



ADMINISTRATIVE REGISTER OF KENTUCKY

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

MEETING NOTICES

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet on December 3, 2020, at 1:00 p.m. in room 149 Capitol Annex.

ARRS Tentative Agenda - **1175** [Online agenda updated as needed](#)

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

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**Administrative Regulation Review Subcommittee
TENTATIVE Meeting Agenda
Thursday, December 3, 2020 at 1 p.m.
Annex Room 149**



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

UNIVERSITY OF KENTUCKY

**Agriculture Experiment Station
Milk and Cream**

- 012 KAR 005:010. Licenses.
- 012 KAR 005:020. Testing.
- 012 KAR 005:030. Test samples.
- 012 KAR 005:040. Sampling and weighing.
- 012 KAR 005:050. Inspections.
- 012 KAR 005:060. Purchases from farm bulk tanks.
- 012 KAR 005:070. Uniform standards for payment.

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**Office of the Secretary
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- 101 KAR 002:210 & E. 2021 Plan Year Handbook for the Public Employee Health Insurance Program. ("E" expires 06-12-2021)

FINANCE AND ADMINISTRATION CABINET

**Kentucky Retirement Systems
General Rules**

- 105 KAR 001:149. Quasi-governmental employer cessation window.

BOARDS AND COMMISSIONS

Board of Pharmacy

- 201 KAR 002:050. Licenses and permits; fees. (Deferred from June)
- 201 KAR 002:105. Requirements for wholesalers, medical gas wholesalers, wholesale distributors, and virtual wholesale distributors. (Amended After Comments) (Deferred from November)
- 201 KAR 002:106. Licensed or permitted facility closures. (Deferred from September)
- 201 KAR 002:225. Special limited pharmacy permit – medical gas. (Not Amended After Comments) (Deferred from November)
- 201 KAR 002:240. Special limited pharmacy permit- Charitable. (Deferred from September)
- 201 KAR 002:320. Requirements of manufacturers and virtual manufacturers. (Amended After Comments) (Deferred from November)

Board of Optometric Examiners

- 201 KAR 005:140. Dispensing. (Deferred from November) (Not Amended After Comments)

Board of Barbering

- 201 KAR 014:035. Public identification of and access to barber shops and schools.
- 201 KAR 014:070. Shop license applications.
- 201 KAR 014:095. Accredited school.
- 201 KAR 014:100. School advertising.
- 201 KAR 014:105. Barbering school enrollment and postgraduate requirements.
- 201 KAR 014:130. School fees for services.
- 201 KAR 014:135. School attendance hours.
- 201 KAR 014:140. School license.

Board of Architects

- 201 KAR 019:215. Accredited schools and colleges. (Deferred from November)
- 201 KAR 019:220. Application for examination. (Deferred from November)
- 201 KAR 019:225. Examinations required; general provisions. (Deferred from November)
- 201 KAR 019:230. Reexamination; reconsideration. (Deferred from November)
- 201 KAR 019:235. Reciprocity; registration without examination. (Deferred from November)
- 201 KAR 019:240. Resident licensed in another state; reciprocity. (Deferred from November)
- 201 KAR 019:245. Duplicate certificates. (Deferred from November)
- 201 KAR 019:250. Temporary licensing not permitted. (Deferred from November)
- 201 KAR 019:255. Fees. (Deferred from November)
- 201 KAR 019:260. Professional practice standards; violations, penalties. (Deferred from November)
- 201 KAR 019:265. Individual seals; office titles. (Deferred from November)
- 201 KAR 019:270. Plans and specifications standards. (Deferred from November)
- 201 KAR 019:275. Use of title "architect". (Deferred from November)
- 201 KAR 019:410. Accredited schools and colleges for certified interior designers. (Deferred from November)
- 201 KAR 019:415. Application for certification as an interior designer. (Deferred from November)
- 201 KAR 019:420. Qualifications for certification. (Deferred from November)
- 201 KAR 019:425. Limited period of certification by prior experience. (Deferred from November)

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201 KAR 019:430. Certification by persons credentialed in other jurisdictions. (Deferred from November)
201 KAR 019:435. Certification renewal. (Deferred from November)
201 KAR 019:440. Fees for certification of interior designers. (Deferred from November)
201 KAR 019:445. Continuing education. (Deferred from November)
201 KAR 019:450. Signature of documents by certified interior designers; use of title. (Deferred from November)
201 KAR 019:455. Unprofessional conduct. (Deferred from November)

Board of Nursing

201 KAR 020:320. Standards for curriculum of prelicensure registered nurse and practical nurse programs.
201 KAR 020:390. Nursing Incentive Scholarship Fund.

Board of Chiropractic Examiners

201 KAR 021:001. Definitions for 201 KAR Chapter 021.
201 KAR 021:015. Code of ethical conduct and standards of practice.
201 KAR 021:025. Board, officers, duties, and compensation.
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201 KAR 021:055. Colleges and universities; accreditation, approval.
201 KAR 021:061. Repeal of 201 KAR 021:060.
201 KAR 021:065. Professional advertising; seventy-two (72) hour right of restriction.
201 KAR 021:075. Peer review committee procedures and fees.
201 KAR 021:085. Preceptorship Program.

Board of Licensure for Pastoral Counselors

201 KAR 038:070. Renewal of licenses and continuing education.

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202 KAR 007:301. Emergency Medical Technician. (Amended After Comments) (Deferred from November)
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202 KAR 007:401. Paramedics. (Amended After Comments) (Deferred from November)
202 KAR 007:601. Training, education and continuing education. (Amended After Comments) (Deferred from November)

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Office of the Secretary

Tax Appeals

802 KAR 001:010 & E. Tax appeal procedures. ("E" expires 05-30-2021)

Negligence Claims

802 KAR 002:010 & E. Negligence claims before the Board of Claims. ("E" expires 05-30-2021)

Crime Victims Claims

802 KAR 003:010 & E. Crime victims compensation. ("E" expires 05-30-2021)

LABOR CABINET

Department of Workers' Claims

803 KAR 025:091. Workers' compensation hospital fee schedule.

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Department of Insurance

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Agents, Consultants, Solicitors, and Adjustors

806 KAR 009:025. Licensing process.
806 KAR 009:030. Adjuster licensing restrictions.
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806 KAR 030:070. Books and records subject to inspection.

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806 KAR 046:040. Forms for application and financial statements.

Workers' Compensation Self-insured Groups

806 KAR 052:010. Forms for application, security deposits and financial statements.

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Thoroughbred Racing

810 KAR 001:001. Definitions for 810 KAR Chapter 001.

810 KAR 001:011. Pari-mutuel wagering.

810 KAR 001:120. Exotic wagering.

Licensing

810 KAR 003:020. Licensing of racing participants. (Not Amended After Comments) (Deferred from November)

Harness Racing

811 KAR 001:005. Definitions.

811 KAR 001:125. Pari-mutuel wagering.

811 KAR 001:250. Exotic wagering.

Quarter Horse, Paint Horse, Appaloosa, and Arabian Racing

811 KAR 002:010. Definitions.

811 KAR 002:060. Pari-mutuel wagering.

811 KAR 002:120. Kentucky Horse Breeders' Incentive Fund.

811 KAR 002:160. Exotic wagering.

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Department for Public Health

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901 KAR 005:120. Abortion reporting. (Not Amended After Comments)

Department for Public Health

Communicable Diseases

902 KAR 002:210E. Covering the face in response to a declared national or state public health emergency. ("E" expires 06-08-2021) (Comments Received, SOC ext., due 12-15-2020)

902 KAR 002:220 & E. School notification standards related to COVID-19. ("E" expires 06-11-2021)

Local Health Departments

902 KAR 008:160 & E. Local health department operations requirements. ("E" expires 05-05-2021) (Not Amended After Comments)

902 KAR 008:170 & E. Local health department financial management requirements. ("E" expires 05-05-2021) (Not Amended After Comments)

Sanitation

902 KAR 010:030. Registered environmental health specialists and sanitarians. (Not Amended After Comments)

Food and Cosmetics

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. (Amended After Comments) (Deferred from November)

Milk and Milk Products

902 KAR 050:040. Hauler requirements. (Not Amended After Comments)

Department for Behavioral Health, Developmental and Intellectual Disabilities

Substance Abuse

908 KAR 001:381. Repeal of 908 KAR 001:380. (Deferred from October)

908 KAR 001:400. Licensing and standards for substance use and misuse prevention. (Amended After Comments)

Department for Community Based Services

Supplemental Nutrition Assistance Program

921 KAR 003:042. Supplemental Nutrition Assistance Program Employment and Training Program.

921 KAR 003:035 & E. Certification process. ("E" expires 05-27-2021) (Comments Received, SOC ext., due 12-15-2020)

Child Welfare

922 KAR 001:450 & E. Eligibility confirmation for tuition waiver. ("E" expires 05-05-2021) (Amended After Comments)

922 KAR 001:500. Educational and training vouchers. (Comments Received, SOC ext., due 12-15-2020)

922 KAR 001:520 & E. Supplements to per diem rates. ("E" expires 4-26-2021) (Amended After Comments)

Daycare

922 KAR 002:405E. Enhanced requirements for certified and licensed child care and limited duration child care programs as a result of a declared state of emergency. ("E" expires 05-29-2021)

3. REGULATIONS REMOVED FROM DECEMBER'S AGENDA

STATE BOARD OF ELECTIONS

Forms and Procedures

031 KAR 004:192E. Procedures for November 3, 2020 elections. ("E" expires 05-25-2021) (Withdrawn 10-2-2020)

BOARDS AND COMMISSIONS

Board of Licensure of Marriage and Family Therapists

201 KAR 032:035. Supervision of marriage and family therapist associates. (Comments Received, SOC ext. due 12-15-2020)

TRANSPORTATION CABINET

Department of Vehicle Regulation

Administration

601 KAR 002:231. Repeal of 601 KAR 002:030. (Deferred from October)

601 KAR 002:232 & E. Kentucky Ignition Interlock Program. ("E" expires 04-25-2021) (Not Amended After Comments)

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

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Department of Education

General Administration

702 KAR 001:190E. District employee emergency leave. ("E" expires 06-10-2021) (Comments Received, SOC ext. due 12-15-2020)

Facilities Management

702 KAR 004:090. Property disposal. (Comments Received, SOC ext. due 12-15-2020)

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 4:194E

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 4:194E. Procedures for November 3, 2020 Elections.

EFFECTIVE: November 2, 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. Notwithstanding KRS 117.045(9), voters who have changed their registration within the last year shall be eligible to serve as an election official for the November 3, 2020 elections. 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. An application for an absentee ballot due to a medical emergency need not be notarized and this clause shall not expand the definition or use of the term medical emergency.

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. A ballot delivered by 6:00 p.m., local time, on November 3, 2020 shall not be required to bear a postmark.

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. Reading aloud the names of all absentee ballot voters, as described in KRS 117.087(3), shall not be required in the processing of absentee ballots.

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) The Inner Envelope is missing and the ballot is just in the white envelope: REJECT IT.
- (9) Returned or dropped off in just the inner envelope with flap attached and signature present: ACCEPT IT.
- (10) Returned in an unofficial outside envelope, if inside envelope, flap and signature are present: ACCEPT IT; If no signature on flap: REJECT IT.
- (11) 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. The county executive committee of a political party having a ticket to elect during the general election may designate not more than two (2) challengers to be present at and witness the holding of the election, at any one-time, in any location used for early in-person voting or for in-person voting on November 3, 2020. Any school board candidate, any independent ticket or candidate for city office, any nonpartisan city candidate, candidate for an office of the Court of Justice, or committee described in KRS 117.315(4) may designate not more than one (1) challenger to be present at and witness the holding of the election, at any one-time, in any location used for early in-person voting or for in-person voting on November 3, 2020. All Challengers shall follow Centers for Disease Control guidance, as well as, any state issued guidelines concerning hygienic voting practices and social distancing.

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. Election Officials required to submit an affirmation as described in KRS 117.228(4) shall complete "Election Official Affirmation Form" SBE 72, 09/2020. 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;

(c) "Election Official Affirmation Form" SBE 72, 09/2020.

(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 Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:40 p.m.

ANDY BESHEAR, Governor

JARED DEARING, Executive Director

APPROVED BY AGENCY: November 2, 2020

FILED WITH LRC: November 2, 2020 at 11:18 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this temporary emergency administrative regulation shall be held on January 21, 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 January 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Taylor Brown, 140 Walnut Street, Frankfort, Kentucky 40601, Phone: (502) 782-9499, Email: TaylorA.Brown@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Taylor Brown

(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, 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 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.

STATEMENT OF EMERGENCY 301 KAR 2:221E

This emergency administrative regulation establishes waterfowl seasons and limits. The U.S. Fish and Wildlife Service prescribes final frameworks from which states may select season dates, limits, and other options for migratory bird hunting seasons. The 2020-2021 migratory bird hunting season framework was published in the August 21, 2020 edition of the Federal Register. This administrative regulation is necessary to establish the 2020-2021 waterfowl hunting seasons in accordance with the USFWS

framework. 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
MIKE BERRY, Secretary
BRIAN CLARK, Deputy Commissioner

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (Emergency Amendment)

301 KAR 2:221E. Waterfowl seasons and limits.

EFFECTIVE: October 30, 2020

RELATES TO: KRS 150.010(41), 150.025(1), 150.305(1), 150.330, 150.340(1), (3), 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.360, 150.600(1), 50 C.F.R. 20, 21

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods of taking wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes requirements for the taking of waterfowl within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions. (1) "Dark goose" means a Canada goose, cackling goose, white-fronted goose, or brant.

(2) "Light Goose" means a snow goose or Ross's goose.

(3) "Light Goose Conservation Order" is defined by 50 C.F.R. 21.60.

(4) "Waterfowl" is defined by KRS 150.010(41).

Section 2. (1) Except as established in 301 KAR 2:222, 2:225, or 2:226, a person shall not hunt waterfowl except during the seasons established in this administrative regulation.

(2) Hunting zones, special hunt areas, and reporting areas are established in 301 KAR 2:224.

Section 3. Season Dates. (1) The duck, coot, and merganser season shall:

(a) Begin on Thanksgiving Day for four (4) consecutive days; and

(b) Be from December 7 through January 31.

(2) The dark goose season shall be from Thanksgiving Day through February 15.

(3) The light goose season shall be from Thanksgiving Day through February 15.

(4) The Light Goose Conservation Order season shall be from February 16 through March 31.

(5) A person shall not hunt a light or dark goose in:

(a) The areas of Laurel River Lake as posted by sign; or

(b) Cave Run Lake and the public land inside the boundary formed by Highways 801, 1274, 36, 211, US 60, and Highway 826.

Section 4. Ballard Zone. (1) In the Ballard Zone, as established in 301 KAR 2:224, a person hunting waterfowl shall:

(a) Not hunt or establish a blind within:

1. 100 yards of another blind; or

2. Fifty (50) yards of a property line; and

(b) Not possess more than one (1) uncased or loaded shotgun while in a blind.

(2) The requirements of subsection (1) of this section shall not apply if the Light Goose Conservation Order, as established in Section 3 of this administrative regulation, is the only waterfowl season open, excluding falconry seasons.

Section 5. Bag and Possession Limits. (1) Ducks. The daily

limit shall be six (6), which shall not include more than:

- (a) Four (4) mallards;
- (b) Two (2) hen mallards;
- (c) Three (3) wood ducks;
- (d) Two (2) black ducks;
- (e) Two (2) redheads;
- (f) One (1) pintail;
- (g) One (1)[Three (3)] scaup beginning Thanksgiving Day for four (4) consecutive days and December 7 through December 17;
- (h) Two (2) scaup beginning on December 18 through January 31;
 - (i) One (1) mottled duck; or
 - (i)[(i)] Two (2) canvasbacks.
- (2) Coot. The daily limit shall be fifteen (15).
- (3) Merganser. The daily limit shall be five (5), which shall not include more than two (2) hooded mergansers.
- (4) Dark goose. The daily limit shall be five (5), which shall not include more than:
 - (a) Three (3) Canada geese or cackling geese, in combination;
 - (b) Two (2) white-fronted geese; or
 - (c) One (1) brant.
- (5) Light goose. The daily limit shall be twenty (20), except that there shall not be a limit during the Light Goose Conservation Order season.
- (6) The possession limit shall be triple the daily limit, except that there shall not be a light goose possession limit.

Section 6. Shooting Hours. A person shall not hunt waterfowl except from one-half (1/2) hour before sunrise until:

- (1) Sunset, except as established in 301 KAR 2:222; or
- (2) One-half (1/2) hour after sunset if hunting light geese during the Light Goose Conservation Order season.

Section 7. Falconry Waterfowl Season and Limits. (1) The light goose season shall be from Thanksgiving Day through February 15.

(2) The Light Goose Conservation Order season shall be from February 16 through March 31.

(3) The season for all other waterfowl shall be from Thanksgiving Day through February 15.

(4) The daily limit shall be three (3) waterfowl, except that there shall not be a limit on light geese during the Light Goose Conservation Order season.

(5) The possession limit shall be nine (9) waterfowl, except that there shall not be a possession limit on light geese during the Light Goose Conservation Order season.

Section 8. Permit for the Light Goose Conservation Order season. (1) A person hunting light geese during the Light Goose Conservation Order season shall first obtain a free permit by completing the online Snow Goose Conservation Order Permit process on the department's Web site at fw.ky.gov.

(2) A person hunting light geese during the Light Goose Conservation Order season shall submit a Snow Goose Conservation Order Permit Survey to the department by April 10.

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

(a) "Snow Goose Conservation Order Permit", January 2014; and

(b) "Snow Goose Conservation Order Permit Survey", January 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

BRIAN CLARK, Deputy Commissioner
MIKE BERRY, Secretary

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Beth Frazee

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes waterfowl seasons and bag limits within federal migratory bird hunting frameworks established in 50 CFR Parts 20 and 21 according to the U.S. Fish and Wildlife Service (USFWS).

(b) The necessity of the administrative regulation: The necessity of this administrative regulation is to establish the 2020-2021 waterfowl hunting seasons in accordance with the USFWS.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land.

(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing hunting season and bag limit requirements and providing reasonable hunting opportunity consistent with state, national, and international management requirements.

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

(a) How the amendment will change the existing administrative regulation: This amendment will change the daily bag limit for scaup to 1 scaup daily during the first 15 days of regular duck season, then a bag limit of 2 scaup daily during the remaining 45 days. Additionally, it will allow hunters to possess more than one weapon while hunting while still limiting them to possessing only one loaded or uncased weapon at a time.

(b) The necessity of the amendment to this administrative regulation: Waterfowl seasons and limits are set on an annual basis following the establishment of federal frameworks by the USFWS each year. It is the Department's responsibility to allow quality hunting opportunity within these federal frameworks. The changes in bag limit for these species represent the maximum allowed in federal frameworks.

(c) How does the amendment conform to the authorizing statutes: See (1)(c) above.

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

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: There are approximately 20,000 waterfowl hunters in Kentucky that may 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: The current changes in season dates and/or bag limits will be published in the fall waterfowl hunting guide and on the department's website. Hunters will need to follow all applicable amendments to the hunting bag limits.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with Federal law.

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

(a) Initially: There will not be an additional cost to implement this administrative regulation initially.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation? The source of funding is the State Game and Fish 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. It will not be necessary to increase any fees or funding to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not applied. The same guidelines and limits apply to all waterfowl hunters.

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's Wildlife Division and Law Enforcement Division.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods of taking wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate revenue for the first year.

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Wildlife and Fisheries, Federal Code of Regulations, 50 C.F.R. Part 20, Migratory Bird Hunting; Part 21, Migratory Bird Permits.

2. State compliance standards. The Department of Fish and Wildlife Resources sets migratory birds seasons within the frameworks established by the U.S. Fish and Wildlife Service and published in 50 C.F.R. Parts 20 and 21.

3. Minimum or uniform standards contained in the federal mandate. 50 C.F.R. Part 20 contains season frameworks for the earliest opening and latest closing date, the maximum number of days a species is open to hunting, and daily bag and possession limits. 50 C.F.R. Part 21 defines permits and the necessary requirements to hold and possess migratory game birds before, during and after periods open for hunting.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal

mandate defines the regulatory frameworks that a state may allow. States are permitted to be more restrictive but not more liberal in their respective regulations. State management objectives necessitate more restrictive regulations to protect local, regional and/or state populations of birds important to Kentucky's waterfowl hunters. The Department imposes more restrictive hunting regulations in some regions in effort to meet waterfowl management objectives while still providing quality hunting opportunity.

STATEMENT OF EMERGENCY 501 KAR 6:080E

The Department of Corrections is required to classify prisoners committed to its custody and is authorized to promulgate regulations it deems necessary and proper for the classification of prisoners pursuant to KRS 197.065 and 197.110. Classification of prisoners involves the use of an actuarial instrument to consider risk factors and predict the likelihood of prison rule violations and escape. Given these reasons, this emergency regulation is necessary to ensure the safety of the public, the staff, and the inmates by proper housing, program assignment and custody level. It is important for the Department of Corrections to put into place its updated classification system to better protect staff, inmates, and the public. The validation of the system identified risk factors that were no longer predictive of future behavior and they were updated or replaced. The new classification system is also gender-responsive. This administrative regulation will be replaced by an ordinary administrative regulation that is being filed with the emergency administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

HON. ANDY BESHEAR, Governor

COOKIE CREWS, Commissioner

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Emergency Amendment)

501 KAR 6:080E. Department of Corrections manuals.

EFFECTIVE: November 2, 2020

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 197.065, 197.110, 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 of its divisions. This administrative regulation incorporates by reference the manuals that are referenced in policies and procedures for the Department of Corrections.

Section 1. Incorporation by Reference. (1) "Department of Corrections Manuals," [March 10, 2008] are incorporated by reference. Department of Corrections Manuals includes:

(a) Classification Manual (Amended 11/2/20[4/15/02]); and

(b) Kentucky Department of Corrections Religion Reference Manual (Added 3/10/08).

(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, Monday through Friday, 8 a.m. to 4:30 p.m.

COOKIE CREWS, Commissioner

APPROVED BY AGENCY: August 31, 2020

FILED WITH LRC: November 2, 2020 at 10:47 a.m.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, email Justice.RegContact@ky.gov,

phone (502) 564-3279, fax (502) 564-6686.

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 manuals that are referenced in the department's policies and procedures, the Classification Manual and the Religion Reference manual.

(b) The necessity of this administrative regulation: This administrative regulation establishes the manual for the classification process for inmates within the Department of Corrections (DOC) in compliance with the requirements of KRS 197.065 and 197.110 and gives guidance to DOC staff for religious issues involving inmates.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 197.065 requires the classification of prisoners and KRS 197.110 requires an administrative regulation concerning classification of prisoners. KRS 196.035 authorizes the secretary of the cabinet or the secretary's delegate to promulgate administrative regulations for the proper administration of the functions of the cabinet or any division in the cabinet.

(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 DOC employees and to inmates concerning classification and religious practice.

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

(a) How the amendment will change this existing administrative regulation: The amendment substantially rewrites the Classification Manual for the department.

(b) The necessity of the amendment to this administrative regulation: The manual has been totally rewritten to update the classification of prisoners for the department and the inmates committed to it.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 197.065 requires the classification of prisoners and KRS 197.110 requires an administrative regulation concerning classification of prisoners. The Classification Manual complies with the requirements of these statutes.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff and prisoners information concerning the classification of prisoners within the department.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the Kentucky Department of Corrections, approximately 3,746 employees, approximately 20,076 prisoners, and the private prison company for the Kentucky inmates that it incarcerates.

(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 manual gives guidance to staff and prisoners concerning classification within the department.

(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 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): An updated classification system will better protect staff, inmates, and the public. The validation of the system identified risk factors that were no longer predictive of future behavior and they were updated or replaced. The new classification system is also gender-responsive.

(5) Provide an estimate of how much it will cost the

administrative body to implement this administrative regulation:

(a) Initially: No increase in funding is anticipated. Printing costs for the manual are expected to be approximately \$960.

(b) On a continuing basis: No increase in funding is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Department of Corrections budgeted funds for the biennium.

(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 regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendments to this regulation impact the operation of the Kentucky Department of Corrections and each state correctional institution.

(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, 197.065, 197.110 and to meet American Correctional Association (ACA) standards requirements.

(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 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? The regulation does not generate revenue.

(c) How much will it cost to administer this program for the first year? The amendment to this regulation impacts how the Kentucky Department of Corrections classifies prisoners. The costs are not anticipated to increase with this amendment. Printing costs for the Classification Manual are expected to be approximately \$960.

(d) How much will it cost to administer this program for subsequent years? The costs are not anticipated to increase with this amendment.

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

Revenues (+/-):

Expenditures (+/-):

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

GOVERNOR'S OFFICE
Kentucky Department of Veterans' Affairs
(As Amended at ARRS, November 9, 2020)

17 KAR 1:040. Application requirements for tuition waiver programs related to veterans.

RELATES TO: KRS 164.505, 164.507, 164.512, 164.515

STATUTORY AUTHORITY: KRS 164.479(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.479(2) requires the Kentucky Department of Veterans Affairs to promulgate administrative regulations regarding the eligibility of applicants to participate in tuition waiver programs. This administrative regulation establishes the application requirements for these programs.

Section 1. Definition. "Honorable discharge" means a discharge from service in the Kentucky National Guard or a branch of the U.S. Armed Forces that is:

- (1) Classified as:
 - (a) Honorable; or
 - (b) General under honorable conditions; and
- (2) Not classified as:
 - (a) Other than honorable;
 - (b) Bad conduct;
 - (c) Dishonorable; or
 - (d) Dismissed by court-martial.

Section 2. Application. (1) An applicant[application] for tuition waiver pursuant to KRS 164.505, 164.507, 164.512, or 164.515 shall submit the "Kentucky Department of Veterans Affairs Tuition Waiver Application" to the department.

(2) In addition to the requirements in subsection (1) of this section, an applicant[application] for tuition waiver pursuant to KRS 164.505, 164.507, or 164.515, who is the stepchild of a veteran, shall submit to the department the sworn "Affidavit of Membership in the Veteran's Household" to document that the stepchild is a current member of the living veteran's household or was a member of the veteran's household at the time of the veteran's death.

Section 3. Certification. (1) An applicant[application] for tuition waiver shall be issued a "Certificate of Entitlement to Waiver of Tuition" from the department if the department determines that the applicant qualifies for the tuition waiver.

(2) If the applicant does not qualify for the tuition waiver, the department shall notify the applicant in writing of the reasons for the denial.

Section 4. Extension Request. (1) An applicant for extension of tuition waiver benefits who is under the age of twenty-six (26) and whose tuition waiver certificate expired at age twenty-three (23) shall submit to the department the "Application for Extension of Tuition Waiver Benefit".

(2) An applicant for extension of tuition waiver benefits whose tuition waiver certificate expired after thirty-six (36) months of benefits shall submit to the department the "Application for Extension of Tuition Waiver Benefit".

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

- (a) "Kentucky Department of Veterans Affairs Tuition Waiver Application", KDVA Form TW 1, April 2020;
- (b) "Affidavit of Membership in the Veteran's Household", KDVA Form TW 3, September 2011;
- (c) "Certificate of Entitlement to Waiver of Tuition", KDVA Form TW 2, May 2007, ~~and~~

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

CONTACT PERSON: Donna Scrivener, Field Operations Branch Chief, Kentucky Department of Veterans Affairs, 1111B Louisville Road, Frankfort, Kentucky 40601, phone (502) 564-9203 fax (502) 564-9240, email donna.scrivener@ky.gov.

GOVERNOR'S OFFICE
Kentucky Department of Veterans Affairs
(As Amended at ARRS, November 9, 2020)

17 KAR 3:050. Drug testing procedures at Kentucky Department of Veterans Affairs state Veterans nursing homes.

RELATES TO: 41 U.S.C. 701-707

STATUTORY AUTHORITY: KRS 40.325(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 40.325 authorizes the Kentucky Department of Veterans Affairs to promulgate any administrative regulations necessary to operate veterans' nursing homes in compliance with applicable state and federal statutes and regulations. This administrative regulation establishes procedures that will ensure state veteran nursing homes comply with KRS 18A.043, 41 U.S.C. 701-707, and 82 Federal Register 7920 (Mandatory Guidelines for Federal Workplace Drug Testing Programs) through drug testing of employees caring for veteran residents in veteran nursing homes.

Section 1. Definitions. (1) "Administrator" means the person in charge of a Kentucky Veterans Center, or that person's specific designee.

(2) "Applicant" means an individual seeking employment in a test-designated position at a facility operated by the department.

(3) "Appointing authority" means the Commissioner, Kentucky Department of Veterans Affairs, or the Commissioner's designee.

(4) "Controlled substance" is defined in KRS 218A.010.

(5) "Confirmatory test" means a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle from that of the initial test in order to ensure reliability and accuracy.

(6) "Department" means the Kentucky Department of Veterans Affairs.

(7) "Donor" means the individual from whom a urine specimen is collected.

(8) "Drug" is defined in KRS 218A.010.

(9) "Initial test" or "screening test" means an immunoassay test to eliminate negative urine specimens from further consideration and to identify the presumptively positive specimens that require confirmation or further testing.

(10) "Kentucky Veterans Center" means a state veterans nursing home operated by the Kentucky Department of Veterans Affairs.

(11) "On duty" means being engaged in, or on-call to be engaged in, the performance of work responsibilities for the employer.

(12) "Reasonable suspicion" means the quantity of proof or evidence, based on specific, objective facts and rationally-derived inferences from those facts about the conduct of an individual that would lead a reasonable person, based upon his or her training or life experiences, to suspect that a KDVA employee has been using illegal drugs, controlled substances, prescription or nonprescription medication, or alcohol in violation of this administrative regulation.

- (13) "Refusal to submit to a drug test" means the following:
- (a) Failing to provide an adequate urine sample without an adequate medical explanation;
 - (b) Engaging in conduct that obstructs the testing process; or
 - (c) Refusing to be tested.
- (14) "Sample" means a representative portion of a urine specimen or quality control sample used for testing.
- (15) "Serious work accident" means any on-duty accident or incident resulting in personal injury or death to any person.
- (16) "Specimen" means the portion of urine that is collected from a donor.
- (17) "Support services" means positions that do not provide direct resident or child care and includes employees in the fields of maintenance, dietary services, social services, recreational services, and administrative services.
- (18) "Test-designated employee" means an individual employed at a KDVA Veterans Center who provides care, treatment, or support services to a resident of the facility.

Section 2. Applicability. (1) The Department shall develop and implement test-designated employee drug testing procedures subject to the approval of the appointing authority.

(2) This administrative regulation applies to test-designated position applicants and test-designated position employees.

(3) This administrative regulation applies to drug testing conducted under the authority of KRS 40.325 to carry out the requirements of 18A.043 and 41 U.S.C. 701-707 regarding a drug-free workplace.

(4) Coordination of state and federal administrative regulations. This administrative regulation shall also apply to an employee subject to mandatory federal regulations governing drug testing. However, the employee is subject only to the provision of the federal regulation in any circumstance in which:

(a) It is not possible to comply with both this administrative regulation and the federal regulation; or

(b) Compliance with this administrative regulation is an obstacle to the accomplishment and execution of any requirement of the federal regulation.

Section 3. Prohibited Behavior. The following activities are prohibited while on duty or on KDVA Veteran Center grounds:

(1) The unlawful manufacture, distribution, sale, dispensation, possession, or use of any controlled substance;

(2) Consuming or being under the influence of illegal drugs, drugs illegally obtained, or alcoholic substances;

(3) The use, misuse, or abuse of prescription or non-prescription medication in a quantity sufficient to impair a test-designated employee's ability to perform assigned duties or in any way place patient or fellow employee safety at risk; or

(4) Interfering with any testing procedure or tampering with any test sample.

Section 4. Testing of Test-Designated Employees. (1) An applicant for a test-designated position, as a condition of continued employment, shall be subject to a drug test as provided in this administrative regulation.

(2) The Department shall establish and have operational the test-designated employee drug testing procedures as provided in this administrative regulation within 120 days of the effective date of this administrative regulation.

(3) Tests authorized. The following tests shall be authorized:

(a) Reasonable suspicion testing. A test-designated employee shall submit to a drug test if there is reasonable suspicion that the employee has violated this administrative regulation.

(b) Preappointment testing. An applicant being considered for a test-designated position shall submit to and pass a drug test prior to being appointed to the position.

(c) Postaccident testing. A test-designated employee shall submit to a drug test if there is evidence that the test-designated employee may have caused or contributed to a serious work accident.

(d) Random drug testing: A test-designated employee shall submit to a drug test if the employee is selected as part of the

random drug testing component of the KDVA Drug Testing Program.

1. The appointing authority may direct that up to twenty-five (25) percent of the total number of test-designated employees per each KDVA Veterans Center be selected for drug testing each year.

2. Selection shall be done on a purely random basis according to drug testing procedures adopted within 120 days of the effective date of this regulation.

3. Should a test-designated employee be randomly selected more than once per year, that employee shall not be tested if the immediate previous testing of that person took place within sixty (60) days of the new random selection date.

(e) Follow-up testing. A test-designated employee shall submit to up to three (3) follow-up drug tests per year at the direction of the appointing authority within one (1) year of any of the following occurrences:

1. The employee's voluntary disclosure of drug problems;

2. Entry into, or completion of a drug rehabilitation program;

3. Employee failure in a pre-appointment drug test or refusal to take a pre-appointment drug test; or

4. Any time the employee has been disciplined for violating this regulation.

Section 5. Penalties. (1) Positive test results.

(a) A positive test result shall constitute a violation of this administrative regulation and shall constitute just cause for the appointing authority to discipline the donor, up to and including dismissal, according to applicable laws, regulations, and policies.

(b) The appointing authority shall notify the donor, in writing, of the penalty that may be imposed, including any mandatory penalties, for violating this administrative regulation.

(c) An appointing authority shall immediately remove a test-designated employee from the employee's duties if the employee tests positive for prohibited drugs or otherwise violates this administrative regulation.

(2) Employees selected for a test-designated position. An employee selected for a test-designated position is prohibited from serving in the test-designated position until the employee has submitted to and passed a pre-appointment drug test. If the employee fails or refuses to submit to the drug test, interferes with a test procedure, or tampers with a test sample, the following shall occur:

(a) An applicant not presently employed by the Commonwealth shall not be appointed to the test-designated position;

(b) An applicant who is employed by the Commonwealth, but is being considered for promotion to or otherwise appointment to the test-designated position, shall not be promoted or otherwise appointed to that position; or[and]

(c) An applicant who is employed by the Department, who fails or refuses to submit to the drug test, shall be subject to disciplinary actions for the failure or refusal.

(3) Self-reporting. A test-designated employee who voluntarily discloses to the appointing authority a problem with drug abuse (controlled substances, illegal substances, or alcohol abuse) shall not be disciplined for the disclosure if it occurs prior to submitting to a drug test authorized by Section 4(3)(a) through (d) of this administrative regulation (preappointment, reasonable suspicion, postaccident, or random), but shall be provided an opportunity to take leave to enter a drug rehabilitation program.

(a) If a test-designated employee self-reports drug abuse as stated in this subsection, the appointing authority may remove the employee from the care of residents and of children upon receiving the report from the employee.

(b) A test-designated employee may self-report and avoid disciplinary action only once during his or her employment.

(c) A self-reporting employee remains subject to all drug testing requirements and other requirements outlined in this regulation.

(4) Federal drug testing programs. Nothing in this administrative regulation shall preclude the appointing authority from implementing a drug-testing program required by federal law.

Section 6. Drugs Included. (1) When a drug test is administered, the department shall, at a minimum, test for:

- (a) Marijuana;
- (b) Cocaine;
- (c) Opiates;
- (d) Amphetamines;
- (e) Phencyclidine;
- (f) Morphine;
- (g) MDMA (Ecstasy);
- (h) Methadone;
- (i) Benzodiazepines;
- (j) Barbiturates; and
- (k) Oxycodone.

(2) If conducting reasonable suspicion or post-accident drug testing, the department may test for any drug listed in Schedule 1 or 2 as defined in KRS Chapter 218A.

(3) Before the department tests for other drugs, it shall~~must~~ first obtain approval from the appointing authority.

(4) The department or contract agency requesting approval for the testing of other drugs shall submit to the appointing authority the agency's proposed initial test methods, testing levels, and proposed performance test program.

(5) This administrative regulation shall not limit an agency that is specifically authorized by law to include additional categories of drugs in the drug testing of its own employees.

(6) Initial and confirmatory drug testing conducted pursuant to this administrative regulation shall utilize cutoff levels as specified in the federal "Mandatory Guidelines for Federal Workplace Drug Testing Programs," cited as 82 Federal Register 7920.

(7) Drug test specimens that meet or exceed the cutoff levels as specified in subsection (6) of this section shall be reported as a positive test result and shall constitute a failed drug test.

(8) Drug test specimens that test below the cutoff levels as specified in subsection (6) of this section shall be reported as a negative test result and shall constitute a passed drug test. No further testing of a negative specimen for drugs shall be permitted, and the negative specimen shall be discarded or pooled for use in a laboratory's internal quality control program.

Section 7. Test-Designated Employee Drug Testing Procedures. (1) The test-designated employee drug-testing program developed pursuant to Section 2 of this administrative regulation shall be implemented in accordance with nationally recognized standards as specified in the federal "Mandatory Guidelines for Federal Workplace Drug Testing Programs."

(2) All costs associated with implementing the test-designated employee drug-testing program developed pursuant to Section 2 of this administrative regulation shall be borne by the Office of the Kentucky Veterans Center.

(3) The appointing authority shall maintain records concerning all Veterans Center employee drug testing in a secure manner, so that disclosure of information to unauthorized persons does not occur.

(4) Except as required by law or expressly authorized or required in this section, the appointing authority or anyone with knowledge shall not release employee information that is contained in the records maintained pursuant to this administrative regulation.

(5) An employee subject to testing shall be entitled, upon written request, to obtain copies of any records pertaining to the employee's drug tests. The appointing authority shall promptly provide the records requested by the employee. Access to an employee's records shall not be contingent upon payment for records other than those specifically requested.

(6) The appointing authority may disclose information required to be maintained under this administrative regulation pertaining to an employee to that employee or to the decision-maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of a drug test administered under the requirements of this administrative regulation or from the appointing authority's determination that the employee engaged in prohibited conduct (including a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee).

(7) The appointing authority shall release information regarding an employee's records as directed by the specific, written consent of the employee authorizing release of the information to an identified person. Release of this information shall be in accordance with the terms of the employee's consent.

Section 8. Test-Designated Employee Notification. (1) New employees shall receive information and training concerning this administrative regulation as part of the employee's initial orientation training.

(2) Current employees shall receive information and training concerning this administrative regulation within the first three (3) months following the effective date of this administrative regulation.

(3) Information and training provided pursuant to subsection (2) of this section shall include information regarding the type and nature of services and supports available through the Kentucky Employee Assistance Program, as well as how to access these services and supports.

(4) The Personnel Office within each Veterans Center shall maintain documentation that all employees have received information and training concerning this administrative regulation and shall provide a copy of that documentation to the Administrative Branch Manager, Office of Kentucky Veterans Center, who shall coordinate with the Personnel Administrator of the Office of the Commissioner, Frankfort, Kentucky.

(5) All test-designated employees shall sign a document certifying:

- (a) Receipt of information and training concerning this administrative regulation;
- (b) An understanding of the requirements, limitations, and restrictions on employee conduct contained in this administrative regulation; and
- (c) An understanding of the potential consequences, up to and including dismissal, for violation of this administrative regulation.

Section 9. Employee Duty to Report Convictions. A test-designated employee shall report to the KDVA headquarters through his or her immediate supervisor any criminal drug statute for which he or she was convicted within five (5) working days of the conviction.

Section 10. Prescription and Nonprescription Medications. (1) A test-designated employee taking a prescription or nonprescription medication prior to or during the work shift shall immediately inform his or her supervisor of this fact if:

- (a) The medication's indications and contraindications give the employee reason to believe that the medication may in some way impair work performance; or
- (b) Having once taken the medication, the employee begins to experience an unexpected, typical, or adverse reaction to the medication, which impairs work performance.

(2) An employee who fails to comply with subsection (1) of this section shall be subject to disciplinary action up to and including termination of employment.

(3) Having been notified by an employee pursuant to subsection (1) of this section the employee's supervisor shall closely monitor the employee's work performance throughout the employee's work shift. If the supervisor determines that there is a sufficient perceived impairment of the employee's work performance so as to raise concerns related to employee, resident, or child safety, the supervisor shall notify the administrator concerning the employee's impaired work performance. The administrator shall then conduct an assessment and make a determination regarding the employee's impaired work performance.

(4) If the results of an assessment conducted pursuant to subsection (3) of this section indicate that the employee's work performance is impaired so as to raise concerns related to employee, ~~or~~ resident or child safety, the administrator shall:

- (a) Transfer or temporarily assign the employee away from resident care or child care, and to a job function unrelated to such care, provided that the transfer or temporary reassignment does not place the employee or other employees at risk of injury or

otherwise jeopardize the orderly operation of the Veterans Center; or

(b) Allow the employee to depart the workplace and use available leave time, taking care to assist the employee if the impairment jeopardizes the safety of the employee or other employees.

(5) The employee shall be allowed to return to regular work duties if the results of an assessment conducted pursuant to subsection (3) of this section indicate that the employee's work performance is not impaired.

CONTACT PERSON: Dennis W. Shepherd, General Counsel, Kentucky Department of Veterans Affairs, 1111B Louisville Road, Frankfort, Kentucky 40601, phone (502) 564-9203 fax (502) 564-9240, email dennis.shepherd@ky.gov.

GOVERNOR'S OFFICE
Kentucky Department of Veterans' Affairs
(As Amended at ARRS, November 9, 2020)

17 KAR 4:030. Veterans' Service Organization Burial Honor Guard Program.

RELATES TO: KRS 40.360, 40.362, 40.364, 40.366, 10 U.S.C. 1491

STATUTORY AUTHORITY: KRS 40.360(3), 40.364(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 40.360(3) and 40.364(1) require the Kentucky Department of Veterans Affairs to promulgate administrative regulations to implement and administer the Veterans' Service Organization Burial Honor Guard Program. This administrative regulation establishes the requirements for the Veterans' Service Organization Burial Honor Guard Program.

Section 1. Definitions. (1) "Authorized provider" means a veterans' service organization or any other military or civilian organization that has been trained in rendering military funeral honors according to requirements established in 10 U.S.C. 1491.

(2) "Eligible veteran" means a person who:

(a) 1.a. Has served the state and nation in the armed forces; and

b. Was discharged under other than dishonorable conditions, ~~that is if e.~~ with an honorable or general under honorable conditions service characterization; or

2. At the time of death, was a member of the Selective Reserve or Kentucky National Guard;

(b) Was recently deceased, or cremated remains are being interred, or, if not recently deceased, the burial honors are being rendered for historical reasons; and

(c) Was never convicted of a federal or state capital offense.

(3) "Veterans' service organization" or "VSO" means an organization serving American veterans such as Veterans of Foreign Wars, AMVETS, Disabled American Veterans, Vietnam Veterans of America, and American Legion.

Section 2. Program Responsibilities. (1) The Kentucky Department of Veterans Affairs shall:

(a) Pay a stipend in the amount provided by subsection (2) of this section to the military burial honor guard detail supplied by the authorized provider for the military honors rendered by that detail; and

(b) Maintain a central repository for recording all data required by KDVA Form Veterans' Service Organization Request for Honors Stipend.

(2) The maximum amount of the stipend shall be sixty (60) dollars for each ceremony provided by the VSO. The stipend amount shall be determined as follows:

(a) For playing "Taps" on CD or other recording device, zero dollars;

(b) For having a live bugler ~~[or ceremonial bugler]~~ or ceremonial bugler play the song "Taps", instead of using a CD or other recording device, ten (10) dollars;

(c) For folding and presenting the United States Flag with the song "Taps":

1. Played on CD, twenty-five (25) dollars; or

2. Performed by a live bugler or ceremonial bugler, ~~thirty-five (35) dollars~~; or

(d) For folding and presenting the United States Flag with a rifle team, with a minimum of three (3) firers, with the song "Taps" ~~;~~ [f];

1. Played on CD or other pre-recorded device, fifty (50) dollars; or

2. Performed by a live bugler or ceremonial bugler, sixty (60) dollars.

(3) Authorized providers shall:

(a) Render military burial honors in accordance with the requirements established in 10 U.S.C. 1491;

(b) Require a flag folding ceremony as part of the military burial honors in which the United States flag is folded by the military burial honor guard;

(c) Ensure that the folded flag is presented during the ceremony to the deceased's next of kin or family representative by a member of the eligible veteran's own military service (USMC, USA, USAF, USN, U.S.C.G.); and

(d) After each rendering of military burial honors, provide the Kentucky Department of Veterans Affairs a completed KDVA Form 01/04.

Section 3. To be eligible to receive a stipend, a veterans' service organization shall:

(1) Register as a state vendor and receive a state vendor number. Registration shall be completed online at www.eprocurement.ky.gov;

(2) Verify the veteran's service from the veteran's DD-214 form; and

(3) Not receive an honorarium, donation, or other payment from the funeral home or the veteran's family for the military burial honors provided for the veteran.

Section 4. Incorporation by Reference. (1) KDVA Form, Veterans' Service Organization Request for Honors Stipend, 11/06, is incorporated by reference.

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

CONTACT PERSON: Al Duncan, Cemeteries Branch Manager, Kentucky Department of Veterans Affairs, 1111B Louisville Road, Frankfort, Kentucky 40601, phone (502) 564-9203 fax (502) 564-9240, email alvin.duncan@ky.gov.

GOVERNOR'S OFFICE
Kentucky Department of Veterans Affairs
(As Amended at ARRS, November 9, 2020)

17 KAR 4:040. Indigent Veterans' Burial Program.

RELATES TO: KRS 40.355, 40.357, 38 U.S.C. 101(2)

STATUTORY AUTHORITY: KRS 40.357(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 40.357(1) ~~[directs]~~ the Kentucky Department of Veterans Affairs (KDVA) to promulgate administrative regulations to implement the Indigent Veterans' Burial Program. This administrative regulation establishes rules to operate this program, including oversight by this department and required eligibility criteria applicable before state funds shall be used to defray funeral costs.

Section 1. Eligibility Criteria under KRS 40.355. To be eligible for state funds to defray the costs of funeral expenses for burial in a cemetery in Kentucky, private or public, the ~~deceased~~ ~~following requirements~~ shall ~~[be met]~~:

(1) ~~[The deceased shall]~~ Be a veteran as defined by 38 U.S.C. 101(2) and as verified by discharge records; ~~[and who]~~:

(2) ~~[The deceased shall]~~ Have died in Kentucky. ~~[;]~~

(3) ~~[The deceased shall]~~ Have been indigent at the time of death, meaning:

(a) The deceased's estate did not possess money or other assets to pay for or defray the costs of the deceased's funeral;

(b) There was not a person obligated by law to pay for the funeral expenses of the deceased; and

(c) After diligent efforts, there was not a funeral home, cemetery, veteran service organization, or entity that was able to obtain funds to pay funeral expenses from another private or public source. ~~[;]~~

(4) Priority shall be given to an indigent veteran whose records indicate that the veteran had established Kentucky residency prior to death so that General Funds expended to defray funeral costs shall be used for the citizens of Kentucky first.

(5) The following records may be used to establish state residency:

(a) Military service records, such as a DD Form 214;

(b) The deceased's driver's license; or

(c) Another official record clearly showing the deceased was a Kentucky resident.

Section 2. Reimbursement. The amount of reimbursement authorized ~~shall be~~ is limited as follows:

(1) Except as provided by subsection (2) of this section, the department shall reimburse a cemetery or funeral home its costs for burying an indigent veteran.

(2) The maximum amount reimbursed shall not exceed \$1,000 per indigent veteran.

Section 3. Application Process. (1) To request state funds to defray the funeral costs of an eligible indigent veteran, each funeral home, cemetery, veterans service organization, private citizen, or other entity shall submit an Indigent Veteran Burial Application, designated as KDVA Form 6.

(2) State and federal veterans cemetery priority. Each funeral home, cemetery, veteran service organization, or other entity seeking defrayment of burial costs shall first seek burial of the indigent veteran in a state or federal veterans cemetery before considering burial in another cemetery.

Section 4. Approval Process. (1) The final decision to approve an Indigent Burial Application shall be made by the Commissioner, Kentucky Department of Veterans Affairs.

(2) In the absence of the commissioner, approval authority shall be delegated to the deputy commissioner or, in the absence of both the commissioner and the deputy commissioner, approval authority shall be delegated to the staff assistant in charge of Kentucky Veterans Cemeteries.

(3) The approval authority shall decide whether the deceased meets the eligibility criteria established in this administrative regulation, and, if so, shall approve funds to defray burial costs.

Section 5. Incorporation by Reference. (1) "Indigent Veteran Burial Application", KDVA Form 6", January 2009, is incorporated by reference.

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

CONTACT PERSON: Al Duncan, Cemeteries Branch Manager, Kentucky Department of Veterans Affairs, 1111B Louisville Road, Frankfort, Kentucky 40601, phone (502) 564-9203 fax (502) 564-9240, email alvin.duncan@ky.gov.

GOVERNOR'S OFFICE
Kentucky Department of Veterans Affairs
(As Amended at ARRS, November 9, 2020)

17 KAR 5:020. Kentucky Medal for Freedom.

RELATES TO: KRS 40.353

STATUTORY AUTHORITY: KRS 40.353

NECESSITY, FUNCTION, AND CONFORMITY: KRS 40.353 authorizes the Kentucky Department of Veterans Affairs (KDVA) to award the Kentucky Medal for Freedom to eligible recipients and requires the Kentucky Department of Veterans Affairs (KDVA) to maintain a Kentucky Medal for Freedom honor roll and to promulgate administrative regulations to carry out the provisions of this section. This administrative regulation establishes the requirements for the Kentucky Medal for Freedom program.

Section 1. Definitions. (1) "Applicant" means a person, eighteen (18) years old or older, who is seeking the Medal for Freedom on behalf of the deceased recipient.

(2) "Primary next of kin" means the person or persons with whom the Medal for Freedom shall be presented.

(3) "Recipient" means the deceased military person who was killed in action and is being honored by award of the Medal for Freedom.

Section 2. Application Procedure to Nominate Recipient. (1) Any adult, age eighteen (18) or older, may nominate someone to receive the Kentucky Medal for Freedom.

(2) The nomination process shall be initiated by filling out a Kentucky Medal for Freedom Nomination.

(3) All requests and inquiries concerning the Kentucky Medal for Freedom shall be directed to: Kentucky Department of Veterans Affairs, Kentucky Medal for Freedom Contact Person, 1111B Louisville Rd., Frankfort, Kentucky 40601.

(4) Each Medal for Freedom that is awarded shall be presented to the primary next of kin using this order of priority:

(a) Widow or widower;

(b) Children;

(c) Parents, unless legal custody was granted to another person;

(d) Blood or adoptive relative granted legal custody;

(e) Siblings in the order of age, beginning with the oldest;

(f) Grandparents;

(g) Another relative; or

(h) Close friend or associate.

Section 3. Medal for Freedom Award Panel. (1) A panel of three (3) full-time employees of the Kentucky Department of Veterans Affairs shall review all applications.

(2) The commissioner or the deputy commissioner shall act as chairperson for the award panel.

(3) The other two (2) members of the Panel shall be chosen from among the senior staff of the department, such as the executive director, Office of Kentucky Veterans Centers; Cemetery Branch Manager; Field Operations Branch Manager; cemetery directors; and administrators of the state veterans nursing homes.

(4) The award panel shall decide whether an application shall be approved and, if so, which primary next of kin shall receive the medal.

(5) Multiple medals for the same recipient may be awarded at the discretion of the award panel.

Section 4. Kentucky Medal for Freedom Honor Roll. The Department shall establish a permanent honor roll, listing each recipient's name and branch of service.

(1) The honor roll shall reside on a permanent basis in the Office of the Commissioner, Kentucky Department of Veterans Affairs, Frankfort, Kentucky.

(2) The Honor Roll shall be made available for display at special occasions such as Memorial Day, Veterans Day, or during special ceremonies conducted at state or federal cemeteries

located throughout the Commonwealth.

Section 5. Incorporation by Reference.

(1) Kentucky Medal for Freedom Nomination, KDVA Form 5, January 2009, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Veterans Affairs, 1111B Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material shall also be available on the department's Web site at www.veterans.ky.gov/.

CONTACT PERSON: Al Duncan, Cemeteries Branch Manager, Kentucky Department of Veterans Affairs, 1111B Louisville Road, Frankfort, Kentucky 40601, phone (502) 564-9203, fax (502) 564-9240, email alvin.duncan@ky.gov.

**FINANCE AND ADMINISTRATION CABINET
TEACHERS' RETIREMENT SYSTEM
(As Amended at ARRS, November 9, 2020)**

102 KAR 1:340. 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 immediately prior to retirement].*~~

RELATES TO: KRS 161.220(9)

STATUTORY AUTHORITY: KRS 161.310

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310(1) requires the board of trustees to promulgate administrative regulations for the administration of the funds of the retirement system and for the transaction of business. KRS 161.220(9) establishes the definition of "final average salary" for retirement calculation purposes, which ~~[definition]~~ limits the amount of increases in salaries that can be included as final average salary if those increases are received for any of the three (3) years of employment immediately prior to retirement, unless the member experiences a corresponding change in position or in length of employment. This administrative regulation establishes the method for: **(1) calculating final average salary if there is a change in position or in length of employment for any of the final three (3) years immediately prior to retirement; and (2) measuring the increase in compensation for those final three (3) years.**

Section 1. Definitions.

