am Comments	47 Ky.R. 735	
045 KAR 001:050			201 KAR 002:320		
Amended	47 Ky.R. 552		Amended	47 Ky.R. 127	
101 KAR 002:210			201 KAR 005:140	47 Ky.R. 606	
Amended	47 Ky.R. 751		201 KAR 006:100	46 Ky.R. 3064	
101 KAR 001:325	46 Ky.R. 2290	9-1-2020	201 KAR 008:550		
101 KAR 002:120			Amended	46 Ky.R. 1928	
Amended	46 Ky.R. 1915		Am Comments	2646	
As Amended	2686	6-2-2020	As Amended	47 Ky.R. 42	7-29-2020
101 KAR 006:010	47 Ky.R. 472		201 KAR 008:590	46 Ky.R. 2355	
102 KAR 001:125			As Amended	47 Ky.R. 52	7-29-2020
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102 KAR 001:340			Amended	47 Ky.R. 366	
Amended	47 Ky.R. 360		201 KAR 009:210		
103 KAR 002:005			Amended	47 Ky.R. 368	
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201 KAR 009:260			Am Comments	2474	
Amended	47 Ky.R. 374		As Amended	2616	6-30-2020
201 KAR 009:270	46 Ky.R. 2294		201 KAR 016:590	46 Ky.R. 1743	
Am Comments	2790		Am Comments	2475	
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201 KAR 009:360	47 Ky.R. 473		201 KAR 016:600	46 Ky.R. 1745	
201 KAR 012:030	46 Ky.R. 2298		Am Comments	2477	
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201 KAR 012:060	46 Ky.R. 2302		As Amended	2620	6-30-2020
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201 KAR 012:082	46 Ky.R. 2303		201 KAR 019:220	47 Ky.R. 609	
As Amended	2888	7-30-2020	201 KAR 019:225	47 Ky.R. 610	
201 KAR 012:100			201 KAR 019:230	47 Ky.R. 612	
Amended	46 Ky.R. 2489		201 KAR 019:235	47 Ky.R. 613	
As Amended	2891	7-30-2020	201 KAR 019:240	47 Ky.R. 615	
201 KAR 012:140	46 Ky.R. 2307		201 KAR 019:245	47 Ky.R. 616	
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201 KAR 012:260	46 Ky.R. 2308		201 KAR 019:255	47 Ky.R. 618	
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201 KAR 014:070			201 KAR 019:275	47 Ky.R. 625	
Amendment	47 Ky.R. 760		201 KAR 019:410	47 Ky.R. 626	
201 KAR 014:095			201 KAR 019:415	47 Ky.R. 627	
Amendment	47 Ky.R. 761		201 KAR 019:420	47 Ky.R. 629	
201 KAR 014:100			201 KAR 019:425	47 Ky.R. 631	
Amendment	47 Ky.R. 762		201 KAR 019:430	47 Ky.R. 632	
201 KAR 014:105			201 KAR 019:435	47 Ky.R. 633	
Amendment	47 Ky.R. 764		201 KAR 019:440	47 Ky.R. 635	
201 KAR 014:130			201 KAR 019:445	47 Ky.R. 636	
Amendment	47 Ky.R. 765		201 KAR 019:450	47 Ky.R. 639	
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Amendment	47 Ky.R. 767		201 KAR 020:057	46 Ky.R. 2684	
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Amendment	47 Ky.R. 768		201 KAR 020:065		
201 KAR 016:012(r)	46 Ky.R. 2161	6-30-2020	Amended	46 Ky.R. 2984	
201 KAR 016:500	46 Ky.R. 1720		As Amended	47 Ky.R. 525	
As Amended	2602	6-30-2020	201 KAR 020:085		
201 KAR 016:510	46 Ky.R. 1723		Amended	47 Ky.R. 553	
Am Comments	2460		201 KAR 020:110		
As Amended	2604	6-30-2020	Amended	46 Ky.R. 2987	
201 KAR 016:512	46 Ky.R. 1725		201 KAR 020:161		
Am Comments	2461		Amended	47 Ky.R. 555	