(1) "Additional duties" means service from a duty or duties outside of the member's primary job duty. This includes compensation paid from a district's supplemental or extra service salary schedule, such as coaching, club sponsoring, and summer school teaching. Additional duties also includes extended school services (ESS). For members employed by employers that are not school districts, additional duties includes assignments, responsibilities, duties, college credit hour classes taught, grant writing, and projects that are outside of, or added to, the member's position.

(2) "Newly Created Position" means a position that did not exist at least a full twelve (12) months prior to the member's assumption of that position.

(3) "Position" means:

(a) The primary job duty performed by a member that, standing alone, earns service credit in TRS, whether that job duty is provided in full-time employment as defined in KRS 161.220(21), part-time employment, or substitute teaching; and

(b) Does not include additional duties as defined in this administrative regulation.

(4) "Previously Existing Position" means a position that existed at least a full twelve (12) months prior to the member's assumption of that position.

Section 2. A member who receives an increase in salary that exceeds the limits permitted for inclusion as final average salary pursuant to KRS 161.220(9)(b), but experiences a corresponding change in length of employment, shall have his or her final average

salary calculated using salaries adjusted in the manner established in this section.

(1) The member shall receive one (1) additional day of salary for retirement calculation purposes at the member's base daily rate of pay for each day added to the member's annual contract in excess of the member's contracted days from the last immediately prior fiscal [work] year.

(2) The base daily rate of pay used as an additional day of salary [credit] for retirement calculation purposes shall not include compensation:

(a) For extra duties worked beyond the member's primary job duty for which the member receives most of his or her compensation;

(b) That exceeds the limitations established by KRS 161.220(9)(b);

(c) That is not "annual compensation" as defined by KRS 161.220(10); or

(d) That is otherwise excluded from use in retirement calculations pursuant to the provisions of KRS 161.220 through 161.716.

(3) The additional days shall be worked days in order to have the additional salary included for retirement calculation purposes.

Section 3. (1) The limitation established by KRS 161.220(9)(b) on the amount of salary included in each of the member's three (3) highest salaries shall not apply if the increase in the member's salary is due to a corresponding change in position. A corresponding change in position only occurs if:

(a) The member assumes a newly created position in which all duties are new and different from the previous position the member held;

(b) The member moves from one (1) position to another separate, previously existing position; or

(c) The member assumes a second, previously existing position in its entirety, and now occupies two (2) different positions.

(d) For purposes of paragraphs (b) and (c) of this subsection [subsections b and c of this section]:

1. For school district employers, the district salary schedule shall be proof of a previously existing position.

2. For other employers, proof of a previously existing position includes official employment records, such as those for classified and non-classified positions established under the state merit system.

3. For all employers, a title change in and of itself, shall not be proof.

Section 4. (1) The limitation established by KRS 161.220(9)(b) on the amount of salary included in each of the member's three (3) highest salaries shall apply in situations including if:

(a) A member performs additional duties during a fiscal year; or

(b) The employer changes the member's duties or responsibilities to include additional duties or responsibilities within the member's existing position; or

(c) The member assumes some, but not all, duties of a second position; or

(d) The member assumes a newly created position in which not all duties are new and different.

Section 5. (1) Members who experience a corresponding change in position shall be entitled to receive salary credit:

(a) If the employer is a school district, based upon the compensation paid to the new position from the previous year's salary schedule, plus a percentage increase equal to the highest percentage increase received by members on any one (1) rank and step of the salary schedule of the school district; or

(b) If the employer is not a school district, the percentage increase received by all other members.

(2) Any contributions paid to TRS on salaries that are disallowed under KRS 161.220(9)(b) shall be refunded to the school district on the member's behalf. 102 KAR 1:340. 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 immediately prior to retirement.

Section 6. The measurement of the limitation under KRS 161.220(9)(b) shall be applied so that the combined increase in salary for each of the last three (3) full years of salary prior to retirement shall not exceed the total permissible, percentage increase received by other members of the employer for the same three (3) year period.

CONTACT PERSON: Robert B. Barnes, Deputy Executive Secretary of Operations and General Counsel, Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8508, fax (502) 573-0199 or email Beau.Barnes@trs.ky.gov.

BOARDS AND COMMISSIONS

Board of Nursing

(As Amended at Interim Joint Committee on Health and Welfare, October 28, 2020)

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

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

STATUTORY AUTHORITY: KRS 314.131

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

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

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

(3) "Mental health counseling" means the provision of guidance, by a qualified health professional as defined at KRS 202A.011(12), to the individual through the utilization of methodologies such as the collection of case history data, valid and reliable screening tools, and psychological techniques such as the personal interview.

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

(2) The APRN shall:

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

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

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

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

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

(6) The APRN shall comply with all federal statutes and

regulations pertaining to the prescribing of controlled substances via telehealth for medication assisted treatment for opioid use disorder.

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

(8) The APRN who is at a remote location from the patient and is communicating with the patient, or health care professional who is treating the patient, using a telecommunications system referred to in section 1395m(m) of Title 42, shall comply will applicable federal and state laws.

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

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

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

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

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

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

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

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

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

a. Addictions Nursing Certification Board;

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

c. National Certification Commission for Addiction Professionals; or

3. A psychiatric-mental health nurse practitioner.

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

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

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

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

a. The patient's history of present illness;

b. The patient's history of drug use;

c. The patient's social and family history;

d. The patient's medical and psychiatric histories;

e. A focused physical examination of the patient; and

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

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

2. Obtain the patient's consent and authorizations in order to

obtain and discuss the patient's prior medical records, which shall require:-]

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

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

3. Obtain and review a KASPER or other prescription drug monitoring program (PDMP) report for that patient for the twelve (12) month period immediately preceding the initial patient encounter and appropriately utilize that information in the evaluation and treatment of the patient;

4. Explain treatment alternatives, the risks, and the benefits of treatment with buprenorphine to the patient; :-]

5. Obtain written informed consent from the patient for treatment; :-]

6. Discuss and document the patient's treatment with the patient's other providers;

7. If the patient is a female of childbearing potential and age, meet the requirements of paragraph (b) of this subsection; and

8. Develop a treatment plan that incorporates an evaluation by a qualified mental health professional as defined at KRS 202A.011(12), with expertise in addiction, and compliance with the recommendations of the evaluator with ninety (90) days initiating treatment, and objective behavior modification including mental health counseling or a twelve (12) step program for the duration of the treatment.

(b) 1. Prior to initiating treatment, the APRN shall require that the patient [first] submit to a pregnancy test and, if pregnant, the APRN shall provide counseling as to the risk of neonatal abstinence syndrome which shall be consistent with current SAMHSA guidance [patient education material on neonatal abstinence syndrome from the American Congress of Obstetricians and Gynecologists, American Academy of Pediatrics, American Society of Addiction Medicine (ASAM) and the Kentucky Department for Public Health, and offer means to prevent pregnancy].

2. Prior to prescribing [An APRN who prescribes] [shall not prescribe] buprenorphine to a patient who is pregnant or breastfeeding, an APRN shall [first] obtain and document [unless the APRN first obtains and documents] consultation with an obstetrician or a maternal-fetal medicine specialist who holds a DATA 2000 waiver that determines [for an opinion as to whether] the potential benefit of Buprenorphine use outweighs the potential risk of use.[-]

3. The consultation shall be obtained from a physician or an APRN as established in subsection (3)(a) of this section.[-]

(c) Except as provided by paragraph (d) of this subsection, while initiating treatment with buprenorphine, the APRN shall comply with the following requirements:

1. The APRN shall recommend to the patient an in-office observed induction protocol.

a. Except as provided in clause b. of this subparagraph, the APRN shall conduct or supervise the in-office observed induction protocol.

b. If an in-office observed induction does not occur, the APRN shall appropriately document the circumstances in the patient record and shall implement a SAMHSA-recognized or ASAM recognized home-based induction protocol.

2. The APRN shall document the presence or absence of any opioid withdrawal symptoms before the first dose is given by using a standardized instrument, such as the clinic opioid withdrawal scale (COWS) or other similarly recognized instrument.

3. The APRN shall initiate treatment with a dose not to exceed the dose equivalency of four (4) milligrams buprenorphine generic tablet, which:

a. May be followed by subsequent doses if withdrawal persists [and is not improving]; and

b. Shall not exceed the dose equivalency of sixteen (16) milligrams buprenorphine generic tablet on the first day of treatment.

(d) If the patient is transferred from another treatment provider

and has previously experienced withdrawal without a relapse and has not had a lapse in treatment, the APRN shall:

1. Document the previous history of withdrawal;

2. Educate the patient about the potential for precipitated withdrawal; and]

3. Continue maintenance treatment of the patient on the same or less dosage as established by the previous treatment provider and then as provided in paragraph (e) of this subsection; and

4. Schedule visits at the same frequency as the previous treatment provider would have been required to or more frequently if deemed necessary by the APRN.

(e) After initial induction of buprenorphine, the APRN shall prescribe to the patient an amount of buprenorphine that:

1. Is necessary to minimize craving and opiate withdrawal;

2. Does not produce opiate sedation;

3. Is able only to supply the patient until the next visit, which shall be scheduled as required by this section; and

4. Does not exceed the FDA-approved dosage limit [of twenty-four (24) milligrams per day].

(f) The patient's visits shall be scheduled as follows:

1. The APRN shall ensure that [see] the patient is seen no later than ten (10) days after induction and then at intervals of no more than ten (10) days for the first month after induction and at intervals of no more than fourteen (14) days for the second month after induction [at least weekly for the first two (2) months].

2. If the patient demonstrates objective signs of positive treatment progress after the first two (2) months, the [APRN shall see the] patient shall be seen at least once monthly thereafter for up to two (2) years.

3. If after two (2) years after initiation of treatment, the patient has demonstrated objective signs of positive treatment progress, including documented evidence that the patient has been compliant with the treatment plan and all treatment directives, then the APRN may require that the patient be seen [only by the APRN] at least once every three (3) months. The APRN shall:

a. Evaluate the patient to determine whether the patient's dosage should be continued or modified; and

b. Appropriately document that evaluation and clinical judgment in the patient's chart.

4. The APRN shall see the patient in shorter intervals if the patient demonstrates any noncompliance with the treatment plan.

5. If extenuating circumstances arise that require a patient to unexpectedly reschedule a visit, the APRN shall make best efforts to see the patient as soon as possible and document the circumstances in the patient chart.

(g) The APRN shall review compliance with the recommendations of the treatment plan, including review of KASPER or other PDMP reports and drug screens to help guide the treatment plan at each visit.

1. The APRN shall:

a. Incorporate those findings into the treatment plan to support the continuation or modification of treatment; and

b. Accurately document the same in the patient record.

2. Appropriate evaluation may include adjustment of dose strength or frequency of visits, increased screening, a consultation with or referral to a specialist, or an alternative treatment, including consideration of weaning.

3. The APRN shall obtain a minimum of eight (8) drug screens from the patient within each twelve (12) month period of treatment in order to help guide the treatment plan.

a. At least two (2) of the drug screens shall be random and coupled with a pill count. At least one (1) of those two (2) drug screens shall be confirmed by gas chromatography/mass spectrometry (GC/MS) or liquid chromatography/mass spectrometry (LC/MS).

b. Each drug screen shall [at a minimum,] screen for buprenorphine, methadone, [oxycodone, other] opioids, THC, benzodiazepines, amphetamines, alcohol, gabapentin, and cocaine.

c. If a drug screen indicates the presence of any of the drugs screened, the APRN shall:

(i) Incorporate those findings into appropriate clinical evaluation to support the continuation or modification of treatment;

and

(ii) Document in the patient record.[-]

d. ~~Appropriate evaluation may include adjustment of dose strength or frequency of visits, increased screening, a consultation with or referral to a specialist, or an alternative treatment.[-]~~

(h) Every twelve (12) months following initiation of treatment, if a patient's prescribed daily therapeutic dosage exceeds the dose equivalency of sixteen (16) milligrams buprenorphine generic tablet per day, then the APRN who is not certified in addiction therapy shall:

1. Refer the patient for an evaluation by a physician or an APRN as established in subsection (3)(a) of this section for an opinion as to whether continued treatment and dosage is appropriate; and

2. Document the results of that evaluation in the patient chart.

(i) For patients who have demonstrated objective signs of positive treatment progress for at least two (2) years from the date of initiation of treatment, including documented evidence that the patient has been compliant with the treatment plan and all treatment directives, the APRN shall evaluate for and document every twelve (12) months the medical necessity for continued treatment at the established dose.

(j) The APRN shall document a plan for dealing with any lost or stolen medication, which[-]

4.[-] shall not provide for the automatic replacement of medication prior to the specified interval date. Replacement medication shall not be authorized by the APRN in the absence of an individual assessment, specific consideration of all prior instances of lost or stolen medication, and documented consultation with the patient[-]; and

2. If the APRN determines that it is necessary to minimize improper or illegal diversion of medications under the circumstances, the APRN shall require the patient to first report the lost or stolen medications to police or other law enforcement agencies and require the patient to provide evidence to the APRN of having so reported[-].

(k) After initial induction, the APRN shall:

1. Implement a treatment plan that requires objective behavioral modification by the patient. The behavioral modification shall include the patient's participation in a behavioral modification program that shall include mental health counseling or a twelve (12) step facilitation; and

2. Require the patient to obtain an evaluation by a qualified mental health professional as defined in KRS 202A.011(12), with expertise in addiction, within ninety (90) days of initiating treatment, and to comply with the evaluator's recommendations.[-]

Section 4. Continuing Education. An APRN who has obtained a waiver and registration as issued by the DEA [Drug Enforcement Administration (DEA)] to prescribe buprenorphine for the treatment of opioid use disorder shall complete a total of four (4) hours annually in addiction disorders, including[the] one and one-half (1.5) contact hours in pharmacology as defined[of continuing education required annually] by 201 KAR 20:215, Section 5(1)(c)(b) in addiction disorders[-].

Section 5. Use of Transmucosal Buprenorphine for Treatment of Opioid Use Disorder in an Emergency Situation or Inpatient Setting. (1) In an emergency, including in a hospital emergency department or similar outpatient urgent care setting, or in an inpatient setting, an APRN may offer and initiate buprenorphine treatment to patients who present with opioid use disorder, without meeting the requirements established in Sections 2 and 3 of this administrative regulation and to the extent permitted by federal law, if:

(a) The APRN has determined that the use of buprenorphine will not result in a harmful interaction with other medications or substances in the patient's system, including benzodiazepines, sedative hypnotics, carisoprodol, or tramadol;

(b) The APRN obtains and documents written informed consent from the patient specific to risks and benefits of buprenorphine treatment; and

(c) The APRN provides the patient with written instructions and contact information for appropriate follow up care, including bridge-provider services, residential treatment providers, and outpatient treatment providers.

(2) The APRN shall initiate buprenorphine treatment under an observed induction protocol with an initial dose not to exceed the dose equivalency of four (4) milligrams buprenorphine generic tablet, which may be followed by subsequent doses, up to a maximum of twenty-four (24) milligrams buprenorphine generic tablet, if withdrawal persists and is not improving.

Section 6. Telehealth. Nothing in this administrative regulation shall be construed to prohibit prescribing buprenorphine via telehealth. The prescribing APRN shall follow the standards set by 201 KAR 20:520.

CONTACT PERSON: Morgan Ransdell, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3339, fax (502) 429-1248, email Morgan.Ransdell@ky.gov.

DEPARTMENT OF AGRICULTURE
Office of the Consumer and Environmental Protection
(As Amended at ARRS, November 9, 2020)

302 KAR 50:021. Procedures and policies [and procedures] for hemp growers.

RELATES TO: KRS 61.870 – 61.844, Chapter 217B, 260.850-260.869, 7 U.S.C. 1639p, 5940, 21 U.S.C. Chapter 9

STATUTORY AUTHORITY: KRS 260.862[-, 7 U.S.C. 1639p]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.862(1)(a) authorizes the department to promulgate administrative regulations for a Hemp Licensing Program in the Commonwealth of Kentucky. KRS 260.862(1)(a)(e) authorizes the department to license persons who wish to participate in a Hemp Licensing Program by cultivating, handling, processing, or marketing hemp. This administrative regulation establishes procedures and requirements for licensing persons who wish to grow or cultivate hemp as a participant in the department's Hemp Licensing Program.

Section 1. Definitions.

(1) "Agent" means a person who is employed by or working under contract for a license holder, and who does not have any ownership interest in the hemp.

(2) "Applicant" means a person[-, or a person who is authorized to sign for a business entity,] who submits an application on his or her behalf or on behalf of a business entity to participate in the Hemp Licensing Program.

(3) "Broker" means to engage or participate in the marketing of hemp by acting as an intermediary or negotiator between prospective buyers and sellers.

(4) "Cannabis"[-;

(a) Means the plant that, depending on its THC concentration level, is defined as either "hemp" or "marijuana." Cannabis is a genus of flowering plants in the family Cannabaceae of which Cannabis sativa is a species, and Cannabis indica and Cannabis ruderalis or subspecies thereof. Cannabis includes all parts of the plant, whether growing or not, including its seeds, resin, compounds, salts, derivatives, and extracts; and

(b) Does not mean[include] a "publicly marketable hemp product," as defined by subsection (37) of this section[administrative regulation].

(5) "CBD" means cannabidiol.

(6) "Commissioner" is defined by KRS 260.850(1).

(7) "Commonwealth" means the Commonwealth of Kentucky.

(8) "Conviction"[-;

(a) Means an adjudication or finding of guilt, including[-; it also includes] a plea of guilty or nolo contendere; and

(b) Does not mean[- if] a conviction [is] subsequently overturned on appeal, pardoned, or expunged[-, then it is not

considered a conviction].

(9) "Corrective action plan" ***means[is]*** a document ***established[set forth]*** by the department for a licensee to correct a negligent violation of, or non-compliance with, KRS 260.850-260.869 or ***a requirement of 302 KAR Chapter 50[an administrative regulation promulgated under the authority of those statutes]***.

(10) "Culpable mental state greater than negligence" means to act intentionally, knowingly, willfully, or with criminal negligence.

(11) "Decarboxylation" means the completion of the chemical reaction that converts the delta-9 THC-acid into delta-9-THC, the intoxicating component of cannabis. The decarboxylated value is also calculated using a conversion formula that sums delta-9-THC and eighty-seven and seven-tenths (87.7) percent of delta-9 THC-acid.

(12) "delta-9-THC" means delta-9-tetrahydrocannabinol concentration (the primary intoxicating component of cannabis). For compliance purposes, all delta-9-THC concentrations ***are[must-be]*** measured post- decarboxylation (result commonly referred to as total THC).

(13) "Department" or "KDA" is defined by KRS 260.850(3).

(14) "Geospatial location" means a location designated through a GPS or other global system of navigational satellites used to determine the precise ground position of a place or object.

(15) "GPS" means Global Positioning System.

(16) "Handling" is defined by KRS 260.850(4).

(17) "Hemp" or "industrial hemp" is defined by KRS 260.850(5).

(18) "Hemp Grower License" means a document issued by the department authorizing the person to grow, handle, market, and store hemp in the Commonwealth under the terms established in the document, KRS 260.850 through 260.863, and this administrative regulation.

(19) "Hemp Processor/Handler License" means a document issued by the department authorizing the person to process, handle, market, and store hemp in the Commonwealth under the terms established in the document, KRS 260.850 through 260.869, and 302 KAR 50:031.

(20) "Hemp product" or "industrial hemp product" is defined by KRS 260.850(6).

(21) "Key participant":

(a) Means a person who has a direct or indirect financial interest in the entity producing hemp, such as an owner or a partner in a partnership and includes: -"Key participants" include, without limitation, an entity's chief executive officer, chief operating officer, and chief financial officer; and (b) Does not mean: -"Key participants" do not include farm managers, field managers, or shift managers.

(22) "Law enforcement agency" means the Kentucky State Police, DEA, or other federal, state, or local law enforcement agency or drug suppression unit.

(23) "Licensed grower" means a person authorized in the Commonwealth by the department to grow, handle, store, and market hemp under the terms established in a hemp grower license, KRS 260.850 through 260.859[;] and this administrative regulation.

(24) "Licensed processor" means a person in the Commonwealth authorized by the department to process, handle, store, and market hemp under the terms established in a hemp processor/handler license KRS 260.850 through 260.859, and 302 KAR 50:031.

(25) "Location ID" means the unique identifier established by the applicant for each unique set of GPS coordinates where hemp will be grown, handled, stored, or processed, which can include a field name or building name.

(26) "Lot" means a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of hemp throughout.

(27) "Negligence" means failure to exercise the level of care that a reasonably prudent person would exercise in complying with an administrative regulation, rule, or instruction.

(28) "Nonviable seed" means a seed that has been crushed, dehulled, or otherwise rendered to have a zero percent

germination rate.

(29) "Person" means an individual or business entity.

(30) "Pesticide" means any substance or mixture of substances intended to:

(a) Prevent, destroy, control, repel, attract, or mitigate any pest;

(b) Be used as a plant regulator, defoliant, or desiccant; or

(c) Be used as a spray adjuvant, once ***[they have been]*** mixed with a U.S. Environmental Protection Agency registered product.

(31) "Post-harvest sample" means a sample taken from the harvested hemp from a particular lot's harvest in accordance with the procedures as established in 302 KAR 50:056. The entire lot's harvest is in the same form (for example, intact-plant, flowers, ground materials[; etc.]), homogenous, and not mixed with non-hemp materials or hemp from another lot.

(32) "Pre-harvest sample" means a composite, representative portion from living plants in a hemp lot collected in accordance with the procedures as established in 302 KAR 50:056.

(33) "Prohibited variety" means a variety or strain of cannabis excluded from the Kentucky Hemp Licensing Program.

(34) "Processing" is defined by KRS 260.850(9).

(35) "Program" means the department's Hemp Licensing Program.

(36) "Propagule" means a plant or plant part that can be utilized to grow a new plant.

(37) "Publicly marketable hemp product" means a hemp product that meets one (1) or more of the following descriptions:

(a) The product:

1. Does not include any living hemp plants, viable seeds, leaf materials, floral materials, or delta-9-THC content above zero and three-tenths (0.3) percent; and

2. Does include, without limitation, the following products: bare stalks, bast fiber, hurd fiber, nonviable roots, nonviable seeds, seed oils, and plant extracts (excluding products containing delta-9-THC above zero and three-tenths (0.3) percent);

(b) The product is CBD that was derived from "hemp", as defined by ***subsection (17) of this section[this administrative regulation]***; or

(c) The product is CBD that is approved as a prescription medication by the United States Food and Drug Administration.

(38) "Secondary pre-harvest sample" means a pre-harvest sample that is taken:

(a) In a given plot after the first pre-harvest sample is taken; and

(b) On a different day than the initial pre-harvest sample.

(39) "Signing authority" means an officer or agent of the organization with written authorization to commit the legal entity to a binding agreement.

(40) "Strain" means a group of hemp with presumed common ancestry and identified physiological distinctions. A strain does not meet the uniformity, stability, or distinction requirements to be considered a variety.

(41) "University" means an accredited institution of higher learning located in the Commonwealth.

(42) "Variety" means a subdivision of a species that is:

(a) Uniform, in ***[the sense]*** that the variations in essential and distinctive characteristics are describable;

(b) Stable, in ***[the sense]*** that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity if reproduced or reconstituted as required by the different categories of varieties; and

(c) Distinct, in ***[the sense]*** that the variety can be differentiated by one (1) or more identifiable morphological, physiological, other characteristics from all other publicly known varieties, or other characteristics from all other publicly known varieties.

(43) "Variety of concern" means any variety of hemp that tests above 0.3000 percent delta9-THC in one (1) or more pre-harvest samples. A hemp variety designated as a "variety of concern" could be subject to restrictions and additional testing.

(44) "Volunteer cannabis plant" means any cannabis plant that:

(a) Grows of its own accord from seeds or roots in the years following an intentionally planted cannabis crop; and

(b) Is not intentionally planted.

Section 2. Grower License Application.

(1) Any person who wishes to grow hemp at any location in the Commonwealth shall submit to the department a completed Hemp Grower License Application, or annual license renewal, incorporated by reference as part of the Hemp Grower Licensing Application Packet in 302 KAR 50:080.

(2) Existing grower license holders shall annually complete the department's requirements for license renewal by March 15.

(3) A person who does not hold a license from the department shall not:

(a) Grow, cultivate, handle, or process; or

(b) Broker, store, or market hemp or other cannabis that does not fall within the definition of a "publicly marketable hemp product" at any location within the Commonwealth.

(4) A person under the age of eighteen (18) years of age shall not apply for or hold a grower license.

(5) Completed Hemp Grower License Applications shall~~[must]~~ be received by the department by the end of the application period established in the application.

(6) Completed Hemp Grower License Application forms shall be delivered to KDA Hemp Licensing Program, 111 Corporate Drive, Frankfort, Kentucky 40601.

(7) The department shall deny any Hemp Grower License Application that fails to meet the deadline established in the application.

(8) Each applicant shall pay a grower application fee in the amount established in 302 KAR 50:060.

(9) Application fees shall not cover or include the cost of the criminal background checks required by KRS 260.862(2)(d) and Section 3 of this administrative regulation. Applicants and license holders shall pay criminal background check fees [in the manner directed by the department].

(10) The department shall deny any Hemp Grower License Application that is received without the application fee established in 302 KAR 50:060.

(11) With the Hemp Grower License Application form, the applicant shall submit, at a minimum:

(a) If the applicant is an individual, the individual's full name, residential address, telephone number, and email address (if available);

(b) If the applicant is a business entity ~~[, the following information]~~:

1. [(i)] the entity's name, Employer Identification Number, business location address in Kentucky, and principal business location;

2. [(ii)] for the individual who will have signing authority on the entity's behalf, his or her full name, title within the entity, business address, telephone number, and email address (if available); and

3. [(iii)] for each key participant, his or her full name, title within the entity, business address, telephone number, and email address (if available);

(c) The proposed acreage or greenhouse or indoor square footage to be planted;

(d) Street address ~~[,]~~ location ID ~~[,]~~ and GPS coordinates for each field, greenhouse, building, or site where hemp will be grown, handled, or stored;

(e) Maps depicting each site where hemp will be grown, handled, or stored, with appropriate designations for field boundaries, and Location IDs corresponding to the GPS coordinates; and

(f) Agreement to all terms and conditions established in the hemp grower application.

(12) Any Grower License Application that is missing required information shall be subject to denial.

(13) The terms and conditions established in the hemp grower application shall include for a licensed grower, at a minimum ~~[, the following requirements for licensed growers]~~:

(a) Acknowledgement~~[Acknowledge]~~ that licensed growers shall comply with all requirements established~~[administrative regulations]~~ in 302 KAR 50;

(b) Agreement~~[Agree]~~ to pay a licensing fee in the amount

established in 302 KAR 50:060;

(c) Acknowledgement~~[Acknowledge]~~ that licensed growers shall comply with instructions from representatives of the department and law enforcement agencies;

(d) A consent to entry onto, and inspection of, all premises where hemp or other cannabis plants or materials are located ~~[,]~~ or licensed to be located, by representatives of the department and law enforcement agencies, with or without cause and~~[,]~~ with or without advance notice;

(e) A consent to forfeiture and destruction, without compensation, of:

1. Material found to have a measured delta-9-THC content in excess of zero and three-tenths (0.3) percent on a dry weight basis;

2. Plants located in an area that is not licensed by the department; and

3. Plants not accounted for in required reporting to the department;

(f) Agreement~~[Agree]~~ to apply for licensing of all growing, handling, and storage locations, including GPS coordinates, and receive department approval for those locations prior to having hemp on those premises;

(g) Acknowledgement~~[Acknowledge]~~ that licensed growers shall submit:

1. A Site Modification Request, incorporated by reference in 302 KAR 50:080;

2. [(Form,)] The appropriate fees based on the requested changes; and

3. [, and obtain] Prior written approval from a representative of the department before implementing any change to the licensed sites stated in the hemp grower license ~~[,]~~ and an acknowledgement that growing site changes shall be subject to a site modification surcharge in the amount established in 302 KAR 50:060 for a new set of GPS coordinates;

(h) Acknowledgement~~[Acknowledge]~~ that anyone applying pesticides to hemp shall hold a pesticide license and apply pesticides in accordance with Section 16~~[18]~~ of this administrative regulation;

(i) Acknowledgement~~[Acknowledge]~~ that the risk of financial or other loss shall be borne solely by the licensed grower;

(j) Acknowledgement~~[Acknowledge]~~ that licensed growers shall comply with restrictions established by the department limiting the movement of hemp plants and plant parts;

(k) Agreement~~[Agree]~~ that any time hemp is in transit, a copy of the hemp grower license shall be available for inspection upon the request of a representative of the department or a law enforcement agency;

(l) Agreement~~[Agree]~~ that, upon request from a representative of the department or a law enforcement agency, a licensed grower shall immediately produce a copy of his or her hemp grower license for inspection;

(m) Agreement~~[Agree]~~ to submit Field Planting Reports and~~[,]~~ Harvest Reports incorporated by reference in 302 KAR 50:080, and other reports required by the department to which the grower has agreed, on or before the deadlines established in this administrative regulation;

(n) Agreement~~[Agree]~~ to scout and monitor unlicensed fields for volunteer cannabis plants and to destroy those volunteer cannabis plants for three (3) years past the last date of planting reported to the department;

(o) Agreement~~[Agree]~~ not to employ or rent land to cultivate hemp from any person whose employment~~[who]~~ was terminated or denied admission to the Hemp Licensing Program for one (1) or both of the following reasons]:

1. Failure to obtain an acceptable criminal background check; or]

2. Failure to comply with an order from a representative of the department; or

3. Both; and

(p) Agreement~~[Agree]~~ to abide by all land use restrictions for licensed growers established~~[set forth]~~ in Section 5 of this administrative regulation~~[these regulations]~~.

Section 3. Criminal Background Check.

(1) Each licensed grower, ~~for~~ applicant, or key participant within an entity that is a grower or applicant, shall undergo and pay for an annual criminal background check as required by KRS 260.862(2)(d).

(2) A licensed grower, ~~for~~ applicant, or key participant within an entity that is a grower or applicant, shall, following completion of the background check, ensure delivery of the report to the department with the licensing application or renewal.

(3) The department shall not accept a report from a criminal background check that occurred more than sixty (60) days prior to the date of the application.

(4) Failure to submit the background check with the application shall be grounds for license denial.

(5) Substitution of a signing authority shall require approval from the department and the submission of a current criminal background check on the substitute signing authority.

Section 4. Application for Hemp Grower License; Criteria and Procedure for Evaluation.

(1) The department shall apply the criteria established in paragraphs (a) through (l) of this subsection in evaluating an application for the grower license.

(a) In accordance with Section 2 of this administrative regulation, the applicant shall submit a complete application with all required components and attachments.

(b) For an applicant who has been a Hemp Licensing Program participant previously, the applicant shall comply with the responsibility to submit:

1. Field Planting Report and Greenhouse/Indoor Planting Report, incorporated by reference in 302 KAR 50:080;

2. Harvest Report, incorporated by reference in 302 KAR 50:080;

3. Any other reports deemed necessary by the department to which the applicant has agreed.

(c) The applicant's growing sites, handling sites, and storage sites shall be located in the Commonwealth of Kentucky.

(d) The applicant's primary residence shall be located in Commonwealth of Kentucky or within ~~fifty (50)~~ **[50]** miles of at least one **[1]** of the applicant's Kentucky growing sites.

(e) The applicant shall affirm that the applicant resides at the primary residence listed on the Grower License Application form from May 1 to September 30.

(f) The criminal background check report indicates that, within ten (10) years from the date when the background check was issued, the applicant shall not have:

1. A felony conviction; or

2. A drug-related misdemeanor conviction or violation. ~~;~~ **[;]**

(g) ~~A~~ **[No]** person who has been convicted of any felony or any drug-related misdemeanor or violation in the previous ten (10) years from the date of application shall ~~not~~ be eligible to obtain a license. ~~;~~ **[; provided, however, that]**

1. A person who was growing hemp lawfully with a license, registration, or authorization under a pilot program authorized by Section 7606 of the Agricultural Act of 2014 (7 U.S.C. 5940) shall be eligible to obtain a license. ~~;~~ **[; and]**

2. A person who was lawfully growing hemp ~~[under the 2014 Farm Bill]~~ before December 20, 2018 and was convicted prior to December 20, 2018 shall be eligible to obtain a license.

(h) ~~[In the past,]~~ Including those times when the applicant was not a participant in the department's Hemp Licensing Program, the applicant shall have demonstrated a willingness to comply with the department's rules, instructions from department staff, and instructions from representatives of Kentucky State Police and other law enforcement agencies.

(i) The applicant shall not be delinquent in making any required reports or payments to the department in connection with the applicant's participation in the Hemp Licensing Program or other programs within the department.

(j) The applicant shall not have any unpaid fees, fines, or civil penalties owed to the department.

(k) The applicant shall not have and shall not make any false

statements or representations to a representative of the department or a law enforcement agency. Any person who materially falsifies any information contained in an application shall be ineligible to obtain a license from the department.

(l) The applicant's proposed growing sites shall comply with the land use restrictions ~~established~~ **[set forth]** in Section 5 of this administrative regulation. Denial of all proposed growing sites shall constitute grounds for denial of the application.

(2) The department shall conditionally approve an application for a hemp grower license if the application ~~complies with~~ **[satisfies the criteria established in]** this administrative regulation.

(3) The department shall notify applicants by letter or email whether the application has been denied or conditionally approved. A person shall not be a participant in the Hemp Licensing Program until the applicant has received a hemp grower license from the department.

(4) Applicants shall pay licensing fees prior to receiving a hemp grower license.

(5) Applicants shall complete a mandatory orientation session at a location designated by the department. The department shall not allow any person to complete orientation in lieu of the applicant.

Section 5. Land Use Restrictions for Licensed Growers.

(1) A licensed grower shall not plant or grow any cannabis that is not hemp.

(2) A licensed grower shall not plant or grow hemp or other cannabis on any site not licensed.

(3) A licensed grower shall not grow hemp or other cannabis in or within 100 feet of any structure that is used for residential purposes without first obtaining written permission from the department.

(4) A licensed grower shall not handle or store leaf or floral material from hemp or other cannabis in or adjacent to any structure that is used for residential purposes.

(5) Hemp shall be physically segregated from other crops unless prior approval is obtained in writing from the department.

(6) A licensed grower shall plant a minimum of 1,000 plants in each growing site unless prior approval is received in writing from the department.

(7) A licensed grower shall plant a minimum of one-quarter (0.25) acre in each outdoor growing site unless prior approval is received in writing from the department.

(8) Except as ~~established~~ **[provided]** in subsection ~~[5]~~ **[9]** of this ~~section~~ **[administrative regulation]**, a licensed grower shall not grow hemp or other cannabis in any outdoor field that is located within 1,000 feet of a school or a public recreational area.

(9) Notwithstanding the prohibition in subsection ~~[5]~~ **[8]** of this ~~section~~ **[administrative regulation]**, hemp may be grown within 1,000 feet of a school, ~~if~~ **[provided that]**.

(a) The applicant has been designated by a school district superintendent. ~~;~~ **[;]**

(b) The applicant is a vocational agriculture instructor, agriculture teacher, or other qualified person who is employed by a school district; and

(c) The school district's board has voted to approve the applicant's proposal.

(10) An applicant or licensed grower shall not include any property on his or her application or Site Modification Request, incorporated by reference in 302 KAR 50:080, to grow, cultivate, or store hemp that is not owned or completely controlled by the applicant or licensed grower, as evidenced by a written lease or other document that shall be provided to the department upon request.

(11) A licensed grower shall not grow, handle, or store hemp or other cannabis on property owned by, leased from, or previously submitted in a license application by any person who is ineligible or ~~whose employment was~~ terminated, or denied admission to the Hemp Licensing Program for ~~[one (1) or both of the following reasons]~~.

(a) Failure to obtain an acceptable criminal background check; ~~or~~ **[or]**

(b) Failure to comply with an order from a representative of the department; or

(c) Both.

(12) Licensed growers with plots of one (1) acre or less ~~shall~~are required to post signage at the plot location. The signage shall include the ~~following information~~:

(a) ~~Agency title~~The statement, "Kentucky Department of Agriculture Hemp Licensing Program";

(b) License holder's name;

(c) License holder's license number; and

(d) ~~The~~Department's telephone number.

Section 6. Administrative Appeal from Denial of Application.

(1) An applicant wishing to appeal the department's denial or partial denial of an application shall submit a written request for a hearing postmarked within fifteen (15) days of the date of the department's notification letter or email.

(2) An appealing applicant shall mail a hearing request letter to KDA Hemp Licensing Program, 111 Corporate Drive, Frankfort, Kentucky 40601.

(3) Appeals shall be heard by a three (3) person administrative panel whose members shall be designated by the commissioner. The panel shall include at least one (1) person who is a department employee and at least one (1) person who is not a department employee and not involved or invested in any hemp projects in Kentucky.

(4) The members of the administrative panel shall not be required to accept or consider information or documents that were not compliant with application deadlines established in this administrative regulation.

(5) The members of the administrative panel shall apply the same standards established in this administrative regulation to determine if the department's action in denying the application was arbitrary or capricious.

(6) Hearings on appeals shall be open to the public and occur at a time and date and location designated by the commissioner.

(7) An appealing applicant shall appear in person at the assigned hearing time. Failure to appear on time shall constitute grounds for dismissal of the appeal.

(8) The three (3) members of the administrative panel shall rule on the appeal by a majority vote.

Section 7. Hemp Grower Licenses.

(1) An applicant shall not be a participant in the Hemp Licensing Program until the department has issued a hemp grower license following the applicant's completion of the department's mandatory orientation session and payment of licensing fees.

(2) The grower license application shall establish the terms and conditions, pursuant to KRS Chapter 260 and 302 KAR Chapter 50, governing participation in the Hemp Licensing Program.

(3) Failure to agree or comply with terms and conditions established in the hemp grower license application or this administrative regulation shall constitute grounds for appropriate departmental action, up to and including termination of the grower license and expulsion from the Hemp Licensing Program.

(4) A Hemp Grower License ~~shall~~will remain in force as long as the license holder meets annual renewal requirements by March 15 of each year.

(5) A Hemp Grower License may be terminated by the license holder or the department upon thirty (30) days prior written notice.

(6) A Hemp Grower License authorizes the license holder to grow hemp; handle his or her own hemp, including ~~such activities as~~ drying, grinding, separating foliage from stem, storing, and packaging; and market his or her own hemp. A Hemp Grower License ~~shall~~does not authorize the grower to process hemp, handle other person's hemp, or market another person's hemp.

(7) The department shall issue grower's license numbers in accordance with this format: "21_0001" through "21_9999."

Section 8. Licensing Fees; Secondary Pre-Harvest Sample Fees.

(1) Licensing fee.

(a) The conditionally approved applicant or license holder shall pay a licensing fee prior to the issuance of a new license or an annual license renewal.

(b) The licensing fee for each growing address shall be in the amount established in 302 KAR 50:060.

(2) Secondary Pre-Harvest Sample fee.

(a) If a licensed grower fails to complete the harvest within fifteen (15) days after the department collects the pre-harvest sample, the licensed grower shall submit a new Harvest Report and may be required to pay a secondary pre-harvest sample fee.

(b) If four (4) or more samples are taken from the same address, then the licensed grower shall be required to pay a secondary pre-harvest sample fee for each sample taken from that address in excess of three (3) samples.

(c) The secondary Pre-Harvest sample fee shall be paid to the department within fifteen (15) days of invoice by the department. The secondary pre-harvest sample fee shall be as established in 302 KAR 50:060.

(d) The licensed grower shall pay the secondary pre-harvest sample fee within fifteen (15) days of invoice.

(e) The licensed grower shall not harvest the remaining crop until the department collects a secondary pre-harvest sample if one is required as established in paragraph (a) or (b) of this subsection.

Section 9. Site Modifications and Site Modification Surcharge Fees.

(1) A licensed grower who elects to grow hemp in a new growing location or store or handle at a site other than the sites specified by the GPS coordinates listed on the hemp grower license, shall submit a Site Modification Request, incorporated by reference in 302 KAR 50:080, and obtain written approval from a representative of the department, prior to planting or storing at the proposed location.

(2) Any request for a new growing location shall comply with the land use restrictions established in Section 5 of this administrative regulation.

(4) The department shall charge a site modification surcharge fee for each new Location ID, (specifically, a GPS coordinate for each new individual field or greenhouse or indoor structure) where hemp will be grown. The amount of the site modification surcharge fee shall be as established in 302 KAR 50:060.

(5) The department shall not approve a site modification request for a new growing location until the department has received the site modification surcharge fee.

(6) The department shall not assess a site modification surcharge for changes to storage only locations.

Section 10. Seed and Propagule Acquisition.

(1) A license holder intending to acquire seeds or propagules first shall determine whether or not the variety or strain intended for purchase is listed on the department's current Summary of Varieties List, which is in the application packet incorporated by reference in 302 KAR 50:080.

(a) If the variety or strain is listed on the Summary of Varieties List, no pre-approval from the department ~~shall be~~is required.

(b) If the variety or strain is not listed on the Summary of Varieties List, the license holder shall submit a New Hemp Variety or Strain Request Form along with a certificate of analysis for that strain or variety, showing that mature plants grown from that seed variety or strain have a floral material delta-9-THC (~~must be~~measured post-decarboxylation, also referred to as total THC) content of not more than 0.300% on a dry weight basis from an independent third-party laboratory.

(2) A license holder who develops a new hemp variety or strain shall submit the New Hemp Variety or Strain Request form, prior to its use in crop production.

(3) The department shall not approve a New Hemp Variety or Strain Request unless the licensed grower affirms in writing that the requested seed acquisition plan does not infringe on the intellectual property rights of any person and that the seed or propagule source is a current legal hemp operation.

(4) The department shall not approve a New Hemp Variety or

Strain Request if a representative of the department has information supporting a belief that the variety or strain will produce plants with delta-9-THC (~~[must—be]~~ measured post-decarboxylation, also referred to as total THC) content of more than 0.300% on a dry weight basis.

(5) A license holder shall not buy, sell, possess, or transfer seeds or propagules of any variety or strain designated as a Prohibited Variety on the department's published Summary of Varieties list.

(6) Upon request from a representative of the department, a licensed grower or licensed processor shall provide a distribution list showing locations where and to whom the hemp seeds or propagules were distributed.

(7) Any person engaging in the distribution of hemp seeds shall adhere to the applicable Kentucky seed laws (KRS 250.010 ~~through~~~~[to KRS]~~ 250.990) and administrative regulations (12 KAR 1:116 ~~through~~~~[to 12 KAR]~~ 1:175).

(8) Any person who intends to move transplants or other living plants to a location outside Kentucky ~~shall~~~~[must]~~ obtain a Class A Nursery License from the Kentucky Office of the State Entomologist.

Section 11. Seeds of Wild, Landrace, or Unknown Origin.

(1) A person shall not acquire or grow hemp or cannabis seeds or propagules of wild, landrace, or unknown origin without first obtaining written approval from a representative of the department.

(2) The department shall not permit hemp or cannabis seeds or propagules of wild, landrace, or unknown origin to be planted, cultivated, or replicated by any person without the department first arranging for replication and THC testing of mature plants grown from the seeds or propagules by the department or its designee.

(3) Any licensed grower or licensed processor found to have saved seed, propagules, or cuttings, or cultivated seeds, propagules, or cuttings from a cannabis plant of wild, landrace, or unknown origin, without advance written permission from the department shall be subject to suspension or revocation of his or her license and forfeiture without compensation of his or her materials.

Section 12. Planting Reports to USDA's Farm Service Agency (FSA).

(1) Prior to the submission of Planting Reports, a licensed grower shall report hemp crop acreage to USDA's Farm Service Agency (FSA) including, at a minimum, the~~[following information]~~:

(a) Street address and, to the extent practicable, geospatial location for each lot or greenhouse where hemp will be produced;~~[.]~~

(b) Acreage (or square footage, in the case of a greenhouse or other indoor growing facility) dedicated to the growing of each variety or strain of hemp; and

(c) ~~[The]~~ Grower's name and license number.

(2) The department shall collect and retain, for a period of at least three (3) calendar years, location ID information for every site or location where the department has approved hemp to be grown.

Section 13. Planting Reports for Outdoor Plantings.

(1) A licensed grower shall submit to the department a complete and current Field Planting Report, within fifteen (15) days after every planting, including complete replanting, of seeds or propagules in an outdoor location.

(2) Each Field Planting Report shall identify the:

(a) Correct variety or strain name;

(b) Address and Field location ID as listed on the hemp grower's license;

(c) Lot number provided by the USDA FSA Office; and

(d) Amount planted and the primary intended use of the harvest.

(3) A licensed grower who does not plant hemp in an approved outdoor site listed in the hemp grower license shall submit a Field Planting Report, on or before July 31, stating that hemp has not been planted and will not be planted at that site.

Section 14. Planting Reports for Indoor Plantings.

(1) A licensed grower shall submit to the department a complete and current Greenhouse/Indoor Planting Report within fifteen (15) days after establishing plants at an indoor location.

(2) Each Greenhouse/Indoor Planting Report shall identify the:

(a) Correct variety or strain name;

(b) Address and Greenhouse or indoor growing location ID as listed in the hemp grower license;

(c) Lot number provided by the USDA FSA Office; and

(d) Amount planted and the primary intended use of the harvest or of the hemp plants.

(3) In addition to the initial Greenhouse/Indoor Planting Report, a licensed grower with an approved greenhouse or indoor growing site shall submit quarterly reports, which are in the application packet incorporated by reference in 302 KAR 50:080, for each location ID to the department. Greenhouse/Indoor Planting Reports shall be due no later than March 31, June 30, September 30, and December 31.

Section 15. Site Access for Representatives of the Department and Law Enforcement Agencies.

(1) The department shall provide information about approved growing, handling, and storage site locations to representatives of the Kentucky State Police, USDA, DEA, and other law enforcement agencies whose representatives request licensed site information, including GPS coordinates.

(2) Licensed growers shall have no reasonable expectation of privacy with respect to premises where hemp or other cannabis seeds, plants, or materials are located, and any premises listed in the hemp grower license.

(3) A licensed grower, whether present or not, shall permit a representative of the department or a law enforcement agency to enter into premises where hemp or other cannabis seeds, plants, or materials are located, and any premises listed in the hemp grower's license, with or without cause and with or without advanced notice.

Section 16. Pesticide Use.

(1) A licensed grower who uses a pesticide on hemp shall first be certified to apply pesticides by the department pursuant to KRS Chapter 217B.

(2) A licensed grower who is certified to apply pesticides by the department pursuant to KRS Chapter 217B shall not use, or be eligible to use, a Category 10 license to apply pesticides to hemp in violation of the product label.

(3) A licensed grower shall not use any pesticide in violation of the product label.

(4) A licensed grower who uses a pesticide on a site where hemp will be planted shall comply with the longest of any planting restriction interval on the product label prior to planting the hemp.

(5) The department may perform pesticide testing on a random basis or if representatives of the department have reason to believe that a pesticide may have been applied to hemp in violation of the product label.

(6) Hemp seeds, plants, and materials bearing pesticide residue in violation of the label shall be subject to forfeiture or destruction without compensation.~~[.]~~

~~(7) The department shall publish a guidance document titled "Kentucky Hemp and Pesticides" on its Web site to provide guidance about pesticide use on hemp.]~~

Section 17. Responsibility of a Licensed Grower Regarding Harvest of Hemp Plots.

(1) The department may inspect a Licensed Grower's premise~~[.]~~ or collect samples of any hemp or other cannabis material, at any time.

(2) The grower shall not harvest hemp plants from a lot without the department first collecting samples from that lot.

(3) At least fifteen (15) days prior to the anticipated harvest of hemp plants, the grower shall submit to the department a completed and current ~~["]~~Harvest Report~~["]~~ form identifying the intended date of harvest (or date of destruction, in the case of a failed crop).

(4) The department's receipt of a Harvest Report shall trigger a sample collection by a representative of the department in accordance with the procedures established[set forth] in 302 KAR 50:056[50:055].

(5) During the department's scheduled sample collection, the grower or an authorized representative of the grower shall be present at the growing site.

(6) Representatives of the department shall be provided with complete and unrestricted access to all hemp and other cannabis plants, whether growing or harvested, and all land, buildings, and other structures used for the cultivation, handling, and storage of all hemp and other cannabis plants, and all locations listed in the hemp grower's license.

(7) The licensed grower shall harvest the crop not more than fifteen (15) days following the date of sample collection by the department, unless specifically authorized in writing by the department.

(8) If the licensed grower fails to complete a harvest within fifteen (15) days following the date of sample collection, then the licensed grower shall submit a new Harvest Report and may be required to pay a secondary pre-harvest sample fee in the amount established in 302 KAR 50:060.

(9) Floral materials shall not be moved outside the Commonwealth, nor moved beyond a processor, nor commingled, nor extracted, until the department releases the material in writing.

(10) Harvested materials from one (1) lot shall not be commingled with other harvested lots without prior written permission from the department.

(11) A licensed grower who fails to submit a Harvest Report shall be subject to revocation of his or her license.

(12) A licensed grower who proceeds to harvest a crop without first obtaining authorization from the department shall be subject to revocation of his or her license.

Section 18. Collection of Samples; THC Testing; Post-Testing Actions.

(1) The department shall collect hemp samples for THC testing in accordance with the procedures established[set forth] in 302 KAR 50:056[50:055].

(2) The designated laboratory shall receive, prepare, and release hemp samples in accordance with the procedures established[set forth] in 302 KAR 50:056[50:055].

(3) The designated laboratory shall measure delta-9-THC concentration of each hemp sample (postdecarboxylation, often referred to as total THC) in accordance with the procedures established[set forth] in 302 KAR 50:056.

(4) The department shall undertake post-testing actions in accordance with the procedures established in 302 KAR 50:056.

(5) All samples shall become the property of the department and shall not be returnable. Compensation shall not be owed by the department.

(6) If the designated laboratory is not able to provide THC testing services required by the department, the department may identify and contract with a third party lab to perform THC testing services.

(7) The department may collect samples of hemp or other cannabis material at any time.

Section 19. Restrictions on Sale or Transfer.

(1) A licensed grower shall not sell or transfer, or allow[permit] the sale or transfer, of living plants, viable seeds, leaf material, or floral material to any person in the Commonwealth who does not hold a license issued by the department.

(2) A licensed grower shall not sell or transfer, or allow[permit] the sale or transfer, of living plants, viable seeds, leaf material, or floral material to any person outside the Commonwealth who is not authorized to possess such materials under the laws of that jurisdiction.

(3) The department shall allow[permit] the sale or transfer of stripped stalks, fiber, dried roots, nonviable seeds, seed oils, floral and plant extracts (excluding THC in excess of zero and three-tenths (0.3) percent) and other marketable hemp products to members of the general public, both within and outside the

Commonwealth, if the marketable hemp product's decarboxylated delta-9-THC level is not more than zero and three-tenths (0.3) percent.

(4) A licensed grower selling or transferring, or permitting the sale or transfer, of floral or plant extracts (including CBD), shall retain testing data or results for at least three (3) years demonstrating that the extract's delta-9-THC level is not more than zero and three-tenths (0.3) percent.

(5) A licensed grower shall not sell or transfer floral extracts containing a decarboxylated delta-9 THC concentration in excess of zero and three-tenths (0.3) percent.

(6) Licensed growers shall comply with the federal Food Drug and Cosmetic Act, 21 U.S.C. Chapter 9, and all other applicable local, state, and federal laws and regulations relating to product development, product manufacturing, consumer safety, and public health.

(7) A licensed grower shall not knowingly permit hemp to be sold to or used by any person in the Commonwealth, who is involved in the manufacture of an item named on the prohibited products list established in 302 KAR 50:070.

(8) A person shall not ship, for transport, or allow to be shipped or transported, any hemp product with a decarboxylated delta-9-THC concentration in excess of zero and three-tenths (0.3) percent.

Section 20. Other Prohibited Activities.

(1) A licensed grower shall not allow another person, other than an agent of the licensed grower, to grow, handle, or store hemp under their license in lieu of obtaining a separate hemp grower license.

(2) A license holder shall not make, manufacture, or distribute in the Commonwealth any of the prohibited products listed in 302 KAR 50:070.

Section 21. Information Submitted to the Department Subject to Open Records Act, KRS 61.870 Through 61.844.

(1) Except as established in subsection (2) of this section, information and documents generated or obtained by the department shall be subject to disclosure pursuant to the Kentucky Open Records Act, KRS 61.870 through 61.884.

(2) Personally identifiable information including physical address, mailing address, driver's license numbers, background checks, GPS coordinates, telephone numbers, and email addresses shall be shielded from disclosure to the maximum extent permitted by law provided, however, except that the department shall provide this information to law enforcement agencies and other regulatory agencies upon request.

Section 22. Violations Requiring Temporary License Suspension Procedures.

(1) The department shall notify a licensed grower in writing that the Hemp Grower License has been temporarily suspended if a representative of the department receives information supporting an allegation that a licensed grower has:

(a) Plead guilty to, or is convicted of, any felony or drug-related misdemeanor or violation, in accordance with KRS 260.864 and

(b) Engaged in conduct violating a provision of KRS 260.850 through 260.869, 302 KAR Chapter 50, or the hemp grower license with a culpable mental state greater than negligence;

(c) Made a false statement to a representative of the department or a law enforcement agency with a culpable mental state greater than negligence;

(d) Been found to be growing or in possession of cannabis with a measured delta-9-THC concentration above zero and three-tenths (0.3)[0.3] percent with a culpable mental state greater than negligence; or

(e) Failed to comply with an order from a representative of the department or a law enforcement agency with a culpable mental state greater than negligence.

(2) The department shall schedule a license revocation hearing for a date as soon as practicable after the notification of temporary suspension, but in any event not later than sixty (60) days following the notification of temporary suspension.