As Amended	2605	6-30-2020	201 KAR 020:162	46 Ky.R. 2688	
201 KAR 016:514	46 Ky.R. 1726		As Amended	47 Ky.R. 56	7-29-2020
Am Comments	2463		201 KAR 020:230	46 Ky.R. 2690	
As Amended	2606	6-30-2020	As Amended	47 Ky.R. 57	7-29-2020
201 KAR 016:516	46 Ky.R. 1728		201 KAR 020:320		
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201 KAR 016:520	46 Ky.R. 1730		Amended	47 Ky.R. 769	
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201 KAR 016:530	46 Ky.R. 1731		Amended	46 Ky.R. 2691	
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201 KAR 016:540	46 Ky.R. 1732		201 KAR 020:390		
Am Comments	2466		Amended	47 Ky.R. 772	
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Am Comments	2468		201 KAR 020:411		
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201 KAR 016:560	46 Ky.R. 1736		As Amended	47 Ky.R. 527	
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201 KAR 016:570	46 Ky.R. 1738		201 KAR 020:610	46 Ky.R. 2164	
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As Amended	2900	7-29-2020	As Amended	47 Ky. R. 713	
201 KAR 020:650	46 Ky.R. 2171		202 KAR 038:070		
Am Comments	2794		Amended	47 Ky.R. 792	
As Amended	2901		202 KAR 007:201		
As Amended IJC	47 Ky.R. 529	7-29-2020	Amended	47 Ky.R. 142	
201 KAR 020:660	46 Ky.R. 2172		202 KAR 007:301		
As Amended	2901	7-29-2020	Amended	47 Ky.R. 147	
201 KAR 020:670	46 Ky.R. 2174		202 KAR 007:330		
As Amended	2902		Amended	47 Ky.R. 152	
As Amended IJC	47 Ky.R. 530	7-29-2020	202 KAR 007:401		
201 KAR 020:680	46 Ky.R. 2176		Amended	47 Ky.R. 158	
As Amended	2903	7-29-2020	202 KAR 007:601		
201 KAR 020:690	46 Ky.R. 2177		Amended	47 Ky.R. 165	
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201 KAR 021:015			Amended	46 Ky.R. 2109	
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201 KAR 021:025			301 KAR 002:251		
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201 KAR 021:041			As Amended	2397	6-2-2020
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201 KAR 021:042			Amended	46 Ky.R. 2115	
Amended	47 Ky.R. 132		As Amended	2625	6-4-2020
201 KAR 021:045			302 KAR 010:010		
Amended	47 Ky.R. 778		Repealed	46 Ky.R. 2357	7-9-2020
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Amended	47 Ky.R. 781		302 KAR 010:015	46 Ky.R. 2358	
201 KAR 021:052			Am Comments	2969	
Amended	47 Ky.R. 783		As Amended	47 Ky.R. 59	7-9-2020
201 KAR 021:053			302 KAR 010:020		
Amended	47 Ky.R. 784		Repealed	46 Ky.R. 2357	7-9-2020
201 KAR 021:055			302 KAR 010:025	46 Ky.R. 2359	
Amended	47 Ky.R. 785		As Amended	47 Ky.R. 60	7-9-2020
201 KAR 021:061	47 Ky.R. 876		302 KAR 010:030		
201 KAR 021:065			Repealed	46 Ky.R. 2357	7-9-2020
Amended	47 Ky.R. 787		302 KAR 010:040		
201 KAR 021:075			Repealed	46 Ky.R. 2357	7-9-2020
Amended	47 Ky.R. 789		302 KAR 010:050		
201 KAR 021:085			Repealed	46 Ky.R. 2357	7-9-2020
Amended	47 Ky.R. 791		302 KAR 010:060		