(3) A person whose Hemp Grower License has been temporarily suspended shall not harvest, process, or remove cannabis from the premises where hemp or other cannabis was located at the time ~~[when]~~ the department issued its notice of temporary suspension, except as authorized in writing by a representative of the department.

(4) As soon as possible after the notification of temporary suspension, a representative of the department shall inspect the licensed grower's premises and perform an inventory of all cannabis, hemp, and hemp products that are in the licensed grower's possession.

Section 23. License Revocation Hearings and Consequences of Revocation.

(1) The department shall notify a person whose Hemp Grower License has been temporarily suspended of the date ~~[when]~~ the person's license revocation hearing will occur at a time and place designated by the commissioner.

(2) License revocation hearings shall be adjudicated by a three (3) person administrative panel in accordance with KRS 260.864.

(3) License revocation hearings shall be open to the public.

(4) A person whose Hemp Grower License has been temporarily suspended shall appear in person at the assigned hearing time. ~~Barring unexpected events, such as inclement weather,~~ failure to appear on time shall constitute a waiver of the person's right to present information and arguments against revoking the hemp grower license.

(5) A representative of the department shall be allowed an opportunity to present information and arguments for revoking the hemp grower license.

(6) A person whose hemp grower license has been temporarily suspended shall be allowed an opportunity to present information and arguments against revoking the hemp grower license.

(7) The three (3) members of the administrative panel shall rule on the question of revocation by a majority vote.

(8) If a majority of the three (3) members of the administrative panel find that it is more likely than not that a licensed grower has committed any of the acts listed in ~~subsection (1) of this section~~~~Section 23(1) of this administrative regulation~~, then the hemp grower license shall be revoked effective immediately.

(9) If a majority of the members of the administrative panel vote against revoking the hemp grower license, the department shall lift the temporary suspension within twenty-four (24) hours of the vote.

(10) If a majority of the members of the administrative panel vote in favor of revoking the hemp grower license, then a representative of the department or a law enforcement agency shall have authority to destroy or confiscate all cannabis, hemp, and hemp products that are in the person's possession.

(11) A person whose property is destroyed or confiscated by a representative of the department or a law enforcement agency shall be owed no compensation or indemnity for the value of the cannabis, hemp, or hemp products that were destroyed or confiscated.

(12) The department shall immediately report any person whose license has been revoked on the grounds that he or she violated a provision of KRS 260.850 through 260.869, 302 KAR Chapter 50, or violated the grower license with a culpable mental state greater than negligence, to an appropriate law enforcement agency.

(13) A person whose grower license has been revoked shall not be eligible for licensure for a period of five (5) years from the date of the most recent violation.

Section 24. Monetary Civil Penalties.

(1) If a representative of the department receives information supporting a finding that it is more likely than not that a person has engaged in conduct violating a provision of KRS 260.850 through 260.869, 302 KAR Chapter 50, or the hemp grower license application, then the department shall assess a monetary civil penalty not to exceed \$2,500 per violation.

(2) A person wishing to appeal the department's assessment of a monetary civil penalty shall submit a written request for a hearing

within fifteen (15) days of the notification date.

(3) A person wishing to appeal the department's assessment of a monetary civil penalty shall mail a hearing request letter to KDA Hemp Licensing Program, 111 Corporate Drive, Frankfort, Kentucky 40601.

(4) Appeals shall be heard by a three (3) person administrative panel whose members shall be designated by the commissioner. The administrative panel shall include at least one (1) person who is a department employee and at least one (1) person who is not a department employee and not involved or invested in any Kentucky hemp projects.

(5) The members of the administrative panel shall determine if the department's action in assessing the monetary civil penalty was arbitrary or capricious.

(6) Hearings on the appeal shall be open to the public and occur at a time, date, and location designated by the commissioner.

(7) An appealing person shall appear in person at the assigned hearing time. ~~Barring unexpected events, such as inclement weather,~~ failure to appear on time shall constitute grounds for dismissal of the appeal.

(8) An appealing person shall be allowed an opportunity to present arguments for reversing the assessed monetary civil penalty.

(9) A representative of the department shall be allowed an opportunity to present arguments for affirming the assessed monetary civil penalty.

(10) The three (3) members of the administrative panel shall rule on the appeal by a majority vote.

(11) A majority of the three (3) members of the administrative panel may affirm the assessed monetary civil penalty, affirm and increase or decrease the assessed monetary civil penalty~~[,]~~ or reverse the assessed monetary civil penalty.

(12) The department shall have the authority to pursue unpaid monetary civil penalties by filing a civil cause of action in the Franklin Circuit Court.

Section 25. Licensing for Representatives of Universities and Colleges.

(1) Except as ~~established~~~~provided~~ in this section~~of this administrative regulation~~, faculty members, administrators, and staff members of an institution of higher education shall be subject to ~~all requirements~~~~each of the sections~~ of this administrative regulation.

(2) ~~An~~~~No~~ institution of higher education shall ~~not allow~~~~permit or authorize~~ its faculty, administration~~[,]~~ or staff members, or any sponsored student~~[,]~~ to be in possession of, or conduct academic research involving, living hemp plants, leaf material, floral material, or viable seeds of hemp without first completing and submitting a Hemp License Application.

(3) An authorized faculty, administrator, or staff member of an eligible institution of higher education who wishes to be in possession of, or conduct an academic research project involving~~[,]~~ living hemp plants, leaf material, floral material, or viable seeds of hemp shall complete and submit a Hemp License Application.

(4) If a university applicant's research plan includes growing hemp, then a Hemp Grower License ~~shall~~~~will~~ be issued by the department.

(5) If a university applicant's research plan does not include growing hemp, then a Hemp Processor/Handler License ~~shall~~~~will~~ be issued by the department. An authorized faculty, administrator, or staff member of an eligible institution of higher education who wishes to be in possession of, or conduct an academic research project involving, leaf material or floral material from hemp shall complete and submit a Processor/Handler License Application.

(6) The department shall accept applications from an authorized faculty, administrator, or staff member of an eligible institution of higher education at any time of the year.

(7) The department shall not collect fees for licenses issued to a faculty member, administrator, or staff member of an institution of higher education if the project is for research only ~~and~~~~(that is,~~ not intended for commerce~~)~~.

(8) Sampling and testing of hemp grown under the authority of this section shall be conducted by the department if the harvested material is intended for commerce.

(9) ~~An[As used in this section, "]~~ eligible institution of higher education shall ~~means an institution of higher education that is~~:

(a) ~~Be[Is]~~ accredited by, and in good standing with, a regional or national higher education accreditation agency;

(b) ~~Confer[Confers]~~ academic degrees at the associate, bachelor, master, or doctoral level; and

(c) ~~Have[Has]~~ a principal campus or office that is located at a site within the Commonwealth of Kentucky.

Section 26. Record Keeping Requirements; Three (3) Year Retention Period.

(1) For at least three (3) years, license holders shall maintain and make available for inspection by the department during reasonable business hours, records regarding:

(a) ~~[Records regarding]~~Acquisition of hemp plants;

(b) ~~[Records regarding]~~Production and handling of hemp plants;

(c) ~~[Records regarding]~~Storage of hemp plants; and

(d) ~~[Records regarding]~~Disposal of all cannabis plants that do not meet the definition ~~for[of]~~ "hemp".

(2) The department shall have access to any premises where hemp plants could[may] be held during reasonable business hours.

(3) All reports and records required to be submitted to the department as part of participation in the program in this part, which include confidential data or business information, such as[including but not limited to] information constituting a trade secret or disclosing a trade position, financial condition, or business operations of the particular licensee or their customers, shall be received by, and at all times kept in the custody and control of, one (1) or more employees of the department or their representatives. Confidential data or business information may be shared with applicable federal, state, or local law enforcement agencies or their designees in compliance with applicable law.

Section 27. Corrective Action Plans for Negligent Violations.

(1) If the department determines that a grower committed a negligent violation of any provision within KRS Chapter 260.850 to 260.869[,] or 302 KAR Chapter 50[any administrative regulation promulgated under the authority of those statutes], then the department shall devise and implement a corrective action plan for the grower.

(2) Corrective action plans shall[will] remain in place for at least two (2) years and include, at a minimum[, the following]:

(a) The date by which the grower shall correct each negligent violation;

(b) Steps to correct each negligent violation; and

(c) A description of the procedures to demonstrate compliance.

(3) A grower who commits a negligent violation shall not, as a result of that violation, be subject to any criminal enforcement action by any government.

(4) If a subsequent violation occurs while a corrective action plan is in place, a new corrective action plan shall[must] be submitted with a heightened level of quality control, staff training, and quantifiable action measures.

(5) A grower who commits three negligent violations within a five (5) year period shall have his or her license revoked and be ineligible to obtain a license for a period of five (5) years beginning on the date of the third violation. A violation that occurred prior to January 1, 2021 shall not count toward the three (3) violations referred to in this subsection.

Section 28. Mandatory Reports to Law Enforcement Agencies for Violations with a Culpable Mental State Greater than Negligence.

(1) In addition to being subject to the license suspension, license revocation, and monetary civil penalty procedures established in this administrative regulation[302 KAR 50:021] and 302 KAR 50:031, a person who is found by the department to

have violated any statute or administrative regulation governing that person's participation in the hemp program with a culpable mental state greater than negligence shall be subject to the reporting requirements established in this section.

(2) The department shall immediately report a person who is found by the department to have violated any statute or administrative regulation governing that person's participation in the hemp program with a culpable mental state greater than negligence to the ~~following law enforcement agencies~~:

(a) ~~[The]~~Attorney General of the United States;

(b) ~~[The]~~Commissioner of the Kentucky State Police; and

(c) ~~[The]~~Commander of the Kentucky State Police's Cannabis Suppression Branch.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, fax (502) 564-2133, email clint.quarles@ky.gov.

DEPARTMENT OF AGRICULTURE
Office of the Consumer and Environmental Protection
(As Amended at ARRS, November 9, 2020)

302 KAR 50:031. Procedures and policies [and procedures]for hemp processors and handlers.

RELATES TO: KRS 61.870 - 61.844, 260.850-260.869, 7 U.S.C. 1739p, 21 U.S.C. Chapter 9

STATUTORY AUTHORITY: KRS 260.862; 7 U.S.C. 1739p

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.862(1)~~[(a)]~~ authorizes the department to promulgate administrative regulations for a Hemp Licensing Program in the Commonwealth of Kentucky. KRS 260.862(1)~~[(a)]~~~~[(c)]~~ authorizes the department to license persons who wish to participate in a Hemp Licensing Program by cultivating, handling, processing, or marketing hemp. This administrative regulation establishes procedures and requirements for licensing persons who wish to process or handle hemp as a participant in the department's Hemp Licensing Program.

Section 1. Definitions.

(1) "Agent" means a person who is employed by or working under contract for a license holder, and who does not have any ownership interest in the hemp.

(2) "Applicant" means a person~~[- or a person who is authorized to sign for a business entity,]~~ who submits an application on his or her behalf or on behalf of a business entity to participate in the Hemp Licensing Program.

(3) "Brokering" means engaging or participating in the marketing of industrial hemp by acting as an intermediary or negotiator between prospective buyers and sellers

(4) "Cannabis":

(a) Means the plant that, depending on its THC concentration level, is defined as either "hemp" or "marijuana." Cannabis is a genus of flowering plants in the family Cannabaceae of which Cannabis sativa is a species, and Cannabis indica and Cannabis ruderalis or subspecies thereof. Cannabis includes all parts of the plant, whether growing or not, including its seeds, resin, compounds, salts, derivatives, and extracts; and

(b) Does not mean[include] a "publicly marketable hemp product," as defined by subsection (31) of this section[this administrative regulation].

(5) "CBD" means cannabidiol.

(6) "Commissioner" is defined by KRS 260.850(1).

(7) "Commonwealth" means the Commonwealth of Kentucky.

(8) "Conviction":

(a) Means an adjudication or finding of guilt, including; it also includes a plea of guilty or nolo contendere; and

(b) Does not mean~~[- If]~~ a conviction [is]subsequently overturned on appeal, pardoned, or expunged~~[- then it is not considered a conviction]~~.

(9) "Corrective action plan" means[is] a document

~~established[set forth]~~ by the department for a licensee to correct a negligent violation of, or non-compliance with, KRS 260.850 - 260.869 or a requirement of 302 KAR Chapter 50~~(an administrative regulation promulgated under the authority of those statutes).~~

(10) "Culpable mental state greater than negligence" means to act intentionally, knowingly, willfully, or with criminal negligence.

(11) "Decarboxylation" means the completion of the chemical reaction that converts delta-9 THC-acid into delta-9-THC, the intoxicating component of cannabis. The decarboxylated value is also calculated using a conversion formula that sums delta-9-THC and eighty-seven and seven tenths (87.7) percent of delta-9 THC-acid.

(12) "delta-9-THC" means delta-9-tetrahydrocannabinol concentration (the primary intoxicating component of cannabis). For compliance purposes, all delta-9-THC concentrations are[must be] measured post- decarboxylation (result commonly referred to as total THC).

(13) "Department" or "KDA" is defined by KRS 260.850(3).

(14) "GPS" means Global Positioning System.

(15) "Handling" is defined by KRS 260.850(4).

(16) "Hemp" or "industrial hemp" is defined by KRS 260.850(5).

(16) "Hemp Grower License" means a document issued by the department authorizing the person to grow, handle, and store hemp in the Commonwealth under the terms established in the document, KRS 260.850 through 260.863, and this administrative regulation.

(17) "Hemp Processor/Handler License" means a document issued by the department authorizing the person to process, handle, market, and store hemp in the Commonwealth under the terms established in the document, KRS 260.850 through 260.869, and this administrative regulation[302 KAR 50:030].

(18) "Hemp product" or "industrial hemp product" is defined by KRS 260.850(6).

(19) "Key participant":

(a) Means a person who has a direct or indirect financial interest in the entity producing hemp, such as an owner or a partner in a partnership and includes,—"Key participants" include, without limitation,] an entity's chief executive officer, chief operating officer, and chief financial officer; and

(b) Does not mean:—"Key participants" do not include] facility managers or shift managers.

(20) "Law enforcement agency" means the Kentucky State Police, DEA, or other federal, state, or local law enforcement agency, or drug suppression unit.

(21) "Licensed grower" means a person authorized in the commonwealth by the department to grow, handle, store, and market hemp under the terms established in a hemp grower license, KRS 260.850 through 260.859, and 302 KAR 50:021.

(22) "Licensed processor" means a person in the Commonwealth authorized by the department to process, handle, store, and market hemp under the terms established in a hemp processor/handler license, KRS 260.850 through 260.859, and this administrative regulation.

(23) "Location ID" means the unique identifier established by the applicant for each unique set of GPS coordinates where hemp will be grown, handled, stored, or processed, which can include a field name or building name.

(24) "Negligence" means failure to exercise the level of care that a reasonably prudent person would exercise in complying with an administrative regulation, rule, or instruction.

(25) "Nonviable seed" means a seed that has been crushed, dehulled, or otherwise rendered to have a zero percent germination rate.

(26) "Person" means an individual or business entity.

(27) "Prohibited variety" means a variety or strain of cannabis excluded from the Kentucky Hemp Licensing Program.

(28) "Processing" is defined by KRS 260.850(9).

(29) "Program" means the department's Hemp Licensing Program.

(30) "Propagule" means a plant or plant part that can be utilized to grow a new plant.

(31) "Publicly marketable hemp product" means a hemp product that meets one (1) or more of the following descriptions:

(a) The product:

1.[(4)] Does not include any living hemp plants, viable seeds, leaf materials, floral materials, or delta-9-THC content above zero and three-tenths (0.3) percent; and

2.[(#)] Does include, without limitation, the following products: bare stalks, bast fiber, hurd fiber, nonviable roots, nonviable seeds, seed oils, and plant extracts (excluding products containing delta-9 THC above zero and three-tenths (0.3) percent);

(b) The product is CBD that was derived from "hemp," as defined by subsection (16) of this section[this administrative regulation]; or

(c) The product is CBD that is approved as a prescription medication by the United States Food and Drug Administration.

(32) "Signing authority" means an officer or agent of the organization with written authorization to commit the legal entity to a binding agreement.

(33) "Strain" means a group of hemp with presumed common ancestry and identified physiological distinctions. A strain does not meet the uniformity, stability, or distinction requirements to be considered a variety.

(34) "Variety" means a subdivision of a species that is:

(a) Uniform, in [the sense]that the variations in essential and distinctive characteristics are describable;

(b) Stable, in [the sense]that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity if reproduced or reconstituted as required by the different categories of varieties; and

(c) Distinct, in [the sense]that the variety can be differentiated by one (1) or more identifiable morphological, physiological, other characteristics from all other publicly known varieties, or other characteristics from all other publicly known varieties.

(35) "Variety of concern" means any variety of hemp that tests above 0.3000 percent delta 9-THC in one (1) or more pre-harvest samples. A hemp variety designated as a "variety of concern" could be subject to restrictions and additional testing.

Section 2. Processor or Handler License Application.

(1) Any person who wishes to engage in the processing, handling, brokering, or marketing of hemp that does not fall within the definition of a "publicly marketable hemp product" at any location in the Commonwealth shall submit to the department a complete Processor/Handler License Application, or annual license renewal, incorporated by reference as part of the Processor/Handler License Application Packet in 302 KAR 50:080.

(2) Existing processor or handler license holders shall complete the department's requirements for license renewal by December 31.

(3) Any person who does not hold a grower license from the department shall not~~[:]~~ grow, cultivate, or handle living hemp plants or other cannabis.

(4) Any person who does not hold a processor/handler license from the department shall not process, handle, broker, or market hemp or other cannabis that does not fall within the definition of a "publicly marketable hemp product" at any location within the commonwealth.

(5) A person under the age of eighteen (18) years of age shall not apply for or hold a processor or handler license.

(6) Application deadlines.

(a) Completed Processor/Handler License Application forms shall be postmarked or received by the department by the end of the application period established in the application.

(b) Completed Processor/Handler License Application forms shall be delivered to KDA Hemp Licensing Program, 111 Corporate Drive, Frankfort, Kentucky 40601.

(c) The department shall deny any Processor/Handler License Application that is not received by the deadline established in the application.

(7) The department shall require each applicant to pay a processor or handler application fee in the amount established in 302 KAR 50:060.

(8) Application fees shall not cover or include the cost of the

criminal background checks required by KRS 260.862(2)(d) and Section 3 of this administrative regulation. Applicants and license holders shall pay criminal background check fees directly to the Kentucky State Police or other law enforcement agency ~~[designated in the manner directed by the department]~~.

(9) The department shall deny any Processor/Handler License Application that is received without the application fee established in 302 KAR 50:060.

(10) With the Hemp Processor/Handler License Application form the applicant shall submit, at a minimum:

(a) If the applicant is an individual, the individual's full name, residential address, telephone number, and email address (if available); or

(b) If the applicant is a business entity ~~[the following information]~~:

1. The entity's name, Employer Identification Number, business location address in Kentucky, and principal business location; and

2. For the individual who will have signing authority on the entity's behalf, his or her full name, title within the entity, business address, telephone number, and email address (if available) ~~;~~.

(c) Complete and accurate responses to each request for information on the application form; ~~and~~

(d) Maps and the street address, location ID, and GPS coordinates for each building or site where hemp will be processed, handled, or stored.

(11) Any Processor/Handler License Application that is missing required information shall be subject to denial.

Section 3. Criminal Background Check.

(1) Each licensed processor/handler or applicant shall undergo and pay for an annual criminal background check as required by KRS 260.862(2)(d).

(2) A licensed processor/handler or applicant, or key participant within an entity that is a processor/handler or applicant, shall, following completion of the background check, ensure delivery of the report to the department with the application or renewal.

(3) The department shall not accept a report from a criminal background check that occurred more than ~~sixty (60)]60]~~ days prior to the date of the application.

(4) Failure to submit the background check with the application shall be grounds for license denial.

(5) Substitution of a signing authority shall require approval from the department and the submission of a current criminal background check on the substitute signing authority.

Section 4. Application for Processor or Handler Licensing; Criteria and Procedure for Evaluation.

(1) The department shall apply the criteria established in paragraphs (a) through (l) of this subsection in evaluating applications for a processor/handler license ~~;~~.

(a) In accordance with Section 2 of this administrative regulation, the applicant shall submit a complete application with all required components and attachments.

(b) An applicant who has been a program participant previously, the applicant shall comply with the responsibility to submit any reports required by 302 KAR Chapter 50.

(c) All involved business entities shall be registered and in good standing with the Kentucky Secretary of State.

(d) The applicant's processing sites, handling sites, and storage sites, shall be located in the Commonwealth of Kentucky.

(e) The criminal background check report indicates that, within ten (10) years from the date when the background check was issued, the applicant shall not have:

1. A felony conviction; or
2. A drug-related misdemeanor conviction or violation.

(f) The applicant's planned activities shall remain compliant with state law ~~[and KDA policy]~~.

(g) The applicant shall have adequate facilities ~~;~~ or plans to acquire adequate facilities sufficiently ~~[soon enough]~~ to complete the planned activities.

(h) ~~[In the past]~~, including those times ~~[when]~~ the applicant

was not a participant in the Hemp Licensing Program, the applicant shall have demonstrated a willingness to comply with the department's rules, instructions from department staff, and instructions from representatives of Kentucky State Police and other law enforcement agencies.

(i) The applicant shall not be delinquent in making any required reports or payments to the department in connection with the applicant's participation in the Hemp Licensing Program or other programs within the department.

(j) The applicant shall not have any unpaid fees, fines, or civil penalties owed to the department.

(k) The applicant shall not have made and shall not make any false statements or representations to a representative of the department or a law enforcement agency.

(l) The applicant's proposed sites shall comply with the land use restrictions ~~established~~~~[set forth]~~ in Section 5 of this administrative regulation. Denial of all proposed processing and handling sites shall constitute grounds for denial of the application.

(2) The department shall conditionally approve an application for a processor/handler license if the application satisfies the criteria established in this administrative regulation.

(3) The department shall notify applicants by letter or email whether the application has been denied or conditionally approved. A person shall not be a participant in the Hemp Licensing Program until the applicant has received a hemp processor/handler license from the department.

(4) Applicants shall pay licensing fees prior to receiving a processor/handler license.

(5) Applicants shall complete a mandatory orientation session at a location to be determined by the department. The department shall not allow any person to complete orientation in lieu of the applicant.

Section 5. Land Use Restrictions for Licensed Processors or Handlers.

(1) A licensed processor or handler shall not process or store leaf or floral material from hemp or other cannabis in or adjacent to any structure that is used for residential purposes without first obtaining written permission from the department.

(2) A licensed processor or handler shall not apply to process, handle, or store hemp on any property that is not owned or completely controlled by the applicant or licensed processor.

(3) A licensed processor or handler shall not process, handle, or store hemp on property owned by, leased from, or previously submitted in an application by any person who is ineligible or was terminated or denied admission to the Hemp Licensing Program ~~for [one (1) or both of the following reasons]~~:

(a) Failure to obtain an acceptable criminal background check ~~;~~ ~~or]~~

(b) Failure to comply with an order from a representative of the department; ~~or~~

~~(c) Both.~~

Section 6. Administrative Appeal from Denial of Application.

(1) An applicant wishing to appeal the department's denial or partial denial of an application shall submit a written request for a hearing postmarked within fifteen (15) days of the date of the department's notification letter or email.

(2) An ~~appellant~~~~[appealing applicant]~~ shall mail a hearing request letter to KDA Hemp Licensing Program, 111 Corporate Drive, Frankfort, Kentucky 40601.

(3) Appeals shall be heard by a three (3) person administrative panel whose members shall be designated by the commissioner. The panel shall include at least one (1) person who is a department employee and at least one (1) person who is not a department employee and not involved or invested in any hemp projects in Kentucky.

(4) The members of the administrative panel shall not be required to accept or consider information or documents that were not compliant with application deadlines established in this administrative regulation.

(5) The members of the administrative panel shall apply the same standards ~~established~~~~[set forth]~~ in this ~~administrative~~

regulation to determine if the department's action in denying the application was arbitrary or capricious.

(6) Hearings on appeals shall be open to the public and occur at a time and date and location designated by the commissioner.

(7) An ~~appellant~~~~appealing~~ applicant shall appear in person at the assigned hearing time. Failure to appear on time shall constitute grounds for dismissal of the appeal.

(9) The three (3) members of the administrative panel shall rule on the appeal by a majority vote.

Section 7. Hemp Processor or Handler Licenses.

(1) An applicant shall not be a participant in the Hemp Licensing Program until the department has issued a processor/handler license following the applicant's completion of the department's mandatory orientation session and payment of licensing fees.

(2) The processor/handler license application shall establish the terms and conditions governing participation in the Hemp Licensing Program.

(3) Failure to agree or comply with terms and conditions established in the processor/handler license application or this administrative regulation shall constitute grounds for appropriate departmental action, up to and including termination of the license and expulsion from the Hemp Licensing Program.

(4) Annual renewal of a processor/handler license shall require the license holder to:

(a) Submit to the department an annual criminal background check for the signing authority of record;

(b) Complete a mandatory, annual program orientation session hosted by the department;

(c) Pay annual fees in the amount established in 302 KAR 50:060;

(d) Update all licensed addresses, location IDs, and GPS coordinates with the department; and

(e) Agree to comply with the policies ~~established~~~~set forth~~ in 302 KAR Chapter 50.

(5) A processor/handler license ~~shall~~~~will~~ remain in force as long as the license holder meets the annual renewal requirements by December 31 of each year.

(6) A processor/handler license may be terminated by the license holder or the department upon thirty (30) days prior written notice.

(7) The department shall issue processor/handler's license numbers in accordance with this format: "P_0001" through "P_9999."

Section 8. Processor or Handler Licensing Fee.

(1) The licensing fee for processing harvested hemp fiber shall be the amount established in 302 KAR 50:060.

(2) The licensing fee for processing harvested hemp grain shall be the amount established in 302 KAR 50:060.

(3) The licensing fee for processing hemp floral material (for example, CBD extraction) shall be the amount established in 302 KAR 50:060.

(4) A licensed processor or handler that processes more than one (1) harvest component (for example, fiber, grain, and floral material) shall pay the licensing fee that is required for each harvested component that is applicable.

(5) A handler that does not engage in processing (for example, a seed cleaner, laboratory or dryer) shall be subject to a licensing fee in the amount established in 302 KAR 50:060.

(6) The licensed processor or handler fee shall be paid annually in full prior to the issuance or renewal of the processor/handler license.

Section 9. Seed and Propagule Acquisition.

(1) A license holder intending to acquire seeds or propagules first shall determine whether or not the variety or strain intended for purchase is listed on the department's current Summary of Varieties List.

(a) If the variety or strain is listed on the Summary of Varieties List, ~~a~~~~no~~ pre-approval from the department ~~shall not be~~~~is~~ required.

(b) If the variety or strain is not listed on the Summary of

Varieties List, the license holder shall submit a New Hemp Variety or Strain Request Form along with a certificate of analysis for that strain or variety, showing that mature plants grown from that seed variety or strain have a floral material delta-9-THC (~~must be~~measured post-decarboxylation, also referred to as total THC) content of not more than 0.300% on a dry weight basis from an independent third-party laboratory.

(2) A license holder who develops a new hemp variety or strain shall submit the New Hemp Variety or Strain Request form, prior to its use in crop production.

(3) The department shall not approve a New Hemp Variety or Strain Request unless the licensed grower affirms in writing that the requested seed acquisition plan shall not infringe on the intellectual property rights of any person~~;~~ and the seed or propagule source is a current legal hemp operation.

(4) The department shall not approve a New Hemp Variety or Strain Request if a representative of the department has information supporting a belief that the variety or strain will produce plants with delta-9-THC (~~must be~~measured post-decarboxylation, also referred to as total THC) content of more than 0.300% on a dry weight basis.

(5) A license holder shall not buy, sell, possess, or transfer seeds or propagules of any variety or strain designated as a prohibited variety on the department's published summary of varieties list.

(6) Upon request from a representative of the department, a licensed grower or licensed processor shall provide a distribution list showing locations where and to whom the hemp seeds or propagules were distributed.

(7) Any person engaging in the distribution of hemp seeds shall adhere to all applicable Kentucky seed laws (KRS 250.010 ~~through~~~~to KRS~~ 250.990) and regulations (12 KAR 1:116 ~~through~~~~to 12 KAR~~ 1:175).

(8) Any person who intends to move transplants or other living plants to a location outside Kentucky ~~shall~~~~must~~ obtain a Class A Nursery License from the Kentucky Office of the State Entomologist.

Section 10. Seeds of Wild, Landrace, or Unknown Origin.

(1) A person shall not acquire or grow hemp or cannabis seeds or propagules of wild, landrace, or unknown origin without first obtaining written approval from a representative of the department.

(2) The department shall not permit hemp or cannabis seeds or propagules of wild, landrace, or unknown origin to be planted, cultivated, or replicated by any person without the department first arranging for replication and THC testing of mature plants grown from the seeds or propagules by the department or its designee.

(3) Any licensed grower or licensed processor or handler found to have saved seed, propagules, or cuttings, or cultivated seeds, propagules, or cuttings from a cannabis plant of wild, landrace, or unknown origin, without permission from the department shall be subject to suspension or revocation of their license and forfeiture without compensation of their materials.

Section 11. Site Access for Representatives of the Department and Law Enforcement Agencies.

(1) The department shall provide information about approved growing, handling, processing, and storage site locations to representatives of the Kentucky State Police, DEA, and other law enforcement agencies whose representatives request licensed site location information, including GPS coordinates.

(2) Licensed processors or handlers shall have no reasonable expectation of privacy with respect to premises where hemp or other cannabis seeds, plants, or materials are located and any premises listed in the processor or handler license.

(3) A licensed processor or handler, whether present or not, shall permit a representative of the department or a law enforcement agency to enter into premises where hemp or other cannabis seeds, plants, or materials are located and any premises listed in the processor or handler license, with or without cause, and with or without advance notice.

Section 12. Collection and Retention of Cannabis Samples.

(1) The department ~~may~~~~[shall have the authority to]~~ collect, test, and retain samples of hemp or other cannabis, and substances derived from hemp or cannabis in the possession of a licensed processor or handler.

(2) All samples collected by the department shall become the property of the department and shall be nonreturnable. Compensation shall not be owed by the department.

(3) The material to be collected for sampling shall be determined by the department inspector.

Section 13. Restrictions on Sale or Transfer.

(1) A licensed processor or handler shall not sell, ~~for~~transfer, or ~~allow~~~~[permit]~~ the sale or transfer, of living plants, viable seeds, leaf material, or floral material to any person in the Commonwealth who does not hold a license issued by the department.

(2) A licensed processor or handler shall not sell, ~~for~~transfer, or ~~allow~~~~[permit]~~ the sale or transfer, of living plants, viable seeds, leaf material, or floral material to any person outside the Commonwealth who is not authorized to possess ~~[such]~~materials under the laws of that jurisdiction.

(3) The department shall permit the sale or transfer of stripped stalks, fiber, dried roots, nonviable seeds, seed oils, cannabinoid extracts (excluding THC in excess of zero and ~~three-tenths~~~~[threetenths]~~ (0.3) percent), and other marketable hemp products to members of the general public, both within and outside the Commonwealth, if the marketable hemp product's decarboxylated delta-9-THC level is not more than zero and three-tenths (0.3) percent.

(4) A licensed processor or handler selling, ~~for~~transferring, or ~~allowing~~~~[permitting]~~ the sale or transfer~~[.]~~ of floral or plant extracts (including CBD), shall conduct and retain testing data reflecting the decarboxylated delta-9 THC level for at least three (3) years.

(5) A licensed processor or handler shall not sell or transfer floral extracts containing a decarboxylated delta-9 THC concentration in excess of zero and three-tenths (0.3) percent except that pursuant to KRS 260.8635, a licensed processor, or a person acting as a representative of a licensed processor, may move or transport hemp extract material having a delta-9 tetrahydrocannabinol concentration in excess of three-tenths of one percent (0.3%) from one (1) licensed processing location in the Commonwealth to another licensed processing location in the Commonwealth, ~~if~~~~[provided that]~~:

(a) The hemp extract material shall move directly from one (1) licensed processing location to another; and

(b) The licensed processor shall provide written notice to the department of the planned movement at least twenty-four (24) hours in advance by submitting to the department a completed Hemp Concentrate Transport Notification Form.

(6) A licensed processor or handler shall comply with the federal Food Drug and Cosmetic Act, 21 U.S.C. Chapter 9, and all other applicable local, state, and federal laws and regulations relating to product development, product manufacturing, consumer safety, and public health.

(7) Any person making human-consumable products, or substances that will be used to make human-consumable products, shall be Good Manufacturing Practices-compliant and permitted by the Department of Public Health within the Cabinet for Health and Family Services.

(8) Any person packaging a product prior to sale shall comply with the Uniform Packaging and Labeling Regulations as ~~established~~~~[prescribed]~~ in 302 KAR 75:130.

(9) A licensed processor or handler shall not knowingly permit hemp to be sold to or used by any person in the Commonwealth who is involved in the manufacture of an item named on the prohibited products list established in 302 KAR 50:070.

(10) A person shall not ship, ~~for~~transport, or allow to be shipped or transported, any hemp product with a decarboxylated delta-9-THC concentration in excess of zero and three-tenths (0.3) percent.

Section 14. Other Requirements.

(1) A licensed processor or handler shall not process or store

hemp on any site not listed in the processor/handler license.

(2) A person shall not convert a substance that was extracted or derived from hemp or other cannabis into a Schedule I controlled substance.

(3) A license holder shall not make, manufacture, or distribute any of the prohibited products listed in 302 KAR 50:070.

(4) A person shall not possess living hemp or other cannabis plants without a hemp grower license.

(5) A licensed processor or handler shall not allow another person, other than an agent of the licensed processor or handler, to process, ~~handle~~~~[handler]~~ or store hemp under their license in lieu of obtaining a separate hemp processor/handler license.

(6) Processors using hazardous materials or flammable solvents (for example, ethanol) shall comply with the requirements of the State Fire Marshal.

(7) Any person owning or operating an analytical laboratory offering third-party testing services shall report post-decarboxylated delta-9 THC on a 100% dry weight basis.

(8) Any person owning or operating an analytical laboratory offering third-party testing services shall participate in the University of Kentucky's Hemp Proficiency Testing Program.

Section 15. Information Submitted to Department Subject to Open Records Act, ~~KRS 61.870 Through 61.884~~.

(1) Except as ~~established~~~~[provided]~~ in subsection (2) of this section, information and documents generated or obtained by the department shall be subject to disclosure pursuant to the Kentucky Open Records Act, KRS 61.870 through 61.884.

(2) Personally identifiable information including physical address, mailing address, driver's license numbers, background checks, GPS coordinates, telephone numbers, and email addresses shall be shielded from disclosure to the maximum extent permitted by law~~[.]~~ ~~provided, however,~~ The department shall provide this information to law enforcement agencies and other regulatory agencies upon request.

Section 16. Violations Requiring Temporary License Suspension Procedures.

(1) The department shall notify a licensed processor/handler in writing that the Processor/Handler License has been temporarily suspended if a representative of the department receives information supporting an allegation that a licensed processor/handler has:

(a) Plead guilty to, or is convicted of, any felony or drug-related misdemeanor or violation in accordance with KRS 260.864~~[.]~~

(b) Engaged in conduct violating a provision of KRS 260.850 through 260.869, 302 KAR Chapter 50, or the processor/handler license with a culpable mental state greater than negligence;

(c) Made a false statement to a representative of the department or a law enforcement agency with a culpable mental state greater than negligence;

(d) Been found to be in possession of cannabis with a measured delta-9-THC concentration above ~~zero and three tenths~~ ~~(0.3)]~~~~[0.3]~~ percent with a culpable mental state greater than negligence;

(e) Been found to be growing hemp or cannabis without a hemp grower license with a culpable mental state greater than negligence; or

(f) Failed to comply with an order from a representative of the department or a law enforcement agency with a culpable mental state greater than negligence.

(2) The department shall schedule a license revocation hearing for a date as soon as practicable after the notification of temporary suspension, but in any event not later than sixty (60) days following the notification of temporary suspension.

(3) A person whose processor/handler license has been temporarily suspended shall not process~~[.]~~ or remove cannabis from the premises where hemp or other cannabis was located at the time ~~[when]~~the department issued its notice of temporary suspension, except as authorized in writing by a representative of the department.

(4) As soon as possible after the notification of temporary suspension, a representative of the department shall inspect the

licensed processor/handler's premises and perform an inventory of all cannabis, hemp, and hemp substances that are in the licensed processor/handler's possession.

Section 17. License Revocation Hearings and Consequences of Revocation.

(1) The department shall notify a person whose processor/handler license has been temporarily suspended of the date ~~[when]~~ the person's license revocation hearing will occur at a time and place designated by the commissioner.

(2) License revocation hearings shall be adjudicated by a three (3) person administrative panel in accordance with KRS 260.864.

(3) License revocation hearings shall be open to the public.

(4) A person whose processor/handler license has been temporarily suspended shall appear in person at the assigned hearing time. Failure to appear on time shall constitute a waiver of the person's right to present information and arguments against revoking the processor/handler license.

(5) A representative of the department shall be allowed an opportunity to present information and arguments for revoking the processor/handler license.

(6) A person whose processor/handler license has been temporarily suspended shall be allowed an opportunity to present information and arguments against revoking the processor/handler license.

(7) The three (3) members of the administrative panel shall rule on the question of revocation by a majority vote.

(8) If a majority of the three (3) members of the administrative panel find that it is more likely than not that a licensed processor or handler has committed any of the acts listed in Section ~~16(1)~~~~[47(4)]~~ of this administrative regulation then the processor/handler license shall be revoked effective immediately.

(9) If a majority of the members of the administrative panel vote against revoking the processor/handler license, the department shall lift the temporary suspension within twenty-four (24) hours of the vote.

(10) If a majority of the members of the administrative panel vote in favor of revoking the processor/handler license, then a representative of the department or a law enforcement agency shall have authority to destroy or confiscate all cannabis, hemp, and hemp substances that are in the person's possession.

(11) A person whose property is destroyed or confiscated by a representative of the department or a law enforcement agency shall be owed no compensation or indemnity for the value of the cannabis, hemp, or hemp products that were destroyed or confiscated.

(12) The department shall immediately report any person whose license has been revoked on the grounds that he or she violated a provision of KRS 260.850 through 260.869, 302 KAR Chapter 50, or the processor/handler license with a culpable mental state greater than negligence, to an appropriate law enforcement agency.

(13) A person whose processor/handler license has been revoked shall not be eligible for licensure for a period of five (5) years from the date of the most recent violation.

Section 18. Monetary Civil Penalties.

(1) If a representative of the department receives information supporting a finding that it is more likely than not that a person has engaged in conduct violating a provision of KRS 260.850 through 260.869, 302 KAR Chapter 50, or the processor or handler license application, then the department shall assess a monetary civil penalty based on the severity of the violation and not to exceed \$2,500 per violation.

(2) A person wishing to appeal the department's assessment of a monetary civil penalty shall submit a written request for a hearing within fifteen (15) days of the notification date.

(3) A person wishing to appeal the department's assessment of a monetary civil penalty shall mail a hearing request letter to KDA Hemp Licensing Program, 111 Corporate Drive, Frankfort, Kentucky 40601.

(4) Appeals shall be heard by a three (3) person administrative panel whose members shall be designated by the commissioner.

The administrative panel shall include at least one (1) person who is a department employee and at least one (1) person who is not a department employee and not involved or invested in any Kentucky hemp projects.

(5) The members of the administrative panel shall determine if the department's action in assessing the monetary civil penalty was arbitrary or capricious.

(6) Hearings on the appeal shall be open to the public and occur at a time, date, and location designated by the commissioner.

(7) An appealing person shall appear in person at the assigned hearing time. Failure to appear on time shall constitute grounds for dismissal of the appeal.

(8) An appellant~~[appealing person]~~ shall be allowed an opportunity to present arguments for reversing the assessed monetary civil penalty.

(9) A representative of the department shall be allowed an opportunity to present arguments for affirming the assessed monetary civil penalty.

(10) The three (3) members of the administrative panel shall rule on the appeal by a majority vote.

(11) A majority of the three (3) members of the administrative panel may affirm the assessed monetary civil penalty, affirm and increase or decrease the assessed monetary civil penalty, or reverse the assessed monetary civil penalty.

(12) The department shall have the authority to pursue unpaid monetary civil penalties by filing a civil cause of action in the Franklin Circuit Court.

Section 19. Licensing for Representatives of Universities and Colleges.

(1) Except as established~~[provided]~~ in this section~~[of this administrative regulation]~~, faculty members, administrators, and staff members of an institution of higher education shall be subject to all requirements~~[each]~~ of ~~[the sections of]~~ this administrative regulation.

(2) An~~[No]~~ institution of higher education shall not allow~~[permit]~~ or authorize its faculty, administration, or staff members, or any sponsored student, to be in possession of, or conduct academic research involving living hemp plants, leaf material, floral material, or viable seeds of hemp without first completing and submitting a Hemp License Application.

(3) An authorized faculty, administrator, or staff member of an eligible institution of higher education who wishes to be in possession of, or conduct an academic research project involving living hemp plants, leaf material, floral material, or viable seeds of hemp shall complete and submit a Hemp License Application.

(4) If a university applicant's research plan includes growing hemp, then a Hemp Grower License shall~~[will]~~ be issued.

(5) If a university applicant's research plan does not include growing hemp, then a Hemp Processor/Handler License shall~~[will]~~ be issued.

(6) The department shall accept applications from an authorized faculty, administrator, or staff member of an eligible institution of higher education at any time of the year.

(7) The department shall not collect fees for licenses issued to a faculty member, administrator, or staff member of an institution of higher education if the project is for research only and~~[/]~~ that is, not intended for commerce~~[/]~~.

(8) Sampling and testing of hemp processed or handled under the authority of this section shall be conducted by the department if the harvested material is intended for commerce.

(9) An~~[As used in this section, "]~~ eligible institution of higher education shall~~[" means an institution of higher education that is]~~.

(a) Be~~[Is]~~ accredited by, and in good standing with, a regional or national higher education accreditation agency;

(b) Confer~~[Confers]~~ academic degrees at the associate, bachelor, master, or doctoral level; and

(c) Have~~[Has]~~ a principal campus or office that is located at a site within the Commonwealth of Kentucky.

Section 20. Corrective Action Plans for Negligent Violations.

(1) If the department determines that a processor or handler committed a negligent violation of any provision within KRS Chapter 260.850 ~~through[te]~~ 260.869~~[e]~~ or 302 KAR Chapter 50[any administrative regulation promulgated under the authority of those statutes], then the department shall devise and implement a corrective action plan for the processor or handler.

(2) Corrective action plans ~~shall[will]~~ remain in place for at least two (2) years and include, at a minimum~~[, the following]~~:

(a) The date by which the processor or handler shall correct each negligent violation;

(b) Steps to correct each negligent violation; and

(c) A description of the procedures to demonstrate compliance.

(3) A processor or handler who commits a negligent violation shall not, as a result of that violation, be subject to any criminal enforcement action by any government.

(4) If a subsequent violation occurs while a corrective action plan is in place, a new corrective action plan ~~shall[must]~~ be submitted with a heightened level of quality control, staff training, and quantifiable action measures.

(5) A processor or handler who commits three (3) negligent violations within a five (5) year period shall have his or her license revoked and be ineligible to obtain a license for a period of five (5) years beginning on the date of the third violation. A violation that occurred prior to January 1, 2021 shall not count toward the three (3) violations referred to in this subsection.

Section 21. Mandatory Reports to Law Enforcement Agencies for Violations with a Culpable Mental State Greater than Negligence.

(1) In addition to being subject to the license suspension, license revocation, and monetary civil penalty procedures established in 302 KAR 50:021 and this administrative regulation[302 KAR 50:031], a person who is found by the department to have violated a requirement of KRS Chapter 260 or 302 KAR Chapter 50[any statute or administrative regulation governing that person's participation in the hemp program] with a culpable mental state greater than negligence shall be subject to the reporting requirements established in this section.

(2) The department shall immediately report a person who is found by the department to have violated any statute or administrative regulation governing that person's participation in the hemp program with a culpable mental state greater than negligence to the commander of the Kentucky State Police's Cannabis Suppression Branch.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, fax (502) 564-2133, email clint.quarles@ky.gov.

**DEPARTMENT OF AGRICULTURE
Office of the Consumer and Environmental Protection
(As Amended at ARRS, November 9, 2020)**

302 KAR 50:056. Sampling and THC testing; disposal of noncompliant harvests; post-testing actions~~;~~ ~~disposal of noncompliant harvests~~.

RELATES TO: KRS Chapter 217B, 260.850-260.869, 7 U.S.C. 1739p

STATUTORY AUTHORITY: KRS 260.862, 7 U.S.C. 1739p

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.862(1)~~[(a)]~~ authorizes the department to promulgate administrative regulations for a Hemp Licensing Program in the Commonwealth of Kentucky. KRS 260.862(1)~~[(a)]~~~~[(e)]~~ authorizes the department to license persons who wish to participate in a Hemp Licensing Program by cultivating, handling, processing, or marketing hemp. This administrative regulation establishes procedures and requirements for sampling and THC testing, and establishes procedures for the movement or disposal of hemp

following the completion of THC testing.

Section 1. Definitions.

(1) "Acceptable Hemp THC Level" means the sum of the statewide Measurement of Uncertainty plus the 0.300% limit ~~established[set forth]~~ in federal law, 7 U.S.C., and KRS Chapter 260[state law].

(2) "Cannabis":

~~(a)~~ Means the plant that, depending on its THC concentration level, is defined as either "hemp" or "marijuana." Cannabis is a genus of flowering plants in the family Cannabaceae of which Cannabis sativa is a species, and Cannabis indica and Cannabis ruderalis or subspecies thereof. Cannabis includes all parts of the plant, whether growing or not, including its seeds, resin, compounds, salts, derivatives, and extracts; and

~~(b)~~ Does not ~~mean[include]~~ a "publicly marketable hemp product," as defined by 30s KAR 50:021, Section 1(37)[this administrative regulation].

(3) "CBD" means cannabidiol.

(4) "Decarboxylated" means the completion of the chemical reaction that converts delta-9 THC-acid into delta-9-THC, the intoxicating component of cannabis. The decarboxylated value is also calculated using a conversion formula that sums delta-9-THC and eighty-seven and seven tenths (87.7) percent of delta-9 THC-acid.

(5) "delta-9-THC" means delta-9-tetrahydrocannabinol concentration (the primary intoxicating component of cannabis). For compliance purposes, all delta-9-THC concentrations ~~are[must be]~~ measured post- decarboxylation or by another method which shall include both delta-9-THC and delta-9-THCA (also known as total THC).

(6) "Department" or "KDA" is defined by KRS 260.850(3).

(7) "Hemp" or "industrial hemp" is defined by KRS 260.850(5).

(8) "Inspector" means an employee or other representative of the department sent to collect samples and perform inspections.

(9) "Lot" means a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of hemp throughout.

(10) "Measurement of uncertainty" means the parameter, associated with the result of a measurement that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to the measurement. The statewide Measurement of Uncertainty ~~is[shall be]~~ the greater of the measurements of uncertainty computed by the designated laboratories testing samples for the department.

(11) "MSU BVC" means the Breathitt Veterinary Center at the Murray State University in Hopkinsville.

(12) "Person" means an individual or business entity.

(13) "Post-harvest sample" means a sample taken from the harvested hemp from a particular lot's harvest in accordance with the procedures as established in 302 KAR 50:055. The entire lot's harvest is in the same form (for example, intact-plant, flowers, ground materials~~[, etc.]~~), homogenous, and not mixed with non-hemp materials or hemp from another lot.

(14) "Pre-harvest sample" means a composite, representative portion from living plants in a hemp lot collected in accordance with the procedures as established in 302 KAR 50:055.

(15) "Program" means the department's Hemp Licensing Program.

(16) "Propagule" means a plant or plant part that can be utilized to grow a new plant.

(17) "UK DRS" means the Division of Regulatory Services at the University of Kentucky College of Agriculture, Food, and Environment in Lexington.

Section 2. Procedures for Inspection and Sample-Collection Visits.

(1) ~~A[No]~~ hemp plant shall ~~not~~ be harvested from any lot before a department inspector completes an inspection and sample-collection visit.

(2) The licensed grower shall submit to the department a completed Harvest Report form at least fifteen (15) days prior to the grower's expected harvest date.

(3) Upon receiving a completed Harvest Report form, the department shall contact the licensed grower to schedule an inspection and sample-collection visit for a specific time on a date that is not later than the grower's expected harvest date.

(4) The licensed grower, or the grower's authorized representative, shall be present during the inspection and sample-collection visit.

(5) During the inspection and sample-collection visit, the licensed grower shall provide to the inspector, complete and unrestricted access to all hemp and other cannabis plants, whether growing or harvested; all land, buildings, and other structures used for the cultivation and storage of hemp and other cannabis plants; and all locations listed in the Hemp Grower License.

(6) During the inspection and sample-collection visit, the inspector shall perform a visual inspection of each location listed in the Hemp Grower License in order to verify the GPS coordinates and look for evidence that hemp plants or other cannabis plants were harvested without authorization prior to the inspector's inspection and sample-collection visit or any other suspicious circumstance.

(7) The licensed grower shall complete the harvest of the crop from a lot not more than fifteen (15) days following the date of the inspection and sample-collection visit, unless specifically authorized in writing by the department, ~~if provided, however, that such~~ Authorization shall not exceed an additional five (5) days and shall not be granted by the department without its determination that the cause for delay was inclement weather or another circumstance beyond the licensed grower's control.

(8) If the licensed grower fails to complete the harvest of the crop from a lot within fifteen (15) days following the date of sample collection, then the licensed grower shall submit a new Harvest Report and may be required to pay a secondary pre-harvest sample fee established in 302 KAR 50:060.

(9) Floral material shall not be moved outside the Commonwealth, nor moved beyond a processor, ~~nor~~ nor commingled, ~~nor~~ extracted, ~~nor~~ converted into a consumer-ready product, ~~nor~~ enter commerce, until the department releases the material in writing.

Section 3. Procedure for Collecting Samples.

(1) The inspector shall use the following equipment and supplies:

(a) An ~~Inspection and Sample Collection~~ form, which is in the application packet incorporated by reference in 302 KAR 50:080;

- (b) Alcohol wipes;
- (c) Pruning shears;
- (d) Paper sample-collection bags;
- (e) A permanent marker;
- (f) Security tape or a stapler;
- (g) A GPS unit, or a device with GPS-capable technology; and
- (h) Nitrile disposable gloves.

(2) The inspector shall take cuttings from five (5) plants in each lot to make up a composite sample for that lot. ~~The number of plants selected to form a composite sample was calculated using the Codex Alimentarius Recommended Methods of Sampling for the Determination of Pesticide Residues for Compliance with MRLS CAC/GL 33-1999. In 2019, Kentucky's hemp testing program showed that 43% of the pre-harvest samples were above 0.30% THC; therefore "1" is equal to 0.43.~~ For a confidence level of ninety-five (95) percent[95%], the minimum plant number required shall be three (3)[is 3:] A lot from a thousand-acre field would require five and three-tenths (5.3)[5.3] plants.

(3) The inspector shall select the individual plants to be sampled from each lot by selecting at random at least five (5) plants that appear to be representative of the composition of the lot, and avoiding selecting plants that are close to the perimeter of the lot.

(4) From each individual plant selected for sampling, the inspector shall cut the highest twenty (20) centimeters from the plant's primary stem of female flower. The inspector shall not remove seed, stem, or other material from the sample that is cut

from the plant.

(5) The inspector shall place the cuttings from the lot into a paper sample-collection bag, shut the bag by folding over its top, and secure the fold with security tape or a stapler.

(6) Using a permanent marker, the inspector shall write on the sealed paper sample collection bag the Sample ID consistent with ~~the following format~~:

- (a) The last four (4) digits of the Grower License number,
- (b) The date, in MMDDYY format; and
- (c) A two (2) digit sample number assigned by the inspector.

(d) Example: For Grower License 21_1234, with a sample collected on October 15, 2020, from the third lot sampled by the inspector on that date, the Sample ID is 1234-101520-03.

(7) The inspector shall complete the ~~Inspection and Sample Collection form~~ by entering ~~the following information~~:

- (a) The licensed grower's name and contact information;
- (b) The address where the lot is located;
- (c) The Grower License number;
- (d) The inspector's name;
- (e) The date of the inspection and sample collection visit; and
- (f) For each sample collected, the Location ID, the Sample ID, the hemp variety or strain name, and a description of the crop.

(8) Following the completion of the inspection and sample-collection visit, the inspector shall deliver the sealed sample-collection bag to the department's designated drying facility.

(9) The department shall not unseal sample-collection bags during the drying process.

Section 4. Procedure for THC Testing.

(1) THC testing shall be completed by a testing lab designated by the department.

(2) Upon receipt of a sealed sample-collection bag from the department, the laboratory shall receive, prepare, and release hemp samples in accordance with the UK DRS SOP# HM-LB-001 (Procedures for Receiving, Preparing and Releasing Hemp Samples) or MSU BVC SOP # TOX WIN 0042 (Hemp Receiving) and MSU BVC SOP # TOX WIN 0043 (Hemp Storage and Destruction), as applicable.

(3) Hemp material not used by the laboratory for delta-9-THC testing shall be stored as a retained sample.

(4) The laboratory shall measure delta-9-THC content, including both delta-9-THC and delta-9-THCA, on a dry weight basis in accordance with the UK DRS SOP# HMP-LB-002 (Procedures for Measuring Delta 9 THC Content in Industrial Hemp by Gas Chromatography with Flame Ionization Detection) or MSU BVC SOP # TOX WIN 0069 (Hemp Potency), as applicable.