201 KAR 021:095			Repealed	46 Ky.R. 2357	7-9-2020
Amended	47 Ky.R. 134		302 KAR 010:070		
201 KAR 022:170			Repealed	46 Ky.R. 2357	7-9-2020
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201 KAR 023:070	46 Ky.R. 2694		Repealed	46 Ky.R. 2357	7-9-2020
201 KAR 025:011			302 KAR 010:090		
Amended	47 Ky.R. 136		Repealed	46 Ky.R. 2357	7-9-2020
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201 KAR 025:021			302 KAR 020:012(r)	46 Ky.R. 2178	7-9-2020
Amended	47 Ky.R. 138		302 KAR 020:013(r)	46 Ky.R. 2361	7-9-2020
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201 KAR 025:031			302 KAR 020:030		
Amended	47 Ky.R. 140		Repealed	46 Ky.R. 2178	7-9-2020
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201 KAR 032:035			Repealed	46 Ky.R. 2178	7-9-2020
Amended	47 Ky.R. 557		302 KAR 020:052		
201 KAR 032:110			Repealed	46 Ky.R. 2178	7-9-2020
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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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40.355	017 KAR 004:040	158.4412	702 KAR 001:180
40.357	017 KAR 004:040	158.442	702 KAR 001:180
40.360	017 KAR 004:030	158.443	702 KAR 001:180
40.362	017 KAR 004:030	158.444	702 KAR 001:180
40.364	017 KAR 004:030	158.645	704 KAR 008:090
40.366	017 KAR 004:030	158.6451	704 KAR 003:303
41.240	902 KAR 008:170		704 KAR 008:090
43.070	045 KAR 001:050	158:6453	704 KAR 003:303
43.075	045 KAR 001:050	158.649	701 KAR 008:020
45.357	921 KAR 004:116	159.010	702 KAR 007:125E
	922 KAR 006:010	159.030	702 KAR 007:125E
45A	601 KAR 002:232	159.035	702 KAR 007:125E
45A.455	922 KAR 006:010	159.140	702 KAR 007:125E
45A.690	902 KAR 008:170		922 KAR 001:330
49.020	802 KAR 002:010	159.170	702 KAR 007:125E
49.040	802 KAR 002:010	160.1590	701 KAR 008:020
49.090	802 KAR 002:010	160.1591	701 KAR 008:020
49.120	802 KAR 002:010	160.1592	701 KAR 008:020
49.220	802 KAR 001:010	160.1593	701 KAR 008:020
49.230	802 KAR 001:010	160.1594	701 KAR 008:020
49.240	802 KAR 001:010	160.1595	701 KAR 008:020
49.250	802 KAR 001:010	160.1596	701 KAR 008:020
49.260-49.490	802 KAR 003:010	160.1597	701 KAR 008:020
61.315	739 KAR 002:040	160.1598	701 KAR 008:020
61.510-61.705	105 KAR 001:149	160.1599	701 KAR 008:020
61.800-61.850	922 KAR 006:010	160.290	702 KAR 001:190E
61.805-61.850	702 KAR 007:065		704 KAR 003:303
61.870-61.884	908 KAR 001:400		704 KAR 008:090

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160.380	702 KAR 007:065	200.115	922 KAR 001:520
160.445	702 KAR 007:065	200.700	902 KAR 004:140E
160.470	702 KAR 003:270E	202A.011	922 KAR 001:330
160.476	702 KAR 003:270E	204.1-050	806 KAR 009:370
161.020	016 KAR 003:090	205.560	907 KAR 001:604
161.027	016 KAR 003:090	205.6312	907 KAR 001:604
161.028	016 KAR 003:090	205.6485	907 KAR 001:604
	016 KAR 009:010	205.712	601 KAR 002:232
161.030	016 KAR 003:090	205.8451	907 KAR 001:604
	016 KAR 009:010	209.030	908 KAR 001:400
161.048	016 KAR 009:010	210.366	201 KAR 038:070
161.141	701 KAR 008:020	211.090	902 KAR 004:140E
161.152	702 KAR 001:190E		902 KAR 010:030
161.200	702 KAR 007:125E	211.180	902 KAR 002:020
161.220	102 KAR 001:340		902 KAR 004:140E
164.001	922 KAR 001:450		902 KAR 008:170
164.2847	922 KAR 001:450	211.684	922 KAR 001:330
	922 KAR 001:500	211.689	902 KAR 004:140E
164.505	017 KAR 001:040	211.090	902 KAR 004:030
164.507	017 KAR 001:040		902 KAR 004:110
164.512	017 KAR 001:040		902 KAR 050:050
164.515	017 KAR 001:040		902 KAR 050:090
186.010	601 KAR 002:232	211.1751	902 KAR 008:160
186.440	601 KAR 002:232	211.180	902 KAR 002:210E
186.442	601 KAR 002:232		902 KAR 004:030
186.480	601 KAR 002:232		902 KAR 004:110
186.531	601 KAR 002:232	211.840-211.852	902 KAR 100:012
186.560	601 KAR 002:232	211.990	902 KAR 100:012
186.570	601 KAR 002:232	212.025	902 KAR 008:170
189A.005	601 KAR 002:232	212.120	902 KAR 008:170
189A.010	601 KAR 002:232	212.230	902 KAR 008:160
189A.040	601 KAR 002:232	212.240	902 KAR 008:160
189A.045	601 KAR 002:232	212.245	902 KAR 008:160
189A.070	601 KAR 002:232		902 KAR 008:170
189A.085	601 KAR 002:231	212.890	902 KAR 008:160
	601 KAR 002:232		902 KAR 008:170
189A.090	601 KAR 002:232	213.101	901 KAR 005:120
189A.103	601 KAR 002:232	213.106	901 KAR 005:120
189A.105	601 KAR 002:232	214.010	902 KAR 002:020
189A.107	601 KAR 002:232		902 KAR 002:210E
189A.200	601 KAR 002:232		902 KAR 002:220
189A.220	601 KAR 002:232	214.020	902 KAR 002:220
189A.240	601 KAR 002:232	214.036	922 KAR 001:330
189A.250	601 KAR 002:232	214.155	902 KAR 004:030
189A.340	601 KAR 002:231	214.610	201 KAR 009:360
	601 KAR 002:232	214.620	201 KAR 009:360
189A.345	601 KAR 002:231	214.645	902 KAR 002:020
	601 KAR 002:232		902 KAR 002:210E
189A.350	601 KAR 002:232	215.520	902 KAR 002:020
189A.370	601 KAR 002:232	216B.010-216B.130	900 KAR 005:020
189A.400	601 KAR 002:232	216B.015	802 KAR 003:010
189A.410	601 KAR 002:232		902 KAR 002:020
189A.420	601 KAR 002:232	216B.105	803 KAR 025:091
189A.440	601 KAR 002:232	216B.400	802 KAR 003:010
194A.005	908 KAR 001:400	217.005-217.215	902 KAR 050:032
	922 KAR 001:330	217.015	201 KAR 002:225
194A.010	921 KAR 004:116		201 KAR 005:140
194A.030	902 KAR 004:110		902 KAR 045:110
194A.050	902 KAR 004:030		902 KAR 045:180
	902 KAR 010:030		902 KAR 050:010
	921 KAR 004:116		902 KAR 050:031
	922 KAR 001:330	217.025	902 KAR 045:110
194A.060	922 KAR 006:010		902 KAR 045:180
	921 KAR 004:116		902 KAR 050:010
194A.070	908 KAR 001:400		902 KAR 050:033
	921 KAR 004:116		902 KAR 050:090
196	501 KAR 006:120	217.035	902 KAR 045:110
197	501 KAR 006:120		902 KAR 045:180
197.010	500 KAR 006:220		902 KAR 050:010
199.011	922 KAR 001:520		902 KAR 050:080
	922 KAR 002:450E	217.037	902 KAR 045:110
199.570	922 KAR 001:450		902 KAR 045:180
199.894	922 KAR 002:450E		902 KAR 050:080