(5) ~~A~~ ~~No~~ person shall ~~not be permitted to~~ add to, amend, or in any way alter the composition of the retained sample.

Section 5. Post-testing Actions.

(1) Not later than sixty (60) after the date of the inspection and sample-collection visit, the department shall notify the licensed grower of the results of the THC test results and the grower's eligibility to move the harvested materials into commerce.

(2) For the purpose of determining ~~if whether~~ a test result is compliant with the definition of hemp (0.3000% delta-9 THC on a dry-weight basis) ~~set forth in federal law and state law~~, the department shall evaluate it against the Acceptable Hemp THC Level that is applicable for the current year (that is, 0.300% plus the statewide Measurement of Uncertainty).

(3) A sample from a lot with a measured THC concentration not exceeding the Acceptable Hemp THC Level shall be deemed compliant (~~i.e.~~ conforming to the legal definition of hemp).

(4) A sample from a lot with a measured THC concentration exceeding the Acceptable Hemp THC Level shall be deemed non-compliant.

(5) Within seven (7) days of receiving notice of a measured THC concentration that exceeds the Acceptable Hemp THC Level but is less than 1.000%, the Licensed Grower ~~shall~~ ~~must~~ consent to the destruction of all leaf material and floral material, or he or she may request a post-harvest re-test in accordance with the procedures ~~established~~ ~~set forth~~ in Section 6 of this

administrative regulation.

(6) The retest fee shall be paid in an amount established in 302 KAR 50:060.

(7) Samples with a measured THC concentration of 1.000% or greater shall not be eligible for a post-harvest retest and shall be destroyed.

(8) The sample for a retest shall be collected on a date determined by the department.

Section 6. Procedure for Collecting Samples for Post-harvest Retests.

(1) The inspector shall use the following equipment and supplies:

- (a) An ~~[""]~~Inspection and Sample Collection~~[""]~~ form;
- (b) Alcohol wipes;
- (c) Pruning shears;
- (d) Paper sample-collection bags for wet samples;
- (e) Plastic sample-collection bags for dry samples;
- (f) A permanent marker;
- (g) Security tape or a stapler;
- (h) A GPS unit, or a device with GPS-capable technology; and
- (i) Nitrile disposable gloves.

(2) The material selected for Post-Harvest Sampling from this lot ~~shall[will]~~ be determined by the inspector, not the grower.

(3) The inspector shall perform a visual inspection to verify that the harvested material is in a homogenous state (for example, in an intact-plant state or in a ground-up state, or in another state). If the harvested material is not in a homogenous state, then the inspector shall notify the Hemp Program Manager and convey any instructions the Hemp Program Manager may designate to undertake additional post-harvest processing activities to bring the entire harvest into a homogenous state. If the license holder refuses or fails to undertake ~~the[such]~~ designated activities, he or she shall be deemed to have waived any right to request a post-harvest retest and the material shall be designated for disposal.

(4) Floral harvested material selected for Post-Harvest Sampling shall be taken in the state (for example, in an intact-plant state or in a ground-up state, or in another state) in which the license holder plans to sell or send the material to a processor, in accordance with the ~~[following]~~instructions established in paragraphs (a) through (c) of this subsection.

(a) For intact-plant post-harvest samples:

1. Ensure that the entire harvest is accounted for and in the same form (~~[i.e.,]~~intact plants)~~;~~~~[.]~~

2. Clip the top twenty (20)[20] cm of hemp plant, primary stem, including female floral material, without removing seed, stem, or other material~~;~~~~[.]~~

3. Take cuttings from at least five (5) hemp plants within the harvest's storage or drying[storage/drying] area at the discretion of the inspector~~;~~~~[.]~~

4. Place the complete sample in a paper bag~~;~~ and[.]

5. Seal the paper bag by folding over top once and stapling to keep closed.

(b) For ground plant or ground floral material Post-Harvest Samples:

1. Ensure that the entire harvest is accounted for and in the same form (~~[i.e.,]~~all harvested material whether whole plant or floral material only shall[must] be ground with no intact plants or whole flowers remaining from that harvest)~~;~~~~[.]~~

2. Sample material from bag or container without removing seed, stem, or other material~~;~~~~[.]~~

3. Sample from a minimum of five (5) locations within the containers from at least one (1) cup of material from the lot~~;~~~~[.]~~

4. Place the complete sample in a plastic sample container~~;~~ and[.]

5. Seal the plastic sample container.

(c) For Post-Harvest Samples in other forms (~~[e.g.,]~~trimmed floral material~~;~~ or floral material and stems):

1. Ensure that the entire harvest is accounted for and in the same form (~~[i.e.,]~~all harvested material whether whole plant or floral material only shall[must] be ground with no intact plants or whole flowers remaining from that harvest)~~;~~~~[.]~~

2. Sample material from bag or container without removing

seed, stem, or other material~~;~~~~[.]~~

3. Sample from a minimum of five (5) locations within the containers, collecting from at least one (1) cup of material from the lot~~;~~~~[.]~~

4. Place the complete sample in a plastic sample container~~;~~ and[.]

5. Seal the plastic sample container.

(5) The inspector shall place the cuttings or composite sample from the lot into a sample collection bag~~;~~~~[.]~~ and secure the bag with security tape or staples.

(6) Using a permanent marker, the inspector shall write on the sealed sample-collection bag the Sample ID consistent with the following format:

(a) The last four (4) digits of the Grower License number~~;~~~~[.]~~

(b) The date, in MMDDYY format;~~and~~

(c) A two (2) digit sample number assigned by the inspector~~;~~ and[.]

(d) Example: For Grower License 21_1234, with a sample collected on October 15, 2020, from the third lot sampled by the inspector on that date, the Sample ID ~~is[would-be]~~ 1234-101520-03.

(7) The inspector shall complete the ~~[""]~~Inspection and Sample Collection form~~[""]~~ by entering~~[the following information]~~:

(a) The licensed grower's name and contact information;

(b) The address where the lot was grown and where it is currently located;

(c) The Grower License number;

(d) The inspector's name;

(e) The date of the inspection and sample collection visit; and

(f) For each sample collected, the Location ID, the Sample ID, the hemp variety or strain name, and a description of the crop.

(8) Following the completion of the inspection and sample-collection visit, the inspector shall deliver the sealed sample-collection bag to the department's designated drying facility.

(9) The department shall not unseal sample-collection bags during the drying process.

(10) The procedure for THC testing used by UK DRS shall be the same for post-harvest retests as those established[set-forth] in Section 4 of this administrative regulation.

(11) A lot having a post-harvest sample with a measured THC concentration exceeding the Acceptable Hemp THC Level shall be deemed non-compliant and designated for disposal.

Section 7. Disposal of Non-compliant Harvested Materials.

(1) If a lot is designated for mandatory disposal, then the department shall ensure that all leaf material and floral material from that lot is disposed of using one (1) of the procedures established[set-forth] in this Section of this administrative regulation. The costs of disposal, if any are incurred by the department, shall be charged to the license holder.

(2) Disposal by on-site destruction with department supervision. Without removing the harvested material from the license holder's premises (or other licensed premises where the harvested material is located), a department employee shall personally observe the harvested material's destruction (~~[i.e.,]~~the act of rendering it into a useless and non-retrievable state) using one (1) of these methods:

(a) By grinding it up and incorporating it into the soil; or

(b) By controlled incineration.

(3) Disposal by on-farm transfer to a person who is registered or authorized by the department to accept controlled substances for the purposes of destruction. At the premises of the license holder (or other licensed premises where the harvested material is located), a department employee shall load, or observe the loading, of the harvested material until the transfer is complete.

(4) Disposal by vehicle transport to a department-approved location.

(a) Prior to the transport: At the premises of the license holder (or other licensed premises where the harvested material is located), a department employee shall load, or observe the loading, of the harvested material until the material is completely secured on or in the vehicle.

(b) During the transport: A department employee shall

accompany the harvested material as it moves in a vehicle directly to a department-approved location. The vehicle shall constantly move towards its final destination without unnecessary stops, stops for reasons unrelated to the transport task, or stops of an extended duration.

(c) After the transport: Upon arrival at the department-approved location, a department employee shall unload, or observe the unloading, of the harvested material until the material is completely removed from the vehicle.

(d) Following the material's removal from the vehicle, a department employee shall personally observe the harvested material's destruction (~~if e.g.~~ the act of rendering it into a useless and non-retrievable state) using one (1) of these methods:

1. By grinding it up and incorporating it into the soil; or
2. By controlled incineration.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "UK DRS SOP# HMP-LB-002 (Procedures for Measuring Delta 9 THC Content in Industrial Hemp by Gas Chromatography with Flame Ionization Detection)", 2020;

(b) "UK DRS SOP# HM-LB-001 (Procedures for Receiving, Preparing and Releasing Hemp Samples)", 2020;

(c) "MSU BVC SOP # TOX WIN 0042 (Hemp Receiving)", 2020;

(d) "MSU BVC SOP # TOX WIN 0043 (Hemp Storage and Destruction)", 2020; and

(e) "MSU BVC SOP # TOX WIN 0069 (Hemp Potency)", 2020.

(2) These materials may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Office of Agricultural Marketing, 105 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. These materials may also be obtained at www.kyagr.com.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, fax (502) 564-2133, email clint.quarles@ky.gov.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, November 9, 2020)

702 KAR 7:065. Designation of agent to manage middle and high school interscholastic athletics.

RELATES TO: KRS 61.805 - 61.850, 156.070(2), 160.380, 160.445, 20 U.S.C. 1681

STATUTORY AUTHORITY: KRS 156.070(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070(1) requires the Kentucky Board of Education to manage and control the common schools, including interscholastic athletics in the schools. KRS 156.070(2) authorizes the board to designate an agency to manage athletics. This administrative regulation designates an agent for middle and high school athletics; establishes the financial planning and review processes for the agent; and incorporates by reference the bylaws, procedures, and rules of the agent.

Section 1. Definitions. (1) "Contact" means that drills are run at Level 3, thud, or Level 4, live action.

(2) "KBE" means Kentucky Board of Education.

(3) "KHSAA" means Kentucky High School Athletics Association.

(4) "Level 0" or "air" means that players run a drill unopposed and without contact.

(5) "Level 1" or "bags" means that a drill is run against a bag or another soft contact surface.

(6) "Level 2" or "control" means that a drill is run at the assigned speed until the moment of contact; one (1) player is

predetermined the winner by the coach; contact remains above the waist, and players stay on their feet.

(7) "Level 3" or "thud" means that a drill is run at the assigned speed through the moment of contact; there is not a predetermined winner; contact remains above the waist; players stay on their feet, and a quick whistle ends the drill.

(8) "Level 4" or "live action" means that a drill is run in game-like conditions and is the only time that players are taken to the ground.

(9) "Non-contact" means that drills are run at Level 0, air; Level 1, bags; or Level 2, control.

(10) "OCR" means Office for Civil Rights.

Section 2. The KHSAA shall be the Kentucky Board of Education's agent to manage interscholastic athletics at the middle and high school level in the common schools and private schools, ~~including a private school~~ desiring to associate with KHSAA or to compete with a common school.

Section 3. To remain eligible to maintain the designation as the agent to manage interscholastic high school athletics, the KHSAA shall:

(1) Accept four (4) at-large members appointed by the Kentucky Board of Education to its high school Board of Control;

(2) Sponsor an annual meeting of its member high schools;

(3) Provide for each member high school to have a vote on the KHSAA constitution and bylaw changes submitted for consideration;

(4) Provide for high school regional postseason tournament net revenues to be distributed to the member high schools in that region participating in that sport, utilizing a share approach determined by the high schools within that region playing that sport;

(5) Provide for students desiring to participate at the high school level (regardless of the level of play) to be enrolled in at least grade seven (7) ~~[unless the student has participated at the high school level before the 2014–2015 school year];~~

(6) Require its governing body to annually establish goals and objectives for its commissioner and perform a self-assessment and submit the results annually to the KBE by December 31;

(7) Advise the Department of Education of all legal action brought against the KHSAA;

(8) Permit a board of control member to serve a maximum of two (2) consecutive four (4) year terms with no region represented for more than eight (8) consecutive years;

(9) Employ a commissioner and evaluate that person's performance annually by October 31, and establish all staff positions upon recommendation of the commissioner;

(10) Permit the commissioner to employ other personnel necessary to perform the staff responsibilities;

(11) Permit the Board of Control to assess fines on a member high school;

(12) Utilize a trained independent hearing officer instead of an eligibility committee for a high school athletic eligibility appeal;

(13) Establish a philosophical statement of principles to use as a guide in a high school eligibility case;

(14) Conduct continual cycles of field audits of the association's entire high school membership, which provides that each high school is audited regarding each school's compliance with 20 U.S.C. Section 1681 (Title IX) and submit annual summary reports, including the highlighting of any potential deficiencies in OCR compliance to the Kentucky Board of Education;

(15) As a condition precedent to high school membership, require each member high school and superintendent to annually submit a written certification of compliance with 20 U.S.C. Section 1681 (Title IX);

(16) Conduct all meetings related to high school athletics in accordance with KRS 61.805 through 61.850;

(17) Provide written reports of any investigations into possible violations of statute, administrative regulation, KHSAA Constitution, KHSAA Bylaws, or other rules governing the conduct of high school interscholastic athletics conducted by KHSAA or their designees to the superintendent and principal of the involved

school district and school before being made public;

(18) Not punish or sanction, in any manner, a school, student, coach, or administrator for allowing a student to play in an athletic contest or practice with the team during a time when an order of a court of competent jurisdiction permits the student to participate or otherwise stays or enjoins enforcement of a KHSAA final decision on eligibility; and

(19) Require any student enrolled initially in grade seven (7) through twelve (12) who is repeating a grade for any reason, to be ineligible, during the school year that the grade is repeated, to compete in an interscholastic athletics competition at any level.

Section 4. To remain eligible to maintain the designation as the agent to manage interscholastic athletics at the middle school level, the KHSAA shall implement the following requirements for all participants in middle school interscholastic athletics, distribute these requirements to all middle schools, and publish via the KHSAA Web site:

(1) Require that these provisions apply to all middle school interscholastic athletics. The following indicates that a team is representative of a school and classified as middle school athletics:

(a) The contest, event, or tournament is sponsored by a school or combined group of schools;

(b) Competitors wear a school-issued uniform;

(c) The contest, event, or tournament is sponsored by an outside entity as a school entry event, which is advertised or promoted as a school event, whether or not an entry fee is required;

(d) A school entity pays an entry fee, for the student or team, including payment by booster organizations;

(e) A school representative accompanies the student-athlete or transports the student-athlete to the contest, event, or tournament;

(f) A designated or hired member of a school coaching staff, whether paid or unpaid, is present and offering instruction, advice, evaluation, or refinement of skills or exercising other duties defined as coaching within the sport rules;

(g) Transportation to or from the contest, event, or tournament utilizes school provided or approved transportation;

(h) Competitors in the contest, event, or tournament wear apparel identifying them by the name of the school, including the formal name, informal name, or team nickname;

(i) Competitors in the contest, event, or tournament are provided promotional or other resources by the school including school media recognition, signage, and items indicative of school representation;

(j) Competition in a contest, event, or tournament has, in any form, jurisdiction of the local school board or school-based decision-making body, including financial or other approval control; or

(k) Competition in a contest, event, or tournament is covered by any school or school system provided or procured insurance policy;

(2) Require that any head or assistant coach, whether paid or unpaid, desiring to coach interscholastic athletics at the middle school level:

(a) Meet the requirements of KRS 156.070(2)(g)2 [456.070(2)(f)2-];

(b) Meet the requirements of KRS 160.380(5) [160.380(4)] and (6); and

(c) Provide to the school documentation of successful completion of a C.P.R. course including the use of an automatic external defibrillator and the first aid training, conducted by an instructor or program approved by a college or university, the American Red Cross, the American Heart Association, or other bona fide accrediting agency that is approved by the KHSAA based upon industry standards. The [initial] certification shall [use in-person instruction and certification shall] be updated as required by the approving agency;

(3) Require adherence to the following items regarding safety, sports medicine, and risk minimization for all interscholastic athletics at the middle school level:

(a) Each student, before trying for a place on a middle school athletic team, shall provide an annual medical examination, in

accordance with KRS 156.070(2)(e) [456.070(2)(d)], and shall use the KHSAA form PPE01, with PPE02 being optional for the health care provider;

(b) All participants at the middle school level shall adhere to all sports medicine and risk minimization policies in use at the high school level that may be supplemented by the school, school district, conference, or association including:

1. Heat index and heat illness programs;

2. Wrestling weight management programs;

3. Concussion and other head injury policies including policies for minimizing impact exposure and concussion risks;

4. The following football drill work and practice activity limitations:

a. Football contact and non-contact practice shall use the appropriate clothing and equipment for the level of drill, including:

(i) A drill conducted in helmets-only shall be a Level 0, air, or Level 1, bags;

(ii) A drill conducted in shells (shorts, shoulder pads, and helmets) shall be a non-contact drill; and

(iii) A contact drill shall be conducted in full equipment;

b. Middle school football shall practice a minimum of eleven (11) days before engaging another group or opponent in full contact, using the following minimum schedule:

(i) Five (5) days in helmets;

(ii) Followed by three (3) days in helmets and shoulder pads; and

(iii) Concluding with three (3) days in full equipment practice; and

c. Contact drills shall not be conducted more than twenty-one (21) days before the first regular-season contest;

d. Beginning July 1, 2020, the first regular season interscholastic contest shall not be played before the Saturday preceding week seven (7) of the National Federation of High Schools Standardized Procedure for Numbering Calendar Weeks;

5. The following baseball pitching limitations shall apply to all interscholastic play at the middle school level including scrimmages, regular season, and post season games:

a. The pitch count shall be based on pitches thrown for strikes (including foul balls), balls, balls in play, and outs;

b. Warm-up pitches allowed before each inning, warm-up pitches allowed by the umpire in case of injury or game delay, and plays attempted against the batter-runner or any runner at first, second, or third base shall not count against this limit;

c. A pitcher at any level who reaches the pitch count limit in the middle of an at-bat shall be allowed to finish that hitter;

d. The required calendar rest shall begin on the day following the date on which the game began, or a resumed game began regardless of the conclusion time of the game; and

e. The rest periods shall be based on the following total pitches:

(i) Maximum pitches - eighty-five (85);

(ii) Fifty-six (56) pitches or more - three (3) calendar days rest;

(iii) Thirty-six (36) to fifty-five (55) pitches - two (2) calendar days rest;

(iv) Twenty (20) to thirty-five (35) pitches - one (1) calendar day rest; and

(v) One (1) to nineteen (19) pitches - no mandated rest;

6. Students seeking to play or practice, including scrimmages, regular season, and post season games, in the sport of fastpitch softball, shall be required to wear face protection, commercially manufactured for softball facial protection and worn as intended by the manufacturer, when playing the positions of first base, third base, and pitcher; and

7. Teams participating in middle school athletics as defined by subsection (1) of this section shall use KHSAA licensed officials in the sports of baseball, basketball, field hockey, football, soccer, softball, and volleyball;

(4) Create a permanent Middle School Athletics Advisory Committee. This committee shall:

(a) Be autonomous with respect to the Board of Control of the KHSAA;

(b) Be composed of no less than three (3) middle school representatives from each Supreme Court district as well as no

less than three (3) at large representatives from throughout the state;

(c) Provide an opportunity for nonprofit athletic groups, parents, and others to participate and provide input on the sport, athletic event, or athletes involved in interscholastic activities through local school districts;

(d) Meet not less than twice annually to review current programs and policies, make recommendations for improvements to and participation in middle school interscholastic activities, as well as any changes in statute, administrative regulation, or policy related to middle school interscholastic athletics, and assist in the development of model guidelines for schools, districts, conferences, and associations to be used in implementing a middle school athletic program; and

(e) Report regularly, not less than annually, to the commissioner of the KHSAA and issue, in conjunction with the commissioner, a formal written report annually to the KBE with recommendations for changes in statute, administrative regulation, or policy;

(5) Require any organization conducting a school-based event at the middle school level to submit the following, which shall be published and listed on the KHSAA Web site:

(a) Annual financial reports of all sanctioned and approved events sponsored by the organization; and

(b) Documentation of financial accountability including verification of federal status and tax documents including an annual IRS Form 990;

(6) Provide notice to the middle schools related to any program conducted by KHSAA related to educating school administrators about the provisions of 20 U.S.C. 1681, Title IX;

(7) Provide educational materials and a mechanism to facilitate the monitoring and tracking capabilities for the middle schools to ensure compliance with the provisions of KRS 160.445 and other requirements for coaches at the middle school level;

~~(8) Require any student enrolled initially in grade five (5) through eight (8) who is repeating a grade for any reason, to be ineligible, during the school year that the grade is repeated, to compete in interscholastic athletics competition at any level;~~

~~(9) Require that any student who turns:~~

(a) Fifteen (15) years of age before August 1 of the current school year shall not be eligible for interscholastic athletics in Kentucky in competition against students exclusively enrolled in grades eight (8) and below;

(b) Fourteen (14) years of age before August 1 of the current year shall not be eligible for interscholastic athletics in Kentucky in competition against students exclusively enrolled in grades seven (7) and below; and

(c) Thirteen (13) years of age before August 1 of the current school year shall not be eligible for interscholastic athletics in Kentucky in competition against students exclusively enrolled in grades six (6) and below;

(9) [(10)] Require each school, school district, conference, or association of schools to develop rules and limitations regarding student participation at the middle school level to include:

(a) A defined age limitation for participating students;

(b) A policy regarding the participation of students below grade six (6);

(c) A limitation on practice time before the season in any sport or sport activity which shall not exceed the practice time adopted for play at the high school level;

(d) A limitation on the number of school-based scrimmages and regular season, school based contests in each sport or sport-activity, which shall not include post season contests and shall not exceed the allowable number of contests for that sport or sport-activity at the high school level; and

(e) A limitation on the length of the regular competitive season in each sport or sport-activity, not including any post season activities, which shall not exceed the length for that sport or sport-activity at the high school level;

(10) [(11)] Conduct all meetings related to middle school athletics in accordance with KRS 61.805 through 61.850;

(11) [(12)] Issue an annual report to the KBE on the status of interscholastic athletics at the middle school level, including any

recommendations for changes in statute, administrative regulation, or policy;

(12) [(13)] Allow a school or school district to join a conference or association that has developed rules for any particular sport or sport-activity to satisfy the requirements of this administrative regulation; and

(13) [(14)] The period of June 25 to July 9, inclusive, shall be a dead period for middle school athletics. During the dead period:

(a) Students shall not receive coaching or training from school personnel, whether salaried or non-salaried;

(b) School facilities, uniforms, nicknames, transportation, or equipment shall not be used;

(c) School funds shall not be expended in support of interscholastic athletics; and

(d) A postseason wrap-up activity, celebration, or recognition event relating to a spring sports team at a school may be held.

Section 5. Financial Planning and Review Requirements. (1) KHSAA shall annually submit the following documents to the KBE by October 31:

(a) Draft budget for the next two (2) fiscal years, including the current year;

(b) End-of-year budget status report for the previous fiscal year;

(c) Revisions to the KHSAA Strategic Plan as a result of an annual review of the plan by the KHSAA governing body;

(d) A summary report of operations including summaries of financial, legal, and administrative actions taken and other items ongoing within KHSAA. This report shall also include a summary of items affecting:

1. Athletic appeals and their disposition, including the name of the individual, grade, school, and the action taken by KHSAA;

2. Eligibility rules;

3. Duties of school officials;

4. Contests and contest limitations;

5. Requirements for officials and coaches; and

6. Results of a biennial review of its bylaws that results in a recommendation for a change, directing any proposals for change in association rules to be considered for a vote by the member schools at the next legislative opportunity; and

(e) A review of all items which have been submitted to the membership for approval through the processes established in the KHSAA Constitution and the result of the voting on those issues.

(2) The KHSAA shall annually submit at the next meeting of the Kentucky Board of Education following receipt and adoption by the Board of Control, audited financial statements with the KHSAA Commissioner's letter addressing exceptions or notes contained in management correspondence if any.

Section 6. Forms. The forms incorporated by reference in this administrative regulation shall be filed:

(1) Using the paper form; or

(2) Using the electronic forms found on the Kentucky High School Athletic Association Web site at www.khsaa.org.

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

(a) "KHSAA Constitution", 7/2020[6/2017];

(b) "KHSAA Bylaws", 7/2020[6/2019];

(c) "KHSAA Due Process Procedure", 6/2017;

(d) "KHSAA Board of Control and Officials Division Policies", 7/2020[6/2019];

(e) KHSAA Form BA101- Baseball Pitching Limitation", 6/2016;

(f) KHSAA Form GE01, "Application for Membership", 5/2020[5/2017];

(g) KHSAA Form GE04, "Athletic Participation Form, Parental and Student Consent and Release for High School Level (grades 9 - 12) Participation", 7/2020[7/2019];

(h) KHSAA Form DP02, "Request for Statutory Waiver of Bylaw 2", 6/2018;

(i) KHSAA Form DP06, "Application for Athletic Eligibility for Domestic Students", 7/2020[6/2019];

(j) KHSAA Form DP07, "Application for Athletic Eligibility for

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Students having J-1 or F-1 Status", 7/2020[7/2019];

(k) KHSAA Form DP08, "Application for Non U.S. Student Athletic Eligibility for Students Not having J-1/F-1 Status ", 7/2020[7/2019];

(l) KHSAA Form DP16, "Request for Waiver of 20 Day Notice", 6/2018;

(m) KHSAA Form DP17, "Add. Info for Appeal", 6/2018;

(n) KHSAA Form DP18 "Waiver – 15 Day Exceptions", 6/2018;

(o) "KHSAA Form GE14- Contract for Athletic Contests", 7/2020[8/2017];

(p) "KHSAA Form GE19-Title IX Procedures Verification", 5/2011;

(q) KHSAA Form GE20, "Heat Index Measurement and Record", 4/2014;

(r) KHSAA Form PPE01/Physician Clearance, "PPE01-Physician Clearance Form (Grades 6-12)", 7/2020[KHSAA Form PPE/Physical Exam, "PPE- Physical Exam History/Physician Clearance Form (Grades 6-12)", 7/2019];

(s) KHSAA Form PPE02/Physical Exam, "PPE02 Physical Exam Form (Grades 6-12)", 7/2020;

(t) KHSAA Form PPE/Supplemental, "PPE- Physical Exam History Supplemental Form for Athletes With Special Needs (Grades 6 - 12)", 7/2019; and

(u) [(t)] "KHSAA Form MS01- Athletic Participation Parental and Student Consent and Release for Middle School (grades 5-8) Participation", 7/2020[4/2015].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Legal, Legislative and Communication Services, Department of Education, 5th Floor, 300 Sower Blvd, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

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, November 9, 2020)

704 KAR 8:090. Required Kentucky Academic Standards for Technology.

RELATES TO: KRS 156.070, 156.160, 158.645, 158.6451[, ~~160.290, 156.850, 704 KAR 3:305~~]

STATUTORY AUTHORITY: 156.070, 156.160, 156.850, 160.290

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board of Education to establish courses of study for the different grades and kinds of common schools, with the courses of study to comply with the expected goals, outcomes, and assessment strategies developed under KRS 158.645 and 158.6451. KRS 156.070(1) requires the Kentucky Board of Education to manage and control the common schools and all programs operated in the schools. KRS 160.290 authorizes local boards of education to provide for courses and other services for students consistent with the administrative regulations of the Kentucky Board of Education. KRS 156.850 requires compliance with federal provisions and acts relating to vocational education. This administrative regulation incorporates by reference the Kentucky Academic Standards for Technology, which contain the general courses of study and academic content standards of technology, for use in Kentucky's common schools.

Section 1. Before graduating from a Kentucky public high

school, a student shall meet the minimum content requirements established in the Kentucky Academic Standards for Technology.

Section 2. Incorporation by Reference. (1) The "Kentucky Academic Standards for Technology", August 2020, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, 5th floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

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.

KENTUCKY COMMUNITY AND TECHNICAL COLLEGE SYSTEM Kentucky Fire Commission (As Amended at ARRS, November 9, 2020)

739 KAR 2:050. Volunteer fire department aid.

RELATES TO: KRS Chapter 75, ~~[KRS] 95A.262, [KRS] 273.401~~

STATUTORY AUTHORITY: KRS 95A.050(3), 95A.055(13) ~~[95A.055(13), KRS 95A.050(3)]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 95A.055(13)[~~95A.262(2)~~] requires the Commission to promulgate administrative regulations to implement KRS 75.430 and KRS 95A.055 [on Fire Protection Personnel Standards and Education to allot funds to local volunteer fire departments in order to promote better fire protection through better facilities and equipment]. This administrative regulation establishes [the] requirements for volunteer fire departments[~~department~~] aid.

Section 1. Definition. "Fire apparatus" means a motorized vehicle specifically designed to perform firefighting operations, with a minimum rated pump capacity of 750 gallons per minute (gpm), and which met or meets the associated National Fire Protection Association (NFPA) standard at the time of manufacture.

Section 2. Eligibility. (1) To qualify for aid, a volunteer fire department shall meet the requirements established in KRS 95A.262 and submit to the commission proof of the required annual twenty (20) hours of recognized training for each firefighter by June 30[~~December 31~~].

(2) Even if all volunteer firefighters have not yet become certified volunteer firefighters, as defined by 739 KAR 2:060, a new fire department shall be eligible for aid if the fire department has:

- (a) Been recognized by the commission;
- (b) Been established for less than two (2) years;
- (c) A staff consisting of at least fifty (50) percent certified volunteer firefighters; and
- (d) Twelve (12) or more firefighters and a chief who have not qualified another fire department for volunteer department aid.

Section 3. Applying for Aid. The chief officer or the appointed representative of the department shall submit a Volunteer Fire Department State-Aid Application.

Section 4. Eligible Items and Report of Purchase. (1) Funds may be used:

- (a) To purchase items such as firefighting and special operations equipment;
- (b) To purchase fire apparatus;
- (c) To purchase a fire station; or

(d) For the maintenance or repair of a fire station.

(2)(a) Funds shall not be expended for ineligible items unless the commission receives a written request from the chief explaining the need for the items and the request is approved by the commission staff, in accordance with this section.

(b) If the request is denied and the volunteer department does not desire to use the funds for approved items, the allotment shall be refunded to the commission.

(3) Each fire department receiving aid shall submit the State-Aid Report of Purchase form to the commission staff by July 31 of the following year the aid was granted. Failure to do so shall disqualify the department from receiving aid the following year.

(a) The commission or its designee may make an inspection of the applicant's fire department to determine comparative needs within the department before making the allotment.

(b) The inspection may include an accounting to assure that equipment previously purchased is currently in the possession of the fire department.

Section 5. Holding of Funds. (1)(a) If the approved allotment is insufficient to cover the cost of equipment or other approved purpose, the full aid granted for a fiscal year may be held by the fire department for a period not to exceed five (5) years from the initial granting of funds.

(b) If the funds will be held, a written explanation for the holding request shall be submitted to the commission upon receiving the funds.

(c) The funds shall be held in a special and separate bank account marked "Fire Department Aid Fund."

(2)(a) Upon the expenditure of funds, the chief or appointed representative shall submit the State-Aid Report of Purchase to the commission.

(b) If the funds are used toward the retirement of a preexisting debt for purchase of land, buildings, or equipment, proof of the expenditure in the form of an affidavit or cancelled note shall be submitted to the commission.

(c) An applicant who knowingly makes a false statement regarding volunteer fire department aid shall subject the grant to refund and prosecution for fraud.

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

(a) Volunteer Fire Department State-Aid Application, 8/2017; and

(b) State-Aid Report of Purchase, 8/2017.

(2) This material may be inspected, copied, or obtained subject to applicable copyright law, at the Kentucky Fire Commission [~~on Fire Protection Personnel Standards and Education~~], 118 James Court, Lexington, Kentucky 40505, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Jonathan L. Gay, Counsel for the Kentucky Fire Commission, phone (859) 225-4714, fax (859) 225-1493, 163 E. Main Street, Suite 200, Lexington, Kentucky 40507, email: administrativeregulations@wgmfirm.com.

**LABOR CABINET
Department of Workers' Claims
(As Amended at ARRS, November 9, 2020)**

803 KAR 25:089. Workers' compensation medical fee schedule for physicians.

RELATES TO: KRS 342.0011(32), 342.019, 342.020, 342.035

STATUTORY AUTHORITY: KRS 342.020, 342.035(1), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.035(1) requires the commissioner of the Department of Workers' Claims to promulgate administrative regulations to ensure that all fees, charges, and reimbursements for medical services under KRS Chapter 342 are limited to charges that are fair, current, and reasonable for similar treatment of injured persons in the same community for like services, where treatment is paid for

by general health insurers. KRS 342.035(4) requires the commissioner to promulgate an administrative regulation establishing the workers' compensation medical fee schedule for physicians. Pursuant to KRS 342.035, a schedule of fees is to be reviewed and updated, if appropriate, every two (2) years on July 1. This administrative regulation establishes the medical fee schedule for physicians.

Section 1. Definitions. (1) "Medical fee schedule" means the 2020 Kentucky Workers' Compensation Schedule of Fees for Physicians [~~2018 Kentucky Workers' Compensation Schedule of Fees for Physicians~~].

(2) "Physician" is defined by KRS 342.0011(32).

Section 2. Services Covered. (1) The medical fee schedule shall govern all medical services provided to injured employees by physicians under KRS Chapter 342.

(2) The medical fee schedule shall also apply to other health care or medical services providers to whom a listed CPT code is applicable unless:

(a) Another fee schedule of the Department of Workers' Claims applies;

(b) A lower fee is required by KRS 342.035 or a managed care plan approved by the commissioner pursuant to 803 KAR 25:110; or

(c) An insurance carrier, self-insured group, or self-insured employer has an agreement with a physician, medical bill vendor, or other medical provider to provide reimbursement of a medical bill at an amount lower than the medical fee schedule.

Section 3. Fee Computation. (1) The appropriate fee for a procedure or item covered by the medical fee schedule shall be the Maximum Allowable Reimbursement (MAR) listed in the 2020[2018] Kentucky Workers' Compensation Schedule of Fees for Physicians for those procedures or items for which a specific monetary amount is listed [; and].

(2) Procedures Listed Without Specified Maximum Allowable Reimbursement Monetary Amount: The appropriate fee for a procedure or item for which no specific monetary amount is listed shall be determined and calculated in accordance with numerical paragraph six (6) of the General Instructions of the medical fee schedule unless more specific Ground Rules are applicable to that service or item, in which case the fee shall be calculated in accordance with the applicable Ground Rules [;].

(3) The resulting fee shall be the maximum fee allowed for the service provided.

Section 4. (1) A physician or healthcare or medical services provider located outside the boundaries of Kentucky shall be deemed to have agreed to be subject to this administrative regulation if it treats a patient who is covered under KRS Chapter 342.

(2) Pursuant to KRS 342.035, medical fees due to an out-of-state physician or healthcare or medical services provider shall be calculated under the fee schedule in the same manner as for an in-state physician.

Section 5. Incorporation by Reference. (1) "2020 Kentucky Workers' Compensation Schedule of Fees for Physicians", [~~2018 Kentucky Workers' Compensation Schedule of Fees for Physicians~~], July 1, 2018 edition [~~the edition effective~~] July 1, 2020 Edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Workers' Claims, Mayo-Underwood Building 3rd Floor, 500 Mero Street [~~Prevention Park 657 Chamberlin Avenue~~], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify the commissioner has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 342.260, 342.270 and 342.285.

CONTACT PERSON: Scott C. Wilhoit, Special Assistant,

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Department of Workers' Claims, Mayo-Underwood Building, 3rd Floor, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 782-4532, fax (502) 564-0682, Scottc.wilhoit@ky.gov.

LABOR CABINET
Department of Workers' Claims
(As Amended at ARRS, November 9, 2020)

803 KAR 25:240. Workers' compensation unfair claims settlement practices.

RELATES TO: KRS 304.12-230, 342.267, 342.610(7)

STATUTORY AUTHORITY: KRS 342.260(1)

NECESSITY, FUNCTION, AND CONFORMITY: *[Pursuant to]*

KRS 342.260(1) *requires[,]* the Commissioner ~~[Executive Director]~~ of the Department ~~[Office]~~ of Workers' Claims *[is authorized]* to promulgate administrative regulations necessary to carry on the work of the Department ~~[Office]~~ of Workers' Claims *[,]* and administrative law judges ~~[and arbitrators]~~. KRS 342.267 requires the Commissioner ~~[Executive Director]~~ to fine carriers for engaging in unfair claims settlement practices under KRS Chapter 342 or 304.12-230. This administrative regulation establishes standards for the Commissioner ~~[executive-director]~~ and carriers with regard to unfair claims settlement practices.

Section 1. Definitions. (1) "Agent" means a person or entity performing claims adjusting, case management, utilization review, or other service on behalf of a carrier.

(2) "Carrier" is defined *by[in]* KRS 342.0011(6).

Section 2. File and Record Documentation. (1) Each carrier's claim files and files held by an agent of the carrier shall be subject to examination by the commissioner ~~[executive-director]~~ or the commissioner's ~~[executive-director's]~~ designee.

(2) Each carrier or agent of the carrier shall maintain claim data that is readily accessible and retrievable for examination.

(3) Documentation shall be contained in each claim file:

(a) Detailing the activities of each carrier and any agent of the carrier; and

(b) Detailing the basis~~[foundations]~~ for the decision of the carrier or agent of the carrier upon material matters of the claim.

(4) Each document within a claim file shall be noted as to date received, date processed, or date mailed.

(5) For a carrier *that[which]* does not maintain hard copy files, claim files shall be capable of duplication to legible hard copy.

(6) A claim file shall be maintained for a period not less than five (5) years following the creation of the material or the completion of the purpose for which it was created, whichever shall occur last.

Section 3. Notice of Policy Provisions and Information. (1) A carrier shall provide *the[adequate]* notice *required by KRS 342.610(7)* with regard to policy provisions, *[and information with regard to]* coverage, and benefits.

(2) Failure *[of a carrier]* to provide the notice *[required by KRS 342.610(7)]*~~[(6)]~~ in the form prescribed by 803 KAR 25:200 shall constitute an unfair claims settlement practice.

Section 4. Duty to Investigate. Upon notice of a work-related injury, a carrier shall diligently investigate a claim for facts warranting the extension or denial of benefits.

Section 5. Standards for Prompt and Timely Actions. (1) After receipt of notice of a work-related injury necessitating medical care or causing lost work days, a carrier shall as soon as practicable advise an injured employee of acceptance or denial of the claim.

(2) A carrier shall provide to the employee in writing the specific reasons for denial of a claim.

(3) A carrier shall inform an employee of additional information needed for the claim to be accepted.

(4) A carrier shall meet the time constraints for accepting and

paying workers' compensation claims established in KRS Chapter 342 and 803 KAR Chapter 25~~[applicable administrative regulations]~~.

Section 6. Standards for Fair and Equitable Settlement. (1) A carrier shall attempt in good faith to promptly pay a claim in which liability is clear;

(2) A carrier shall not misrepresent pertinent facts or law with regard to a claim;

(3) A carrier shall not compel an employee to institute formal proceedings with the Department ~~[Office]~~ of Workers' Claims to recover benefits where liability is clear;

(4) A carrier shall not offer a settlement which is substantially less than the reasonable value of a claim;

(5) A carrier shall not threaten to file or invoke a policy of filing appeals for the purpose of compelling a settlement for less than a workers' compensation award ~~[or benefit review determination]~~; and

(6) A carrier shall not require an employee to obtain information which is accessible to the carrier.

Section 7. Acknowledgment of Communications. (1) Upon receipt of an inquiry from the Department~~[Office]~~ of Workers' Claims, each carrier shall furnish the Department~~[Office]~~ of Workers' Claims a full response within fifteen (15) days.

(2) Upon receipt of a communication from an injured employee *that[which]* reasonably suggests a response is expected, a carrier shall make a prompt and appropriate reply to the employee.

This is to certify the commissioner has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 342.260, 342.270 and 342.285.

CONTACT PERSON: B. Dale Hamblin, Jr., Assistant General Counsel, Workers' Claims Legal Division, Kentucky Labor Cabinet~~[Scott C. Wilhoit, Special Assistant, Department of Workers' Claims]~~, Mayo-Underwood Building, 3rd Floor, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 782-4404~~[4532]~~, fax (502) 564-0681~~[0682]~~, email Dale.Hamblin@ky.gov ~~[Scottc.wilhoit@ky.gov]~~.

PUBLIC PROTECTION CABINET
Department of Alcoholic Beverage Control
(As Amended at ARRS, November 9, 2020)

804 KAR 4:415. Direct shipper license.

RELATES TO: KRS 243.027, 243.028, 243.029, 243.030(33), 244.050, 244.440, 244.585~~[- 804 KAR 4:015, 804 KAR 4:100, 804 KAR 4:410.]~~

STATUTORY AUTHORITY: KRS 241.060, ~~[KRS]~~ 243.027

NECESSITY, FUNCTION, AND CONFORMITY: KRS 243.027 *requires[authorizes]* the Department of Alcoholic Beverage Control to set forth the requirements and the form for a direct shipper license application. KRS 243.027(3)(c) *requires[authorizes]* the department to establish through regulation what information the department determines to be necessary to implement and administer the direct shipper license. KRS 243.027(6)(a) *requires[authorizes]* the department to reduce unlicensed deliveries and shipments of alcoholic beverages in the state. KRS 241.060(1) authorizes the department to promulgate reasonable administrative regulations governing procedures relative to application for licenses as well as the supervision and control of the trafficking of alcoholic beverages. [To protect the public health and safety of Kentucky citizens,] This administrative regulation establishes requirements for the direct shipper license and the privileges and responsibilities of a direct shipper license.

Section 1. Qualifications. To qualify for a direct shipper license, *an[the]* applicant shall:

(1) Hold *[either]* a current license, permit, or other

authorization to manufacture alcoholic beverages in the state where it is located or a current license in this state under KRS 243.212 or 243.215 to supply alcoholic beverages;

(2) Hold a current permit or authorization under the Federal Alcohol Administration Act as follows:

(a) If a manufacturer other than a brewery, a basic permit to produce or manufacture beverage alcohol;

(b) If a manufacturer that is a brewery, a brewer's notice to produce or manufacture malt beverages; or

(c) If an importer, wholesaler, or distributor licensed as a supplier under KRS 243.212 or 243.215, a basic importer's or wholesaler's [importers] permit for the purpose of directly shipping only those products for which the applicant is designated the primary source of supply under the applicant's supplier license [to import beverage alcohol];

(3) Complete the online direct shipper license application via the department's licensing portal at <https://abc-portal.ky.gov/s/kyabcnewlicensetype>;

(4) Provide the address and a description of the premises from which the applicant will ship alcoholic beverages to consumers, and documentation showing ownership or possession of the premises under a written agreement;

(5) Pay the annual license fee established in KRS 243.030(33);

(6) Disclose all of the applicant's current alcohol-related licenses, permits, and authorizations granted by this state, the federal government, and, if applicable, the state in which the applicant manufactures alcoholic beverages;

(7) Disclose all convictions for violations of alcoholic beverage laws, or misdemeanors directly or indirectly attributable to the use of alcoholic beverages or the use or trafficking in controlled substances, in the last two (2) years in any state, by the applicant or the applicant's officers, directors, or members or managers as defined in KRS 275.015;

(8) Disclose all convictions or sentences served for felonies of any kind by the applicant or the applicant's officers, directors, or members or managers as defined in KRS 275.015, in the last five (5) years;

(9) Complete all registration requirements with respect to payment of any applicable excise tax, state or local sales or use tax, local regulatory license fee, or other tax owed in this state to directly ship alcoholic beverages to consumers in this state; and

(10) Consent to the jurisdiction of the Commonwealth of Kentucky for purposes of enforcement of KRS Chapters 241 to 244.

Section 2. Prohibited Substantial Interests. A direct shipper license applicant and direct shipper licensee shall comply with 804 KAR 4:015 and for that purpose shall be considered a ~~["manufacturer"]~~ as defined in 804 KAR 4:015.

Section 3. Licensed Premises.

(1) The licensed premises described in a direct shipper license application may be different from the premises where the applicant is licensed, permitted, or otherwise authorized to manufacture or supply alcoholic beverages.

(2) If the direct shipper licensee uses, or intends to use, [will use] the licensed premises described in the direct shipper license application for storage of alcoholic beverages incidental to shipment, the[such] premises shall also comply with the laws of the jurisdiction in which it is located in order to store [be licensed or otherwise authorized for storage of] the alcoholic beverages to be shipped.

(3) Direct shipper licensees may engage in transportation of their products as permitted by their [If, as described in subsection (1), the licensed premises described in the direct shipper license application is different from a direct shipper licensee's manufacturing or supplying premises, the direct shipper licensee may transport alcoholic beverages between the licensed premises described in the direct shipper license application and the licensee's manufacturing premises, subject to the constraints of the direct shipper's] license, permit, or authorization to manufacture or supply alcoholic beverages.

Section 4. Minimum Production. A manufacturer that is ~~either~~ a direct shipper license applicant or a direct shipper licensee, and who intends to ship wine or distilled spirits, shall meet the minimum quantities of production set forth in KRS 243.155(2) and KRS 243.120(2)(a) as applicable.

Section 5. Brand Registration. In accordance with 804 KAR 4:410, a direct shipper licensee shall register with the department all brands the licensee intends to ship to consumers in ~~[-or into] this state [-that the licensee has not already registered under another license issued by the department]~~.

Section 6. Independent Contractors. A direct shipper licensee shall not contract with an independent contractor or agent who has, or would have, a substantial interest prohibited under 804 KAR 4:015 if the independent contractor or agent is treated as a ~~["manufacturer"]~~ as defined in 804 KAR 4:015.

Section 7. Records. A direct shipper licensee shall comply with the record retention and audit requirements set forth in 804 KAR 4:100, except a licensee shall maintain ~~[such]~~ records for a minimum of three (3) years. At the request of the department, the licensee shall make available for inspection all records regarding direct shipment to Kentucky consumers ~~[at the request of the department]~~.

Section 8. Minimum Price. A direct shipper licensee shall sell alcoholic beverages at a price no less than the cost of production [current wholesale price, if a current wholesale price is available], in accordance with KRS 244.050.

CONTACT PERSON: Joshua Newton, General Counsel, Department of Alcoholic Beverage Control, 500 Mero Street, 2 NE #226, Frankfort, Kentucky 40601, phone (502) 782-0770, fax (502) 564-4850, email Joshua.Newton@ky.gov.

**PUBLIC PROTECTION CABINET
Department of Charitable Gaming
(As Amended at ARRS, November 9, 2020)**

820 KAR 1:050. Raffles.

RELATES TO: KRS 238.545, 238.550

STATUTORY AUTHORITY: KRS 238.515

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515 authorizes the Department of Charitable Gaming to establish and enforce reasonable standards for the conduct of charitable gaming and to promulgate administrative regulations necessary to implement KRS Chapter 238. This administrative regulation establishes standards for the conduct of raffles.

Section 1. **Definitions.** (1) **"Access control" means the restriction of access to a place or other resource. Locks and login credentials are two (2) mechanisms of access control.**

(2) **"Address Resolution Protocol (ARP)" is the protocol used to translate IP addresses into MAC addresses to support communication on a LAN (Local Area Network). The Address Resolution Protocol is a request and reply protocol and it is communicated within the boundaries of a single network, never routed across internetwork nodes (connection points, either a redistribution point or an end point for data transmissions).**

(3) **"Algorithm" means a finite set of unambiguous instructions performed in a prescribed sequence to achieve a goal, especially a mathematical rule or procedure used to compute a desired result. Algorithms are the basis for most computer programming.**

(4) **"Authentication" means a security measure designed to protect a communications system against acceptance of a fraudulent transmission or simulation by establishing the validity of a transmission, message, or originator.**

(5) "Bearer ticket" means an electronic or paper ticket that contains one (1) or more draw numbers purchased.

(6) "Bi-Directional" means the ability to move, transfer, or transmit in both directions.

(7) "Counterfoil" means an electronic record or paper ticket stub, also known as a barrel ticket, which shall be drawn to determine a winner and contains a player's draw number matching the bearer ticket purchased and may, depending on the type of raffle, contain the name, address, or telephone number of the player.

(8) Critical memory means memory that is used to store all data that is considered vital to the continued operation of the RSU.

(9) "Crypto-analytic" means an attack against the encryption key (refer to definition of encryption key).

(10) "Cryptographic" means anything written in a secret code or cipher.

(11) "Distributed Denial of Service (DDoS)" means a type of Denial of Service (DoS) attack where multiple compromised systems, usually infected with a destructive software program, are used to target a single system causing a Denial of Service (DoS) attack. Victims of a DDoS attack consist of both the end targeted system and all systems maliciously used and controlled by the hacker in the distributed attack.

(12) "Domain" is a term used to identify one (1) or more IP addresses. A domain name is used in a Uniform Resource Locator (URL) to identify particular Web pages.

(13) "Draw number" means a uniquely identifiable number that is provided to the purchaser for each chance purchased and may be selected as the winning number for the raffle.

(14) "Electronic raffle system" means computer software and related equipment used by raffle licensees to sell tickets, account for sales, and facilitate the drawing of tickets to determine the winners.

(15) "Encryption" means the reversible transformation of data from the original (the plaintext) to a difficult-to-interpret format (the ciphertext) as a mechanism for protecting its confidentiality, integrity, or its authenticity.

(16) "Encryption key" means a sequence of numbers used to encrypt or decrypt (to decode/decipher) data.

(17) "Firewall" means any number of security schemes that prevent unauthorized users from gaining access to a computer network or that monitor transfers of information to and from the network.

(18) "Geolocation" means identifying the real-world geographic location of an Internet connected computer, mobile device, or website visitor.

(19) "Host" means a computer system that is accessed by a user working at a remote location. Typically, the term is used when there are two (2) computer systems connected by modems and telephone lines. The system that contains the data is called the host, while the computer at which the user sits is called the remote terminal. A computer that is connected to a TCP/IP network, including the Internet. Each host has a unique IP address.

(20) "Hypertext Transfer Protocol (HTTP)" means the underlying protocol used by the World Wide Web. HTTP defines how messages are formatted and transmitted, and what actions Web servers and browsers shall take in response to various commands.

(21) "Internet" means an interconnected system of networks that connects computers around the world via the TCP/IP protocol. TCP/IP protocol is short for Transmission Control Protocol/Internet Protocol, the suite of communications protocols used to connect hosts on the Internet.

(22) "Intrusion Detection System (IDS)" or "Intrusion Prevention System (IPS)" means a system that inspects all inbound and outbound network activity and identifies suspicious patterns that may indicate a network or system attack from someone attempting to break into or compromise a system. Used in computer security, intrusion detection refers to the process of monitoring computer and network

activities and analyzing those events to look for signs of intrusion in a system.

(23) "Internet Protocol (IP)" means an identifier for a computer or device on a TCP/IP network.

(24) "Media Access Control (MAC)" means a hardware address that uniquely identifies each node, such as the computer or printer, of a network.

(25) "Man-in-the-Middle (MITM)" means an active Internet attack where the person attacking attempts to intercept, read, or alter information moving between two (2) computers.

(26) "Message authentication" means a security measure designed to establish the authenticity of a message by means of an authenticator within the transmission derived from certain predetermined elements of the message itself.

(27) "Online" means being connected to the Internet.

(28) "Online Purchasing Platform" means the raffle system hardware and software that drives the features common to all raffles offered, and which forms the primary interface to the Raffle System for both the patron and the operator. The online purchasing platform provides the patron with the means to register an account, log in to or out of their account, modify their account information, make ticket purchases, request account activity statement or reports, and close their account. In addition, any web pages displayed to the patron that relate to ticket purchasing offered on the raffle system. The online purchasing platform provides the operator with the means to review patron accounts, enable or disable raffles, generate various financial transaction and account reports, input raffle outcomes, enable or disable patron accounts, and set any configurable parameters.

(29) "Protocol" means a set of formal rules describing how to transmit or exchange data, especially across a network. TCP/IP is the standard communications protocol of the Internet and most internal networks.

(30) "Raffle sales unit (RSU)" means a portable or wireless device, a remote hardwired connected device, or a standalone cashier station that is used as a point of sale for bearer tickets.

(31) "Remote access" means any access from outside the system or system network including any access from other networks within the same establishment.

(32) "Shellcode" means a small piece of code used as the payload (cargo of data transmission) in the exploitation of computer security. Shellcode exploits a vulnerability and allows an attacker the ability to reduce a computer system's information assurance.

(33) "Security certificate" means information, often stored as a text file, which is used by the Secure Socket Layers (SSL) protocol to establish a secure connection. A security certificate contains information about whom it belongs to, who it was issued by, valid dates, and a unique serial number or other unique identification that may be used to verify the contents of the certificate. In order for an SSL connection to be created, both sides are required to have a valid security certificate, which is also called a digital ID.

(34) "Stateful firewall" means a firewall that keeps track of the state of network connections traveling across it. The firewall is programmed to distinguish legitimate packets for different types of connections. Only packets matching a known active connection shall be allowed by the firewall; others shall be rejected. Stateful inspection, also referred to as Dynamic Packet Filtering, is a security feature often included in business networks.

(35) "Stateless" means a communications protocol that treats each request as an independent transaction that is unrelated to any previous request so that the communication consists of independent pairs of requests and responses. A stateless protocol does not require the server to retain session information or status about each communications partner for the duration of multiple requests. In contrast, a protocol that requires the keeping of internal state is known as a stateful protocol. Examples of stateless protocols include

Internet Protocol (IP) and the Hypertext Transfer Protocol (HTTP).

(36) "Validation number" means a unique number that may represent one (1) or more draw numbers that shall be used to validate the winning number for the raffle.