199.896	922 KAR 002:450E	217.045	902 KAR 050:033

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217.085	902 KAR 045:110		810 KAR 001:120
	902 KAR 045:180		811 KAR 001:005
217.095	902 KAR 045:110		811 KAR 001:125
	902 KAR 045:180		811 KAR 001:250
217.125	902 KAR 045:110		811 KAR 002:010
217.155	902 KAR 045:110		811 KAR 002:060
	902 KAR 045:180		811 KAR 002:160
217.182	201 KAR 005:140	230.3615	810 KAR 001:011
217.811	902 KAR 045:110		810 KAR 001:120
217B	302 KAR 050:021		811 KAR 001:125
	302 KAR 050:045		811 KAR 002:060
	302 KAR 050:056	230.370	810 KAR 001:011
217C	902 KAR 050:120		810 KAR 001:120
217C.010-217C.990	902 KAR 050:032		811 KAR 001:125
	902 KAR 050:033		811 KAR 001:250
	902 KAR 050:040		811 KAR 002:060
217C.010	902 KAR 050:031		811 KAR 002:160
	902 KAR 050:050	230.398	810 KAR 001:011
217C.020	902 KAR 050:031		810 KAR 001:120
217C.030	902 KAR 050:010		811 KAR 001:125
	902 KAR 050:080		811 KAR 001:250
217C.050	902 KAR 050:071		811 KAR 002:060
217C.060	902 KAR 050:031		811 KAR 002:160
	902 KAR 050:071	230.750	810 KAR 001:011
	902 KAR 050:080		810 KAR 001:120
	902 KAR 050:090		811 KAR 001:125
217C.070	902 KAR 050:050		811 KAR 001:250
217C.100	902 KAR 050:031		811 KAR 002:060
	902 KAR 050:090		811 KAR 002:160
217C.990	902 KAR 050:031	230.804	811 KAR 002:120
	902 KAR 050:050	238.545	820 KAR 001:050
	902 KAR 050:080	238.550	820 KAR 001:050
218A.172	201 KAR 009:260	243.027	804 KAR 004:415
218A.202	201 KAR 009:230	243.028	804 KAR 004:415
218A.205	201 KAR 009:200	243.029	804 KAR 004:415
	201 KAR 009:210	243.030	804 KAR 004:415
	201 KAR 009:240	244.050	804 KAR 004:415
	201 KAR 009:260	244.440	804 KAR 004:415
	201 KAR 009:360	244.585	804 KAR 004:415
	201 KAR 020:161	247.4453	902 KAR 050:010
	201 KAR 025:011	247.453	902 KAR 050:010
	201 KAR 025:021	250.021	012 KAR 001:116
	201 KAR 025:031		012 KAR 001:140
222.005	908 KAR 001:400		012 KAR 001:155
222.211	908 KAR 001:381	250.031	012 KAR 001:116
222.221	908 KAR 001:400		012 KAR 001:140
223.010	902 KAR 010:030	250.041	012 KAR 001:116
223.020	902 KAR 010:030		012 KAR 001:140
223.030	902 KAR 010:030	250.051	012 KAR 001:116
	902 KAR 010:036		012 KAR 001:140
223.060	902 KAR 010:030	250.061	012 KAR 001:116
223.080	902 KAR 010:030		012 KAR 001:140
223.990	902 KAR 010:030	250.071	012 KAR 001:116
230	810 KAR 001:001		012 KAR 001:140
230.215	810 KAR 003:020	250.081	012 KAR 001:116
	811 KAR 001:005		012 KAR 001:120
	811 KAR 001:125		012 KAR 001:125
	811 KAR 002:010		012 KAR 001:130
230.225	811 KAR 002:120		012 KAR 001:140
230.260	810 KAR 003:020		012 KAR 001:160
230.280	810 KAR 003:020		012 KAR 001:170
230.290	810 KAR 003:020		012 KAR 001:175
230.300	810 KAR 001:011	250.091	012 KAR 001:116
	810 KAR 001:120		012 KAR 001:140
	810 KAR 003:020	250.101	012 KAR 001:116
	811 KAR 001:125		012 KAR 001:140
	811 KAR 001:250	250.111	012 KAR 001:116