Section 2. Raffle Ticket Construction. (1) Raffle tickets shall have a detachable section or duplicate ticket and shall be consecutively numbered. If raffle tickets are sold electronically, the charitable organization selling the tickets shall provide all purchasers with a physical ticket or electronic communication that contains the information required by subsection (2) of this section.

(2) The detachable section or duplicate of the ticket shall bear a duplicate number corresponding to the number on the ticket and shall provide space for the purchaser's name, complete address, and telephone number.

(3) The following information shall be on each ticket:

(a) The date and time for each drawing;

(b) The location of each drawing;

(c) The name of the charitable organization conducting the raffle;

(d) The charitable organization's license number or exemption number;

(e) The price of the ticket; and

(f) Each prize to be awarded with a fair market value over \$500.

(4) The requirements of subsections (2) and (3) of this section shall be waived if:

(a) The raffle tickets sell for five (5) dollars or less, or

(b) The raffle sales are initiated and concluded and all winners are selected at a licensed charity fundraising event or a licensed special limited charity fundraising event.

Section (3)[2.] Raffle Prizes. (1) A charitable organization conducting a raffle in which real or personal property prizes are to be awarded shall be responsible for the transfer and delivery of the prize without lien or interest of others.

(2) All raffle prizes shall be awarded as indicated on the raffle ticket unless the event at which the raffle was to be conducted is postponed. If the raffle is postponed, all reasonable efforts shall be made to notify ticket holders of the new drawing date.

(3) If the prize to be awarded is the jackpot of a progressive raffle board, the charitable organization's charitable gaming session records shall report in the gross receipts total all startup cash, monies derived from raffle ticket sales, and any other contribution to the jackpot.

Section (4)[3.] Conduct of Raffles. (1) Any person holding a raffle ticket shall be permitted to observe the raffle drawing. A charitable organization may broadcast a raffle drawing via a verifiable online live streaming service to provide ticket holders an opportunity to view the drawing if the charitable organization provides purchasers with instructions for viewing the drawing at the time tickets are purchased.

(2) A person shall not be required to be present at a raffle drawing in order to be eligible for the prize drawing.

(3) For raffles using paper tickets, each [Each] ticket seller shall return to the charitable organization the stubs or other detachable sections or duplicates of all tickets sold prior to the drawing.

(4) For raffles using paper tickets, before [Before] drawing, the charitable organization shall place the seller's portion of each ticket sold into a receptacle from which the winning tickets are to be drawn. The receptacle shall be designed so that each ticket placed in it has an equal chance to be drawn.

(5) If a charitable organization uses electronic raffle software to conduct a raffle, the charitable organization shall ensure that the electronic raffle software has been:

(a) Purchased, leased, or otherwise obtained from a distributor licensed by the department;

(b) Manufactured by a manufacturer licensed by the department;

(c) Certified by an independent testing lab; and

(d) Approved by the department for use in the Commonwealth.

(6) A charitable organization shall conduct a raffle entirely with traditional paper tickets or entirely with an electronic or online raffle system [tickets]: a charitable organization shall not use both paper and electronic tickets in the same raffle, except for paper receipts or bearer tickets generated by an electronic or online raffle system in compliance with this regulation.

Section (5)[4.] Claiming Raffle Prizes. (1) If the winner is not present at the drawing, the charitable organization shall notify the winner within seven (7) days of the drawing that the winner shall claim the prize within thirty (30) days.

(2) If a winner does not wish to claim the prize but wishes to donate it to the charitable organization, the charitable organization shall obtain a written statement of the winner's intention within the thirty (30) day period. A charitable organization shall not accept the donation to the charitable organization of a prize won if doing so would violate KRS 238.540.

(3) If a raffle winner does not claim the prize or donate it to the charitable organization within thirty (30) days after having been contacted by certified mail, or if the raffle winner is ineligible by law to claim the prize, the charitable organization shall notify the department and draw another ticket in the presence of department personnel.

(4) The requirements of subsections (1), (2), and (3) of this section shall be waived, and the charitable organization shall be allowed to draw tickets until a winner is present if:

(a) The raffle tickets sell for five (5) dollars or less;

(b) The raffle sales are initiated and concluded and all winners are selected at a licensed charity fundraising event; or

(c) The raffle sales are initiated and concluded and all winners are selected at a licensed special limited charity fundraising event.

[Section 5. Electronic Raffle Definitions. (1) "Bearer ticket" means an electronic or paper ticket that contains one or more draw numbers purchased.

(2) "Counterfoil" means an electronic record or paper ticket stub, also known as a barrel ticket, which will be drawn to determine a winner and contains a single draw number matching the player's purchased bearer ticket and may, depending on the type of raffle, contain the name, address, or telephone number of the player.

(3) "Draw number" means a uniquely identifiable number that is provided to the purchaser for each chance purchased and may be selected as the winning number for the raffle.

(4) "Electronic raffle system" means computer software and related equipment used by raffle licensees to sell tickets, account for sales, and facilitate the drawing of tickets to determine the winners.

(5) "Raffle sales unit" (or "RSU") means a portable and/or wireless device, a remote hardwired connected device or a standalone cashier station that is used as a point of sale for bearer tickets.

(6) "Validation number" means a unique number which may represent one or more draw numbers that will be used to validate the winning number for the raffle.]

Section 6. Electronic Raffle System Standards. (1) Each electronic raffle system shall have a device or facility that provides for the sale of bearer tickets and the collection and accounting tools needed to track all sales initiated through the raffle system. The system shall have the ability to support all RSUs, whether they are hard-wired or connected wirelessly, to ensure that each RSU sends or transmits all ticket sales to the system. The system shall have the ability to facilitate winner selection by either manual or electronic means.

(2) **Time Limits.[:]** The electronic raffle system software **shall [must]** be capable of setting time limits for when tickets may be purchased for a raffle drawing.

(3) **Configuration Changes.[:]** After the commencement of a raffle, the electronic raffle system software shall not allow changes to parameters **that [which]** may affect the integrity of the raffle.

(4) **Bearer Tickets.[:]** After the payment of a fee, participants shall receive a bearer ticket for one (1) or more chances to win a

raffle drawing. The bearer ticket shall be printed with the information required by Section ~~(2)~~(4)(2) of this administrative regulation **and shall include**~~and~~:

(a) The date and time (in twenty-four (24) hour format showing hours and minutes) that the ticket was purchased;

(b) All unique draw numbers purchased for the raffle;

(c) The RSU identifier from which the ticket was generated; and

(d) A unique validation number or barcode.

(5) Validation Numbers.~~;~~ The algorithm or method used by the electronic raffle system to generate the bearer ticket validation number **shall [must]** be unpredictable and ensure against duplicate validation numbers for the raffle currently in progress.

(6) Voiding a Ticket.~~;~~ The electronic raffle system shall be designed to flag or otherwise identify a voided bearer ticket and its corresponding draw number. The system shall record at a minimum the draw numbers and the validation number from the voided bearer ticket. Voided draw numbers shall not be able to be resold or reissued for that raffle.

(7) Counterfoils.~~;~~ If ~~[Where]~~ a manual draw is used to determine a winner, all counterfoils used in a raffle drawing **shall [must]** be the same size, shape, and weight. A counterfoil shall be printed or stored electronically for each purchased draw number. If an electronic random number generator is used to determine the winner of the raffle drawing, a printed counterfoil is not required. A counterfoil **shall [must]** only contain one (1) draw number and shall contain the following information, which matches the bearer ticket issued to the player:

(a) Event Identifier or Location;

(b) The draw number;

(c) Issued date and time (in twenty-four (24) hour format showing hours and minutes);

(d) Value or cost of the bearer ticket; and

(e) Unique validation number or barcode.

(8) Reprinting of Counterfoils.~~;~~ If ~~[Where]~~ the system supports the reprinting of counterfoil tickets, **the [this]** facility shall require additional supervised access controls, and the draw numbers for all reprinted counterfoils shall be flagged in the system as reprints.

(9) Raffle Prize Displays.~~;~~ An electronic raffle system may include a raffle prize display that **may [can]** be viewed by participants of the raffle that displays the raffle prize and the current progression of the prize. The electronic raffle system may have multiple raffle awards displayed in an alternating fashion.

(10) Electronic Raffle Drawing Requirements.~~;~~ A raffle drawing shall be held at a date, time, place stated on the charitable organization's license or certificate of exemption. The drawing shall be administered by an officer or chairperson of the charitable organization. A raffle drawing shall only be conducted after:

(a) The close of the raffle; and

(b) All sales and voided sales for the particular raffle purchase period have been reconciled.

(11) Closing the Raffle Purchase Period.~~;~~ The system **shall [must]** be capable of closing off the sale of bearer tickets at a time determined by the operator. **Tickets shall not be sold [No sales of tickets may occur]** after the raffle purchase period has ~~[been]~~ closed. The system **shall [must]** be capable of displaying to the operator by way of the RSU device display that all sales from a particular device have been uploaded, transferred, or otherwise communicated to the electronic raffle system.

(a) On verification of the sales data transfer, the RSU device **shall [must]** be capable of being reset or closed; and

(b) The RSU **shall [must]** not be enabled for any further sales for the current raffle.

(12) Voided Tickets.~~;~~ Voided tickets shall not be qualified toward any prize. The system shall be capable of reconciling voided sales for the raffle purchase to identify all voided tickets that may be committed to the draw. The system shall record an acknowledgement from the event manager that voided tickets have been reconciled before permitting a winning number to be entered into the system for validation.

(13) Winner Determination.~~;~~ The operator shall conduct an electronic or other approved draw procedure **that [which]** ensures

a randomly selected draw number as a winner from all tickets sold. Each drawn counterfoil shall be verified as a sold and valid ticket. This process shall be repeated for each advertised prize.

(14) Official Drawing Results.~~;~~ Results of the drawing become official and final after the drawn number is verified as a winning bearer ticket for the respective drawing, and is presented to the participants of the raffle. The system shall display the winning draw on all capable display devices **[that are]** intended to be viewed by participants.

(15) Winner Verification.~~;~~ Winning tickets shall be verified prior to payout. Participants **shall [must]** present the bearer ticket to an authorized agent for validation with the system. The system shall be capable of verifying the winning draw numbers and shall allow for the validation of draw numbers either manually or through the use of a bar code scanner or equivalent.

(16) System Reporting Requirements.~~;~~ The system shall be capable of producing general accounting reports to include the following information for each draw conducted:

(a) Raffle Drawing Report. A report **that [which]** includes the following for each raffle drawing:

1. Date and time of the event;

2. Organization running the event;

3. Sales information;

4. Prize value awarded to participant;

5. Prize distribution (total raffle sales vs. prize value awarded to participant);

6. Refund totals by event;

7. Draw numbers-in-play count;

8. Winning number(s) drawn (including draw order, call time, and claim status); and

9. All other information required by 820 KAR 1:057.

(b) Exception Report.~~;~~ A report **that [which]** includes system exception information, including~~;~~ **but not limited to,** changes to system parameters, corrections, overrides, and voids;

(c) Bearer Tickets Report.~~;~~ A report **that [which]** includes a list of all bearer tickets sold including all associated draw numbers, selling price, and RSU identifier;

(d) Sales by RSU.~~;~~ A report **that [which]** includes a breakdown of each RSU's total sales (including draw numbers sold) and any voided **or [and]** misprinted tickets;

(e) Voided Draw Number Report.~~;~~ A report **that [which]** includes a list of all draw numbers that have been voided including corresponding validation numbers;

(f) Raffle Sales Unit Event Log.~~;~~ A report **that [which]** lists all events recorded for each RSU, including the date and time and a brief text description of the event or identifying code.~~;~~

(g) Raffle Sales Unit Corruption Log.~~;~~ A report **that [which]** lists all RSUs unable to be reconciled to the system, including the RSU identifier, RSU operator, and the money collected; **and**

(h) All information required by 820 KAR 1:057.

Section 7. Raffle Sales Unit Standards. (1) After the payment of a fee, participants shall receive a chance to win a raffle drawing. A chance to win a raffle drawing shall be purchased from an attendant-operated Raffle Sales Unit (~~"RSU"~~).

(a) Attendant-Operated Raffle Sales Unit.~~;~~ A participant may purchase a bearer ticket from an attendant-operated RSU by providing payment for the ticket(s) to the attendant. Upon receiving payment, the attendant **shall [will]** provide the participant the bearer ticket(s) purchased by the participant.

(b) Player-Operated Raffle Sales Unit.~~;~~ A participant may purchase a bearer ticket from a player-operated RSU by following the instructions appearing on the screen of the RSU and providing payment for the ticket(s). Upon payment for the ticket(s), the RSU **shall [will]** issue the corresponding bearer ticket(s) purchased by the participant.

(2) An RSU **shall [must]** be capable of generating and printing a bearer ticket with one (1) or more uniquely identifiable draw numbers.

(a) The system **shall [must]** not generate duplicate draw numbers within the same event.

(b) For each draw number generated, there ~~shall~~ **[must]** be only one ~~(1) [and only one]~~ corresponding counterfoil with the same draw number.

(c) The RSU ~~shall~~ **[must]** be capable of providing a transaction receipt in the form of a bearer ticket to a purchaser.

(3) Access Controls.~~;~~ Access to raffle sales software shall be controlled by a secure login procedure. It shall not be possible to modify the configuration settings of an RSU without an authorized secure login.

(4) Touch Screens.~~;~~ Touch screens shall be accurate once calibrated and shall maintain that accuracy for at least the manufacturer's recommended maintenance period.

(5) RSU Interface.~~;~~ The functions of all buttons, touch or click points represented on the RSU interface shall be clearly indicated within the area of the button, ~~for~~ touch ~~or~~/click point ~~[and]~~/or within the help menu. There shall be no functionality available through any buttons or touch ~~or~~/click points on the RSU that are undocumented.

(6) Communications.~~;~~ A Raffle Sales Unit ~~shall~~ **[must]** be designed or programmed ~~to [such that it may]~~ only communicate with authorized electronic raffle systems components. The electronic raffle system ~~shall~~ **[must]** have the capability to uniquely identify and authorize each RSU used to sell tickets for a raffle.

(7) Wireless Raffle Sales Units.~~;~~ Communication ~~shall~~ **[must]** only occur between the RSU and the electronic raffle system via authorized access points.

(8) Printing Bearer Tickets.~~;~~ If the RSU connects to a printer that is used to produce bearer tickets, the bearer ticket shall include information as indicated in Section 2 ~~[1](2) of this administrative regulation. This information, or some of this information, [it] may be [permissible for some of this information to be]~~ contained on the ticket stock itself.

(a) The RSU ~~shall~~ **[must]** control the transfer of ticket data sent to the printer, and only transfer ticket data to the printer when sufficient space is available in the printer memory to receive the ticket information.

(b) If a barcode forms part of the validation number printed on the bearer ticket, the printer ~~shall~~ **[must]** support the barcode format and print with sufficient resolution to permit validation by a barcode reader.

(9) Printer Error Conditions.~~;~~ The bearer ticket printer shall be able to detect and indicate to the operator the following error conditions:

(a) Low battery;

(b) Out of paper or paper low;

(c) Printer disconnected (~~[-]~~It is permissible for the system to detect this error condition when it tries to print).

(d) If the unit is capable of reprinting a ticket, the reprinted ticket shall clearly indicate that it is a reprint of the original ticket.

(10) Critical Memory Requirements.~~;~~ ~~[Critical memory means memory that is used to store all data that is considered vital to the continued operation of the RSU.]~~ Critical memory shall be maintained for the purpose of storing and preserving critical data ~~including. This includes, but is not limited to:~~

(a) ~~If [When]~~ not communicating with the system, recall of all tickets sold including, at minimum, draw numbers and validation numbers; and

(b) RSU configuration data.

(11) Maintenance of Critical Memory.~~;~~ Critical memory storage shall be maintained by a methodology that enables errors to be identified. This methodology may involve signatures, checksums, partial checksums, multiple copies, time stamps ~~[and]~~/or effective use of validity codes.

(12) Comprehensive Checks.~~;~~ Comprehensive checks of critical memory shall be made on startup and shall detect failures with an extremely high level of accuracy.

(13) Unrecoverable Critical Memory. An unrecoverable corruption of critical memory shall result in an error. Upon detection, the raffle sales unit shall cease to function.

(14) Backup Requirements. The RSU ~~shall~~ **[must]** have a backup or archive capability, which allows the recovery of critical data ~~if [should]~~ a failure occurs.

(15) RSU Program Identification.~~;~~ All programs shall contain sufficient information to identify the software and revision level of the information stored on the RSU, which may be displayed via a display screen.

(16) Detection of Program Corruption.~~;~~ RSU programs shall be capable of detecting program corruption and cause the RSU to cease operations until corrected.

(17) Verification of Program Updates.~~;~~ Prior to execution of the updated software, the software ~~shall~~ **[must]** be successfully authenticated on the RSU.

(18) Independent Control Program Verification.~~;~~ The RSU shall have the ability to allow for an independent integrity check of the RSU's software from an outside source and is required for all software that may affect the integrity of the raffle. This ~~shall~~ **[must]** be accomplished by being authenticated by a third-party device or by allowing for removal of the media ~~so [such]~~ that it ~~may~~ **[can]** be verified externally. This integrity check ~~shall~~ **[will]** provide a means for field verification of the software to identify and validate the program. The test laboratory, prior to device approval, shall evaluate the integrity check method.

Section 8. Random Number Generator Requirements. (1) A random number generator shall reside on a program storage device secured in the logic board of the system. The numbers selected by the random number generator for each drawing shall be stored in the system's memory and be capable of being output to produce a winning number. The use of an RNG results in the selection of raffle outcomes in which the selection shall:

(a) Be statistically independent;

(b) Conform to the desired random distribution;

(c) Pass industry-standard recognized statistical tests, as chosen by the independent testing laboratory; and

(d) Be unpredictable.

(2) Applied Tests. The test laboratory may employ the use of various recognized tests to determine whether or not the random values produced by the random number generator pass the desired confidence level of **ninety-nine (99) percent [99%]**. The independent test lab shall choose the appropriate tests on a case by case basis depending on the RNG under review. These tests may include~~;~~ ~~but are not limited to:~~

(a) Chi-square test;

(b) Equi-distribution (frequency) test;

(c) Gap test;

(d) Overlaps test;

(e) Poker test;

(f) Coupon collector's test;

(g) Permutation test;

(h) Kolmogorov-Smirnov test;

(i) Adjacency criterion tests;

(j) Order statistic test;

(k) Runs tests (patterns of occurrences ~~shall~~ **[should]** not be recurrent);

(l) Interplay correlation test;

(m) Serial correlation test potency and degree of serial correlation (outcomes ~~shall~~ **[should]** be independent of the previous game);

(n) Tests on subsequences; and

(o) Poisson distribution.

(3) Period.~~;~~ The period of the RNG, in conjunction with the methods of implementing the RNG outcomes, ~~shall~~ **[must]** be sufficiently large to ensure that all valid, sold numbers are available for random selection.

(4) Range.~~;~~ The range of raw values produced by the RNG ~~shall~~ **[must]** be sufficiently large to provide adequate precision and flexibility when scaling and mapping.

(5) Background RNG Cycling or Activity Requirement.~~;~~ ~~[In order]~~ To ensure that RNG outcomes cannot be predicted, adequate background cycling or activity ~~shall~~ **[must]** be implemented between each drawing at a speed that cannot be timed. The rate of background cycling or activity ~~shall~~ **[must]** be sufficiently random in and of itself to prevent prediction.

(6) RNG Seeding or Re-Seeding.~~;~~ The methods of seeding or re-seeding implemented in the RNG ~~shall~~ **[must]** ensure that all

seed values are determined securely and that the resultant sequence of outcomes is not predictable.

(a) The first seed shall be randomly determined by an uncontrolled event. After every bearer ticket draw, there shall be a random change in the RNG process (new seed, random timer, **or** delay, **[etc.]**). This **shall [will]** verify the RNG does not start at the same value, every time. It is permissible not to use a random seed, **except[; however,]** the manufacturer **shall [must]** ensure that the selection process will not synchronize.

(b) Unless proven to have no adverse effect on the randomness of the RNG outcomes or actually improve the randomness of the RNG outcomes, seeding and re-seeding **shall [must]** be kept to an absolute minimum. If **[for any reason]** the background cycling or activity of the RNG is interrupted, the next seed value for the RNG **shall [must]** be a function of the value produced by the RNG immediately prior to the interruption.

(7) Scaling Algorithms. The methods of scaling (**[i.e.]** converting raw RNG outcomes of a greater range into scaled RNG outcomes of a lesser range) shall be linear, and shall not introduce any bias, pattern, or predictability. The scaled RNG outcomes **shall [must]** be proven to pass various recognized statistical tests as chosen by the independent testing laboratory.

(a) If a random number with a range shorter than that provided by the RNG is required for some purpose within the raffle system, the method of re-scaling, (**[i.e.,]** converting the number to the lower range), **shall [is to]** be designed in **[such]** a way that all numbers within the lower range are equally probable.

(b) If a particular random number selected is outside the range of equal distribution of rescaling values, it is permissible to discard that random number and select the next in sequence for the purpose of re-scaling.

(8) Winning Number Draw.**[;]** The winning number selection shall only be produced from sold bearer ticket numbers from the current drawing to be available for selection.

(a) Each valid, sold raffle number shall be available for random selection at the initiation of each drawing; and

(b) For raffles **that [which]** offer multiple awards or drawings with separate buy-ins for each, the winning number selection shall only be produced from sold bearer ticket numbers corresponding with each applicable award or drawing. As winning numbers are drawn, they shall be immediately used as governed by the rules of the raffle (**[i.e.]** the bearer tickets **shall not [are not to]** be discarded due to adaptive behavior).

(9) No Corruption from Associated Equipment.**[;]** An electronic raffle system shall use appropriate protocols to protect the random number generator and random selection process from influence by associated equipment, which may be communicating with the electronic raffle system.

Section 9. Electronic Raffle System Server Requirements. (1) The Electronic Raffle System Server(s) may be located locally, within a single facility or may be remotely located outside of the facility through a Wide Area Network (WAN).

(2) Physical Security.**[;]** The servers shall be housed in a secure location that has sufficient physical protection against alteration, tampering, or unauthorized access.

(3) Logical Access Control.**[;]** The electronic raffle system shall be logically secured through the use of passwords, biometrics, or other means certified as secure by the independent testing lab. The storage of passwords, PINs, biometrics, and other authentication credentials shall be secure. The system **shall [must]** have multiple security access levels to control and restrict different classes of access to the electronic raffle system.

(4) Security from Alteration, Tampering,**[;]** or Unauthorized Access.**[;]** The electronic raffle system shall provide a logical means for securing the raffle data against alteration, tampering, or unauthorized access. The following rules also apply to the raffle data within the Electronic Raffle System:

(a) **Equipment shall not [No equipment shall]** have a mechanism whereby an error will cause the raffle data to automatically clear. Data shall be maintained at all times regardless of whether the server is being supplied with power.

(b) Data shall be stored in **[such]** a way as to prevent the loss of the data when replacing parts or modules during normal maintenance.

(5) Data Alteration.**[;]** The electronic raffle system shall not permit the alteration of any accounting, reporting, or significant event data without supervised access controls. In the event any data is changed, the following information shall be documented or logged:

(a) Data element altered;

(b) Data element value prior to alteration;

(c) Data element value after alteration;

(d) Time and date of alteration; and

(e) User login to identify the personnel that performed the alteration.

(6) Server Programming.**[;]** There shall be no means available for an operator to conduct programming on the server in any configuration (**[e.g.]** the operator **shall [should]** not be able to perform SQL statements to modify the database). **[However,]** Network administrators may perform authorized network infrastructure maintenance with sufficient access rights, which include the use of SQL statements that were already resident on the system.

(7) Copy Protection.**[;]** Copy protection to prevent unauthorized duplication or modification of software, for servers or RSUs, may be implemented **if [provided that]**:

(a) The method of copy protection is fully documented and provided to the Test Laboratory, **which shall [who will]** verify that the protection works as described; or

(b) The program or component involved in enforcing the copy protection **may [can]** be individually verified by the methodology described in subsection (17).

(8) Uninterruptible Power Supply Support.**[;]** **If [Where]** the server is a stand-alone application, it **shall [must]** have an uninterruptible power supply (**[“UPS”]**) connected and of sufficient capacity to permit a graceful shut-down and that retains all electronic raffle system data during a power loss. The electronic raffle system server may be a component of a network that is supported by a network-wide UPS **if [provided that]** the server is included as a device protected by the UPS.

(9) System Clock Requirements.**[;]** An Electronic Raffle System **shall [must]** maintain an internal clock that reflects the current date and time (in twenty-four (24) hour format showing hours and minutes) that shall be used to provide for the following:

(a) Time stamping of significant events;

(b) Reference clock for reporting; and

(c) Time stamping of all sales and draw events.

(10) System Clock Synchronization Feature.**[;]** If multiple clocks are supported the system shall have a facility to synchronize clocks within all system components.

(11) RSU Management Functionality.**[;]** An electronic raffle system **shall [must]** have a master list of each authorized RSU in operation, including at minimum the following information for each entry:

(a) A unique RSU identification number or corresponding hardware identifier (**[i.e.]** MAC);

(b) Operator identification; and

(c) Tickets issued for sale, if applicable.

(12) RSU Validation.**[;]** It is recommended that RSUs be validated at least once per year with at least one (1) method of authentication. The system shall have the ability to remotely disable the RSU after the threshold of unsuccessful validation attempts has been reached.

(13) Counterfoil Printers.**[;]** **If [Where]** printed counterfoils are in use, the printer mechanism shall be able to detect and indicate the following error conditions:

(a) Out of paper;**[;]**

(b) Paper low;**[;]**

(c) Memory Error;

(d) Printer failure; and

(e) Printer disconnected.

(14) Printer Disable. At any time during an active draw, the operator shall have the ability to manually disable a printer and

remove the printer from the configuration without affecting the remaining printers or any outstanding print requests.

(15) Significant Event Logging. Significant events shall be communicated and logged on the electronic raffle system, which shall include:

(a) Connection **or** [//]Disconnection of an RSU or any component of the system;

(b) Critical memory corruption of any component of the system;[//]

(c) Counterfoil Printer errors:

1. Out of paper **or** [//]paper low;

2. Printer disconnect **or** [//]failure; and

3. Printer memory error;[//]

(d) Establishment and failure of communications between sensitive electronic raffle system components;[//]

(e) Significant event buffer full;

(f) Program error or authentication mismatch;

(g) Firewall audit log full, **if** [where] supported; and

(h) Remote access, **if** [where] supported.

(16) Significant Event Surveillance or Security Functionality. Each significant event conveyed to the electronic raffle system shall be stored. An electronic raffle system shall provide an interrogation program that enables on-line comprehensive searching of the significant events through recorded data. The interrogation program shall have the ability to perform a search based at least on the following:

(a) Date and time range;

(b) Unique component identification number; and

(c) Significant event identifier.

(17) Storage Medium Backup.[//] The electronic raffle system shall have sufficient redundancy and modularity so that if any single component or part of a component fails, the raffle **may** [can] continue. Redundant copies of critical data shall be kept on the electronic raffle system with open support for backups and restoration.

(a) All storage shall be through an error checking, nonvolatile physical medium, or an equivalent architectural implementation, so **if** [that should] the primary storage medium fail, the functions of the electronic raffle system and the process of auditing those functions **may** [can] continue with no critical data loss.

(b) The database shall be stored on redundant media so that no single failure of any portion of the system would cause the loss or corruption of data.

(18) Recovery Requirements. In the event of a catastrophic failure, **and if** [when] the electronic raffle system cannot be restarted in any other way, it shall be possible to reload the electronic raffle system from the last viable backup point and fully recover the contents of that backup, including[//, **but not limited to**]:

(a) Significant Events;

(b) Accounting information;

(c) Reporting information; and

(d) Specific site information such as employee files **or** [//] raffle set-up[//, etc.]

(19) Verification of System Software. System software components and modules shall be verifiable by a secure means at the system level denoting the program identification and version. The system shall have the ability to allow for an independent integrity check of the components and modules from an outside source and is required for all software that may affect the integrity of the system. This **shall** [must] be accomplished by being authenticated by a third-party device, or by allowing for removal of the media **so** [such] that it **may** [can] be verified externally. This integrity check shall provide a means for field verification of the system components and modules to identify and validate the programs or files. The independent testing laboratory, prior to system approval, shall approve the integrity check method.

Section 10. Electronic Raffle System Communication Requirements. (1) Communication Protocol.[//] Each component of an electronic raffle system **shall** [must] function as indicated by the communication protocol implemented. An electronic raffle system **shall** [must] provide for the following:

(a) Communication between all system components **and shall** [must] provide mutual authentication between the component and the server;[//]

(b) All protocols **shall** [must] use communication techniques that have proper error detection and recovery mechanisms, which are designed to prevent eavesdropping and tampering. Any alternative implementations **shall** [will] be reviewed on a case-by-case basis, with regulatory approval; and

(c) All data communications critical to the raffle shall employ encryption. The encryption algorithm shall employ variable keys, or similar methodology to preserve secure communication.

(2) Connectivity.[//] Only authorized devices shall be permitted to establish communications between any system components. Electronic raffle systems shall provide a method to:

(a) Verify that the system component is being operated by an authorized user;

(b) Enroll and un-enroll system components;

(c) Enable and disable specific system components;[//]

(d) Ensure that only enrolled and enabled system components participate in the raffle; and

(e) Ensure that the default condition for components shall be un-enrolled and disabled.

(3) Loss of Communications.[//] Raffle sales units (RSUs) may continue to sell tickets when not in communication with the system. Sales taking place on the RSU during a loss of communication with the system shall be logged on the device. The RSU shall deactivate upon detecting the limit of its buffer overflow. Upon the re-establishment of communication, the system shall require the RSU to re-authenticate with the server(s). All tickets sold during communication loss shall be transmitted to the system. Loss of communications shall not affect the integrity of critical memory.

(4) System Security.[//] All communications, including remote access, **shall** [must] pass through at least one (1) approved application-level firewall and **shall** [must] not have a facility that allows for an alternate network path. Any alternate network path existing for redundancy purposes **shall** [must] also pass through at least one (1) application-level firewall.

(5) Firewall Audit Logs. The firewall application **shall** [must] maintain an audit log and **shall** [must] disable all communications and generate a significant event **that** [which] meets the requirements as specified in Section 9(13) if the audit log becomes full. The audit log shall contain:

(a) All changes to configuration of the firewall;

(b) All successful and unsuccessful connection attempts through the firewall; and

(c) The source and destination IP Addresses, Port Numbers, and MAC Addresses.

(6) Remote Access. [“Remote access” means any access from outside the system or system network including any access from other networks within the same establishment.] The electronic raffle system shall have the option to disable remote access. Remote access shall accept only the remote connections permissible by the firewall application and electronic raffle system settings. In addition, there shall be:

(a) No unauthorized remote user administration functionality, such as adding users, or changing permissions;

(b) No unauthorized access to any database other than information retrieval using existing functions;

(c) No unauthorized access to the operating system; and

(d) For systems using an electronic random number generator, the electronic raffle system **shall** [must] immediately detect remote access.

(7) The system manufacturer may, as needed, remotely access the electronic raffle system and its associated components for the purpose of product and user support.[//]

(8) Remote Access Auditing. The electronic raffle system **shall** [must] maintain an activity log **that** [which] updates automatically depicting all remote access information, to include:

(a) Log on name;

(b) Time and date the connection was made;

(c) Duration of connection; and

(d) Activity while logged in, including the specific areas accessed and changes that were made.

(9) Wide Area Network Communications. Wide Area Network ("WAN") communications are permitted as allowed by the regulatory body and shall meet the following requirements:

(a) The communications over the WAN are secured from intrusion, interference, and eavesdropping via techniques such as use of a Virtual Private Network (VPN) or encryption; and

(b) Only functions documented in the communications protocol shall be used over the WAN. The protocol specification shall be provided to the Testing Laboratory.

(10) Wireless Network Communications. If a wireless communication solution is utilized, it shall adhere to the following requirements:

(a) Segregation of Networks. Networks used by the electronic raffle systems shall [should] be separate and not include other devices that are not part of the electronic raffle system.

(b) Service Set Identifier (SSID). The wireless network name (SSID) used to identify the wireless network shall [should] be hidden and not broadcast.

(c) Media Access Control (MAC) Address Filtering. The wireless network should use MAC address filtering [as means] to validate whether or not a device may connect to the wireless network.

(d) Device Registration. The electronic raffle system shall [should] use a device registration method [as means] to validate whether or not a device is an authorized device on the electronic raffle system.

Section 11. Online Raffle Ticket Sales. (1) All systems used for the sale of raffle tickets through the Internet shall [must] meet the requirements contained within this administrative regulation [document] and the terms and conditions set forth by this administrative regulation [these regulations] for the sale of raffle tickets through the Internet.

[(2) Definitions:

(a) "Access control" means the restriction of access to a place or other resource. Locks and login credentials are two mechanisms of access control.

(b) "Address Resolution Protocol ('ARP') is the protocol used to translate IP addresses into MAC addresses to support communication on a LAN ("Local Area Network"). The Address Resolution Protocol is a request and reply protocol and it is communicated within the boundaries of a single network, never routed across internetwork nodes (connection points, either a redistribution point or an end point for data transmissions).

(c) "Algorithm" means a finite set of unambiguous instructions performed in a prescribed sequence to achieve a goal, especially a mathematical rule or procedure used to compute a desired result. Algorithms are the basis for most computer programming.

(d) "Authentication" means a security measure designed to protect a communications system against acceptance of a fraudulent transmission or simulation by establishing the validity of a transmission, message or originator.

(e) "Bi-Directional" means the ability to move, transfer or transmit in both directions.

(f) "Counterfoil" means an electronic record or paper ticket stub, also known as a barrel ticket, which will be drawn to determine a winner and contains a player's draw number matching the bearer ticket purchased and may, depending on the type of raffle, contain the name, address, or telephone number of the player.

(g) "Crypto-analytic" means an attack against the encryption key (refer to definition of encryption key).

(h) "Cryptographic" means anything written in a secret code, cipher, or the like.

(i) "Distributed Denial of Service ('DDoS') means a type of Denial of Service ("DoS") attack where multiple compromised systems, usually infected with a destructive software program, are used to target a single system causing a Denial of Service (DoS) attack. Victims of a DDoS attack consist of both the end targeted system and all systems maliciously used and controlled by the hacker in the distributed attack.

(j) "Domain" is a term used to identify one or more IP addresses. A domain name is used in a Uniform Resource Locator ("URL") to identify particular Web pages.

(k) "Encryption" means the reversible transformation of data from the original (the plaintext) to a difficult-to-interpret format (the ciphertext) as a mechanism for protecting its confidentiality, integrity and sometimes its authenticity.

(l) "Encryption key" means a sequence of numbers used to encrypt or decrypt (to decode/decipher) data.

(m) "Firewall" means any number of security schemes that prevent unauthorized users from gaining access to a computer network or that monitor transfers of information to and from the network.

(n) "Geolocation" means identifying the real-world geographic location of an Internet connected computer, mobile device, or website visitor.

(o) "Host" means a computer system that is accessed by a user working at a remote location. Typically, the term is used when there are two computer systems connected by modems and telephone lines. The system that contains the data is called the host, while the computer at which the user sits is called the remote terminal. A computer that is connected to a TCP/IP network, including the Internet. Each host has a unique IP address.

(p) "Hypertext Transfer Protocol ('HTTP') means the underlying protocol used by the World Wide Web. HTTP defines how messages are formatted and transmitted, and what actions Web servers and browsers should take in response to various commands.

(q) "Internet" means an interconnected system of networks that connects computers around the world via the TCP/IP protocol. TCP/IP protocol is short for Transmission Control Protocol/Internet Protocol, the suite of communications protocols used to connect hosts on the Internet.

(r) "Intrusion Detection System ('IDS') or "Intrusion Prevention System ('IPS') means a system that inspects all inbound and outbound network activity and identifies suspicious patterns that may indicate a network or system attack from someone attempting to break into or compromise a system. Used in computer security, intrusion detection refers to the process of monitoring computer and network activities and analyzing those events to look for signs of intrusion in a system.

(s) "Internet Protocol ('IP') means an identifier for a computer or device on a TCP/IP network.

(t) "Media Access Control ('MAC') means hardware address that uniquely identifies each node, such as computer or printer, of a network.

(u) "Man-in-the-Middle ('MITM') means an active Internet attack where the person attacking attempts to intercept, read or alter information moving between two computers.

(v) "Message authentication" means a security measure designed to establish the authenticity of a message by means of an authenticator within the transmission derived from certain predetermined elements of the message itself.

(w) "Online" means being connected to the Internet.

(x) "Online Purchasing Platform" means the raffle system hardware and software which drives the features common to all raffles offered, and which forms the primary interface to the Raffle System for both the patron and the operator. The online purchasing platform provides the patron with the means to register an account, log in to/out of their account, modify their account information, make ticket purchases, request account activity statement/reports, and close their account. In addition, any web pages displayed to the patron that relate to ticket purchasing offered on the raffle system. The online purchasing platform provides the operator with the means to review patron accounts, enable or disable raffles, generate various financial transaction and account reports, input raffle outcomes, enable or disable patron accounts, and set any configurable parameters.

(y) "Protocol" means a set of formal rules describing how to transmit or exchange data, especially across a network. TCP/IP is the standard communications protocol of the Internet and most internal networks.

(z) "Shellcode" means a small piece of code used as the payload (cargo of data transmission) in the exploitation of computer security. Shellcode exploits a vulnerability and allows an attacker the ability to reduce a computer system's information assurance.

(aa) "Security certificate" means information, often stored as a text file, which is used by the Secure Socket Layers ("SSL") protocol to establish a secure connection. A security certificate contains information about whom it belongs to, who it was issued by, valid dates, a unique serial number or other unique identification that can be used to verify the contents of the certificate. In order for an SSL connection to be created, both sides must have a valid security certificate, which is also called a digital ID.

(ab) "Stateful firewall" means a firewall that keeps track of the state of network connections traveling across it. The firewall is programmed to distinguish legitimate packets for different types of connections. Only packets matching a known active connection will be allowed by the firewall; others will be rejected. Stateful inspection, also referred to as Dynamic Packet Filtering, is a security feature often included in business networks.

(ac) "Stateless" means a communications protocol that treats each request as an independent transaction that is unrelated to any previous request so that the communication consists of independent pairs of requests and responses. A stateless protocol does not require the server to retain session information or status about each communications partner for the duration of multiple requests. In contrast, a protocol which requires the keeping of internal state is known as a stateful protocol. Examples of stateless protocols include Internet Protocol (IP) and the Hypertext Transfer Protocol (HTTP).]

(2) All online raffle ticket sales systems, software, and database requirements **shall [must]** be tested and certified by an independent testing laboratory to meet the applicable requirements set forth in this **administrative regulation [document]** and approved by the department.

(3) Operation manuals and service manuals **shall [must]** be expressed in broad terms that are directly relevant to the system used to sell raffle ticket(s) through the Internet and **shall [must]** be provided at the request of the department.

(4) Geolocation.[:] The raffle system, online purchasing platform or the patron device **shall [must]** be able to reasonably detect the physical location of an authorized patron attempting to access the service. Third parties may be used to verify the location of patrons.

(5) Inventory.[:] If [When] issued a charitable gaming license to conduct a raffle, the charitable organization shall provide the number of raffle tickets available for sale through the Internet. The raffle system software shall have the ability to set time limits for which tickets may be purchased. Upon completion of the sale of the final raffle ticket for a charitable organization raffle, the raffle **shall [must]** close.

(6) Systems used by the purchaser to obtain raffle ticket(s) through the Internet **shall [must]** be designed to be reasonably impervious to communication errors. Personally identifiable information, sensitive account data, and financial information shall be protected over a public network.

(7) Asset Management.[:] All assets housing, processing of communication controlled information, including those comprising the operating environment of the Raffle system **[and/or]** its components, **shall [should]** be accounted for and have a designated [owner/] responsible for ensuring that information and assets are appropriately classified, and defining and periodically reviewing access restrictions and classifications.

(8) Raffle Equipment Security.[:] Raffle system servers **shall [must]** be located in server rooms that **[which]** restrict

unauthorized access. Raffle system servers shall be housed in racks located within a secure area.

(9) Network Security Management.[:] To ensure purchasers are not exposed to unnecessary security risks by choosing to participate in raffles, these security requirements **shall [must]** apply to the following critical components of the raffle system:

(a) Raffle system components that **[which]** record, store, process, share, transmit, or retrieve sensitive purchaser information, **such as [e.g.]** credit card **or [and]** debit card details, authentication information, **or** patron account balances;

(b) Raffle system components that **[which]** store results of the current state of a purchaser's purchase order;

(c) Points of entry to and exit from the above systems (other systems that **[which]** are able to communicate directly with the core critical systems); and

(d) Communication networks that **[which]** transmit sensitive patron information.

(10) Networks should be logically separated **so [such]** that there **shall [should]** be no network traffic on a network link that **[which]** cannot be serviced by hosts on that link.

(a) The failure of any single item **shall [should]** not result in denial of service;

(b) An Intrusion Detection System **or [and]** Intrusion Prevention System **shall [must]** be installed on the network **and shall [which can]:**

1. Listen to both internal and external communications;
2. Detect or prevent Distributed Denial of Services (["DDoS"/]) attacks;
3. Detect or prevent shellcode from traversing the network;
4. Detect or prevent Address Resolution Protocol (["ARP"/]) spoofing; and
5. Detect other Man-in-the-Middle indicators and server communications immediately if detected.

(c) Stateless protocols **shall [should]** not be used for sensitive data without stateful transport (HTTP is allowed if it runs on TCP).[:]

(d) All changes to network infrastructure **shall [must]** be logged;

(e) Virus scanners or detection programs **shall [should]** be installed on all pertinent information systems. These programs shall be updated regularly to scan for new strains of viruses;

(f) Network security shall be tested by a qualified and experienced individual at least once per year: **[and]**

(g) Testing shall include testing of the external (public) interfaces and the internal network; **and[:]**

(h) Testing of each security domain on the internal network shall be undertaken separately.

(11) Communication Protocol.[:] Online raffle tickets offered for sale by a charitable organization shall support a defined communication protocol that ensures purchasers are not exposed to unnecessary security risks when using the Internet for this purpose. Each component of a raffle system **shall [must]** function as indicated by the communication protocol implemented. The system **shall [must]** provide for the following:

(a) All critical data communication shall be protocol based or incorporate an error detection and correction scheme to ensure accuracy of messages received;

(b) All critical data communication shall employ encryption. The encryption algorithm shall employ variable keys or similar methodology to preserve secure communication;

(c) Communication between all system components **shall [must]** provide mutual authentication between the component and the server;

(d) All protocols shall use communication techniques that have proper error detection and recovery mechanisms, which are designed to prevent eavesdropping and tampering.[:]

(e) All data communications critical to raffle ticket sales through the Internet shall employ encryption. The encryption algorithm shall employ variable keys, or similar methodology to preserve secure communication.

(12) Remote Access.[:] **[Remote access means any access from outside the system or system network including any access from other networks within the same establishment.]**

Remote access shall only be allowed with prior written approval of the department and shall have the option to be disabled. If [Where] allowed, remote access shall accept only the remote connections permissible by the firewall application and online raffle ticket sales settings. In addition, there shall be:

- (a) No authorized remote user administration functionality;
- (b) No authorized access to any database other than information retrieval using existing functions;
- (c) No authorized access to the operating system; and
- (d) The raffle system **shall [must]** maintain an activity log that [which] updates automatically depicting all remote access information.

(13) Error Recovery.[:] The system used by a licensed charitable organization to offer the sale of raffle ticket(s) through the Internet **shall [must]** be able to recover messages when they are received in error. This would include inaccurately inputting personal or [banking information that [which] would result in the purchaser being notified that the information is invalid and shall [must] require review and corrective measures. In the event of a catastrophic failure, if [when] the system cannot be restarted in any other way, it shall be possible to reload the system information from the last viable backup point and fully recover the contents of that backup, including[: but not limited to]:

- (a) Significant events;
- (b) Accounting information;
- (c) Reporting information; and
- (d) Specific site information, including [but not limited to] employees file and the raffle set-up.

(14) Bi-Directional Requirements.[:] Any system used to sell raffle ticket(s) through the Internet shall be tested by an independent testing laboratory, which [who] shall certify that:

- (a) The physical network is designed to provide exceptional stability and limited communication errors;
- (b) The system is stable and capable of overcoming and adjusting for communication errors in a thorough, secure, and precise manner; and
- (c) Information is duly protected with the most secure forms of protection via encryption, segregation of information, firewalls, passwords, and personal identification numbers.

(15) Encryption.[:] Security messages that traverse data communications lines **shall [must]** be encrypted using an encryption key or keys to ensure that communications are demonstrably secure against crypto-analytic attacks. The encryption keys or keys used to provide security to the system that provide for the sale of raffle tickets through the Internet **shall [must]** be monitored and maintained. Additionally, there **shall [must]** be a documented process for:

- (a) Obtaining or generating encryption keys;
- (b) Managing the expiry of encryption keys [if encryption keys];
- (c) Revoking encryption keys;
- (d) Securely changing the current encryption keyset;
- (e) The storage of any encryption keys; and
- (f) To recover data encrypted with a revoked or expired encryption key for a defined period of time after the encryption key becomes valid.

(16) Cryptographic Controls.[:] Cryptographic controls shall be implemented for the protection of the following information:

- (a) Any sensitive or personally identifiable information shall be encrypted if it traverses a network with a lower level of trust;
- (b) Data that is not required to be hidden **and has to [but must]** be authenticated shall use some form of message authentication technique;
- (c) Authentication **shall [must]** use a security certificate [from an organization] approved by the independent testing laboratory;
- (d) The grade of encryption used **shall [should]** be appropriate to the sensitivity of the data;
- (e) The use of encryption algorithms shall be reviewed periodically by qualified management staff to verify that the current encryption algorithms are secure;
- (f) Changes to encryption algorithms to correct weaknesses shall be implemented as soon as practical. If no [such] changes are available, the algorithm shall be replaced; and

(g) Encryption keys **shall [must]** not be stored without being encrypted themselves through a different encryption method [and/or by using a different encryption key.

(17) Firewalls. All online raffle systems shall utilize firewalls that comply with the following provisions:

- (a) A firewall shall be located at the boundary of any two (2) dissimilar security domains.
- (b) All connections to hosts used for the sale of raffle tickets through the Internet shall be housed in a secure data center and **shall [must]** pass through at least one (1) application-level firewall. This includes connections to and from any non-related hosts used by the operator.
- (c) The firewall shall be a separate hardware device with the following characteristics:

1. Only firewall-related applications may reside on the firewall; and
2. Only a limited number of accounts may be present on the firewall.

(d) The firewall shall reject all connections except those that have been specifically approved.

(e) The firewall shall reject all connections from destinations that [which] cannot reside on the network from which the message originated.

(f) The firewall shall maintain an audit log of all changes to parameters that [which] control the connections permitted through the firewall.

(g) The firewall shall maintain an audit log of all successful and unsuccessful connection attempts. Logs **shall [should]** be kept for ninety (90) days and a sample reviewed monthly for unexpected traffic.

(h) The firewall shall disable all communication if the audit log becomes full.

(18) Firewall Audit Logs.[:] The audit log shall contain:

- (a) All changes to **the** configuration of the firewall;
- (b) All successful and unsuccessful attempts through the firewall; and
- (c) The source and destination IP addresses, port numbers, and MAC addresses.

(19) System Clock.[:] The system used for the sale of raffle tickets through the Internet shall maintain an internal clock that reflects the current date and time that shall be used for the following:

- (a) Time stamping of significant events;
- (b) Reference clock for reporting; and
- (c) Time stamping of all sales.

(20) Purchase Session.[:] A purchase session consists of all activities and communications performed by a purchaser during the time the purchaser accesses the raffle system or online purchasing platform. Tickets sold online shall only be purchased during a purchase session.

(21) Purchasing Tickets.[:] A participant may purchase a raffle ticket from the website by following the instructions appearing on the screen and providing payment for the tickets. Each raffle ticket **shall [must]** be sold individually for the price indicated. Multiple discounted prices **shall [will]** only be allowed if a way of ensuring financial accountability is possible by the online purchasing platform or raffle system:

- (a) A ticket purchase via a credit card transaction or other methods that may [which can] produce a sufficient audit trail shall [must] not be processed until [such time as] the funds are received from the issuer or the issuer provides an authorization number indicating that the purchase has been authorized;
- (b) There **shall [must]** be a clear notification that the purchase has been accepted by the system and the details of the actual purchase accepted **shall [must]** be provided to the patron once the purchase is accepted; and

(c) Purchase confirmation shall include the amount of the purchase accepted by the raffle system or online purchasing platform.

(22) Disputes.[:] The raffle system or online purchasing platform **shall [must]** conspicuously provide a mechanism to advise the patron of the right to make a complaint against the

operator and to enable the patron to notify the department of [such] a complaint.

(23) Bearer Ticket Issuance.[:] After the payment of a fee, the purchaser shall receive a receipt through the Internet that the purchase of a raffle ticket or tickets is complete. Upon receiving the receipt acknowledging the purchase through the Internet, the purchaser may receive the raffle ticket via e-mail. The receipt acknowledging purchase and the issuance of the raffle tickets through the Internet **shall [must]** be processed as two (2) separate transactions.

(24) Validation Numbers.[:] The method used by the raffle system to generate the bearer ticket validation number **shall [must]** be unpredictable and ensure against duplicate validation numbers for the raffle currently in progress.

(25) Voiding a Ticket.[:] If a ticket is voided, the appropriate information shall be recorded, which includes the draw numbers and the validation number pertaining to the voided ticket. Voided draw numbers shall not be able to be resold or reissued.

(26) Raffle Drawing Requirements. (a) A raffle drawing shall be held the date, time, and place stated on the organization's license or certificate of exemption.

(b) The operator shall conduct a manual or electronic draw procedure **that [which]** ensures a randomly selected draw number as a winner from all the tickets sold. Each drawn counterfoil shall be verified as a sold and valid ticket. Voided tickets shall not be qualified toward any prize. This process shall be repeated for each advertised prize.

(c) Results of the drawing become official and final after the drawn number is verified as a winning raffle ticket for the respective drawing and is presented to the participants for the raffle. The winning draw number shall be made available on the raffle website for the participants to review. Operators may utilize any additional methods in presenting the winning draw number(s) to the participants.

(27) Accounting Requirements.[:] Any system used for the sale of raffle tickets through the Internet **shall [must]** have the capability to log sales and to print reports detailing sales and accounting information for specific dates and time periods **that shall [must]** be available. This information shall include [, but is not limited to,] the price of each raffle ticket, number of raffle tickets sold, and total sales. The system or other equipment shall be capable of producing accounting reports to include the following information:

(a) Data required to be maintained for each raffle drawing, including:

1. Date and time of event;
2. Organization running the event;
3. Sales information;
4. Value of prize(s) awarded;
5. Prize distribution;
6. Refund totals of event;
7. Draw numbers-in-play;
8. Winning number(s) drawn (including draw order, call time, and claim status); and
9. Any other information required by 820 KAR 1:057.

(b) Exception Report.[:] A report **that [which]** includes system exception information, including [, but not limited to,] changes to system parameters, corrections, overrides, and voids.

(c) Bearer Tickets Reports.[:] A report **that [which]** includes a list of all bearer tickets sold including all associated draw numbers and selling price.

(d) Sales Report.[:] A report **that [which]** includes a breakdown of sales of raffle ticket(s) through the Internet, including draw numbers sold and any voided and misprinted tickets.

(e) Voided Draw Number Report.[:] A report **that [which]** includes a list of all draw numbers that have been voided including corresponding validation numbers.

(f) Event Log.[:] A report **that [which]** lists all events recorded specific to the sales of raffle ticket(s) through the Internet. This **shall [will]** include the date and time of the transaction and a brief description of the transaction [and/or] identifying code.

(g) Corruption Log.[:] A report **that [which]** lists all Internet transactions that were unable to be reconciled to the system.

(28) Sales and Accounting Report Requirements.[:] Any raffle ticket sold **shall [must]** be included in the sales and accounting reports and be detailed in all financial transactions on the system. In addition, a log relating to accounting and raffle ticket sales **shall [must]** be maintained on the system. The charitable organization conducting the raffle shall be given the option of printing this log on demand.

(29) Backup Requirements.[:] Any system used for the sale of raffle ticket(s) through the Internet **shall [must]** have a backup and archive utility to allow the licensed charitable organization, conducting the raffle, the ability to save critical data **if [should]** a system failure occurs. This backup **may [can]** be automatically run by the charitable organization.

(30) Data Alteration.[:] The alteration of any accounting, reporting or significant event data related to the sale of raffle tickets through the Internet shall include supervised access controls. In the event any data is changed, the following information shall be logged, documented, stored, and available upon request for review:

- (a) Data element altered;
- (b) Data element value prior to alteration;
- (c) Data element value after alteration;
- (d) Time and date of alteration; and
- (e) User login of the personnel that performed the alteration.

(31) Access Controls.[:] The allocation of access privileges shall be restricted and controlled on business requirements and the principle of least privilege.

(a) A formal user registration and de-registration procedure **shall [must]** be in place for granting and revoking access to all information systems and services.

(b) All users shall have a unique identifier (user ID) for their personal use only, and a suitable authentication technique shall be chosen to substantiate the claimed identity of a user.

(c) The use of generic accounts shall be limited, and **if [where]** used **the [for]** reasons for their use shall be formally documented.

(d) Password provision **shall [must]** be controlled through a formal management process.

(e) Passwords **shall [must]** meet business requirements for length, complexity, and lifespan.

(f) Access to system applications shall be controlled by a secure log-on procedure.