	811 KAR 002:060		012 KAR 001:140
	811 KAR 002:160		012 KAR 001:155
230.310	810 KAR 003:020	250.366	012 KAR 004:075
230.320	810 KAR 003:020		012 KAR 004:080
230.330	810 KAR 003:020		012 KAR 004:091
	811 KAR 002:120		012 KAR 004:100
230.361	810 KAR 001:011		012 KAR 004:130

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250.371-250.451	012 KAR 004:170	304.9-133	806 KAR 009:360
	012 KAR 004:080	304.9-135	806 KAR 009:190
	012 KAR 004:091	304.9-150	806 KAR 009:025
250.371-250.461	012 KAR 004:075	304.9-160	806 KAR 009:025
250.391	012 KAR 004:130	304.9-230	806 KAR 009:025
250.396	012 KAR 004:130		806 KAR 009:370
	012 KAR 004:140	304.9-260	806 KAR 009:025
250.401	012 KAR 004:130		806 KAR 009:370
250.406	012 KAR 004:110	304.9-270	806 KAR 009:025
250.411	012 KAR 004:170	304.9-295	806 KAR 009:025
258.005	902 KAR 008:160	304.9-320	806 KAR 009:025
258.065	902 KAR 002:020	304.9-390	806 KAR 012:120
258.990	902 KAR 002:020	304.9-430	806 KAR 009:025
260	302 KAR 050:013		806 KAR 009:030
	302 KAR 060:010	304.9-432	806 KAR 009:030
260.775-260.845	012 KAR 005:010	304.9-440	806 KAR 009:030
	012 KAR 005:020	304.10-040	806 KAR 009:360
	012 KAR 005:030	304.12-010	806 KAR 012:120
	012 KAR 005:040		806 KAR 012:150
	012 KAR 005:050		806 KAR 012:170
	012 KAR 005:060	304.12-020	806 KAR 012:150
	012 KAR 005:070		806 KAR 012:170
260.813	902 KAR 050:050	304.12-030	806 KAR 012:120
260.850-260.869	302 KAR 050:021	304.12-230	803 KAR 025:240
	302 KAR 050:031		806 KAR 012:150
	302 KAR 050:045		806 KAR 012:170
	302 KAR 050:056	304.12-240	806 KAR 009:370
	302 KAR 050:080	304.14-642	806 KAR 009:025
260.992	012 KAR 005:010	304.17A-165	806 KAR 009:360
	012 KAR 005:020	304.17A-607	806 KAR 009:360
	012 KAR 005:030	304.17A-820	806 KAR 003:170
	012 KAR 005:040	304.30-030	806 KAR 030:010
	012 KAR 005:050	304.30-060	806 KAR 030:070
	012 KAR 005:060	304.32-210	806 KAR 003:170
	012 KAR 005:070	304.35-040	806 KAR 003:170
273.401	739 KAR 002:050	304.36-140	806 KAR 003:170
273.405-273.453	922 KAR 006:010	304.37-010	806 KAR 003:170
286.3-030	806 KAR 009:190	304.37-020	806 KAR 003:170
304.1-040	806 KAR 012:120	304.42-150	806 KAR 003:170
304.1-050	806 KAR 003:170	304.45-030	806 KAR 003:170
	806 KAR 009:360	304.45-040	806 KAR 003:170
	806 KAR 046:040	304.48-020	806 KAR 046:040
304.2-065	806 KAR 003:170	304.48-050	806 KAR 046:040
304.2-205	806 KAR 007:035	304.48-070	806 KAR 046:040
304.2-210-304.2-290	806 KAR 003:170	304.48-110	806 KAR 003:170
304.2-290	806 KAR 006:010	304.48-170	806 KAR 046:040
304.2-310	806 KAR 009:360	304.48-230	806 KAR 046:040
304.3-120	806 KAR 003:170	304.49	806 KAR 049:020
304.3-125	806 KAR 003:170		806 KAR 049:030
304.3-240	806 KAR 003:170	304.49-070	806 KAR 003:170
	806 KAR 006:100	304.49-080	806 KAR 003:170
304.3-241	806 KAR 003:170	304.49-090	806 KAR 003:170
304.4-010	806 KAR 009:025	304.50	806 KAR 052:010
	806 KAR 009:370	304.50-060	806 KAR 003:170
304.5-030	806 KAR 012:120	304.50-075	806 KAR 003:170
304.6-070	806 KAR 006:080	304.99-020	806 KAR 012:120
	806 KAR 006:100	309.085	201 KAR 035:040
304.6-130-304.6-180	806 KAR 006:010	311A.010	202 KAR 007:201
304.6-150	806 KAR 006:100		202 KAR 007:301
304.6-155	806 KAR 006:100		202 KAR 007:330
304.6-171	806 KAR 006:100	311A.020	202 KAR 007:330
304.6-180	806 KAR 006:100	311A.025	202 KAR 007:201
304.7-360	806 KAR 007:090		202 KAR 007:301
304.7-361	806 KAR 007:035		202 KAR 007:330
304.8-040	806 KAR 008:010		202 KAR 007:401
304.8-120	806 KAR 008:010	311A.030	202 KAR 007:201
304.9-020	806 KAR 009:030		202 KAR 007:401
	806 KAR 009:370	311A.050	202 KAR 007:330
	806 KAR 012:120		202 KAR 007:601
304.9-040	806 KAR 012:120	311A.060	202 KAR 007:201
304.9-053	806 KAR 009:360		202 KAR 007:301
304.9-054	806 KAR 009:360	311A.080	202 KAR 007:401
304.9-105	806 KAR 009:025	311A.090	202 KAR 007:330
304.9-130	806 KAR 009:025	311A.095	202 KAR 007:201

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	202 KAR 007:301		201 KAR 009:360
	202 KAR 007:330	311.990	201 KAR 009:260
311A.100	202 KAR 007:330	312.015	201 KAR 021:001
311A.110	202 KAR 007:201	312.019	201 KAR 021:015
	202 KAR 007:301		201 KAR 021:025
	202 KAR 007:330		201 KAR 021:045
	202 KAR 007:401		201 KAR 021:055
	202 KAR 007:601		201 KAR 021:061
311A.115	202 KAR 007:601		201 KAR 021:065
311A.120	202 KAR 007:601		201 KAR 021:085
311A.127	202 KAR 007:330	312.021	201 KAR 021:045
311A.130	202 KAR 007:301		201 KAR 021:065
	202 KAR 007:601	312.055	201 KAR 021:025
311A.135	202 KAR 007:401	312.085	201 KAR 021:041
311A.140	202 KAR 007:201		201 KAR 021:042
	202 KAR 007:301		201 KAR 021:055
	202 KAR 007:330		201 KAR 021:085
311A.145	202 KAR 007:201	312.095	201 KAR 021:041
	202 KAR 007:301		201 KAR 021:042
	202 KAR 007:330	312.145	201 KAR 021:041
311A.150	202 KAR 007:330		201 KAR 021:042
311A.160	202 KAR 007:201	312.150	201 KAR 021:051
311A.165	202 KAR 007:301		201 KAR 021:052
311A.170	202 KAR 007:401		201 KAR 021:053
311A.195	202 KAR 007:330	312.160	201 KAR 021:051
311.282	902 KAR 002:020	312.163	201 KAR 021:051
311.420	201 KAR 025:011		201 KAR 021:053
311.450	201 KAR 025:021	312.175	201 KAR 021:041
	201 KAR 025:031		201 KAR 021:042
311.480	201 KAR 025:011		201 KAR 021:095
	201 KAR 025:021	312.200	201 KAR 021:075
311.530-311.620	201 KAR 009:260		201 KAR 021:095
311.550	201 KAR 009:016	312.991	201 KAR 021:065
311.565	201 KAR 009:200	312.200	201 KAR 021:001
	201 KAR 009:210	314.011	201 KAR 020:161
	201 KAR 009:230		201 KAR 020:320
	201 KAR 009:240		201 KAR 020:390
	201 KAR 009:360	314.021	201 KAR 020:320
311.571	201 KAR 009:200	314.025	201 KAR 020:390
	201 KAR 009:210	314.026	201 KAR 020:390
	902 KAR 002:020	314.027	201 KAR 020:390
311.591	201 KAR 009:240	314.031	201 KAR 020:161
311.592	201 KAR 009:230	314.041	201 KAR 020:085