(g) Appropriate authentication methods, in addition to passwords, shall be used to control access by remote users

(h) Any physical access to areas housing components used for the sale of raffle ticket(s) through the Internet application and any logical access to these applications **shall [must]** be recorded.

(i) The use of automated equipment identification to authenticate connections from specific locations and equipment shall be formally documented and **shall [must]** be included in the regular review of access by management.

(j) Restrictions on connection times shall be used to provide additional security for high-risk applications.

(k) The use of utility programs that might be capable of overriding system application controls shall be restricted and tightly controlled.

(l) A formal policy shall be in place and appropriate security measures shall be adopted to protect against the risks of using mobile computing and communication facilities.

(32) Purchaser Account Registration.[:] The raffle system or online purchasing platform **shall [must]** employ a mechanism to collect purchaser information prior to registration of a purchaser account. The purchaser **shall [must]** be fully registered, and the purchaser's account **shall [must]** be activated prior to permitting ticket purchases. Once the identity verification is successfully complete, and the purchaser has acknowledged all of the necessary privacy policies and the terms and conditions, the purchaser account registration is complete and the patron account **shall [can]** become active.

(33) Third-Party Services.[:] Any third-party service providers contracted to provide service involving accessing, processing, communicating, or managing the sale of raffle tickets through the Internet **shall [must]** adhere to information contained in this **administrative regulation [document]**. The security roles and

responsibilities of third-party service providers shall [should] be defined and documented as it relates to the security of information.

(a) Agreements with third-party service providers involving accessing, processing, communicating, or managing the purchase of on-line raffle tickets through the Internet//for its components, or adding products or services to the system used//for its components shall cover all relevant security requirements.

(b) The services, reports, and records provided by the third-party shall be monitored and reviewed by the department upon request.

(c) Changes to the provision of services, including maintaining and improving existing information security policies, procedures and controls, shall be managed, taking account of the criticality of business systems and processes involved and re-assessment of risks.

(d) The access rights of third-party service providers to the system [and/or its components shall be removed upon termination of their contract or agreement, or adjusted upon change.

CONTACT PERSON: Doug Hardin, Staff Attorney, Department of Charitable Gaming, 500 Mero Street 2NW24, Frankfort, Kentucky 40601; phone (502) 782-8204; fax (502) 573-6625; doug.hardin@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(As Amended at ARRS, November 9, 2020)

902 KAR 45:110. Permits and fees for retail food establishments, [food manufacturing plants, food storage warehouses, salvage processors and distributors,] vending machine companies, and restricted food concessions.

RELATES TO: KRS 217.015, 217.025, 217.035, 217.037, 217.085, 217.095, 217.125, 217.155, 217.811

STATUTORY AUTHORITY: KRS 217.125(1), ~~[(2),]~~ (4), 217.811

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217.125(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations for the efficient administration and enforcement of the Kentucky Food, Drug and Cosmetic Act. KRS 217.125~~[(2) and]~~(4) requires the secretary [of the Cabinet for Health and Family Services] to provide by administrative regulation a schedule of reasonable fees to be paid by [food manufacturing plants, food storage warehouses,] retail food establishments, ~~salvage distributors, salvage processing plants,~~ and restricted food concessions for permits to operate and for inspection activities carried out by the cabinet. KRS 217.811 requires the cabinet to provide by administrative regulation a schedule of fees for operating a vending machine company[for Health and Family Services]. This administrative regulation establishes the schedule of fees.

Section 1. Fees. (1) ~~[A permit fee shall be required for inspections conducted by the cabinet or the local health department to determine compliance with:~~

(a) ~~902 KAR 45:080 for a salvage distributor or a salvage processing plant; or~~

(b) ~~KRS 217.025, 217.035, and 217.037 for a food manufacturing plant or food storage warehouse.~~

(2) ~~A fee for the inspection of an establishment identified in subsection (1)(a) or (b) of this section shall be assessed according to the total square footage of the establishment:~~

- (a) Zero - 1,000 square foot - \$120;
- (b) 1,001 - 5,000 square foot - \$160;
- (c) 5,001 - 20,000 square foot - \$200;
- (d) 20,001 - 40,000 square foot - \$300;
- (e) 40,001 - 80,000 square foot - \$400;
- (f) 80,001 - 150,000 square foot - \$500; or
- (g) 150,001 or more square foot - \$600.

~~(3)] A fee shall be assessed for inspection of a retail food store or[and] food service establishment conducted by the cabinet or local health department to determine compliance with the provisions of KRS 217.025, 217.035, and 217.037[,—and 217.125(2)] pertaining to:~~

- (a) Adulteration;
- (b) Misbranding;
- (c) Packaging; or
- (d) Labeling of food products.

~~(2) A fee shall be assessed for inspection of a food service establishment conducted by the cabinet or local health department to determine compliance with the provisions of 902 KAR 45:005.~~

~~(3) The[(4)–A] fee for the inspection of a retail food store or[and] a food service establishment shall be assessed according to the total square footage of the establishment:~~

- (a) Zero - 1,000 square feet - ninety (90)[ninety-three (93)][seventy-five (75)] dollars;
- (b) 1,001 - 10,000 square feet - \$155[156][425];
- (c) 10,001 - 20,000 square feet - \$215[218][475];
- (d) 20,001 - 30,000 square feet - \$250[200]; or
- (e) 30,001 or more square feet - \$375[300].

~~(4)[(5)] An application for a permit to operate a mobile retail food store shall be accompanied by an annual fee of sixty (60)[sixty-two (62)][fifty (50)] dollars.~~

~~(5)[(6)] An application for a permit to operate a vending machine company shall be accompanied by the annual permit fee of \$125 plus a fee for the total number of vending machines operated by the applicant:~~

- (a) One (1) – twenty-five (25) machines – sixty (60) dollars[sixty-two dollars and fifty cents (62.50)];
- (b) Twenty-six (26) – fifty (50) machines – ninety (90) dollars[ninety-three dollars and seventy-five cents (93.75)];
- (c) Fifty-one (51) – 100 machines - \$125;
- (d) 101 – 150 machines - \$155[156.50]; and
- (e) 151 and over machines - \$250.

~~(6)[(5)] the annual fee required by KRS 217.811.~~

~~(7)] An application for a permit to operate a permanent food service establishment shall be accompanied by an annual fee of \$125[400], plus the following fee if applicable:~~

(a) Fee for the number of seats:

- 1. One (1) to twenty-five (25) seats – seventy-five (75)[sixty (60)] dollars;
- 2. Twenty-six (26) to fifty (50) seats - \$125[400];
- 3. Fifty-one (51) to 100 seats - \$155[156][425];
- 4. 101 to 200 seats - \$185[187][450]; or
- 5. 201 or more seats - \$215[218][475];
- (b) Drive-through window - \$155[156][125]; and
- (c) Catering operation - \$135[137][440].

~~(7)[(6)](8)] An application for a permit to operate a statewide mobile food unit shall be accompanied by an annual fee of \$200[460].~~

~~(8)[(7)](9)] An application for a permit to operate a temporary food service establishment shall be accompanied by a fee according to the length of the event:~~

- (a) One (1) to three (3) day event – sixty (60)[sixty-two (62)][fifty (50)] dollars;
- (b) Four (4) to seven (7) day event – ninety (90)[ninety-three (93)][seventy-five (75)] dollars; or
- (c) Eight (8) to fourteen (14) day event - \$125[400].

~~(9)[(8)] An application for a permit to operate a farmer's market temporary food service establishment shall be accompanied by a fee of \$100.~~

~~(10)[(9)](10)] An application for a permit to operate a restricted food concession or mobile restricted food concession shall be accompanied by an annual fee of \$125[400].~~

~~(11) A request for a certificate of free sale or export authorizing a Kentucky food manufacturing plant holding a valid permit to operate to export a product outside of the United States shall be accompanied by a service fee of ten (10) dollars for each certificate requested.]~~

Section 2. Payment of Fees. [(4)] Fees shall be made payable to the local health department having jurisdiction by a:

- (1)(a) Retail food store;
- (2)(b) Mobile retail food store;
- (3)(c) Vending machine company [and commissary];
- (4) Statewide [(d)] mobile food unit;
- (5)(e) Temporary food establishment;
- (6)(f) Savage distributor;
- (g) Restricted food concession; or
- (7)(h) Food service establishment.

(2) Fees shall be made payable to the Kentucky State Treasurer and forwarded to the Kentucky Department for Public Health by a:

- (a) Food manufacturing plant;
- (b) Salvage processing plant;
- (c) Food storage warehouse; or
- (d) Food manufacturing plant requesting a certificate for free sale or export.

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

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(As Amended at ARRS, November 9, 2020)

902 KAR 50:120. Unpasteurized goat milk.

RELATES TO: KRS Chapter 217C

STATUTORY AUTHORITY: KRS [194.050,] 217C.090

NECESSITY, FUNCTION, AND CONFORMITY: [The Cabinet for Human Resources is directed by] KRS 217C.090 authorizes the secretary of the Cabinet for Health and Family Services to issue administrative regulations allowing, upon written recommendation of a physician, the sale of goat milk which has not been pasteurized. This administrative regulation establishes[sets] uniform standards for the production, handling, sampling, examination, and sale, at the farm, of goat's milk which has not been pasteurized;[f,] [and for] the inspection of the goat farm facilities;[f,] and [provides for] the issuance, revocation, and reinstatement of farm permits.

Section 1. Applicability. (1) This administrative regulation is applicable only to dairy goat farms offering unpasteurized goat milk direct to the consumer.

(2) All other dairy goat farms shall follow the applicable administrative regulation under 902 KAR Chapter 50.

(3) Milk produced in compliance with the requirements of this administrative regulation ~~shall~~**[does]** not guarantee the absence of pathogenic organisms.

Section 2. Sale Restrictions. (1) The sale of unpasteurized goat milk pursuant to this administrative regulation shall be from on the farm sales only.

(2) Unpasteurized goat milk for direct consumer consumption shall only be sold from a permitted goat producer to persons with a written recommendation from a physician.

(3) A written recommendation statement from a physician shall be:

- (a) For a specific individual;
 - (b) Kept on file at the producer location for one (1) year; and
 - (c) Subject to inspection by the cabinet.
- (4) The producer shall keep on file records stating the volume of unpasteurized goat milk sold and the date of sales to each person having submitted a written recommendation statement.

Section 3. Permits. (1) ~~A/No~~ person shall **not** sell or offer for sale unpasteurized goat milk, without first obtaining a permit from the cabinet.

(2) Prior to the issuance of a permit to dairy goat producer offering unpasteurized goat milk for sale, the cabinet shall conduct an inspection of the producer's facilities.

(3) If the producer is not in compliance with this administrative regulation:

- (a) The permit shall not be issued;
 - (b) The violations shall be given to the producer in writing; and
 - (c) The findings posted in a conspicuous place at the farm.
- (4) A permit shall be issued if the inspection reveals compliance with this administrative regulation.
- (5) Permits shall not be transferable with respect to persons or locations and shall remain valid unless suspended or revoked by the cabinet.

Section 4. Inspection of Goat Farm. (1) Each dairy goat farm offering unpasteurized milk for sale shall be inspected at least one (1) time each two (2) months after the issuance of a permit.

(2) If the violation of any requirement of this administrative regulation is found to exist on an inspection, a second inspection shall be required after the time **[deemed]** necessary to remedy the violation, but not before three (3) days.

(3) This second inspection shall be used to determine compliance with the requirements of this administrative regulation.

(4) If a violation of the same requirement of this administrative regulation is found on the second inspection, the permit shall be suspended in accordance with Section 12 of this administrative regulation.

(5) A copy of the inspection report shall be:

- (a) Provided to the producer or other responsible person;
- (b) Posted in a conspicuous place on an inside wall of the milk house; and
- (c) Filed with the department.

(6) Every producer offering unpasteurized goat milk for sell shall, upon request of the cabinet, permit access of officially designated persons to all parts of the milk house or facilities to determine compliance with the provisions of this administrative regulation.

Section 5. Animal Health. (1) All milk shall be from herds that are free from tuberculosis and brucellosis.

(a) Tuberculin test. The herd shall be located in an area within the state which meets the requirements of a modified accredited area in which not more than one-half (1/2) of one (1) percent of the goat herd have been found to be infected with tuberculosis. This requirement is in accordance with the "Bovine Tuberculosis Eradication, Uniform Methods and Rules", incorporated by reference in 902 KAR 50:032.

(b) Brucellosis test. The herd shall be located in an area within the state in which the percentage of the goat herd affected with brucellosis does not exceed one (1) percent and the percentage of herds in which brucellosis is present does not exceed five (5) percent. ~~[This requirement is]~~ in accordance with the "Brucellosis Eradication, Uniform Methods and Rules", incorporated by reference in 902 KAR 50:032.

(2) A certificate identifying test results of each animal, signed by a veterinarian, shall be submitted to the cabinet for each test required by this section.

(3) Failure to comply with the requirements of this section shall result in immediate permit suspension.

Section 6. Sampling Frequency and Required Test. (1) A representative sample of the unpasteurized goat milk shall be collected at the farm by the cabinet each month.

(2) All samples shall be analyzed for bacteria count, somatic cell count, antibiotics, adulteration with water, and temperature in an official laboratory or an officially designated laboratory.

(3) Additional samples shall be collected at the farm by the cabinet at least every two (2) months and analyzed for pathogenic organisms in an official laboratory.

(4) Samples of unpasteurized goat milk may be collected for pesticide analysis as directed by the cabinet.

(5)(a) If two (2) of the last four (4) consecutive bacterial counts, somatic cell counts, or cooling temperatures, taken on separate days, exceed the limit established in Section 7 of this administrative regulation, the cabinet shall send a written notice to the producer;

(b) The notice shall be in effect so long as two (2) of the last four (4) consecutive samples exceed the limit of the standard; and

(c) An additional sample shall be taken within twenty-one (21) days of the sending of the notice, but not before the lapse of three (3) days.

(6) Immediate suspension of permit in accordance with Section 12 of this administrative regulation shall be instituted if the limit established in Section 7 of this administrative regulation is violated by three (3) of the last five (5) bacterial counts, cooling temperatures, or somatic cell counts.

(7)(a) If an antibiotic or pesticide residue test is positive, an investigation shall be made to determine the cause, and the cause shall be corrected.~~;~~**and**

(b) An additional sample shall be taken and tested for antibiotic or pesticide residues.~~;~~**and**

(c) ~~[No]~~ Milk shall **not** be offered for sale until it is shown, by a subsequent sample, to be free of antibiotic or pesticide residues or below the actionable levels established for residues.

(8) If pathogenic organisms are found in the milk, immediate permit suspension shall occur and ~~[no]~~ milk shall **not** be sold from the farm until at least four (4) consecutive tests taken on separate days contain no pathogenic organisms upon laboratory analysis.

Section 7. Bacterial, Chemical, and Temperature Standards. (1) Unpasteurized goat milk shall be produced, handled, stored, and packaged to conform to the following standards:

(a) Temperature - cooled to between thirty-six (36) and forty (40) degrees Fahrenheit or less within two (2) hours after milking. Subsequent milkings shall not exceed forty-five (45) degrees Fahrenheit if blended with previous milkings.

(b) Bacterial limits - not to exceed 20,000 per milliliter.

(c) Somatic cells - not to exceed 1,000,000 per milliliter.

(d) Antibiotics - negative.

(e) Coliform - not to exceed ten (10) per milliliter.

(f) Pathogens - negative.

(g) Pesticides and chemical adulterants - negative.

(2) No process, manipulation, or additives shall be applied to the milk, other than appropriate refrigeration, for the purpose of removing or deactivating microorganisms.

Section 8. Sanitation Requirements. (1) The milking area, milk house operations, and equipment shall be located and conducted to prevent contamination of milk, equipment, containers, and utensils.

(2) Abnormal milk.

(a) Goats that show evidence of secreting abnormal milk based upon bacteriological, chemical, or physical examination, shall be milked last or with separate equipment and the milk shall be discarded.~~;~~**and**

(b) Goats treated with, or who have consumed chemical, medicinal, or radioactive agents capable of being secreted in the milk and damaging to human health, shall be milked last or with separate equipment and the milk discarded.

(3) Milking barn or parlor construction.

(a) A milking barn or parlor shall be provided on all farms and located to be readily accessible to both the milk room and animal housing area.

(b) The milking barn or parlor shall:

1. Have floors constructed of concrete or equally impervious material;

2. Have walls and **ceilings[ceiling]** that are water resistant, cleanable, smooth, in good repair, and the ceiling dust tight;

3. Be provided with natural or artificial light, well distributed for day or night milking;

4. Have ventilation and fresh air inlets for air circulation to prevent condensation and excessive odors;

5. Not be overcrowded; and

6. Have dust tight covered boxes or bins, or separate storage facilities for feed.

(c) The interior of the milking barn or parlor shall be kept clean.

(d) Swine and fowl shall be kept out of the milking area.

(4) Goat yard.

(a) The goat yard shall be graded and drained, and shall have no standing pools of water or accumulations of organic wastes.~~;~~**and**

(b) In loafing or goat housing areas, goat droppings and soiled bedding shall be removed, or clean bedding added, at sufficiently

frequent intervals to prevent the soiling of the goat's udder and flanks.~~;~~**and**

(c) Waste feed shall not be allowed to accumulate.~~;~~**and**

(d) Manure packs shall be properly drained and shall provide a firm footing.~~;~~**and**

(e) Swine shall be kept out of the goat yard.

(5) Milk house or room construction and facilities.

(a) A milk house or room shall:

1. Be a sufficient size for the:

a. Cooling, handling, storing, and packaging of milk; and

b. Washing, sanitizing, and storing of milk containers and utensils, except as provided in subsections (8)(c) and (d) of this section;

2. Have a smooth floor constructed of concrete or equally impervious material graded to drain, and maintained in good repair;

3. Have walls and ceilings constructed of smooth material, in good repair, and well painted or finished in an equally suitable manner;

4. Have adequate natural or artificial light and be well ventilated;

5. Be used for only milk house operations; and

6. Be free of trash, animals, and fowl.

(b) There shall **not** be ~~a[no]~~ direct opening from the milk house or room into a barn, stable, or room used for domestic purposes.

(c) A direct opening between the milk house and milking barn, or parlor, is permitted if a tight-fitting, self-closing solid door hinged to be single or double acting is provided.

(d) Potable water under pressure shall be piped into the milk house.

(e) The milk house shall be equipped with a two (2) compartment wash vat and adequate hot water heating facilities.

(f) Separate handwashing facilities shall be provided in the milk house with running potable water, soap or detergent, and individual sanitary towels.

(g) Bottling or packaging may be carried out in the milk house or room if it is done in a sanitary manner and by a method that prevents contamination.

(6) Toilet. Every farm shall be provided with one (1) or more toilets, conveniently located and properly constructed, operated, and maintained in a sanitary manner. The waste shall be inaccessible to flies and shall not pollute the soil surface or contaminate the water supply.

(7) Water supply. Water for milk house or room, and milking operations shall be:

(a) From a supply properly located, protected, and operated; and

(b) Easily accessible, adequate, and of a safe, sanitary quality.

(c) No cross-connection shall exist between a safe water supply and an unsafe or questionable water supply, or any other source of pollution.

(d) A well or other source of water shall be located and constructed to prevent underground or surface contamination from a sewerage system, privy, or other source of pollution from reaching the water supply.

(e) Individual water supplies and water supply systems that have been repaired or become contaminated shall be thoroughly disinfected before being placed in use. The supply shall be made free of the disinfectant by pumping to waste before a sample for bacteriological testing shall be collected.

(f) All containers and tanks used in the transportation of water shall be sealed and protected from possible contamination. These containers and tanks shall be subjected to a thorough cleaning and a bacteriological treatment prior to filling with potable water to be used at the farm.

(g) Samples for bacteriological examination shall be taken upon the initial approval of the physical structure, if a repair or alteration of the water supply system has been made, and at least every year.

(8) Utensils and equipment.

(a) All multiuse containers, equipment, and utensils used in the handling, storage, or transportation of milk shall be:

1. Made of smooth, nonabsorbent, corrosion-resistant, nontoxic materials;

2. Constructed for easy cleaning; and

3. In good repair.

(b) Multiple-use woven material shall not be used for straining

milk.

(c) All single-service articles shall be manufactured, packaged, transported, and handled in a sanitary manner. Articles intended for single-service use shall not be reused.

(d) Containers for purchasing milk may be provided by the person purchasing the milk, and these containers shall not be washed, sanitized, or stored at the farm.

(e) The product-contact surfaces of all multiuse containers, equipment, and utensils used in the handling, storage, or transportation of milk shall be:

1. Cleaned after each usage; and
2. Sanitized before each use.

(f) After sanitization, all containers, utensils, and equipment shall be handled in a manner to prevent contamination of a product-contact surface.

(g) All containers, utensils, and equipment used in the handling, storage, or transportation of milk, unless stored in sanitizing solutions, shall be stored to assure complete drainage, and protected from contamination prior to use.

(h) Pipeline milking equipment such as milker claws, inflations, weigh jars, meters, milk hoses, milk receivers, tubular coolers, and milk pumps that are designed for mechanical cleaning may be stored in the milking barn or parlor if this equipment is designed, installed, and operated to protect the product and solution-contact surfaces from contamination at all times.

(9) Insect and rodent control.

(a) Effective measures shall be taken to prevent the contamination of milk, containers, equipment, and utensils by insects, rodents, and chemicals used to control vermin;

(b) Milk houses or rooms shall be free of insects and rodents; and

(c) Surroundings shall be kept neat, clean, and free of conditions that harbor or are conducive to the breeding of insects and rodents.

Section 9. Milking Procedures. (1) All milking shall be done in the milking barn or parlor.

(2) Milking by hand shall be prohibited.

(3) The flanks, udders, and bellies of all milking goats shall be free from visible dirt.

(4) All brushing shall be completed prior to milking.

(5) The udders and teats of all milking goats shall be cleaned and treated with a sanitizing solution prior to milking, and shall be dry before milking.

(6) Hands shall be washed clean and dried with an individual sanitary towel immediately before milking or performing any milk house function, and immediately after the interruption of any of these activities.

(7) All personnel shall wear clean outer garments while milking or handling milk, milk containers, utensils, or equipment.

Section 10. Personnel Health. (1) A person shall not work at the farm in any capacity while having a disease in a communicable form, or being a carrier of a communicable disease.

(2) The owner of a dairy goat farm on which a communicable disease occurs, or who suspects that an employee has contracted a disease in a communicable form, or has become a carrier of a disease, shall notify the cabinet immediately.

(3) If reasonable cause exists to suspect the possibility of transmission of infection from a person involved with the handling of milk, the cabinet shall require the following measures:

(a) The immediate exclusion of that person from milk handling;

(b) The immediate exclusion of the milk supply concerned from distribution and sale; and

(c) Adequate medical and bacteriological examination of the person involved in milk production or handling activities.

Section 11. Trade Secrets. No person shall, in an official capacity, obtain information under the provisions of this administrative regulation including information as to the quantity, quality, source, or disposition of milk or milk products, or results of inspections or tests to use the information to his or her own advantage or to reveal it to an unauthorized person.

Section 12. Permit Suspension, Revocation and Hearing Procedure. In addition to the penalties established in KRS 217C.990, the cabinet may suspend or revoke an individual producer's permit, in accordance with KRS 217C.040.

(1) The cabinet shall, upon notice to the producer, immediately suspend the permit if:

(a) There is reason to believe that an imminent public health hazard exists;

(b) The producer or an employee has interfered with the cabinet in the performance of the cabinet's duties; or

(c) The producer or an employee has falsified records.

(2)(a) A producer whose permit has been suspended three (3) times within a twelve (12) month period for a violation of any type in accordance with this administrative regulation, shall be issued a notice that upon the fourth suspension within a twelve (12) month period the producer shall appear at the cabinet for a conference to show cause why the permit should be reinstated.

(b) Upon the fourth suspension within a twelve (12) month period, the producer shall appear before the cabinet to show cause why the permit should be reinstated.

(c) At this conference the cabinet may set conditions under which the permit may be reinstated.

(d) This permit suspension shall remain in effect until the conditions of the conference have been met.

(3) In all other instances of violation of this administrative regulation, the cabinet shall:

(a) Serve on the producer a written notice stating the violation; and

(b) Afford the producer a reasonable opportunity to correct the violation.

(4) A producer whose permit has been suspended may, at any time, submit an "Application for Reinstatement of Permit" incorporated by reference in 902 KAR 50:033.

(5) Suspension of a permit shall remain in effect until the violation has been corrected ~~to the satisfaction of the cabinet~~.

(6) For serious or repeated violations of any of the requirements of this administrative regulation the producer's permit may be permanently revoked.

(7) Prior to revocation, the cabinet shall notify the producer in writing, stating the reasons for which the permit is subject to revocation and advising the permit shall be permanently revoked at the end of ten (10) days following the service of the notice, unless the "Request for a Hearing", incorporated by reference in 902 KAR 50:033, is filed in accordance with KRS 217C.100. [Permits. (4) No person shall sell or offer for sale unpasteurized goat milk, without first obtaining a permit from the cabinet.

(2) Prior to the issuance of a permit to a goat milk producer, the cabinet shall conduct an inspection of the producer's facilities. A producer not in compliance with this administrative regulation, shall not be issued a permit, and violations shall be given to the producer in writing and posted in a conspicuous place at the farm. A permit may be issued if the inspection reveals compliance with this administrative regulation.

(3) Permits shall not be transferable with respect to persons or locations and shall remain valid unless suspended or revoked by the cabinet.

(4) The cabinet shall suspend the permit, if the cabinet has reason to believe that a public health hazard exists; the permit holder has violated any of the requirements of this administrative regulation; or the permit holder has interfered with the cabinet in the performance of its duties. The cabinet shall in all cases, except if the milk involved creates, or appears to create, an imminent hazard to the public health; or in a case of willful refusal to permit authorized inspection, serve upon the permit holder a written notice of intent to suspend permit. The notice shall specify the violation in question and afford the permit holder reasonable opportunity to correct the violation as may be agreed to by the parties; or in the absence of agreement, fixed by the cabinet before making an order of suspension effective. A suspension of permit shall remain in effect until the violation has been corrected to the satisfaction of the cabinet. Upon notification acceptable to the cabinet by a person whose permit has been suspended, or upon application within forty-eight (48) hours by a person who has been served with a notice of

intention to suspend, and in the latter case before suspension, the cabinet shall within seventy-two (72) hours proceed to a hearing to ascertain the facts of the violation or interference. Upon evidence presented at the hearing the hearing officer shall affirm, modify, or rescind the suspension or intention to suspend. Upon repeated violation, the cabinet may revoke the permit following reasonable notice to the permit holder and an opportunity for a hearing.

(5) A producer whose permit has been suspended may make written application for reinstatement of the permit on Form DFS-7A, "Application for Reinstatement of Permit", incorporated by reference. A copy of Form DFS-7A, "Application for Reinstatement of Permit", revised October 1986, is available for inspection and copying, 8 a.m. until 4:30 p.m., Monday through Friday, at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

(6) If the permit suspension has been due to violation of quality or temperature standards, the cabinet, within one (1) week after receipt of Form DFS-7A, "Application for Reinstatement of Permit", shall conduct an inspection and collect a sample to determine if compliance with this administrative regulation has been met. If the inspection and sample analysis indicate compliance with this administrative regulation, permit reinstatement may be made.

(7) If the permit suspension has been due to the presence of a pathogenic organism in the milk sample, collection and analysis shall continue at the rate of at least two (2) per week for two (2) weeks after conditions of subsection (6) of this section have been met.

Section 2. Sale Restrictions and Volume Control. (1) Unpasteurized goat milk shall be sold from a permitted goat producer only to persons with a written recommendation from a physician.

(2) A written recommendation statement from a physician shall be for a specific individual and shall be kept on file at the producer location and subject to inspection by the cabinet.

(3) Written recommendation statements shall be kept on file by the producer for at least one (1) year.

(4) The producer shall keep on file records stating volume of unpasteurized goat milk sold and date of sales to each person having submitted a written recommendation statement.

(5) All sale of unpasteurized goat milk regulated under this administrative regulation shall be from on-the-farm sales only.

Section 3. Inspection of Goat Farm. (1) Inspection of each goat farm shall be made prior to the issuance of a permit.

(2) Inspection of each goat farm shall be made at least one (1) time each two (2) months after the issuance of a permit.

(3) If the violation of any requirement [in Section 6] of this administrative regulation is found to exist on an inspection, a second inspection shall be required after the time deemed necessary to remedy the violation, but not before three (3) days. This second inspection shall be used to determine compliance with the requirements of Section 6 of this administrative regulation. A violation of the same requirement of Section 6 of this administrative regulation on the second inspection shall call for permit suspension in accordance with Section 1(4) of this administrative regulation.

(4) One (1) copy of the inspection report shall be provided the operator, or other responsible person, or be posted in a conspicuous place on an inside wall of the milk house. The inspection report shall not be defaced and shall be made available to the cabinet upon request. An identical copy of the inspection report shall be filed with the records of the cabinet.

(5) Every goat producer shall, upon request of the cabinet, permit access of officially designated persons to all parts of the milk house or facilities to determine compliance with the provisions of this administrative regulation.

(6) No person shall, in an official capacity, obtain information under the provisions of this administrative regulation (including information as to the quantity, quality, source, or disposition of milk or milk products, or results of inspections or tests to use the information to his own advantage or to reveal it to an unauthorized person.

Section 4. Sampling Frequency and Required Test. (1) A representative sample of each producer's milk shall be collected at the farm by the cabinet each month and analyzed in an official

laboratory for bacteria count, somatic cell count, antibiotics, adulteration with water, and temperature.

(2) Additional samples shall be collected at the farm by the cabinet at least every two (2) months and analyzed for pathogenic organisms in an official laboratory as directed by the cabinet.

(3) Samples of raw milk may be collected for pesticide analysis as directed by the cabinet.

(4) If two (2) of the last four (4) consecutive bacterial counts, somatic cell counts, or cooling temperatures, taken on separate days, exceed the limit of the standard, the cabinet shall send a written notice to the person concerned. The notice shall be in effect so long as two (2) of the last four (4) consecutive samples exceed the limit of the standard. An additional sample shall be taken within twenty-one (21) days of the sending of the notice, but not before the lapse of three (3) days. Immediate suspension of permit in accordance with Section 1(4) of this administrative regulation or court action shall be instituted if the standard is violated by three (3) of the last five (5) bacterial counts, cooling temperatures, or somatic cell counts.

(5) If an antibiotic or pesticide residue test is positive, an investigation shall be made to determine the cause, and the cause shall be corrected. An additional sample shall be taken and tested for antibiotic or pesticide residues. No milk shall be offered for sale until it is shown, by a subsequent sample, to be free of antibiotic or pesticide residues or below the actionable levels established for residues.

(6) If pathogenic organisms are found in the milk, immediate permit suspension shall occur and no milk shall be sold from the farm until at least four (4) consecutive tests taken on separate days contain no pathogenic organisms upon laboratory analysis.

(7) All samples shall be analyzed in an official laboratory or an officially designated laboratory. Analytical procedures shall be in compliance with "Standard Methods for the Examination of Dairy Products" or "Official Methods of Analysis" of the Association of Official Analytical Chemists. Methods for determining quality testing shall be those described in the "Standard Methods for the Examination of Dairy Products", 16th Edition, 1992, published by the American Public Health Association, and the "Official Methods of Analysis", 15th Edition, 1990, Volumes I and II, published by the Association of Official Analytical Chemists, Inc., unless otherwise approved by the cabinet. Copies of the "Standard Methods for the Examination of Dairy Products", revised 1992, incorporated by reference, and the "Official Methods of Analysis", revised 1990, incorporated by reference, are available for inspection and copying, 8 a.m. until 4:30 p.m., Monday through Friday, at the Office of the Commissioner, Department for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

Section 5. Bacterial, Chemical, and Temperature Standards. (1) Unpasteurized goat milk shall be produced, handled, stored, and packaged to conform with the following standards:

(a) Temperature—cooled to forty-five (45) degrees Fahrenheit or less within two (2) hours after milking. Subsequent milkings shall not exceed fifty (50) degrees Fahrenheit if blended with previous milkings.

(b) Bacterial limits—not to exceed 20,000 per ml.

(c) Somatic cells—not to exceed 1,000,000 per ml.

(d) Antibiotics—negative.

(e) Coliform—not to exceed ten (10) per ml.

(f) Pathogens—negative.

(g) Pesticides and chemical adulterants—negative.

(2) No process, manipulation, or additives shall be applied to the milk, other than appropriate refrigeration, for the purpose of removing or deactivating microorganisms.

Section 6. Sanitation Requirements. (1) Abnormal milk. Goats, which show evidence of the secretion of abnormal milk based upon bacteriological, chemical, or physical examination, shall be milked last or with separate equipment and the milk shall be discarded. Goats treated with, or goats which have consumed chemical, medicinal, or radioactive agents which are capable of being secreted in the milk and which, in the judgment of the cabinet may be damaging to human health, shall be milked last or with separate

equipment and the milk disposed of as the cabinet may direct.

(2) Milking barn or parlor construction. A milking barn or parlor shall be provided on all farms in which the milking herd shall be housed during milking operations. The areas used for milking purposes shall:

(a) Have floors constructed of concrete or equally impervious material;

(b) Have walls and ceiling which are smooth, painted or finished in an approved manner, in good repair, and ceiling dust tight;

(c) Be provided with natural or artificial light, well distributed for day or night milking;

(d) Provide sufficient air space and air circulation to prevent condensation and excessive odors;

(e) Not be overcrowded; and

(f) Have dust tight covered boxes or bins, or separate storage facilities for ground, chopped, or concentrated feed.

(3) Milking barn or parlor cleanliness. The interior shall be kept clean. Floors, walls, ceilings, windows, pipelines, and equipment shall be clean and free of filth or litter. Swine and fowl shall be kept out of the milking area.

(4) Goat yard. The goat yard shall be graded and drained, and shall have no standing pools of water or accumulations of organic wastes. In loafing or goat housing areas, goat droppings and soiled bedding shall be removed, or clean bedding added, at sufficiently frequent intervals to prevent the soiling of the goat's udder and flanks. Waste feed shall not be allowed to accumulate. Manure packs shall be properly drained and shall provide a firm footing. Swine shall be kept out of the goat yard.

(5) Milk house or room construction and facilities. A milk house or room shall be a sufficient size for the cooling, handling, storing, and packaging of milk; and the washing, sanitizing, and storing of milk containers and utensils, except as provided for in subsection (12) of this section.

(a) The milk house shall have a smooth floor constructed of concrete or equally impervious material graded to drain and maintained in good repair. Liquid waste shall be disposed of in a sanitary manner; all floor drains shall be accessible and shall be trapped if connected to a sanitary sewer system.

(b) Walls and ceilings shall be constructed of smooth material, in good repair, and well painted or finished in an equally suitable manner.

(c) The milk house shall have adequate natural or artificial light and be well ventilated.

(d) The milk house shall be used for only milk house operations; there shall be no direct opening into a barn, stable, or room used for domestic purposes. A direct opening between the milk house and milking barn, or parlor is permitted if a tight-fitting, self-closing solid door hinged to be single or double acting is provided.

(e) Potable water under pressure shall be piped into the milk house.

(f) The milk house shall be equipped with a two (2) compartment wash vat and adequate hot water heating facilities.

(g) Bottling or packaging may be carried out in the milk room if it is done in a sanitary manner and by a method which prevents contamination.

(6) Milk house or room cleanliness. The floors, walls, ceilings, windows, tables, shelves, cabinets, wash vats, nonproduct contact surfaces of milk containers, utensils, and equipment shall be clean. Only articles directly related to milk room activities shall be permitted in the milk room. The milk room shall be free of trash, animals, and fowl.

(7) Toilet. Every farm shall be provided with one (1) or more toilets, conveniently located and properly constructed, operated, and maintained in a sanitary manner. The waste shall be inaccessible to flies and shall not pollute the soil surface or contaminate the water supply.

(8) Water supply. Water for milk house and milking operations shall be from a supply properly located, protected, and operated; and shall be easily accessible, adequate, and of a safe, sanitary quality.

(a) No cross-connection shall exist between a safe water supply and an unsafe or questionable water supply, or any other source of pollution.

(b) The well or other source of water shall be located and

constructed to prevent underground or surface contamination from a sewerage systems, privy, or other source of pollution from reaching the water supply.

(c) Individual water supplies and water supply systems which have been repaired or become contaminated shall be thoroughly disinfected before being placed in use. The supply shall be made free of the disinfectant by pumping to waste before a sample for bacteriological testing shall be collected.

(d) All containers and tanks used in the transportation of water shall be sealed and protected from possible contamination. These containers and tanks shall be subjected to a thorough cleaning and a bacteriological treatment prior to filling with potable water to be used at the farm.

(e) Samples for bacteriological examination shall be taken upon the initial approval of the physical structure, if a repair or alteration of the water supply system has been made, and at least every year.

(9) Utensils and equipment construction. All multiuse containers, equipment, and utensils used in the handling, storage, or transportation of milk shall be made of smooth, nonabsorbent, corrosion-resistant, nontoxic materials, and shall be constructed for easy cleaning. All containers, utensils, and equipment shall be in good repair. All milk pails used for hand milking and stripping shall be seamless and of the hooded type. Multiple-use woven material shall not be used for straining milk. All single-service articles shall be manufactured, packaged, transported, and handled in a sanitary manner and shall comply with requirements of subsection (11) of this section. Articles intended for single-service use shall not be reused. Containers for purchasing milk may be provided by the person purchasing the milk; in which case, the containers shall not be washed, sanitized, or stored at the farm.

(10) Utensils and equipment cleaning. The product contact surfaces of all multiuse containers, equipment, and utensils used in the handling, storage, or transportation of milk shall be cleaned after each usage.

(11) Utensils and equipment sanitation. The product contact surfaces of all multiuse containers, equipment, and utensils used in the handling, storage, or transportation of milk shall be sanitized before each use.

(12) Utensils and equipment storage. All containers, utensils, and equipment used in the handling, storage, or transportation of milk, unless stored in sanitizing solutions, shall be stored to assure complete drainage, and protected from contamination prior to use. Pipeline milking equipment such as milker claws, inflations, weigh jars, meters, milk hoses, milk receivers, tubular coolers, and milk pumps which are designed for mechanical cleaning may be stored in the milking barn or parlor if this equipment is designed, installed, and operated to protect the product and solution-contact surfaces from contamination at all times.

(13) Utensils and equipment handling. After sanitization, all containers, utensils, and equipment shall be handled in a manner to prevent contamination of a product-contact surface.

(14) Milking flanks, udders, and teats. Milking shall be done in the milking barn or parlor. The flanks, udders, and bellies of all milking goats shall be free from visible dirt. All brushing shall be completed prior to milking. The udders and teats of all milking goats shall be cleaned and treated with a sanitizing solution prior to milking, and shall be dry before milking. Wet hand milking is prohibited.

(15) Milking surcingles, milk stools, and antikickers. Surcingles, milk stools, and antikickers shall be kept clean and stored above the floor.

(16) Protection from contamination. The milking area, milk house operations, and equipment shall be located and conducted to prevent contamination of milk, equipment, containers, and utensils. No milk shall be strained, poured, transferred, or stored unless it is properly protected from contamination. Hand capping of bottles, containers, or packages may be done if volume does not cause this to be impractical and protection from contamination is maintained.

(17) Personnel handwashing facilities. Adequate handwashing facilities shall be provided in the milk house with running potable water, soap or detergent, and individual sanitary towels.

(18) Personnel cleanliness. Hands shall be washed clean and dried with an individual sanitary towel immediately before milking or performing any milk house function, and immediately after the

interruption of any of these activities. Milkers shall wear clean outer garments while milking or handling milk, milk containers, utensils, or equipment.

(19) Cooling. Raw milk shall be cooled to forty-five (45) degrees Fahrenheit or less within two (2) hours after milking. The blend temperature after the first milking and subsequent milkings shall not exceed fifty (50) degrees Fahrenheit.

(20) Insect and rodent control. Effective measures shall be taken to prevent the contamination of milk, containers, equipment, and utensils by insects, rodents, and chemicals used to control vermin. Milk rooms shall be free of insects and rodents. Surroundings shall be kept neat, clean, and free of conditions which might harbor or be conducive to the breeding of insects and rodents.

Section 7. Animal Health. (1) All milk shall be from herds which are free from tuberculosis and brucellosis.

(a) Tuberculin test. The herd shall be located in an area within the state which meets the requirements of a modified accredited area in which not more than one-half (1/2) of one (1) percent of the goat herd have been found to be infected with tuberculosis. This requirement is in accordance with the "Bovine Tuberculosis Eradication, Uniform Methods and Rules", February 3, 1989, for establishing and maintaining tuberculosis-free herds of goat and modified accredited areas approved by the Animal and Plant Health Inspection Service, Veterinary Services, U. S. Department of Agriculture. If the herd is not located in a modified accredited area, it shall be tested annually under the jurisdiction of the program. Additions to the herd shall be from a modified accredited area or from herds meeting the requirements of this administrative regulation. Copies of the "Bovine Tuberculosis Eradication, Uniform Methods and Rules", incorporated by reference, are available for inspection and copying, 8 a.m. until 4:30 p.m., Monday through Friday, at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621. This publication may also be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., 20402.

(b) Brucellosis test. The herd shall be located in an area within the state in which the percentage of the goat herd affected with brucellosis does not exceed one (1) percent and the percentage of herds in which brucellosis is present does not exceed five (5) percent. This requirement is in accordance with the "Brucellosis Eradication, Uniform Methods and Rules", May 6, 1992, for establishing and maintaining certified brucellosis-free areas approved by the Animal and Plant Health Inspection Service, Veterinary Services, U. S. Department of Agriculture. If the herd is located in an area that does not meet these requirements, the herd shall be blood-tested annually or milk-ring-tested semiannually. Additions to the herd shall be from herds meeting the requirements of this administrative regulation. Copies of the "Brucellosis Eradication, Uniform Methods and Rules", incorporated by reference, are available for inspection and copying, 8 a.m. until 4:30 p.m., Monday through Friday, at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621. This publication may also be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., 20402.

(2) The cabinet shall require physical, chemical, or bacteriological tests necessary to prevent the spread of diseases or the contamination of the milk with pathogenic organisms.

(3) A certificate identifying test results of each animal, signed by a veterinarian, shall be submitted to the cabinet for each test required by this section.

(4) Failure to comply with the requirements of this section shall result in immediate permit suspension.

Section 8. Milk which May be Sold. Goat milk sold at a farm permitted under this administrative regulation shall be limited to milk produced at the particular farm and no milk shall be transferred from one farm to another or delivered from the farm to another place or location for sale.

Section 9. Construction Plan. Properly prepared plans for all milking barns, parlors, and milk houses shall be submitted to the

cabinet for written approval prior to a permit being issued.

Section 10. Personnel Health. No person affected with a disease in a communicable form, or while a carrier of disease, shall work at the farm in any capacity which brings him in contact with the handling, storage, or sale of milk, containers, equipment, and utensils. No farm operator shall employ in any capacity a person suspected of having a disease in a communicable form, or of being a carrier of a communicable disease. An owner of a dairy farm on which a communicable disease occurs, or who suspects that an employee has contracted a disease in a communicable form, or has become a carrier of a disease, shall notify the cabinet immediately.

Section 11. Procedure if Infection is Suspected. If reasonable cause exists to suspect the possibility of transmission of infection from a person concerned with the handling of milk, the cabinet shall require any or all of the following measures:

- (1) The immediate exclusion of that person from milk handling;
- (2) The immediate exclusion of the milk supply concerned from distribution and sale;
- (3) Adequate medical and bacteriological examination of the person, involved in milk production or handling activities.

Section 12. Disclaimer. Milk produced in compliance with the requirements of this administrative regulation does not assure the absence of pathogenic organisms.

Section 13. Hearing Procedure. (1) Upon notification of intent to suspend or upon suspension, the producer may request a hearing. The request for a hearing shall be made in writing on Form DFS-8, "Request for Hearing", revised January 1989, to the cabinet within ten (10) days after notification by the cabinet of an enforcement proceeding. Form DFS-8, "Request for Hearing", is incorporated by reference and may be viewed or obtained, 8 a.m. until 4:30 p.m., Monday through Friday, at the Office of the Commissioner of Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

- (2) The cabinet shall notify the requesting party in writing of the:
 - (a) Name of the hearing officer; and
 - (b) Time and place of the hearing.
- (3) All parties shall be allowed a reasonable time to prepare for the hearing, including the right to:
 - (a) Be represented by counsel;
 - (b) Present evidence on his behalf; and
 - (c) Cross-examine witnesses.
- (4) A transcript of the hearing shall not be made unless requested. The expense of transcribing the hearing shall be the responsibility of the requesting party.
- (5) The hearing officer shall make written findings of fact and conclusions of law, and render a decision based upon the evidence presented. The decision of the hearing officer shall be the final decision of the cabinet.]

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

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

CABINET OF HEALTH AND FAMILY SERVICES
Department for Behavioral Health, Developmental and
Intellectual Disabilities
Division of Behavioral Health
(Amended After Comments)

**908 KAR 1:400. Licensing and standards [Procedures] for
substance use and misuse [abuse] prevention.**

RELATES TO: KRS 61.870 to 61.884, 194A.005[194A.050],
194A.070, 209.030, 222.005(2), 222.221, 620.030

STATUTORY AUTHORITY: KRS 194A.050, 222.211, 222.231

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050 and 222.231 requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to establish requirements and standards for licensing alcohol and other drug prevention (AODP) agencies [agencies and approving substance abuse prevention programs]. KRS 194A.050 requires the secretary to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. This administrative regulation establishes licensing requirements for AODP [substance abuse prevention agencies].

Section 1. Definitions. (1) "Alcohol and other drug use prevention agency" or "AODP" is defined as an agency that develops, provides, and coordinates prevention services, including training and technical assistance services, that address substance use and misuse and related consequences." [Agency is defined by KRS 222.005(2).]

(2) "Alcohol and other drug abuse" is defined by KRS 222.005(3).]

(2)[(3)] "Cabinet" is defined by KRS 194A.005.

(3) [(4)] "Certified prevention specialist" means an individual who is certified [approved] by the Kentucky Certification Board for [of] Prevention Professionals.

(4) [(5)] "Coalition" means a partnership of community stakeholders [volunteers] working to reduce alcohol, tobacco, and other drug use and misuse [abuse] problems and related consequences through community-wide prevention strategies.

(5) [(6)] "Consumer" means the recipient of prevention services.

(6) [(7)] "Department" means the Department for Behavioral Health, Developmental and Intellectual Disabilities [is defined by KRS 194A.030(4)].

(7) [(8)] "Early Intervention Program" is a program that helps Kentucky youths under age twenty-one (21) and their families learn about risks and consequences of substance use, the benefits of good health and well-being among youths, and promotes positive decision-making to resist alcohol, tobacco, and other drugs.

(9) "International Certification and Reciprocity Consortium" or "ICRC" means the organization that establishes the standards of practice in addiction counseling, prevention, and clinical supervision through testing and credentialing of addiction professionals.

(8) [(40)] "Kentucky Certification Board for Prevention Professionals" or "KCBPP" means an ICRC member board that establishes competency-based certification for prevention specialists [professionals] that promotes and maintains integrity and quality of service for alcohol, tobacco and other drug prevention.

(9) [(44)] "Prevention" means the act of preventing use and misuse of alcohol, tobacco, and other drugs and the related consequences. [problems resulting from alcohol, tobacco, and other drug use.]

(10) [(12)] "Prevention Director" means a certified prevention specialist [prevention professional] who manages AODP [Regional Prevention Center] staff, serves as liaison between the AODP

[Regional Prevention Center] and the department, and is responsible for developing the annual plan and budget documents for the AODP [prevention program].

(11) [(43)] "Prevention Specialist[Professional]" means a paid staff, excluding clerical staff, employed by an AODP [a Regional Prevention Center] actively involved in the development and implementation of [a] substance use and misuse [abuse] prevention services [program].

(12) [(44)] "Regional Prevention Center" or "RPC" means a program funded and licensed by the department for the purpose of developing, providing, and coordinating prevention training and technical assistance services that address substance use and misuse and the related consequences. [substance abuse prevention programs and activities in a specified geographical region of the state.

(15) "Strategic Prevention Framework" or "SPF" means a planning process identified by Substance Abuse Mental Health Service Administration.

Section 2. Licensing Procedures. (1) An AODP [agency] receiving remuneration for any prevention program, and any RPC, shall not operate without first obtaining an AODP [alcohol and other drug prevention] license from the cabinet, unless the AODP [agency] is exempted under KRS 222.003(1) and (2).

(2) Any AODP operating a program without first obtaining a license shall be subject to penalties pursuant to KRS 222.990(2). [An agency shall be licensed to operate a Regional Prevention Center in accordance with 908 KAR 1:380, Section 2.]

(3) An application for licensure shall be submitted in writing to the Office of Inspector General, 275 East Main Street, Frankfort, Kentucky 40621.

(4) An application for:

(a) Licensure shall be accompanied by a fee of \$155; or

(b) Renewal shall be accompanied by a fee of eighty (80) dollars.

(5) The license shall remain in effect for one (1) year from the date of issuance and may be renewed, unless a failure to comply with licensure standards causes the license to be [has been]:

(a) Revoked; or

(b) Suspended [; or

(c) Modified by the cabinet for a substantial failure to comply with the licensure standards].

(6) [(5)] The license shall be conspicuously posted in a public area at the AODP [agency] and shall indicate the year the license was issued or renewed.

(7) [(6)] An application for licensure or renewal may [shall] include an on-site inspection by cabinet representatives to determine compliance with licensure standards.

(8) [(7)] The applicant shall provide the cabinet or its representatives access during normal hours of operation to any area of the facility and any document needed to complete the inspection.

(9) [(8)] The cabinet shall notify the AODP [agency] in writing [within ten (10) calendar days] of any violation of licensure standards identified during the inspection.

(10) [(9)] The AODP [agency] shall submit to the cabinet a written plan of correction within ten (10) calendar days of receipt of the notice of violation.

(11) The correction plan shall specify the:

(a) Corrective [the corrective] action to be taken; and

(b) Date [the date] when each violation shall be corrected.

(12) [(10)] The certificate of licensure shall be the property of the cabinet and shall be returned upon closure or revocation of the license.

(13) [(44)] The cabinet shall make available to the public a list of all licensed alcohol and other drug prevention agencies and may issue revisions and corrections to this list as changes occur.]

(12) Any agency operating a program without first obtaining a license shall be subject to the penalties as stated in KRS 222.990(2).]

Section 3. Changes in AODP [agency] Status. (1) An AODP [agency] shall notify the cabinet within ten (10) working days of a change in:

- (a) Name;
- (b) Location;
- (c) Ownership; or
- (d) Discontinuance of services.

(2) If there is a change in AODP [agency] name, ownership, or location, the cabinet may issue a new license for the remainder of the current licensure period.

Section 4. Physical Plant. There shall be written housekeeping, sanitation, and maintenance procedures, which shall be followed at all times to ensure that the AODP shall be clean and in good repair.

Section 5. Organization and Administration. (1) Governing body.

(a) An AODP shall have a governing body with overall authority and responsibility for the AODP's operation.

(b) The governing body shall have written documentation to show the AODP is a legal entity in the Commonwealth of Kentucky by means of a partnership agreement, articles of incorporation, legislative act, or executive order.

(c) The responsibilities of the governing body shall be specified in writing and shall include:

1. Adopting a mission statement that outlines the AODP's purpose;
2. Adopting a conflict of interest policy to govern participation by a governing body member in a decision that may be influenced by a member's business interest;
3. Appointing an executive director who shall be responsible for the day-to-day operation of the AODP;
4. Adopting an administrative structure and establishing a line of authority for all prevention programs operated by the AODP;
5. Documenting administrative structure and lines of authority on an organizational chart, including the name of each current governing board member;
6. Adopting written policies and procedures to direct administrative and program functions of the AODP to ensure that sufficient staff and resources are available for the successful delivery of programs;
7. Reviewing written prevention policies and procedures at least every two (2) years and making needed revisions and incorporating relevant findings of the AODP's quality assurance system;
8. Overseeing a system of financial management and accountability;
9. Completing an annual training on alcohol and other drug prevention for members of a multiservice board that provide oversight to the prevention program; and
10. Meeting as a whole at least quarterly and keeping a written record demonstrating the ongoing discharge of its responsibilities.

Section 6 [4]. Staffing and Staff Qualifications. (1) A prevention specialist [professional] shall be certified by the Kentucky Certification Board for Prevention Professionals and ICRC as a [an International] Certified Prevention Specialist within thirty-six (36) months of initial [:

- (a) The effective date of this administrative regulation; or
- (b) Initial employment.

(2) The AODP [agency] shall designate one (1) individual as the prevention director who shall:

(a) Be certified by the KCBPP as a [an-International] Certified Prevention Specialist; and

(b)1. Have a bachelor's [bachelors] degree plus five (5) years of work experience in prevention or the related fields of health, social science, marketing, communication, or education; or

2. Have a master's degree with two (2) years of work experience in prevention or [administration or administration in] the related fields of health, social science [sciences], marketing, communication, or education.

(3) [Staff responsible for providing prevention services within the agency shall be clearly designated.

(4) The AODP [agency] shall designate an individual to serve as an ombudsman who shall be responsible for responding to:

- (a) Staff or consumer complaints; and
- (b) Staff or consumer grievances.

Section 7. Personnel and Employment Practices. (1) The AODP shall have written policies and procedures governing employment practices for AODP employees and subcontractors which shall include:

(a) Protection from discrimination against any employee or prospective employee based on:

1. Gender;
2. Age;
3. Race;
4. Ethnicity;
5. Religious affiliation; and
6. Disability including prior history of alcohol or other drug abuse;

(b) Personnel policies addressing:

1. Recruitment;
2. Hiring;
3. Promotion;
4. Discipline; and
5. Termination;

(c) Procedures for conducting background checks on any individual working with minors to assure that there is no:

1. Record of conviction related to abuse or molestation of children from the:

- a. Administrative Office of the Courts; or
- b. Kentucky State Police; and

2. Individual employed listed on the central registry established by 922 KAR 1:470;

(d) Procedures for a central registry check that has been submitted for an individual and is pending, which shall include:

1. Provisional hiring of the individual pending the results of the registry check;

2. A requirement that the individual shall not be left unsupervised with a client under eighteen (18) years of age; and

3. A requirement that the individual[employee] shall be dismissed immediately if the results of the check show the individual is listed on the central registry;

(e) Procedures ensuring that criminal record checks as described in paragraph (c) of this subsection shall be completed annually on a random sample of at least twenty-five (25) percent of all personnel;

(f) Maintenance of personnel records for each staff member, which shall contain the following:

1. Application for employment;
2. Job specifications;
3. Written references;
4. Results of background check;
5. Documentation of:
 - a. Education;
 - b. Work experience;
 - c. Training; and
 - d. Status of professional licensure, certification, and registration;
6. Salary information;
7. Job performance appraisals;
8. Disciplinary actions;
9. Commendations; and
10. Employee incident reports;

(g) Written job specifications for all positions identifying the:

1. Qualifications;
2. Duties;
3. Reporting supervisor; and
4. Positions supervised;

(h) Explanation of:

1. Employee benefits;
2. Training and staff development opportunities;
3. Safety and work related injury procedures;
4. Employee grievance procedures;
5. Rules of conduct; and
6. Compensation plan;

(i) Information on equal employment opportunities and affirmative action policies;

(j) A provision for ensuring an alcohol and drug-free workplace to

include actions taken when an employee is involved in the unlawful manufacture, distribution, possession, or use of alcohol or any controlled substance at the AODP;

(k) A provision for yearly job appraisal for each employee, which includes an evaluation based on objective criteria of each employee's performance in relation to their expected job duties;

(l) Ethical standards identifying acceptable employee conduct regarding consumers' rights;

(m) Conflict of interest policies governing dual relationships with other legal entities;

(n) Provisions to assure the confidentiality of personnel records;

(o) A provision for providing an employee with access to that employee's personnel record; and

(p) Provisions for the storage and retention of personnel records.

(2) A staff member shall be given access to a copy of the AODP's policies and procedures at the time of employment and shall be notified of a revision when it is made.

Section 8[5]. AODP Staff Responsibilities [Regional Prevention Centers]. (1) AODP [RPC] staff shall:

(a) Provide prevention services, including training and technical assistance, with a primary content that specifically addresses substance use and misuse and its related consequences;

(b) Utilize the Substance Abuse and Mental Health Services Administration (SAMHSA) approved evidence-based decision-making model for delivery of prevention services;

(c) Utilize the Center for Substance Abuse Prevention's primary prevention strategies found at <https://www.samhsa.gov/grants/block-grants/sabg> for delivery of prevention services; and

(d) Utilize evidence-based or evidence-informed programs and activities in delivery of services.

(2) AODP and[Conduct the following program management functions:

1. Planning;
2. Staffing;
3. Policy development;
4. Program development; and
5. Program evaluation;

(b) Prepare a written mission statement and program operations manuals which shall be reviewed by the prevention director at least one (1) time per year and updated as necessary;

(c) Coordinate and implement all prevention programs, initiatives, and activities funded by the department in the region, with the exception of those specifically exempted by the department;

(d) Coordinate and implement an Early Intervention Program;

(e) Assist communities to develop and implement educational and environmental strategies for adults and children to prevent the:

1. Use of illegal drugs;
2. Abuse of alcohol; and
3. Abuse of other chemicals such as tobacco, pharmaceuticals, and household products that have psychoactive properties;

(f) Collaborate with community agencies and organizations in the provision of prevention services;

(g) Tailor programs to the characteristics of specific target audiences, including age, gender, drug-use pattern, racial, ethnic, and cultural heritage;

(h) Gather and disseminate information about drug-specific prevention activities provided by other agencies, organizations, or individuals within their region;

(i) Participate in mentoring activities and statewide meetings as designated by the department;

(j) Participate in a computerized communication system with the department and other RPCs;

(k) Facilitate cooperation among agencies, groups, and individuals involved in prevention;

(l) Develop, maintain, and sustain regional and county coalitions;

(m) Create forums for coordination and networking of substance abuse prevention professionals; and

(n) Provide consultation with community organizations that

wish to develop comprehensive prevention programs.

(2) A Prevention professional working in RPCs shall provide:

(a) Information on subjects relevant to substance abuse prevention;

(b) Professional information to assist community members in acquiring the knowledge necessary for their involvement in prevention efforts;

(c) Resources for use in community prevention programs;

(d) Books, pamphlets, audio visual, and training materials which shall be made available for use by the community; and

(e) Well-defined, structured training and learning experiences including both information and skill development designed to directly influence the drug use behavior of the consumer and incorporate evidence-based and professionally developed curricula. The program shall train:

1. Persons to reach others with prevention information or lead prevention activities in the groups with which they are involved; and

2. Professionals and volunteers in the community to conduct training for others.

(3) RPC staff shall submit schedules of training and other events to the department upon request.

(4) RPC staff shall:

1. Assist or serve only those prevention programs with a primary content that deals specifically with drug use; and

2. Not deliver programs with a primary content aimed at raising self-esteem, increasing general wellness, raising socio-economic status, or similar factors that may be indirectly related to drug abuse.

(5) RPCs may:

(a) Raise community awareness of the need for a comprehensive approach to prevention;

(b) Encourage and assist in community planning for prevention activities;

(c) Provide consultation and training for providers of prevention programs;

(d) Raise community awareness of the need for intervention and recovery programs as part of a comprehensive approach to prevention;

(e) Encourage and assist in community planning for intervention and recovery activities; and

(f) Provide consultation and training for providers of intervention and recovery programs.

(6) RPC staff shall not provide intervention and recovery programs for persons who are in need of substance use and misuse [abuse] treatment.

Section 9. Quality Assurance. (1) Staff development.

(a) The AODP shall establish a system of on-going staff development to include training and supervision of all prevention staff that shall:

1. Be outlined in the AODP's policies and procedures manual; and

2. Support the attainment of the goals and objectives of the prevention program.

(b) The AODP shall make required training available to staff.

(c) The completion of each training shall be documented in staff personnel records and shall identify the:

1. Name of the training;
2. Clock hours earned; and
3. Dates attended.

(2) Program quality assurance. The AODP shall have written policies and procedures for assuring the quality of each program operated by the AODP that shall include the following:

(a) Designation of the individual responsible for monitoring and evaluating the quality assurance activities;

(b) Description of the range of activities and services provided in each program;

(c) A statement of intended program outcomes and indicators of effectiveness; and

(d) Establishment of a mechanism and a schedule for the collection, organization, and analysis of data to:

1. Be used for process evaluation;

2. Be used for outcome evaluation; and
3. Determine the quality of the service.

Section 10. Consumer Rights. An AODP shall have written policies and procedures for ensuring the rights of the consumer that shall include:

- (1) An assurance that there shall be no unlawful discrimination in determining eligibility for admission to a prevention program;
- (2) A statement of consumer rights posted in the AODP with the name, address, and telephone number of the AODP's ombudsman;
- (3) Assurance of the confidentiality of consumer's substance use and misuse; and
- (4) Posting of the grievance procedure in the AODP, which shall include at a minimum:
 - (a) The period for reviewing and responding to a consumer complaint;
 - (b) A requirement for documentation of a grievance in the:
 1. Consumer record; and
 2. Central AODP incident file; and
 - (c) A requirement that a grievance alleging abuse or neglect be referred in accordance with:
 1. KRS 209.030 regarding the abuse or neglect of an adult; and
 2. KRS 620.030 regarding the abuse or neglect of a minor.

Section 11. Complaints. (1) A suspected violation of a licensure standard shall be reported to the cabinet.

(2) The complainant and information related to a suspected violation shall be kept confidential and shall not be disclosed publicly during an investigation. Once the investigation is complete, disclosure of the information shall be subject to the provisions of KRS 61.870 to 61.884.

(3) The cabinet shall conduct an investigation and inspections based upon a complaint.

Section 12. Denial, Revocation, and Reapplication. (1) The cabinet shall deny or revoke a license if:

- (a) It finds that there has been a failure with the provisions of this administrative regulation **and an acceptable corrective action plan is not completed;**
- (b) Access is denied to the cabinet or its representatives during normal hours of operation to any area of the facility and any document needed to complete an inspection;
- (c) The cabinet finds that the licensee misrepresented or submitted false information to the cabinet;
- (d) The cabinet has probable cause to believe that continued operation would constitute an immediate danger to the health, welfare, or safety of clients;
- (e) **The AODE fails to comply with the annual renewal process;**
- (f) **An individual having a significant financial interest in the AODP has, within the seven (7) year period prior to the application date, had significant financial interest in a facility or service that was licensed or certified by the cabinet, and the license or certificate to operate was denied, suspended, revoked, or voluntarily relinquished as the result of an investigation or adverse action that placed patients, residents, or clients at risk of death or serious harm;**
- (g) **An individual having significant financial interest in the AODP has been:**
 1. **Previously discontinued or disqualified from participation in any governmental assistance program due to fraud or abuse of the program; or**
 2. **The subject of disciplinary action taken against the individual by a professional licensing board for misconduct related to endangering a patient or client;**

- (h) The licensee commits fraud in obtaining a license or in connection with a service provided; or
- (i) ~~[(f)]~~ The licensee fails to comply with a cabinet approved corrective action plan.

Section 13. Penalties. (1) Denial or revocation of a license.

- (a) Plan of correction.

1. **An AODP shall submit to the cabinet, within ten (10)**

calendar days of a notice of a violation, a written plan for the correction of the regulatory violation.

2. The plan of correction shall be signed by the AODP's administrator, the licensee, or a person designated by the licensee and shall specify:

- a. The date by which the violation shall be corrected;**
- b. The specific measures utilized to correct the violation;**

and

- c. The specific measures utilized to ensure the violation will not recur.**

3. The cabinet shall review the plan of correction and notify the AODP in writing of the decision to:

- a. Accept the plan;**
- b. Not accept the plan; or**
- c. Deny, suspend, or revoke the license for a substantial regulatory violation in accordance with KRS 222.231(6).**

4. If the cabinet finds the statement of correction unacceptable, the cabinet shall notify the AODP:

- a. Of the specific reasons the plan is unacceptable; and**
- b. That an amended plan of correction is required within ten (10) calendar days of receipt of the notice by the AODP.**

5. The cabinet shall review the amended plan of correction and notify the AODP in writing of the decision to:

- a. Accept the plan;**
- b. Deny, suspend, or revoke the license for a substantial regulatory violation; or**
- c. Require the AODE to submit an acceptable plan of correction.**

6. An AODP that fails to submit an acceptable amended plan of correction may be notified that the license will be denied, suspended, or revoked.

~~If an AODP fails to submit an acceptable plan of correction within ten (10) calendar days from the date of a notice of violation, the license shall be denied or revoked thirty (30) calendar days after the date of the notice of denial or revocation unless:~~

- ~~1. The AODP requests a hearing in accordance with Section 14 of this administrative regulation; or~~**
- ~~2. The AODP notifies the cabinet in writing that the application for licensure is withdrawn.]~~**

(b) Denial of an application for licensure. When an application for licensure is denied, the legal entity named in the application may reapply for a license in accordance with Section 2 of this administrative regulation after a period of:

1. One (1) year from the date of denial; or
2. Thirty (30) days from the date an application for licensure was withdrawn by the AODP.

(2) Reapplication. The legal entity named in the application may reapply for a license in accordance with Section 2 of this administrative regulation after a period of one (1) year from the date of revocation.

Section 14. Appeals. (1) If the cabinet takes action to deny or revoke an AODP license in accordance with KRS 222.231(6), the cabinet shall notify the AODP in writing stating the reason for the adverse action and the AODP's right to appeal to the cabinet.

(2) The cabinet shall conduct the hearing in accordance with KRS Chapter 13B.

(3) An AODP that continues to operate after the closing date established by the secretary, or designee, shall be subject to action by the cabinet as provided by law.[]

Section 6. Department Responsibilities. The department shall:

- (1) Conduct on-site visits to:
 - (a) Review program progress and compliance; and
 - (b) Conduct random record checks for accuracy and validity;
- (2) Review and approve budgets and quarterly reports to ensure accuracy and efficiency in spending;
- (3) Review training plans for RPC staff; and
- (4) Ensure adherence to the Strategic Prevention Framework to include:
 - (a) Assessment;
 - (b) Building capacity;

- (c) Planning;
- (d) Implementation;
- (e) Evaluation;
- (f) Sustainability; and
- (g) Cultural competence.]

WENDY T. MORRIS, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: November 9, 2020

FILED WITH LRC: November 12, 2020 at 9:28 a.m.

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 persons: Justin Dearing and Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes licensing requirements for Alcohol and Other Drug Prevention agencies (AODP).

(b) The necessity of this administrative regulation: This administrative regulation establishes licensing requirements in AODPs setting minimum quality standards for prevention.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the authorizing statutes by establishing licensure standards for alcohol and drug prevention agencies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by establishing licensing requirements for AODPs and by setting minimum quality standards for prevention.

(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 takes pertinent requirements in 908 KAR 1:380 and moves them into 908 KAR 1:400. Staff responsibilities, quality assurance requirements, consumer rights, a complaint process, denial and revocation processes, reapplication procedures, penalties, and appeal procedures have been added to this amendment. Finally this amendment made proposed changes to conform with KRS Chapter 13A.

The Amended After Comments version updates terminology, clarifies the requirements for denying or revoking a license, and clarifies the requirements for plans of correction.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to add the requirements to complete the licensing and surveying process for AODPs. The Amended After Comments changes are necessary in response to comments received during the public comment period.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation conforms to the authorizing statutes by allowing the cabinet to establish licensure standards for alcohol and drug prevention agencies.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in the effective administration of the authorizing statutes through completing and clarifying the licensure process for AODPs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 19 licensed AODPs that 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: There will be no new action required on

the part of regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will create no new or additional costs to regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment streamlines current administrative regulations for licensure of AODPs.

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

(a) Initially: There will be no initial cost to implement this amended administrative regulation.

(b) On a continuing basis: There will be no continual cost to implement this amended administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds are used 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: The amendment to this administrative regulation does not require an increase in fees or funding.

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

(9) TIERING: Is tiering applied? The administrative regulation does not apply tiering as the standards are applied in a like manner statewide.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services 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 194A.050, 222.211, 222.231

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate new revenue.

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amended After Comments)

922 KAR 1:450. Eligibility confirmation for tuition waiver.

RELATES TO: KRS Chapter 13B, 164.001(12), 164.2847, 199.570, 620.050(5)

STATUTORY AUTHORITY: KRS 194A.050(1), KRS 164.2847(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires ~~authorizes~~ the secretary of the Cabinet for Health and Family Services to adopt and administer administrative regulations necessary under state laws to protect, develop, and maintain the welfare and sufficiency of individual citizens of the Commonwealth. KRS 164.2847(3) requires the Cabinet for Health and Family Services, upon the request of a public postsecondary education institution, to confirm the eligibility status under KRS 164.2847(1), of a student seeking to participate in the tuition waiver program. This administrative regulation establishes a procedure for administrative hearings and criteria pertaining to the release of foster or adoption status information.

Section 1. Definitions. (1) "Institution" is defined by ~~in~~ KRS 164.001(12).

(2) "Student" means an individual who meets the requirements of KRS 164.2847(1).

Section 2. Confirmation of Eligibility. (1) A student shall request a tuition waiver by:

(a) Completing ~~[a form]~~ the DPP-333, Tuition Waiver for Foster and Adopted Children; and

(b) Presenting the DPP-333 to a public postsecondary institution.

(2) Upon the request of a public postsecondary institution, designated cabinet staff shall return the completed DPP-333 to the requesting institution within thirty (30) working days from the date of receipt.

(3) The confidentiality of information shall be maintained in accordance with KRS 199.570 and 620.050 regarding the release of information.

(4) The cabinet shall maintain an active file of a student's completed DPP-333 for ten (10) ~~five (5)~~ years from the date of the student's initial request.

(5) A student who transfers to another institution, or who has not been enrolled continuously at the same institution, shall complete a new DPP-333.

Section 3. Service Appeal. An applicant who is determined ineligible for a tuition waiver by the cabinet shall have access to an administrative hearing in accordance with 922 KAR 1:320.

Section 4. Incorporation by Reference. (1) "DPP-333, Tuition Waiver for Foster and Adopted Children", 11[07]/20 ~~edition 6/13~~, 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 ~~Cabinet for Health and Family Services, Division of Policy Development~~, 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: November 5, 2020

FILED WITH LRC: November 6, 2020 at 11:17 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Laura Begin and Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the process of determining an applicant's eligibility to receive a tuition waiver at a Kentucky public postsecondary institution.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure compliance with statute and eligibility criteria for students who seek the tuition waiver.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the authorizing statutes by establishing procedure and criteria pertaining to the release of foster or adoption status information as confirmation of eligibility for the tuition waiver.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation assists in the effective administration of the statutes by establishing a procedure and criteria for eligibility confirmation of a student seeking to participate in the tuition waiver program.

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

(a) How the amendment will change this existing administrative regulation: This amendment changes the period of time the cabinet shall maintain an active file of a student's completed DPP-333 form for compliance with amendments made in the foster or adopted tuition waiver program, KRS 164.2847, per Senate Bill 115 from Regular Session 2020 (Ky. Acts ch. 111). The amendment also clarifies instructions for completing the tuition waiver form and makes conforming updates in the material incorporated by reference.

The material incorporated by reference is being amended in response to comments received from the Children's Alliance to provide greater clarification.

(b) The necessity of the amendment to this administrative regulation: Senate Bill 115, passed in Regular Session 2020, extended the tuition waiver eligibility period from a five year period to 150 consecutive or nonconsecutive credit hours up to age twenty-eight and included tuition and student fees for graduate programs in addition to undergraduate programs. Conforming amendment was necessary in this administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: The amended administrative regulation conforms to the authorizing statutes by increasing the period of time the cabinet maintains an active file of a student's completed DPP-333 form for the tuition waiver program.

(d) How the amendment will assist in the effective administration of the statutes: The amended administrative regulation will assist in the effective administration of the statutes by ensuring eligibility is consistent with the authorizing statute.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There were 600 verified eligible applicants for the tuition waiver in 2018 and 639 in 2019. Pursuant to KRS 164.2847, those eligible include families who receive state-funded adoption assistance, students currently committed to the cabinet, students in an independent living program placement funded by the cabinet, students who were placed in adopted placements by the cabinet, or students in the legal custody of the cabinet on his or her eighteenth birthday. Kentucky public postsecondary institutions are also affected.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amended administrative regulation will require designated cabinet staff to maintain records for ten years, rather than five. Senate Bill 115 expanded the eligibility for

the public postsecondary institution tuition waiver available to former foster and adopted youth in Kentucky.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment does not have a cost to the entities identified, but Senate Bill 115 did have a cost to Kentucky public postsecondary institutions.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amended administrative regulation will benefit youth who were in foster care or who were adopted prior to their eighteenth birthday by extending the period of time they may utilize the tuition waiver program.

(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 is not projected to have a fiscal impact on the administrative body.

(b) On a continuing basis: The amendment to this administrative regulation is not projected to have a fiscal impact on the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State General Funds are the source of funding used for the implementation and enforcement of this administrative regulation. Overall costs are minimal for this administrative agency.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation is applied in a like manner statewide for all students eligible pursuant to KRS 164.2847.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None.

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

3. Minimum or uniform standards contained in the federal mandate. None.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter requirements or responsibilities.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. None.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services is impacted by this administrative regulation. Kentucky public postsecondary institutions are impacted by Senate Bill 115, to which this amendment conforms.

(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), 164.2847(3).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenue for state or local government.

(b) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue for state or local government in subsequent years.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency (Amended After Comments)

922 KAR 1:520. Supplements to per diem rates [High-risk supplement for resource homes].

RELATES TO: KRS 2.015, 199.011(4), ~~(10)~~, 200.115(1), ~~600.020(9)~~, ~~(30)~~ ~~[600.020(8)]~~, 605.120(2), 610.110(6), 620.020(1), 620.140(1)(d), 42 U.S.C. 672

STATUTORY AUTHORITY: KRS 194A.050(1), 605.120(2)

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 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. KRS 605.120(2) requires the cabinet to establish a reimbursement system, within existing appropriation amounts, for foster parents that comes as close as possible to meeting the actual cost of caring for foster children, and to address additional costs associated with providing care to children with exceptional needs. In addition, *Olmstead v. L.C. and E.W.*, 119 S. Ct. 2176 (1999), held that unnecessary institutionalization of a person with a disability may be a violation of the Americans with Disabilities Act of 1990, 3 U.S.C. 421 and that, given certain exceptions, services should be delivered in the most integrated setting appropriate to the treatment needs of a person with a disability. This administrative regulation establishes the requirements for a foster [resource] home [parent] to receive a high-risk or parenting youth supplement reimbursement, to the extent funds are available, for extraordinary care the foster home [parent] provides to a child with exceptional needs, or a parenting youth, who is in the custody of the cabinet.

Section 1. Definitions. (1) "Case permanency plan" is defined by KRS 620.020(1).

(2) "Child" means:

(a) A child as [is] defined by KRS 199.011(4)[;] and 600.020(9) [600.020(8)], and may include:

(a) An extension or reinstatement of commitment];

(b) A person age eighteen (18) or older whose commitment to the cabinet has been extended or reinstated by a court in accordance with KRS 610.110(6) or 620.140(1)(d); or

(c) A person under age twenty-one (21) [(b) A child] who meets the exceptions to the age of majority in accordance with KRS 2.015.

(3) "Crisis" means a factor or set of factors that:

(a) Jeopardizes a child's placement in a [resource] home; and
(b) Creates a risk for removal of the child from the [resource] home to a more restrictive setting, including institutionalization.

(4) "Exceptional needs" means the needs of a child:

(a) As specified in Section 2[(4) and](2) or 4 of this administrative regulation; and

(b) Reimbursed in accordance with KRS 605.120(2).

(5) "Extraordinary care" means services:

(a) Provided to a child with exceptional needs [and] in the custody of the cabinet; and

(b) That exceed a regular per diem, as established in 922 KAR 1:350, Section 10[43].

(6) "Family team meeting" means a meeting convened to develop a child's case permanency plan to successfully attain the desired outcomes for the child and family[in accordance with Section 2(1)(d) of this administrative regulation].

(7) "Foster home" means:

(a) A "foster family home" as defined by KRS 199.011(10) and 600.020(30), if referring to a physical structure; or

(b) An individual approved as a foster parent by the cabinet pursuant to 922 KAR 1:310 or [and] 922 KAR 1:350, if referring to an individual.

(8) "High-risk supplement" means a reimbursement to a foster [resource] home [parent] that is necessary to cover an additional expense associated with the provision of extraordinary care.[

(8) "Resource home" means a home in which a parent is approved by the cabinet in meeting the foster care, adoption, or respite care requirements of 922 KAR 1:350.]

(9) **"Parenting youth supplement" means a daily supplement to the per diem that is necessary to cover an additional expense associated with a youth who is placed with and has custody of their own child.**

(10) "Transition" means the period of a child's adjustment from a more restrictive out-of-home care placement to a foster [resource] home.

Section 2. High-risk supplement [Eligibility]. (1) To the extent funds are available, the cabinet shall reimburse a foster home for the extraordinary care provided to a child with exceptional needs.

(2) The cabinet shall consider a child eligible for a high-risk supplement if:

(a) 1. Community resources meet the child's needs; and

2. The child requires services consistent with Level IV or [and] Level V care established in 922 KAR 1:360, Section 4;

(b) The child is placed in a medically complex [-fragile; specialized medically fragile;] or care plus foster [resource] home in accordance with 922 KAR 1:350;

(c) A child has a need for extraordinary care due to a:

1. Transition; or

2. Crisis;

(d) A family team meeting is held to:

1. Complete [Develop] a "DPP-111B, High-Risk [Service] Supplement Assessment"; and

2. Include the following individuals:

a. Designated regional cabinet staff;

b. Family members, including the child or a sibling;

c. Family friends;

d. Community partners;

e. Foster [Resource home] parents; or

f. Other individuals requested by the family or cabinet staff; and

(e) The foster [resource] home [parent] agrees to maintain a monthly log of the services provided to the child for the duration [length] of the high-risk supplement.

(3)[(2)] If a child is eligible for [approved to receive] the high-risk supplement:

(a) Designated regional cabinet staff shall develop an addendum to the child's case permanency plan that includes specific services and their timeframes for the child; and

(b) The child's foster [resource] home [parent] shall complete monthly logs of the child's extraordinary care.

(4) The high-risk supplement shall be:

(a) A standardized amount added to the per diem specified in contract between an approved foster home and the cabinet; and

(b) Provided to a foster home for a period of up to six (6) months if the requirements established in this section are met.

(5) Extensions to the high-risk supplement may be granted in six (6) month intervals if:

(a) The child is reassessed by the cabinet pursuant to Section 3 of this administrative regulation and continues to meet the

eligibility requirements established in subsection (2) of this section; and

(b) The family team meeting is held prior to granting each extension in order to:

1. Review progress made in the child's current case permanency plan addendum, which shall include a review of the foster home's monthly log of the child's extraordinary care; and

2. Complete a new "DPP-111B, High-Risk Supplement Assessment".

(6) If a high-risk supplement extension is granted:

(a) The cabinet shall develop a new addendum to the child's case permanency plan that includes the specific services and their timeframes to be provided through the period of the extension granted; and

(b) The foster home shall continue to complete monthly logs of the child's extraordinary care.

Section 3. Reassessment for High-Risk Supplement. (1) If a foster home receives a high-risk supplement, the child shall be reassessed when the supplement expires to determine if the eligibility requirements established in Section 2 of this administrative regulation are met.

(2) If a child eligible for the high-risk supplement is relocated to another foster home or out-of-home placement, the cabinet:

(a) Shall cease reimbursement of the high-risk supplement to the **child's prior** foster home; and

(b) May redetermine the child to be eligible for the high-risk supplement if the requirements established in Section 2(2) of this administrative regulation are met.

Section 4. Parenting Youth Supplement. (1) To the extent funds are available, the cabinet shall reimburse a foster home or approved provider pursuant to 922 KAR 1:300, 922 KAR 1:310, or 922 KAR 1:340 for the extraordinary care provided to a child who is a parenting youth.

(2) The cabinet shall consider a child eligible for a parenting youth supplement if:

(a) The child is placed in:

1. A cabinet-approved foster home as established by 922 KAR 1:350;

2. An independent living setting approved in accordance with 922 KAR 1:340;

3. A private child-placing agency foster home approved in accordance with 922 KAR 1:310; or

4. An approved private child-caring facility in accordance with 922 KAR 1:300.

(b) The child:

1. Is in the custody of the cabinet;

2. Has custody and control of their own child or children; and

3. Physically resides in the same location as the child or children; and

(c) A "DPP-116, Parenting Youth Supplement" is completed.

(3) A parenting youth supplement shall be:

(a) A standardized amount per child of the parenting youth added to the per diem of the parenting youth;

(b) Effective for the duration of the placement in which the youth in the custody of the cabinet and their child or children reside together; and

(c) Specified in **the DPP-116[a contract between an approved foster home or provider established in subsection (2)(a) of this section and the cabinet].**

(4) If a child deemed eligible for the parenting youth supplement is relocated to another foster home or provider established in subsection (2)(a) of this section, the cabinet:

(a) Shall cease reimbursement of the parenting youth supplement to the child's prior foster home or provider; and

(b) May redetermine the child to be eligible for the parenting youth supplement if the requirements of subsection (2) of this section are met. [Per Diem. To the extent funds are available, the cabinet shall reimburse a resource home parent for the extraordinary care provided to a child with exceptional needs.

(1) A high-risk supplement shall be:

(a) A standardized per diem specified in a contract between

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an approved resource home parent and the cabinet; and

(b) Made to a resource home parent for a period up to six (6) months if criteria in Section 2 of this administrative regulation are met.

(2) Extensions to the high-risk supplement may be granted, in six (6) month intervals, if:

(a) The child is reassessed by the cabinet or its agent and meets the eligibility requirements of Section 2(1)(a) through (c), and (e) of this administrative regulation; and

(b) A family team meeting is held prior to the extension to:

1. Review progress made in the child's current case permanency plan addendum, to include a review of the resource home parent's monthly log of the child's extraordinary care; and

2. Complete a new "DPP-111B, Service Supplement Assessment".

(3) If the child's high-risk supplement is extended:

(a) Designated regional cabinet staff shall develop a new addendum to the child's case permanency plan that includes:

1. Specific services and their timeframes for the child; and

2. Services through the period of the extension granted; and

(b) The child's resource home parent shall complete monthly logs of the child's extraordinary care.

(4) Respite care shall be based on the individual needs of the child, in accordance with 922 KAR 1:350, Section 13(5).

Section 4. Reassessment. (1) If a resource home parent cares for a child with exceptional needs and currently receives a foster care services supplement, the child shall be reassessed:

(a) When the current foster care services supplement expires; and

(b) To determine if the eligibility requirements are met in accordance with Section 2 of this administrative regulation.

(2) If the child or resource home parent does not meet eligibility requirements in accordance with Section 2 of this administrative regulation, designated regional cabinet staff may provide supportive services to the child and resource home parent.

(3) If a child deemed eligible for the high-risk supplement is relocated to another resource home or out-of-home placement, the cabinet:

(a) Shall cease reimbursement of the high-risk supplement to the child's previous resource home parent; and

(b) May reconsider the child for the high-risk supplement, if criteria outlined in Section 2 of this administrative regulation are met.

Section 5. Record-keeping. Designated cabinet staff shall:

(1) Track a recipient receiving a high-risk supplement; and

(2) Notify the designated regional cabinet staff of an impending contract expiration one (1) month prior to the expiration of the supplement.]

Section 5.[6.] Service Appeals. A foster [resource] home or provider referenced in Section 4(1) of this administrative regulation [parent] may request an appeal in accordance with 922 KAR 1:320.

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

(a) "DPP-111B, High-Risk [Service] Supplement Assessment", 07/20; and

(b) "DPP-116, Parenting Youth Supplement", 11[07]/20 [edition 09/05, 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: November 10, 2020

FILED WITH LRC: November 12, 2020 at 9:07 a.m.

CONTACT PERSON: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, 275 East

Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFRegs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contact: Laura Begin and Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the criteria and application process for supplements to foster homes for caring for high-risk and parenting youth.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the process by which a foster home or parenting youth may be reimbursed for extraordinary care in meeting the needs of children in out of home care.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 605.120(2) requires the cabinet to establish a reimbursement system, within existing appropriation amounts, for foster parents that comes as close as possible to meeting the actual cost of caring for foster children, and to address additional costs associated with providing care to children with exceptional needs. This administrative regulation adds a supplement to foster care per diem for caring for youth in the cabinet's custody who require high-risk care or who are parenting youth.

(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 through the establishment of the high-risk and parenting youth supplement to current per diem rates.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation establishes a parenting youth supplement that will be paid to a foster home or approved provider to aid in providing for the needs of the parenting youth's child or children. The amendment also updates language and processes and complies with recent amendments made to KRS Chapter 13A, as the current version of this administration regulation is outdated.

The administrative regulation and material incorporated by reference, the DPP-116, is being further amended in response to comments from the Children's Alliance to make clarifications, include a new definition for "parenting youth supplement", and include appeal rights for all entities that may be eligible to receive the parenting youth supplement.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to establish the parenting youth supplement as an addition to the per diem rate paid to foster parents or approved providers.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through the provision of reimbursement to foster homes that meet the extraordinary needs of children in out of home care.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through the provision of reimbursement to foster homes that provide for the extraordinary needs of children in out of home care. Additionally, the amendment will provide financial remuneration to support a parenting youth in meeting the needs of their child while in the custody of the cabinet.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently 38 parenting youth in the custody of the cabinet. The Department for Community Based Services and approved placement settings for youth in out of home care are affected by the 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: Parenting youth will have to meet the criteria contained in this administrative regulation to be eligible for the new parenting youth supplement. An approved provider will be required to submit the parenting youth supplement form in order to receive reimbursement.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Parenting youth will gain the benefit of having parental rights to and custody of their children remain intact. Financial arrangements with the foster care providers are comparable to past arrangements involving the same population. Additionally, the practice changes associated with the new parenting supplement will help the state avoid federal financial penalty and will preserve the safety, permanency, and wellbeing of a child born to the teen parent, benefiting both parent and child.

(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 is not projected to have a fiscal impact on the administrative body.

(b) On a continuing basis: The amendment to this administrative regulation is not projected to have a fiscal impact on the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of funding include federal Social Security Act Title IV-E funds for foster care maintenance and state general funds.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation is applied in a like manner statewide.

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 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 in subsequent years.

(c) How much will it cost to administer this program for the first year? The cabinet already provides the high-risk supplement, but the parenting youth supplement in this amendment is new. As the costs are federally-reimbursable, the costs to the administrative body shall be comparable to the costs as if the child entered cabinet custody. Thus, no fiscal impact is expected and costs may be absorbed within existing appropriations. The change in practice associated with the new supplement will help the state avoid federal financial penalty and will preserve the safety, permanency, and wellbeing of the child with their biological teen parent, benefitting both parent and child.

(d) How much will it cost to administer this program for subsequent years? Costs to the administrative body are comparable and absorbable within existing appropriations. The change in practice associated with the new supplement will help the state avoid federal financial penalty and will preserve the safety, permanency, and wellbeing of the child with their biological teen parent, benefitting both parent and child.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 672

2. State compliance standards. KRS 194A.050(1), 605.120(2)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 672

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter 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. This administrative regulation 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 Cabinet for Health and Family Services, Department for Community Based Services, is impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 605.120(2), 42 U.S.C. 672

(3) Estimate the effect of this administrative regulation on the

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*.

**GENERAL GOVERNMENT CABINET
Kentucky Board of Social Work
(Amendment)**

201 KAR 23:070. Qualifying education and clinical practice experience under supervision [for a certified social worker and a licensed clinical social worker and qualifying experience under supervision].

RELATES TO: KRS 335.010, 335.080(1)(c), (3), 335.100(1)(a), (b), (3)

STATUTORY AUTHORITY: KRS 335.070(3), 335.080(1)(c), (3), 335.100(1)(a), (b), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.080(1)(c) and 335.100(1)(a) require an applicant for a certified social worker license or a licensed clinical social worker license to have a master's degree or a doctoral degree in social work from an educational institution approved by the board. KRS 335.080(3) authorizes[allows] a certified social worker to engage in the practice of clinical social work under the supervision of a licensed clinical social worker as directed by the board by promulgation of an administrative regulation. KRS 335.100(1)(b) requires an applicant for a licensed clinical social worker license to have acquired post-master's experience under approved supervision as established by the board by promulgation of an administrative regulation. KRS 335.100(3) requires a licensed clinical social worker (LCSW) to assume responsibility for and supervise the certified social worker's (CSW) practice of clinical social work as directed by the board by promulgation of an administrative regulation. This administrative regulation establishes the educational institutions approved by the board, [the definitions relating to supervision,] the content of a Clinical Social Work Supervision Contract, and the requirements for qualifying experience under supervision for in state and out-of-state applicants.

Section 1. Definitions. (1) "Additional supervisor" means the supervisor who holds a licensed clinical social work license issued by this board, and who assumes responsibility for the practice of a certified social worker pursuant to KRS 335.080(3), [and] 335.100(3), and this administrative regulation.

(2) "Educational institution approved by the board" means a graduate school of social work accredited by the Council on Social Work Education.

(3) [(2)] "Electronic supervision" means the use of computers and other electronic means by which the supervisor and supervisee use interactive video technology, in real-time, with video and audio interaction for individual and group supervision.

(4) [(3)] "Practice of clinical social work" means the practice of social work that focuses on the evaluation, diagnosis, and treatment of a mental disorder [an emotional disorder or mental illness] as related to the total health of the individual and that meets the requirements of Section 3 of this administrative regulation.

(5) [(4)] "Supervision" means the educational process of utilizing a partnership between an LCSW [a] supervisor and a CSW supervisee aimed at enhancing the professional development of the supervisee in providing clinical social work services.

(6) [(5)] "Supervisor of record" means the supervisor who holds a licensed clinical social work license issued by this board, and who assumes responsibility for the practice of a certified social worker pursuant to KRS 335.080(3), [and] 335.100(3), and this administrative regulation.

Section 2. Education Requirements. An applicant for a certified social worker license or a licensed clinical social worker license shall have a Master of Social Work degree or Doctorate of Social

Work degree from an educational institution approved by the board.

Section 3. Practice of Clinical Social Work. (1) The practice of clinical social work shall be based on knowledge of psychodynamics, human relations, crisis intervention, psychopathology, and group dynamics.

(2) A practitioner of clinical social work shall:

(a) Possess competencies including skills necessary for:

1. Individual, marital, family, and group psychotherapy; and
2. Other recognized treatment modalities; and

(b) Establish a therapeutic relationship with his or her client that includes: [

~~1. Leads to correction of the dysfunction;~~

~~2. Includes:]~~

1.[a.] Assessment and diagnosis of mental disorders using professionally recognized clinical nomenclature;

2.[b.] Safe and appropriate treatment planning that includes development, implementation, [and] modification of the plan, and coordination of treatment with other clinicians who may be involved in the client's care;:]

~~3.[c.] Evaluation of progress; [and]~~

~~4.[d.] Termination of the treatment process; and~~

5.[3. Is characterized by] Face-to-face contact with the client throughout the treatment process, and which may include telehealth in accordance with KRS 335.158 and administrative regulations of the board.

Section 4. Supervision. (1) A supervisor shall be a licensed clinical social worker who:

(a) Provides supervision to a certified social worker pursuant to KRS 335.080(3) and 335.100(3);

(b) Does not have:

1. An unresolved citation filed against him or her by the board;
2. A suspended or probated license; or
3. A previous or existing personal relationship with a supervisee; and

(c) Has:

1. Been engaged in the practice of clinical social work for three (3) years following licensure in Kentucky or another jurisdiction as an independent licensed clinical social worker; [and]

2. Completed an initial six (6) [a board-approved three (3)] hour training course on supervisory practices and methods for licensed clinical social workers relating to the requirements in KRS [Chapter] 335.010 to 335.160 and 335.990, and 201 KAR Chapter 23; and [and this administrative regulation.]

3. In addition to the initial six (6) hour training course established in subparagraph 2. of this paragraph, each supervisor shall complete a three (3) hour refresher supervisory training course each licensure renewal period to maintain supervisory status with the board.

(2) Supervisory experience obtained in Kentucky with a supervisor who has not completed the courses required by subsection (1)(c) 2. and 3. of this section shall not be approved by the board. [

~~(3) The supervisory training course shall be completed every licensure period to maintain supervisory status with the board.]~~

(3) [(4)] A licensed clinical social worker shall not serve as a supervisor of record for more than six (6) certified social workers with whom he or she has a contract to be held accountable to the board at the same time.

~~(5) An applicant receiving supervision outside of Kentucky shall demonstrate that his or her supervisor has been in the practice of clinical social work for a period of three (3) years following licensure as a clinical social worker or its equivalent effective at the time of the supervision.]~~

(4)[(6)] To be approved as a supervisor, a licensed clinical

social worker who meets the requirements of this section shall submit a written request to become a supervisor in Kentucky along with a copy of the supervisory training certificate.

Section 5. Clinical Social Work Supervision Contract. The Clinical Social Work Supervision Contract required by KRS 335.080(3) and 335.100(3) shall be submitted to the board for approval before the certified social worker begins supervision and shall contain:

- (1) The name and license number of the certified social worker supervisee;
- (2) The name and license number of the supervisor of record;
- (3) The name and license number of additional supervisors;
- (4) The agency, institution, or organization where the experience will be received;
- (5) A detailed description of the nature of the practice including the type of:
 - (a) Clients who will be seen;
 - (b) Therapies and treatment modalities that [which] will be used including the prospective length of treatment; and
 - (c) Mental disorders that [Problems which] will be treated;
- (6) The nature, duration, and frequency of the supervision, including the:
 - (a) Number of hours of supervision per week;
 - (b) Amount of [group and] individual and group supervision; and
 - (c) Methodology for transmission of case information.[:]
- (7) The conditions or procedures for termination of the supervision including a provision that the terminating party shall provide at least thirty (30) days' written notice of termination to the certified social worker, supervisor of record, additional supervisor, and certified social worker's employer by the terminating party;
- (8) The conditions and procedures for self-evaluation of the supervision process every six (6) months in which both the certified social worker and the supervisor of record evaluate areas of strength, areas of improvement, punctuality, and overall satisfaction with the supervision process by the supervisor and the supervisee;
- (9) A statement that:
 - (a) The supervisor of record understands and agrees that he or she shall be held accountable to the board for the care given to the supervisee's clients;
 - (b) The certified social worker is an employee of an agency, institution, or organization, who receives regular wages for a payroll period either at a regular hourly rate or in a predetermined fixed amount, and has Social Security and income tax deducted from his or her salary;
 - (c) The supervisor of record and additional supervisors meet the criteria established in Section 4(1) through (4) of this administrative regulation; and
 - (d) The certified social worker supervisee has completed the training course described in Section 12 of this administrative regulation; and
 - (e) The [A] supervisor and supervisee [may] agree to use electronic supervision, in accordance with KRS 335.158 and 201 Chapter 23;
- (10) [(9)] An individualized job description attached to the Clinical Social Work Supervision Contract that:
 - (a) Describes the nature of the clinical social work services the certified social worker supervisee shall provide to a client including assessment, evaluation, diagnosis, and treatment of a mental disorder;
 - (b) Describes in detail how the requirements of Sections 6 and 7 [7 and 8] of this administrative regulation shall [will] be met; and
 - (c) [(b)] Is on office or agency letterhead and is signed by the executive director, the agency director, or the individual who heads the office. [: and]
- (11) Each supervisor of record and additional supervisor shall record and submit to the board documentation of the hours of individual or group supervision completed during the period of supervised clinical practice experience or upon termination of the contract, whichever occurs first.
- (10) A copy of each supervisor's supervisory training certificate

~~attached to the Clinical Social Work Supervision Contract.]~~

Section 6. Notice to Client. If an employee is practicing clinical social work under the supervision of a licensed clinical social worker, the employee shall notify in writing each client at the start of treatment during the period of the supervision. The notification shall contain:

- (1) The name, office address, telephone number, email address, and license number of the supervisor of record; and
- (2) A statement that the employee is licensed by the board.

Section 7. Experience under Supervision. Experience under supervision shall consist of:

- (1) At least sixty (60) percent of the required experience in a direct client-professional relationship;
- (2) Direct responsibility for providing clinical social work services to a specific individual or group of clients; and
- (3) Broad exposure and opportunity for skill development with a variety of mental disorders [dysfunctions], diagnoses, acuity levels, and population groups.

Section 8. Supervision Requirements. (1) Supervision shall relate specifically to the qualifying supervised clinical practice experience and shall focus on:

- (a) The accurate assessment and diagnosis of a client's mental disorder [client problem] leading to proficiency in applying professionally recognized clinical nomenclature;
 - (b) The development and modification of the treatment plan;
 - (c) The development of treatment skills suitable to each phase of the therapeutic process;
 - (d) Ethical problems in the practice of clinical social work and application of the Code of Ethical conduct established in 201 KAR 23:080; and
 - (e) The development and use of the professional self in the therapeutic process.
- (2)(a) Supervision shall total a minimum of 150 [200] hours, which shall include individual supervision of not less than two (2) hours during every two (2) weeks of supervised clinical social work practice, over the two (2) year minimum time period of supervised practice experience under supervision described in KRS 335.100(3).
- (b)[:] Electronic supervision may be used for no more than two (2) hours of individual supervision per month, but only after the first ten (10) [twenty-five (25)] hours of individual supervision hours have been obtained in face-to-face, in-person meetings in which[where] the supervisor and supervisee are physically present in the same room. A certified social worker supervisee who completes the first ten (10) [twenty-five (25)] of face-to-face individual supervision hours shall not have to repeat the face-to-face individual supervision hours if a new contract or supervisor of record is approved by the board unless agreed to by the certified social worker supervisee, supervisor of record, and additional supervisor. [No]More than fifty (50) percent of the individual supervision hours shall not[may] be obtained by electronic supervision.

(c) Electronic supervision shall conform to state and federal laws governing electronic practice or telehealth to ensure that confidentiality of client records and personal health information shall be maintained as required by KRS 335.158, the Code of Ethical Conduct established in 201 KAR 23:080, and other applicable state and federal laws.

(d) A supervisee shall obtain a minimum of 100 hours [not obtain more than 100 hours] of the required supervision by individual [group] supervision.

(e) A supervisee may obtain up to fifty (50) hours of group supervision.

(d) No more than fifty (50) percent of the group supervision hours may be obtained by electronic supervision.

(e) Electronic supervision shall conform to all state and federal laws governing electronic practice to ensure the confidentiality of the client's medical information is maintained as required by KRS Chapter 335 and 201 KAR Chapter 23 and by all applicable state and federal law.

(f) Group supervision shall ~~not~~ be in groups of not more than six (6) supervisees, and shall not include supervisees from other behavioral health professions who are attaining supervised clinical practice experience.

Section 9. An applicant for licensure as a licensed clinical social worker from another jurisdiction. (1) An applicant who holds or has held a license to practice clinical social work or an equivalent license in another jurisdiction and has been engaged in the active practice of clinical social work in that jurisdiction for at least two (2) years prior to the filing of an application with the board meets the requirements for supervision established[set forth] in this administrative regulation unless the license, certificate, registration, or other authorization issued by the other jurisdiction:

- (a) Has been expired for more than two (2) years;
- (b) Is not in good standing; or
- (c) Has been suspended or revoked for disciplinary reasons.

(2) An applicant who receives clinical practice experience under supervision in another jurisdiction shall demonstrate that:

- (a) His or her clinical practice experience under supervision met the legal requirements of that jurisdiction; and
- (b) The board shall give credit for supervision hours obtained in accordance with the legal requirements of the other jurisdiction.

(3) An applicant from another jurisdiction shall submit proof of issuance of a valid license, permit, certificate, registration, or other authorization issued by another jurisdiction that is:

- (a) Active or has been expired for less than two (2) years; and
- (b) Is in good standing or was in good standing upon the date of expiration.

(3) Documentation that establishes that an individual has been licensed in another jurisdiction at the clinical level and has been engaged in the active practice of clinical social work in that jurisdiction for at least five (5) years prior to the filing of an application with the board meets the requirement for supervision set forth in this administrative regulation.

Section 10.[9.] Evaluation by the Board. (1) The [period of] supervised experience required by KRS 335.100(1)(b) shall be evaluated by the board according to one (1) of the methods established in this subsection.

(a) Post experience evaluation. An applicant who obtained his or her supervised experience [whose experience was obtained] while licensed in another jurisdiction [state] shall submit his or her application along with documentation of supervision and qualifications of his or her supervisor.

(b) Transitional evaluation. An applicant who has accumulated an amount less than the full amount of qualifying experience while licensed in another jurisdiction [state] or while working in a clinical social work setting that does not meet the requirements under Section 7(3) of this administrative regulation shall submit his or her application along with documentation of supervision completed prior to the date of his or her application. The applicant shall also submit with his or her application a Clinical Social Work Supervision Contract under paragraph (c) of this subsection for the remainder of the supervised experience.

(c) Preapproved evaluation. Prior to beginning supervised practice experience [supervision], an applicant shall submit a Clinical Social Work Supervision Contract for the supervised experience [which will be taking place over the required time period] and the applicant shall have the contract approved by the board. This contract shall be evaluated by the board and shall be approved or denied[disapproved] within ninety (90) days of its submission.

(2) A certified social worker who desires to practice clinical social work that does not qualify as supervised experience pursuant to KRS 335.100(1)(b)[.] shall submit a Clinical Social Work Supervision Contract pursuant to KRS 335.080(3). This contract shall be evaluated by the board and shall be approved or denied[disapproved] within ninety (90) days of its submission.

(3) A certified social worker who desires to practice clinical social work that meets all the other supervised experience requirements, other than the requirement established[listed] in Section 7(3) of this administrative regulation, shall submit a Clinical

Social Work Supervision Contract pursuant to KRS 335.080(3). The supervision hours obtained in this clinical setting may be considered by the board.

Section 11. [40.] (1) Changes to Section A of the Plan of Clinical Social Work Activities of the Clinical Social Work Supervision Contract that describes the clinical setting and nature of the practice and experience that the supervisee is to obtain, as required by Section 5(5) of this administrative regulation, shall be submitted to the board for approval.

(2) A new Clinical Social Work Supervision Contract shall be submitted to the board for approval if the supervisee changes his or her:

- (a) Supervisor of record; or
- (b) Place of employment.[If the supervisee changes his or her supervisor of record, a new Contract for Clinical Social Work Supervision shall be submitted to the board for approval.]

(3) A supervisee shall notify the board in writing[by letter] of changes of additional supervisors who are not the supervisor of record, but who are identified in the Clinical Social Work Supervision Contract pursuant to Section 5(3) of this administrative regulation, and attach a copy of the supervisor's supervisory training certificate.

Section 12. Supervision Training Course for a Certified Social Worker Under Supervision.

(1) Prior to beginning supervised clinical social work practice, a certified social worker supervisee shall complete a one (1) hour training course on supervised clinical practice experience, provided at no cost by the board, and relating to the requirements in KRS 335.010 to 335.160 and 335.990, and 201 Chapter 23; and.

(2) Submit a copy of the certificate of completion with their Clinical Social Work Supervision Contract.

Section 13. [44.] Incorporation by Reference. (1) "Clinical Social Work Supervision Contract," 11/2020[04/2046], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Social Work, 125 Holmes Street, Suite 310[44 Fountain Place], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JUSTIN "JAY" MILLER, PH.D., Chair

APPROVED BY AGENCY: November 10, 2020

FILED WITH LRC: November 12, 2020 at 12:14 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2021, at 9:00 a.m. ET, at the Kentucky Board of Social Work, 125 Holmes Street, Third Floor Board Room or by a virtual Zoom meeting on this date and time, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted by the board through the end of the day on January 31, 2021. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Florence S. Huffman, Executive Director, Kentucky Board of Social Work, 125 Holmes Street, Suite 310, Frankfort, Kentucky 40601; phone (502) 564-2350 or (502) 782-2856; or email florence.huffman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Florence S. Huffman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the educational and supervision requirements for individuals who wish to provide clinical social work services in Kentucky. Clinical social work involves the assessment, diagnosis, safe and appropriate treatment planning, and therapy to an individual with a mental or emotional disorder. To provide these services, one must hold a Masters or Doctorate in Social Work from an accredited academic institution, and be licensed as an licensed clinical social worker (LCSW) or as a certified social worker (CSW) who has been approved by for post-master's clinical social work experience under the supervision of a qualified LCSW clinical supervisor. Due consideration was given to quality of the supervision experience, the quality and breadth of supervisor's training, and how to improve the outcomes from the overall clinical practice experience.

This regulation establishes the education, licensing, qualifying experience, supervision, and training requirements for:

An LCSW supervisor;

A CSW to provide clinical social work services; and

An out-of-state applicant's qualifications for licensure as an LCSW.

(b) The necessity of this administrative regulation: In the U.S., two years of supervised clinical social work practice experience is the uniform standard to qualify for the licensure as a licensed clinical social worker and to sit for the national standardized clinical practice exam. However, the number of hours of supervision required under supervision with an LCSW supervisor varies widely across the U.S. The lack of uniformity and Kentucky's current requirements present a significant barrier to licensure including the cost of supervision and the vast differential in the number of required supervision hours.

The board filed an amendment to this regulation in the spring of 2020. The board went to extensive efforts to solicit wide participation from the social work community: a public hearing was held virtually by Zoom on May 27, 2020, the public comment time was extended to June 30, 2020; and two listening sessions held virtually by Zoom after the public comment time closed. After receiving hundreds of comments, and after much public debate and consideration, the board decided to withdraw the amendment and refile the current version submitted herein. The board holds fast to the conclusion that a reduction in the number of supervision hours is necessary. However, overwhelming opinion led the board to reconsider its initial amendments, and to move in an incremental approach to reducing the supervision hours and improving the outcome of supervision experience. Before this amendment, Kentucky was discordant with social work boards in neighboring states on the hours of supervision. For example, Tennessee and Indiana require 100 hours or less of clinical practice supervision to qualify for a clinical license, compared to the 200 hours mandated in Kentucky. If a duly qualified LCSW from Tennessee has not practiced clinical social work for five years, and does not have the requisite 200 hours of supervision, this individual cannot qualify for a clinical social work license in Kentucky. Their recourse is to wait until the five years of practice are completed or ask the board to issue a CSW license, and go back under supervision to accumulate the balance of the required supervision hours. This process is costly, time-consuming and frustrating to otherwise qualified clinical social workers who want to work in Kentucky. The board also considered the cost issue as a potential barrier: Clinical supervision costs an average of \$75 per hour and can be as much as \$100 per hour depending upon area of the state in which the social worker lives. Another consideration is that the additional hours of supervision required in Kentucky makes the practice experience take longer than two years. In addition, license mobility and portability have become increasingly important. It is evident from the COVID-19 pandemic, the proliferation of telehealth and the expanding use of technology has transformed the nature of social work practice and greatly expanded social workers' ability to assist people in need, particularly in rural areas. With due consideration to informed consent and confidentiality of clients' protected health information, contemporary social workers' use of technology has created new ways to interact and communicate with

clients, raising fundamentally new questions about the differences in regulation of social work practice.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 335.070(3) authorizes the board to promulgate administrative regulations to carry out of the provisions of KRS 335.101 to 335.160 and KRS 335.990.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs an applicant how he or she qualifies for licensure as a licensed clinical social worker, restates the requirements for a Clinical Social Work Contract during the period of supervised clinical practice experience, reduces the number of supervision hours over the two-year supervised clinical practice period, and describes the conditions for clinical supervision established by the board. In addition, this administrative regulation informs an applicant or licensee about the reduced supervision hours for the clinical social work license, an increase in continuing education hours required for board-approved clinical supervisors, addition of continuing education for the supervisee, and evaluation of the supervision experience.