	201 KAR 009:240		201 KAR 020:320
311.593	201 KAR 009:240	314.051	201 KAR 020:085
311.595	201 KAR 009:016	314.071	201 KAR 020:085
	201 KAR 009:200		201 KAR 020:161
	201 KAR 009:210	314.073	201 KAR 020:085
	201 KAR 009:230	314.091	201 KAR 020:161
	201 KAR 009:240	314.107	201 KAR 020:161
	901 KAR 005:120	314.111	201 KAR 020:320
311.597	201 KAR 009:016	314.131	201 KAR 020:320
	201 KAR 009:230	314.475	201 KAR 020:161
311.601	201 KAR 009:360	314.991	201 KAR 020:161
311.720	901 KAR 005:120	315.010	201 KAR 002:105
	902 KAR 004:110		201 KAR 002:225
311.725	902 KAR 004:110		201 KAR 002:320
311.774	901 KAR 005:120		902 KAR 002:020
311.781	901 KAR 005:120	315.020	201 KAR 002:225
311.782	901 KAR 005:120		201 KAR 002:320
311.783	901 KAR 005:120	315.035	201 KAR 002:106
311.840-311.862	201 KAR 009:260		201 KAR 002:225
311.842	201 KAR 009:016		201 KAR 002:240
	201 KAR 009:200	315.036	201 KAR 002:106
	201 KAR 009:230		201 KAR 002:320
	201 KAR 009:360	315.191	201 KAR 002:225
311.844	201 KAR 009:360		201 KAR 002:311
311.850	201 KAR 009:016		201 KAR 002:320
	201 KAR 009:200	315.340	201 KAR 002:106
	201 KAR 009:210	315.342	201 KAR 002:106
	201 KAR 009:230	315.350	201 KAR 002:105
	201 KAR 009:360		201 KAR 002:106
311.852	201 KAR 009:230	315.351	201 KAR 002:106
	201 KAR 009:240	315.400	201 KAR 002:320

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315.402	201 KAR 002:105	323.416	201 KAR 019:435
	201 KAR 002:106	327.010	907 KAR 001:604
315.404	201 KAR 002:320	333.020	902 KAR 002:020
315.406	201 KAR 002:105	333.130	902 KAR 002:020
315.4102	201 KAR 002:106		902 KAR 002:190E
317.400	201 KAR 014:035		902 KAR 002:210E
317.410	201 KAR 014:035	334A.020	907 KAR 001:604
	201 KAR 014:100	335.300	201 KAR 032:035
	201 KAR 014:105	335.305	201 KAR 032:110
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317.440	201 KAR 014:035	335.320	201 KAR 032:035
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CERTIFICATION LETTER SUMMARIES

The certification process is established in KRS 13A.3104. If the certification letter states the regulation shall be amended, the administrative body shall file an amendment to the regulation within 18 months of the date the certification letter was filed. If the certification letter states that the regulation shall remain in effect without amendment, the last effective date of the regulation is changed to the date the regulations compiler received the letter.

* KRS 13A.010(6) - "Effective" 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
922 KAR 001:130	09-04-2020	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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702 KAR 007:125E	09-23-2020		
815 KAR 002:020	05-29-2020		
815 KAR 004:025	05-29-2020		
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815 KAR 010:060	05-29-2020		
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