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

(a) How the amendment will change this existing administrative regulation: This amendment increases the hours of the training course for LCSW supervisors on supervisory practice and methods, adds a self-evaluation of the supervision process for both the LCSW CSW supervisee. It adds new requirements that the CSW supervisee must complete a one-hour training course and be an employee who receives regular wages; reduces the supervision hours from 200 to 150 hours over the two-year supervised clinical practice with a minimum of 50 hours of the required supervision by individual supervision, and adds a new section for applicants for licensure as a licensed clinical social worker from another jurisdiction.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to implement the board's desire to increase the quality of the supervision experience and to bring the supervision requirements in closer conformity to the clinical supervision requirements of other U.S. jurisdictions and neighboring states.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 335.070 (3) permits the board to establish the requirements for licensure as a clinical social worker.

(d) How the amendment will assist in the effective administration of the statutes: This amendment removes potential time and cost barriers to clinical social work licensure, increases the hours of the LCSW supervision course, adds a one-time course to inform the supervisee, and includes an evaluation of the supervision process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 6,000 licensed social workers in Kentucky, undetermined numbers of out-of-state applicants, community mental health centers, public and private agencies and businesses that employ social workers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The changes in this amendment will increase the continuing education hours for LCSW supervisors and may increase the cost of the initial six-hour supervision course. Correspondingly, the numbers of licensed clinical social workers in this state will increase because both in-state and out-of-state applicants will more easily and quickly meet the licensure requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The board anticipates that any cost increase will be the expense of the supervision training course for licensed clinical social workers who wish to become board-approved supervisors.

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

number of licensed clinical social workers in this state will increase because in state and out-of-state applicants will meet the criteria for licensure more quickly because of the reduced supervision hours. By removing the barriers, the amendment also will increase lawful provision of clinical services by and through telehealth providers from outside the boundaries of Kentucky.

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

(a) Initially: The board estimates that it will incur additional costs of less than \$5,000 to implement this amendment because it will provide the CSW training course at no cost to the applicant.

(b) On a continuing basis: The board estimates that it will incur nominal additional costs to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are wholly self-funded by fees paid by licensees, applicants, and continuing education providers and sponsors.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No, this amendment does not.

(9) TIERING: Is tiering applied? No, tiering was not applied. This administrative regulation is applied uniformly to each licensee and applicant regardless of his or her state of residence and each will be required to meet the same qualifications for clinical social work practice.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Board of Social Work and entities that employ social workers to provide clinical social work services will be impacted by this regulation. These entities include public school districts, community mental health centers, and other public and private businesses.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.070(3), 335.080(1)(c) and (3), 335.100(1)(a), (b), and (3).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Payment for the overall cost of supervision will decrease because the number of supervision hours will be reduced.

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

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

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

BOARDS AND COMMISSIONS Board of Licensed Diabetes Educators (Amendment)

201 KAR 45:130. Continuing education.

RELATES TO: KRS 309.337, 309.339

STATUTORY AUTHORITY: KRS 309.331

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.337

requires licensees to provide documentation of the successful completion of board-approved continuing education credits and that waivers and extensions of continuing education may be approved at the discretion of the board. KRS 309.331(1) requires the board to promulgate administrative regulations establishing continuing education requirements. This administrative regulation establishes continuing education requirements for licensed diabetes educators.

Section 1. Accrual of Continuing Education Hours. (1)(a) The annual continuing education accrual period shall be from November 1 of each year to October 31 of the next year.

(b) Prior to renewal of a license or permit for the next licensure period, a licensee or permit holder shall have earned at least fifteen (15) hours of approved continuing education.

(2) No more [More] than fifteen (15) hours of continuing education shall ~~[not]~~ be carried over into the next continuing education period.

(3) It shall be the responsibility of each licensee to finance the costs of continuing education.

Section 2. Methods of Acquiring Continuing Education Hours.

(1) Continuing education hours for license or permit renewal shall have a substantial emphasis on [be applicable to] diabetes and be presented at a professional level that enhances the quality and effectiveness of diabetes self-management education.

(2) A licensee or permit holder shall obtain continuing education courses from any of the following continuing education providers or programs approved by the providers:

- (a) American Association of Diabetes Educators (AADE);
- (b) American Diabetes Association (ADA);
- (c) Academy of Nutrition and Dietetics (AND);
- (d) Accreditation Council for Pharmacy Education (ACPE);
- (e) Accreditation Council for Continuing Medical Education (ACCME-AMA);

- (f) American Nurses Credentialing Center (ANCC);
- (g) American Academy of Family Physicians (AAFP);
- (h) American Academy of Nurse Practitioners (AANP);
- (i) American Academy of Optometry (AAO);
- (j) American Academy of Physician Assistants (AAPA);
- (k) American Association of Clinical Endocrinologists (AACE);
- (l) American College of Endocrinology (ACE);
- (m) American College of Sports Medicine (ACSM);
- (n) American Medical Association (AMA) or its Kentucky affiliate;

- (o) American Nurses Association (ANA);
- (p) American Occupational Therapy Association (AOTA);
- (q) American Physical Therapy Association (APTA);
- (r) American Psychological Association (APA);
- (s) Commission on Dietetic Registration (CDR);
- (t) Council on Continuing Medical Education (CCME-AOA);
- (u) Council on Podiatric Medical Education (CPME-APMA);
- (v) International Diabetes Federation (IDF);
- (w) National Association of Clinical Nurse Specialists (NACNS);
- (x) National Association of Social Workers (NASW);
- (y) Kentucky Board of Nursing (KBN);
- (z) Kentucky Board of Pharmacy;
- (aa) Kentucky Board of Medical Licensure; or
- (bb) Kentucky Nurses Association (KNA).

Section 3. Recordkeeping of Continuing Education Hours. (1) A licensee or permit holder shall maintain a record of all continuing education courses attended for at least two (2) years after

attending the course.

(2) Appropriate documentation to be kept shall include:

- (a) Proof of attendance;
- (b) Date of activity;
- (c) Description of activity;
- (d) Total hours of instruction, excluding breaks; and
- (e) Names and professional qualifications of the presenters.

(3)(a) Each licensee or permit holder shall sign a statement on the Renewal Application form incorporated by reference in 201 KAR 45:120, indicating compliance with the continuing education requirements.

(b) A license or permit shall not be renewed without the licensee signing this sworn statement.

Section 4. Reconsideration. (1) A licensee or permit holder may request the board to reconsider its denial of a continuing education course. The request shall be filed with the board in writing.

(2)(a) A licensee or permit holder shall file the request for reconsideration pursuant to KRS Chapter 13B within thirty (30) calendar days of notification of the denial.

(b) The request will be reviewed by the board at its next regularly scheduled meeting.

Section 5. Auditing of Continuing Education. (1) During the annual renewal period, [In January following the renewal period,] the board shall [annually] conduct a random audit of up to fifteen (15) percent of current licensees and permit holders, [from the renewal period.]

(2) Each licensee or permit holder selected for audit shall submit documentation of completion of continuing education units from the current license year [preceding renewal period] to the board [within forty-five (45) days of the date of the request.] no later than the end of the current license period.

(3) A licensee or permit holder who fails to comply with the audit request or the continuing education requirements shall be subject to [the] disciplinary action [established in this subsection.

(a) For the first offense, the licensee or permit holder shall be fined fifty (50) dollars. The licensee or permit holder shall and be subject to audit after the next renewal period.

(b) For the second offense, the licensee or permit holder's license or permit shall be suspended for thirty (30) days.

1. The licensee or permit holder shall have thirty (30) days to submit proof of completion of the continuing education requirements established in Section 1 of this administrative regulation.

2. If the licensee or permit holder does not comply with subparagraph 1. of this paragraph, the licensee or permit holder's license or permit shall expire.]

KRISTEN STAKELIN, Board Chair

APPROVED BY AGENCY: November 10, 2020

FILED WITH LRC: November 12, 2020 at 9:14 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 10:00 am on Thursday, January 28, 2020, in Room 127 CW of the Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. At the time of filing this proposed administrative regulation, all state government offices are closed to in-person services because of the COVID-19 pandemic. The physical location listed in this notice is a state government office, and the public hearing will be held at this location if the location is open to in-person services by the date shown above, but if the location is closed to in-person services on that date then the public hearing shall be held by video teleconference at the same date and time shown above. In the event the public hearing is held by video teleconference, members of the public wishing to attend may utilize the following link:

Join from PC, Mac, Linux, iOS or Android:
<https://us02web.zoom.us/j/82387351704?pwd=Y29hRkkyS3RCOWNpZjkwS1F3ZUI4UT09>

Password: 861138

Or Telephone:

Dial:

USA 713 353 0212

USA 8888227517 (US Toll Free)

Conference code: 639497

Find local AT&T Numbers:

<https://www.teleconference.att.com/servlet/glbAccess?process=1&accessNumber=7133530212&accessCode=639497>

Or an H.323/SIP room system:

H.323:

162.255.37.11 (US West)

162.255.36.11 (US East)

Meeting ID: 823 8735 1704

Password: 861138

SIP: 82387351704@zoomcnc.com

Password: 861138

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 January 31, 2021. 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) 352-8095, 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 continuing education requirements for diabetes educators.

(b) The necessity of this administrative regulation: The Board is required by KRS 309.331 to regulate the practice of diabetes education and promulgate regulations regarding continuing education.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is required by KRS 309.331 to regulate the practice of diabetes education and promulgate regulations regarding continuing education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 309.337 requires licensees to provide documentation of the successful completion of board-approved continuing education credits and that waivers and extensions of continuing education may be approved at the discretion of the board. KRS 309.331(1) requires the board to promulgate administrative regulations establishing continuing education requirements. This administrative regulation establishes continuing education requirements for licensed diabetes educators.

(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 regulation expands the period of time in which the Board can audit the continuing education completed by the licensees.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary because as currently stated, the Board does not have enough time to complete the statutorily required audit process.

(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: The proposed regulation expands the period of time in which the Board can audit the continuing education completed by the licensees.

(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 Diabetes Educators, and its licensees and permit holders. There are currently 356 licensees and permit holders.

(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. It only changes the time period the Board has to audit the continuing education requirements completed by its licensees.

(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): It will give the Board adequate time to audit the completed continuing education requirements of its licensees.

(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 Board 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 Board of Diabetes Educators.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.331 and 309.337, 201 KAR 45:130.

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 changing the time period allowed for the Board to audit the completed continuing education of its licensees.

(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.

(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:

TOURISM, ARTS AND HERITAGE CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 2:221. Waterfowl seasons and limits.

RELATES TO: KRS 150.010(41), 150.025(1), 150.305(1), 150.330, 150.340(1), (3), 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.360, 150.600(1), 50 C.F.R. 20, 21

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods of taking wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land. This administrative regulation establishes requirements for the taking of waterfowl within reasonable limits and within the frameworks established by 50 C.F.R. Parts 20 and 21.

Section 1. Definitions. (1) "Dark goose" means a Canada goose, cackling goose, white-fronted goose, or brant.

(2) "Light Goose" means a snow goose or Ross's goose.

(3) "Light Goose Conservation Order" is defined by 50 C.F.R. 21.60.

(4) "Waterfowl" is defined by KRS 150.010(41).

Section 2. (1) Except as established in 301 KAR 2:222, 2:225, or 2:226, a person shall not hunt waterfowl except during the seasons established in this administrative regulation.

(2) Hunting zones, special hunt areas, and reporting areas are established in 301 KAR 2:224.

Section 3. Season Dates. (1) The duck, coot, and merganser season shall:

(a) Begin on Thanksgiving Day for four (4) consecutive days; and

(b) Be from December 7 through January 31.

(2) The dark goose season shall be from Thanksgiving Day through February 15.

(3) The light goose season shall be from Thanksgiving Day through February 15.

(4) The Light Goose Conservation Order season shall be from February 16 through March 31.

(5) A person shall not hunt a light or dark goose in:

(a) The areas of Laurel River Lake as posted by sign; or

(b) Cave Run Lake and the public land inside the boundary formed by Highways 801, 1274, 36, 211, US 60, and Highway 826.

Section 4. Ballard Zone. (1) In the Ballard Zone, as established in 301 KAR 2:224, a person hunting waterfowl shall:

(a) Not hunt or establish a blind within:

1. 100 yards of another blind; or

2. Fifty (50) yards of a property line; and

(b) Not possess more than one (1) uncased or loaded shotgun while in a blind.

(2) The requirements of subsection (1) of this section shall not apply if the Light Goose Conservation Order, as established in Section 3 of this administrative regulation, is the only waterfowl season open, excluding falconry seasons.

Section 5. Bag and Possession Limits. (1) Ducks. The daily limit shall be six (6), which shall not include more than:

(a) Four (4) mallards;

(b) Two (2) hen mallards;

(c) Three (3) wood ducks;

- (d) Two (2) black ducks;
- (e) Two (2) redheads;
- (f) One (1) pintail;
- (g) One(1)[Three (3)] scaup beginning Thanksgiving Day for four (4) consecutive days and December 7 through December 17;
- (h) Two (2) scaup beginning on December 18 through January 31;
 - (i) One (1) mottled duck; or
 - (j)[(i)] Two (2) canvasbacks.
- (2) Coot. The daily limit shall be fifteen (15).
- (3) Merganser. The daily limit shall be five (5), which shall not include more than two (2) hooded mergansers.
- (4) Dark goose. The daily limit shall be five (5), which shall not include more than:
 - (a) Three (3) Canada geese or cackling geese, in combination;
 - (b) Two (2) white-fronted geese; or
 - (c) One (1) brant.
- (5) Light goose. The daily limit shall be twenty (20), except that there shall not be a limit during the Light Goose Conservation Order season.
- (6) The possession limit shall be triple the daily limit, except that there shall not be a light goose possession limit.

Section 6. Shooting Hours. A person shall not hunt waterfowl except from one-half (1/2) hour before sunrise until:

- (1) Sunset, except as established in 301 KAR 2:222; or
- (2) One-half (1/2) hour after sunset if hunting light geese during the Light Goose Conservation Order season.

Section 7. Falconry Waterfowl Season and Limits. (1) The light goose season shall be from Thanksgiving Day through February 15.

(2) The Light Goose Conservation Order season shall be from February 16 through March 31.

(3) The season for all other waterfowl shall be from Thanksgiving Day through February 15.

(4) The daily limit shall be three (3) waterfowl, except that there shall not be a limit on light geese during the Light Goose Conservation Order season.

(5) The possession limit shall be nine (9) waterfowl, except that there shall not be a possession limit on light geese during the Light Goose Conservation Order season.

Section 8. Permit for the Light Goose Conservation Order season. (1) A person hunting light geese during the Light Goose Conservation Order season shall first obtain a free permit by completing the online Snow Goose Conservation Order Permit process on the department's Web site at fw.ky.gov.

(2) A person hunting light geese during the Light Goose Conservation Order season shall submit a Snow Goose Conservation Order Permit Survey to the department by April 10.

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

- (a) "Snow Goose Conservation Order Permit", January 2014; and
- (b) "Snow Goose Conservation Order Permit Survey", January 2014.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

BRIAN CLARK, Deputy Commissioner

MIKE BERRY, Secretary

APPROVED BY AGENCY: October 27, 2020

FILED WITH LRC: October 30, 2020 at 3:55 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 28, 2021 at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in

writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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 attend the public hearing, you may submit written comments on the proposed administrative regulation through January 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beth Frazee, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-3400, fax (502) 564-0506, email fwpubliccomments@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Beth Frazee

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes waterfowl seasons and bag limits within federal migratory bird hunting frameworks established in 50 C.F.R. Parts 20 and 21 according to the U.S. Fish and Wildlife Service (USFWS).

(b) The necessity of the administrative regulation: The necessity of this administrative regulation is to establish the 2020-2021 waterfowl hunting seasons in accordance with the USFWS.

(c) How does this administrative regulation conform to the authorizing statute: KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods for the taking of wildlife. KRS 150.600(1) authorizes the department to regulate the taking of waterfowl on public and private land.

(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing hunting season and bag limit requirements and providing reasonable hunting opportunity consistent with state, national, and international management requirements.

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

(a) How the amendment will change the existing administrative regulation: This amendment will change the daily bag limit for scaup to 1 scaup daily during the first 15 days of regular duck season, then a bag limit of 2 scaup daily during the remaining 45 days.

(b) The necessity of the amendment to this administrative regulation: Waterfowl seasons and limits are set on an annual basis following the establishment of federal frameworks by the USFWS each year. It is the Department's responsibility to allow quality hunting opportunity within these federal frameworks. The changes in bag limit for these species represent the maximum allowed in federal frameworks.

(c) How does the amendment conform to the authorizing statutes: See (1)(c) above.

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

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: There are approximately 20,000 waterfowl hunters in Kentucky that may 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: The current changes in season dates and/or bag limits will be published in the fall waterfowl hunting guide and on the department's website. Hunters will need to follow all applicable amendments to the hunting bag limits.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be in compliance with Federal law.

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

(a) Initially: There will not be an additional cost to implement this administrative regulation initially.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation? The source of funding is the State Game and Fish 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. It will not be necessary to increase any fees or funding to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering was not applied. The same guidelines and limits apply to all waterfowl hunters.

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's Wildlife Division and Law Enforcement Division.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025(1) authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife and to regulate bag limits. KRS 150.360 authorizes the department to restrict methods of taking wildlife. KRS 150.600 authorizes the department to regulate the taking of waterfowl on public and private land.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate revenue for the first year.

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

JUSTICE AND PUBLIC SAFETY CABINET Department of Corrections (Amendment)

501 KAR 6:080. Department of Corrections manuals.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 197.065, 197.110 439.470, [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 of its divisions. This administrative regulation incorporates by reference the manuals that are referenced in policies and procedures for the Department of Corrections.

Section 1. Incorporation by Reference. (1) "Department of Corrections Manuals," [March 10, 2008] are incorporated by reference. Department of Corrections Manuals includes:

(a) Classification Manual (Amended 11/2/2020[4/15/02]); and

(b) Kentucky Department of Corrections Religion Reference Manual (Added 3/10/08).

(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, Monday through Friday, 8 a.m. to 4:30 p.m.501

COOKIE CREWS, Commissioner

APPROVED BY AGENCY: August 26, 2020

FILED WITH LRC: November 2, 2020 at 10:47 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2021, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2021. 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: 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 V. Barker, Assistant General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference manuals that are referenced in the department's policies and procedures, the Classification Manual and the Religion Reference manual.

(b) The necessity of this administrative regulation: This administrative regulation establishes the manual for the classification process for inmates within the Department of Corrections (DOC) in compliance with the requirements of KRS 197.065 and 197.110 and gives guidance to DOC staff for religious issues involving inmates.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 197.065 requires the classification of prisoners and KRS 197.110 requires an administrative regulation concerning classification of prisoners. KRS 196.035 authorizes the secretary of the cabinet or the secretary's delegate to promulgate administrative regulations for the proper

administration of the functions of the cabinet or any division in the cabinet.

(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 DOC employees and to inmates concerning classification and religious practice.

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

(a) How the amendment will change this existing administrative regulation: The amendment substantially rewrites the Classification Manual for the department.

(b) The necessity of the amendment to this administrative regulation: The manual has been totally rewritten to update the classification of prisoners for the department and the inmates committed to it.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 197.065 requires the classification of prisoners and KRS 197.110 requires an administrative regulation concerning classification of prisoners. The Classification Manual complies with the requirements of these statutes.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff and prisoners information concerning the classification of prisoners within the department.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the Kentucky Department of Corrections, approximately 3,746 employees, approximately 20,076 prisoners, and the private prison company for the Kentucky inmates that it incarcerates.

(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 manual gives guidance to staff and prisoners concerning classification within the department.

(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 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): An updated classification system will better protect staff, inmates, and the public. The validation of the system identified risk factors that were no longer predictive of future behavior and they were updated or replaced. The new classification system is also gender-responsive.

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

(a) Initially: No increase in funding is anticipated. Printing costs for the manual are expected to be approximately \$960.

(b) On a continuing basis: No increase in funding is anticipated.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Department of Corrections budgeted funds for the biennium.

(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 regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied? NO. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendments to this regulation impact the operation of the Kentucky Department of Corrections and each state correctional institution.

(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, 197.065, 197.110 and to meet American Correctional Association (ACA) standards requirements.

(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 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? The regulation does not generate revenue.

(c) How much will it cost to administer this program for the first year? The amendment to this regulation impacts how the Kentucky Department of Corrections classifies prisoners. The costs are not anticipated to increase with this amendment. Printing costs for the Classification Manual are expected to be approximately \$960.

(d) How much will it cost to administer this program for subsequent years? The costs are not anticipated to increase with this amendment.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
(Amendment)**

601 KAR 1:113. Transportation network company.

RELATES TO: KRS 17.500, 61.878(1)(c)1., 61.931(6), 186.050, 189.290, 189A.010, 281.010, 281.600, 281.630, 281.6301, 281.631, 281.640, 281.650, 281.655, 281.656, 281.990, 304.3-070, 304.10-010-304.10-070, 304.20-020, 304.39-020(2), 304.39-040, 304.39-320, Chapter 365, 532.060

STATUTORY AUTHORITY: KRS 281.600, 281.630, 281.655

NECESSITY, FUNCTION, AND CONFORMITY: KRS 281.600 authorizes the Department of Vehicle Regulation to promulgate administrative regulations to regulate and establish requirements for the safe operation of motor carriers. KRS 281.630 authorizes the department to establish requirements for a transportation network company to apply for authority to operate in Kentucky. KRS 281.655 requires the department to establish standards for pre-trip acceptance policies and prearranged ride liability policies for transportation network companies. This administrative regulation establishes the standards and application requirements for a transportation network company to operate in Kentucky.

Section 1. Definitions. (1) "Basic repairation benefits" is defined by KRS 304.39-020(2).

(2) "Certificate" is defined by KRS 281.010(8).

(3) "Driver" is defined by KRS 281.010(20).

(4) "Mobile application" is defined by KRS 281.010(30).

(5) "Motor carrier" is defined by KRS 281.010(31).

(6) "Motor carrier vehicle" is defined by KRS 281.010(32).

(7) "Operating Authority" means the authority granted to

operate as a TNC in the commonwealth through the application process with the department.

- (8) "Passenger" is defined by KRS 281.010(36).
- (9) "Personal information" is defined by KRS 61.931(6).
- (10) "Prearranged ride" is defined by KRS 281.010(39).
- (11) "Pre-trip acceptance liability policy" is defined by KRS 281.010(40).
- (12) "Regular seat" is defined by KRS 281.010(44).
- (13) "Street hail" is defined by KRS 281.010(45).
- (14) "Transportation network company" or "TNC" is defined by KRS 281.010(51).
- (15) "Transportation network company driver" or "TNC driver" is defined by KRS 281.010(53).
- (16) "Transportation network company service" or "TNC service" is defined by KRS 281.010(54).
- (17) "Transportation network company vehicle" or "TNC vehicle" is defined by KRS 281.010(55).
- (18) "Underinsured vehicle coverage" is defined by KRS 304.39-320(1).
- (19) "Uninsured vehicle coverage" is defined by KRS 304.20-020(2).

Section 2. Application and Renewal. (1) A TNC shall register as a business organization with the Kentucky Secretary of State.

(2) The department may waive the filing of the certificate of assumed name if a TNC:

- (a) Demonstrates compliance with the relevant provisions of KRS Chapter 365;
 - (b) Certifies in writing to the department that Kentucky law either prohibits or does not require the filing; and
 - (c) States the reasons in writing why the filing is not required.
- (3) In order to apply for a certificate to operate, a TNC shall submit directly to the Division of Motor Carriers:
- (a) A completed Transportation Network Company Authority Application, TC 95-627;
 - (b) An application fee of \$250 pursuant to KRS 281.630(3)(b); and
 - (c) A vehicle qualification fee of thirty (30) dollars per vehicle prorated for the month the vehicle is qualified pursuant to KRS 281.631(3)(a)1. and (8).
- (4) A TNC with fifty-one (51) or more vehicles may qualify vehicles to operate by providing to the department through an online data access point:
- (a) A completed Transportation Network Company Authority Application, TC 95-627;
 - (b) An application fee of \$250 pursuant to KRS 281.630(3)(b); and
 - (c) A calendar year bulk qualification fee pursuant to the following schedule:
 - 1. \$3,000 for fifty-one (51) to 100 vehicles;
 - 2. \$4,500 for 101 to 150 vehicles;
 - 3. \$6,000 for 151 to 200 vehicles;
 - 4. \$7,500 for 201 to 250 vehicles;
 - 5. \$9,000 for 251 to 300 vehicles;
 - 6. \$10,500 for 301 to 350 vehicles;
 - 7. \$12,000 for 351 to 400 vehicles;
 - 8. \$15,000 for 401 to 500 vehicles; and
 - 9. \$22,500 for 501 or more vehicles.

(5) A TNC shall annually submit the following to the Division of Motor Carriers to renew a certificate:

- (a) A completed Motor Carrier Passenger Certificate, Vehicle Qualification and Renewal Application, TC 95-605;
 - (b) A certificate renewal fee of \$250 pursuant to KRS 281.630(4)(d); and
 - (c) A vehicle qualification fee of thirty (30) dollars per vehicle prorated for the month the vehicle is qualified pursuant to KRS 281.631(3)(a)1. and (8).
- (6) If a TNC elects to use the bulk vehicle registration payment option in the TNC's initial or renewal TNC application, the TNC shall not be required to submit additional vehicle qualification information and fees to the Division of Motor Carriers in connection with vehicles that are added during the duration of the period for which the bulk payment was made.

(7) A TNC shall pay a renewal bulk fee by December 15 of each calendar year.

(8) A TNC vehicle shall be added to the TNC's current list by submitting the following to the Division of Motor Carriers:

- (a) A completed Motor Carrier Passenger Certificate, Vehicle Qualification and Renewal Application, TC 95-605; and
- (b) A vehicle qualification fee of thirty (30) dollars per vehicle prorated for the month the vehicle is qualified pursuant to KRS 281.631(3)(a)1. and (8).

(9) An application shall be submitted electronically, by mail, or by hand delivery.

(10) Operating authority obtained pursuant to this section shall not be transferable.

(11)(a) The TNC shall submit the following documents if submitting an application for certificate, annual renewal, or adding a driver during the year:

1. An affidavit from the corporate officer in charge of Kentucky operations certifying that the national criminal background check of TNC drivers established in KRS 281.630 and 281.6301 shall be completed prior to allowing the TNC driver to accept rides through the TNC mobile application; and

2. One (1) copy of the current contractual agreement between the TNC and TNC drivers.

(b) A deficient application shall be returned to the applicant with no formal action taken by the department.

Section 3. Demonstration of Financial Responsibility and Insurance.

(1) A TNC shall maintain primary automobile insurance that:

- (a) Recognizes that a driver is a TNC driver or using a vehicle to transport passengers for compensation; and
- (b) Provides insurance coverage for a TNC driver who is:
 - 1. Logged on to the TNCs mobile application; or
 - 2. Engaged in a prearranged ride.

(2) The following pre-trip acceptance liability policy insurance coverage requirements shall apply if a TNC driver is logged on to the TNC's mobile application and available to receive transportation requests but not engaged in a prearranged ride:

- (a) Primary automobile liability insurance in the minimum amounts required by KRS 281.655(12);
- (b) Basic reparation benefits in accordance with KRS 304.39-020;
- (c) Uninsured vehicle coverage in accordance with KRS 304.20-020; and
- (d) Underinsured vehicle coverage in accordance with KRS 304.39-320.

(3) The pre-trip acceptance liability policy insurance coverage requirements of KRS 281.655(12) shall be satisfied by one (1) of the following:

- (a) Automobile insurance maintained by the TNC;
 - (b) Automobile insurance maintained by the TNC driver; or
 - (c) A combination of paragraphs (a) and (b) of this subsection.
- (4) The following automobile insurance requirements shall apply while a TNC driver is engaged in a prearranged ride:
- (a) Primary automobile liability insurance in the minimum amounts required by KRS 281.655(4);
 - (b) Basic reparation benefits in accordance with KRS 304.39-020;
 - (c) Uninsured vehicle coverage in accordance with KRS 304.20-020; and
 - (d) Underinsured vehicle coverage in accordance with KRS 304.39-320.

(5) The prearranged ride liability insurance coverage requirements of KRS 281.655(4) shall be satisfied by one (1) of the following:

- (a) Automobile insurance maintained by the TNC;
 - (b) Automobile insurance maintained by the TNC driver; or
 - (c) A combination of paragraphs (a) and (b) of this subsection.
- (6) If the insurance maintained by a TNC driver has lapsed or does not provide the required coverage, the TNC shall provide the required insurance coverage beginning with the first dollar of a claim. The TNC shall have the duty to defend a claim for damages.
- (7) Coverage under an automobile insurance policy maintained

by the TNC shall not be dependent on a personal automobile insurer or policy first denying a claim.

(8) The insurance required by this section shall be placed with an insurer licensed pursuant to KRS 304.3-070, or with a surplus lines insurer eligible under KRS 304.10-010 through 304.10-070.

(9) A TNC driver shall carry proof of insurance coverage satisfying KRS Chapter 304, KRS 281.655, and this administrative regulation during his or her use of a vehicle in connection with a TNC's mobile application. In the event of an accident, and upon request, a TNC driver shall provide this insurance coverage information directly to interested parties, automobile insurers, and investigating police officers.

(10) A TNC driver shall disclose directly to interested parties, automobile insurers, the department, and investigating police officers, whether or not he or she was logged on to the TNC's mobile application or on a prearranged ride at the time of an accident.

Section 4. Insurance Exclusions. (1) A Kentucky automobile insurer may exclude the following coverage under a TNC driver's insurance policy for loss or injury that occurs while a TNC driver is logged on to a TNC's mobile application or while a TNC driver provides a prearranged ride:

- (a) Liability coverage for bodily injury and property damage;
- (b) Personal injury protection coverage as established in KRS Chapter 304;
- (c) Uninsured and underinsured motorist coverage;
- (d) Medical payments coverage;
- (e) Comprehensive physical damage coverage; and
- (f) Collision physical damage coverage.

(2) Nothing in this administrative regulation shall require a personal automobile insurer to provide coverage while a driver is:

- (a) Logged on to the TNC mobile application;
- (b) Engaged in a prearranged ride; or
- (c) Using a vehicle to transport passengers for compensation.

(3) Nothing in this administrative regulation shall preclude an insurer from providing coverage for the TNC driver's vehicle.

(4) An automobile insurer whose policy excludes coverage for a TNC vehicle or TNC driver shall have no duty to defend or indemnify a claim for personal or property damages.

(5) An automobile insurer that defends or indemnifies a claim against a TNC driver that is excluded under the terms of its policy shall have a right of contribution against other insurers that provide automobile insurance to the same driver.

(6) In a claims coverage investigation, the TNC and an insurer potentially providing coverage shall cooperate to facilitate the exchange of relevant information with directly involved parties.

(7) Information relevant to a claims coverage situation shall include:

- (a) The name of the insurer or potential insurer of the TNC driver;
- (b) The precise times the TNC driver logged off and on the TNC mobile application in the twelve (12) hour period immediately before and after the incident; and
- (c) A complete description of the insurance coverage including the exclusions and limits. Transportation Cabinet shall issue an RFQ to device manufacturers in order to certify manufacturers eligible to provide ignition interlock services and commodities required for the implementation and maintenance of the state's ignition interlock program.

Section 5. Vehicles. (1) A vehicle used by a driver for TNC services shall be qualified by the department to operate by submitting a completed Transportation Network Company Authority Application, TC 95-627 and submitting the fees required in Section 2 of this administrative regulation.

(2) The TNC shall ensure that the vehicles used by TNC drivers to transport passengers shall be subject to an annual inspection by a mechanic.

(3) The annual inspection shall be completed on the vehicle inspection form provided in Transportation Network Company Authority Application, TC 95-627, or a vehicle inspection form provided by the TNC within thirty (30) days of the qualification of a

vehicle for TNC services.

(4) A TNC shall collect and maintain information on the vehicles being used to provide service by TNC drivers including:

- (a) The VIN and license plate number; and
- (b) Records of official vehicle inspections by the automotive technician.

(5) Records of vehicle inspection and VIN and license plate numbers shall be kept by the TNC for a minimum of three (3) years from the date of inspection, and the TNC shall make the records available to the department or its representative on request. The information and records may be submitted as personal or proprietary information pursuant to KRS 61.878(1)(c)1 and 61.931(6).

(6) A vehicle used to provide TNC services shall be readily identifiable by the following:

- (a) A company specific emblem or decal affixed to the front windshield on the passenger side of the vehicle provided by the TNC; and
 - (b) An electronic copy of the current TNC certificate.
- (7) A driver who is no longer providing TNC service shall destroy or return the decal or emblem to the TNC.

(8) A TNC shall ensure that the vehicles used by drivers to provide TNC services shall:

- (a) Have at least four (4) doors; and
- (b) Be designed to carry no more than eight (8) persons including the driver.

Section 6. TNC Drivers. (1) A TNC shall require each driver to undergo a national criminal background check before providing TNC services pursuant to KRS 281.6301.

(2) The TNC shall certify the criminal background check during the application process established in Section 2 of this administrative regulation. The national criminal background check shall be either:

- (a) A comprehensive background check using fingerprint analysis; or
 - (b) An individual analysis using a social security number.
- (3) The analysis required in subsection (1) of this section shall be conducted by a business or firm engaged in determining criminal background history.

(4) A TNC shall also require that each TNC driver:

- (a) Is at least twenty-one (21) years old;
- (b) Is the owner or lessee of the TNC vehicle or has a statement from the registered owner authorizing the use of the vehicle for TNC services pursuant to KRS 281.631;
- (c) Is listed as an insured of the TNC vehicle;
- (d) Has a valid state-issued driver's license and vehicle registration;
- (e) Has personal vehicle insurance coverage as established in Section 3 of this administrative regulation;
- (f) Has completed a[an annual] driver safety training course approved by the department such that the certification or proof of completing the safety training course shall be valid for a period of five (5) years from the date from which the driver completed the training; and

~~(g) [Provides a written or electronic affirmation that he or she is fit and able to operate a motor vehicle to provide TNC services; and~~

~~(h) Is in compliance with applicable state law and local ordinances related to the operation of a motor vehicle.~~

(5) A current list of drivers shall be kept on file with the TNC and made available for inspection by the department on request. A TNC driver's electronic file shall include the following:

- (a) A current driving history record to be updated annually;
- (b) The current address of the driver;
- (c) A copy of a valid state-issued driver's license and the operator's license number;
- (d) Proof of his or her personal vehicle insurance coverage;
- (e) Proof of personal vehicle registration;
- (f) Proof of the written or electronic affirmation that a TNC driver is fit and able to operate a motor vehicle to provide TNC services;

(g) Verification of the criminal background check required in subsection (1) of this section;

- (h) Records indicating if a driver has refused to accept a prearranged ride and the reason for doing so;
- (i) Records of complaints against a driver; and
- (j) A copy of the most current vehicle inspection.

Section 7. Passenger Service. (1) A TNC shall adopt a policy of non-discrimination based on the following:

- (a) Destination;
- (b) Race or color;
- (c) National origin;
- (d) Religious belief or affiliation;
- (e) Sex and sexual orientation or identity;
- (f) Disability;
- (g) Age; and
- (h) The presence of a passenger's service animal.

(2) A TNC shall notify TNC drivers of the adopted policy of non-discrimination established in subsection (1) of this section.

(3) After acceptance, a TNC driver may refuse to transport a passenger who is acting in an unlawful, disorderly, or endangering manner but shall comply with the non-discriminatory policy in subsection (1) of this section. A driver may also refuse to transport a passenger with a service animal if the driver has a documented medical allergy.

(4) A TNC driver shall not transport a passenger under the age of fourteen (14) unless accompanied by a person over the age of eighteen (18).

(5) A TNC shall establish policies regarding TNC driver behavior that shall include the following prohibitions:

- (a) Being under the influence of alcohol or another substance or combination of substances that impair the driving ability while providing TNC services;
- (b) Accepting a street hail by a potential rider;
- (c) Directly soliciting a passenger or responding to a direct solicitation; and
- (d) Providing services for cash.

(6) A driver shall immediately report the following to the driver's affiliated TNC:

- (a) A refusal to transport a passenger and the reasons for the refusal within forty-eight (48) hours after the refusal if the refusal occurred after the ride had been accepted by the driver;
- (b) Information regarding a driving citation, incident, or accident within twenty-four (24) hours after the event; or
- (c) Information regarding a conviction within twenty-four (24) hours.

(7) A TNC shall provide the following information to the public on its Web site and mobile device application software:

- (a) A schedule of its rates or the method used to calculate rates and peak pricing; and
- (b) Information indicating a zero tolerance policy related to drug and alcohol usage by its drivers while performing TNC services and a passenger support telephone number or email address where a suspected violation may be immediately reported.

(8) A TNC shall provide the following information to a person requesting a ride through its mobile application:

- (a) The expected cost of the trip if requested by a potential passenger;
 - (b) The first name and a photograph of the TNC driver accepting the ride request; and
 - (c) A photograph or description, including license plate number, of the vehicle that will be used for the ride.
- (9) At the completion of the prearranged ride, a TNC shall electronically provide the passenger with a receipt showing:
- (a) The point of origin and destination of the ride;
 - (b) The duration and distance of the ride;
 - (c) The cost of the ride broken down into base fare and additional charges; and
 - (d) The driver's first name.

Section 8. Terms of Service. (1) The TNC shall not require a hold harmless or indemnification clause in the terms of service for a TNC driver or passenger that may be used to evade the insurance requirements of this administrative regulation and KRS Chapter 281.

(2) A TNC shall not disclose to a third party the personally identifiable information of a user of the TNC's mobile application unless:

- (a) The TNC obtains the user's consent to disclose personally identifiable information;
- (b) The disclosure is required to comply with a legal obligation; or

(c) The disclosure is required to protect or defend the terms of use of the service or to investigate violations of the terms of use.

(3) A TNC may disclose a passenger's name and telephone number to the TNC driver in order to facilitate correct identification of the passenger by the driver or to facilitate communication between the passenger and the driver.

Section 9. Penalties. (1) A TNC that operates in violation of the requirements of this administrative regulation shall be fined \$200 pursuant to KRS 281.990(1).

(2) A TNC that operates in violation of the terms of its certificate or permit or operates without a valid permit shall be fined \$500 per occurrence pursuant to KRS 281.990(2).

(3) A TNC that fails to produce requested records and information pursuant to KRS 281.820 within forty-eight (48) hours of the request by the department shall be fined \$200.

(4) A TNC shall be responsible for an affiliated TNC driver's failure to comply with this administrative regulation if the driver's violation has been previously reported to the TNC in writing and the TNC has failed to take action within ten (10) days of the report.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Transportation Network Company Authority Application", TC 95-627, November, 2014; and
- (b) "Motor Carrier Passenger Certificate, Vehicle Qualification and Renewal Application", TC 95-605, May, 2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Vehicle Regulation, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material may also be obtained by accessing the department's Web site at <http://transportation.ky.gov/>.

JIM GRAY, Secretary

MATT COLE, Acting Commissioner

APPROVED BY AGENCY: November 12, 2020

FILED WITH LRC: November 12, 2020 at 11:29 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 1:00 PM EST on January 25, 2021 at the Transportation Cabinet, Transportation Cabinet Building, 200 Mero Street, Frankfort, Kentucky 40622. 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 January 25, 2021, 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://bluejeans.com/513965590/2643>

Or Telephone:

+1.408.419.1715(UnitedStates(SanJose))

+1.408.915.6290 (United States(San Jose))

Meeting ID: 513 965 590

Participant Passcode: 2643

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 January 31,

2021. 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: Jon Johnson, Staff Attorney
Manager/Assistant General Counsel, Transportation Cabinet,
Office of Legal Services, 200 Mero Street, Frankfort,
Kentucky 40622, Phone (502) 564-7650, Fax (502) 564-5238,
email jon.johnson@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jon Johnson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards and application requirements for a transportation network company to operate in Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because KRS 281.655 requires that the department establish standards for pre-trip acceptance policies and prearranged ride liability policies for transportation network companies. It is also necessary because KRS 281.630 allows the department to establish requirements for a transportation network company to apply for authority to operate in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the standards and application requirements for a transportation network company to operate in Kentucky, thus facilitating the safe operation of motor carriers in the Commonwealth of Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the standards and application requirements for a transportation network company to operate in Kentucky in satisfaction of KRS 281.600, 281.630, and 281.655.

(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 revise the safety training course requirements for transportation network company drivers. The existing regulation requires an annual driver safety training course and requires drivers to provide a written or electronic affirmation that the driver is fit and able to operate a motor vehicle that provides TNC services. The amendment as proposed requires that a driver complete a driver safety training course approved by the department that shall be valid for a period of five (5) years. This amendment updates the forms in conformity with the authorizing statutes.

(b) The necessity of the amendment to this administrative regulation: This amendment extends the validity of a driver safety training course approved by the cabinet to five (5) years and takes away the requirement of a written or electronic affirmation of fitness, which is duplicative. This amendment updates the forms in conformity with the authorizing statutes.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the authorizing statutes by establishing the standards and application requirements of transportation network companies seeking to operate in Kentucky. This amendment updates the forms in conformity with the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will establish the standards and application requirements for a transportation network company to operate in Kentucky. This amendment will allow the cabinet to utilize updated forms in conformity with the authorizing statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Transportation network companies, drivers for TNCs, motor carrier operators and owners, the Division of Motor Carriers within the Department of Vehicle Regulation, Commercial Vehicle Enforcement within the Kentucky State Police.

(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: TNCs and TNC drivers will not have to provide a written or electronic statement verifying fitness to operate and will be permitted to take a certified driver safety training course every five (5) years instead of annually. TNCs will utilize the most current forms.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This administrative regulation, through its forms, incorporates the application fee established in KRS 281.630.

(c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance, entities subject to this regulation are likely to operate safer and in satisfaction of the standards and application requirements outlined herein.

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

(a) Initially: This administrative regulation is not expected to result in additional cost to the administrative body.

(b) On a continuing basis: This administrative regulation is not expected to result in additional cost to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation is not expected to result in additional cost; therefore, no funding source is necessary.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Because this administrative regulation is not expected to result in additional cost to the administrative body, no increase in fees or funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees that have not already been established by KRS 281.630.

(9) TIERING: Is tiering applied? Explain why or why not. Tiering is not applied.

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 Division of Motor Carriers within the Department of Vehicle Regulation, Commercial Vehicle Enforcement within the Kentucky State Police, circuit court clerks.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 281.600, 281.630, and 281.655.

(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 as amended is not expected to generate revenue beyond what has already been reported since KRS 281.630 was repealed and reenacted in 2015.

(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 as amended is not expected to generate revenue beyond what has already been reported since KRS 281.630 was repealed and reenacted in 2015.

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

year? This administrative regulation is not expected to generate cost.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation is not expected to generate cost.

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

Revenues (+/-): The generation of revenue is anticipated to hold steady.

Expenditures (+/-): This administrative regulation is not expected to generate cost.

Other Explanation:

LABOR CABINET

Department of Workplace Standards

Division of Occupational Safety and Health Compliance

Division of Occupational Safety and Health Education and Training

Amendment

803 KAR 2:010. Board procedures.

RELATES TO: KRS 338.051

STATUTORY AUTHORITY: KRS 338.051[KRS Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: [Pursuant to the authority granted the Kentucky Occupational Safety and Health Standards Board by] KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements [the following rules and administrative regulations are adopted, governing the procedure of the Kentucky Occupational Safety and Health Standards Board]. This administrative regulation establishes board procedures [identifies in detail the procedure to be followed by the board. Necessary for effective enforcement of the purposes and policies of the Occupational Safety and Health Act which is to insure so far as is possible, safe and healthful working conditions of Kentucky workers (KRS 338.011)].

Section 1. Definitions. [As used in these rules, unless the context clearly requires otherwise:]

(1) "Board" is defined in KRS 338.015 (6) [means Kentucky Occupational Safety and Health Standards Board].

(2) "Chairman" means chairperson [chairman] of the Kentucky Occupational Safety and Health Standards Board.

(3) "Chairperson [Chairman] Pro Tem" means the board member [of the board that has been] elected by the members of the board to chair any board meeting [of the board] in the absence of the chairperson [chairman].

(4) ["Interested person" means any individual, partnership, joint venture, labor union, trade association, guild, cooperative association, corporation, the Commonwealth of Kentucky or any political subdivision thereof.

(5) "Party" means any individual, partnership, joint venture, labor union, trade association, guild, cooperative association, corporation, the Commonwealth of Kentucky or any political subdivision thereof who shall have a vested interest to participate in a hearing conducted in accordance with any article of these rules or administrative regulations.

(6) "Employee" is defined in KRS 338.015(2) ["Employer" means any entity for whom a person is employed except those employers excluded in Section 9 of this administrative regulation].

(5) [(7)] "Employer is defined by KRS 338.015(1) ["Employee" is defined by KRS 338.015(2) means any person employed except those employees excluded in Section 9 of this administrative regulation].

Section 2. The chairperson [All board members and the chairman] of the board shall [be appointed by the Governor who shall] administer the oath of office, if necessary, when the [said]

board convenes [is convened by the Secretary of the Labor Cabinet].

Section 3. [The board shall meet for the purpose of considering, adopting, promulgating and recommending the adoption and promulgation of occupational safety and health rules, administrative regulations, standards, and secure all expertise, testimony, and evidence necessary to accomplish the purpose of KRS Chapter 338. The board may also consider the revision, revocation, or modification in whole or in part of such safety and health rules, administrative regulations, and standards.

Section 4. The published standards of agencies of the Commonwealth of Kentucky and recognized standards producing organizations which are not agencies of the Commonwealth which are legally incorporated by reference in these rules, have the full force and effect as if they were set forth in their entirety herein. Copies of the standards which are incorporated by reference may be examined in the office of the Secretary of State, Commonwealth of Kentucky, Frankfort, Kentucky. Copies of such private standards may be obtained from the issuing organizations.

Section 5. The board shall not adopt standards for products distributed or used in interstate commerce which are different from federal standards for such products unless such standards are required by compelling local conditions and do not unduly burden interstate commerce.

Section 6. The board shall meet annually, [semiannually] or when additional meetings are needed, at the call of the chairperson [its chairman] in a location [Frankfort, Kentucky, unless another place of meeting shall be] designated by the chairperson [chairman].

Section 4. (1) [7. A majority of the board constitutes a quorum for the transaction of business.]

Board decisions [Recommendations, reports, or other decisions of the board] require a majority vote [of not less than a majority of all members present].

(2) The chairperson [chairman] shall have the same rights and duties as all other members, including the right to introduce, discuss, and vote on any matter before the board.

Section 5 [8. (1) The board shall keep and preserve a record of the proceedings of its meetings including the time, place, members present, and votes [time and place of all of its meetings, the members present, the votes and all other formal proceedings, including the appointment of committees].

(2) Committees shall keep and preserve a similar record. [These records shall be made available to any interested person upon request at prescribed rates.]

Section 6. (1) [9. All standards, rules, and administrative regulations adopted by the board shall apply to all employers and employees within the Commonwealth except:

(1) Employees of the United States Government.

(2) Employers, employees and places of employment over which federal agencies other than the Occupational Safety and Health Administration of the United States Department of Labor exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health.

Section 10. (1) If a particular standard is specifically applicable to a condition, practice, means, method, operation, or process, it shall prevail over any different general standard which might otherwise be applicable to the same conditions, practice, means, method, operation, or process.

(2) Any standard shall apply according to its terms to any employment and place of employment in any industry, even though particular standards are also prescribed for that particular industry.

(3) In the event a standard protects a class of persons larger than employees, the standard shall be applicable under these rules only to employees and their employment and place of employment.

Section 11. (1)(a) The board shall hold a public hearing prior

[Prior] to the adoption, promulgation, modification, or repeal [revocation] of any standard or administrative regulation [, administrative regulation or order, the board shall conduct a public hearing].

(2) Notice of the [such] hearing stating the date, time, location, and a brief description shall be posted on the Labor Cabinet website [published] not less than ten (10) calendar days before the hearing [in a newspaper of general circulation stating the date, time and place of such hearing. A brief description of the proposed standard, administrative regulation or order shall be contained therein].

(3) [(b)] Notice [Paragraph (a) of this subsection notwithstanding, notice] shall not be required prior to the adoption of federal standards [which have been] received by the Labor Cabinet after general notice of the board meeting [has been published].

(4) [(2)(a)] Any interested person [including an employer, employee, or representative of the employees] may petition in writing [to] the Secretary of the Labor Cabinet to promulgate, amend, or repeal [modify, or revoke] a standard. The petition shall articulate [should set forth] the terms, substance, effects, and reason [or the substance of the rules desired, the effects thereof if promulgated, and the reason thereof].

(5) [(b)] Within a reasonable time after the receipt of a submission pursuant to this section [paragraph (a) of this subsection], the secretary shall notify the board and [Kentucky Occupational Safety and Health Standards Board and the board] may afford an opportunity for a hearing.

Section 7. (1) [(3)] Hearings [by the board] shall be conducted in accordance with the following [rules and] procedures, which may be suspended or modified when deemed necessary :

(a) These rules and procedures may be suspended or modified when deemed necessary.

(b) The "presiding officer" shall be the chairman of the board or the chairman pro tem].

(2) The members of the board shall elect a chairperson [A chairman] pro tem [shall be elected] whose duties shall be to chair any meeting of the board in the absence of the chairperson [chairman].

(3) The chairperson [chairman] pro tem shall be a member of the board and shall not lose the right to vote while acting as chairperson [chairman. The chairman pro tem shall be elected by the members of the board by a majority vote].

(4) The chairperson [chairman] pro tem shall be elected for a term of two (2) years or until a [his] successor is elected. In the event the chairperson [chairman] pro tem ceases to be a member of the board prior to the expiration of his or her term as chairperson [chairman] pro tem, a new chairperson [chairman] pro tem shall be elected by the board at the next board meeting [In the event both the chairman and the chairman pro tem are absent at the same meeting, a temporary chairman pro tem shall be elected for the purpose of chairing that particular meeting only].

(5) [(e)] Any interested person may appear at the hearing to offer testimony or evidence [either on his behalf or the behalf of any other person;] provided, that at the opening of the [such] hearing, or at an earlier time as the chairperson directs [presiding officer shall by appropriate notice direct], such person shall file with the chairperson [presiding officer] a notice of [his] appearance which shall set forth:

(a) [4.] Name and address of person appearing;

(b) [2.] Name and address of person represented, if any; and

(c) [3.] Approximate length of time [represented] for presentation.

(6) Each [In order to maintain orderly and expeditious procedure, each] person filing a notice of appearance will be notified, if practicable, of the approximate day and the place at which he or she may offer evidence at [before] the hearing. If such person does not appear at the time set in the notice, he or she will not be permitted to offer evidence at any time except by special permission of the chairperson [presiding officer].

(7) At the discretion of the chairperson [presiding officer], the hearing may be continued [from day to day, or adjourned] to a later

date, or to a different place, by chairperson announcement [thereof] at the hearing [by the presiding officer, or by other appropriate notice].

(f) All evidence must be presented under oath or affirmation, which shall be administered by the presiding officer.

(g) For reasons of unavailability or for other good cause shown, the testimony of any witness may be taken by deposition. Depositions may be taken orally or upon written interrogatories before any person designated by the chairman and having power to administer oaths.

(h) Any party desiring to take the deposition of a witness may make application in writing to the chairman setting forth:

1. The reasons why such depositions should be taken;

2. The time when, the place where, and the name and post office address of the person before whom the deposition is to be taken;

3. The name and address of each witness; and

4. The subject matter concerning which each witness is expected to testify.

(i) Such notice as the chairman may order shall be given by the party taking the deposition to every other party.

(j) Each witness testifying upon deposition shall be sworn, and the parties not calling him shall have the right to cross-examine him. The questions propounded and the answers thereto, together with all objections made, shall be reduced to writing, read to the witness, subscribed by him, and certified by the officer before whom the deposition is taken. Thereafter, the officer shall seal the deposition, with two (2) copies thereof, in an envelope and mail the same by registered mail to the chairman. Subject to such objections to the questions and answers as were noted at the time of taking the deposition and would be valid were the witness personally present and testifying, such deposition may be read and offered in evidence by the party taking it as against any party who was present, represented at the taking of the deposition, or who had due notice thereof. No part of a deposition shall be admitted in evidence unless there is a showing that the reasons for the taking of the deposition in the first instance existed at the time of the hearing.

(k) Whenever appropriate to a just disposition of any issue in a hearing, the chairman may allow discovery by any other appropriate procedure, such as by written interrogatories upon a party, production of documents by a party, or by entry for inspection of the employment involved.

(l) The hearing shall be stenographically reported and a transcript made which will be available to any person by prescribed rates upon request made to the official reporter.

(m) Written documents or exhibits, except as otherwise permitted by the presiding officer, must be offered in evidence by a person who is prepared to testify as to the authenticity and trustworthiness thereof, and who shall, at the time of offering the documentary exhibits, make a brief statement as to the contents and manner of preparation thereof.

(n) Written documents and exhibits shall be tendered in duplicate and the persons preparing the same shall be prepared to supply additional copies if such are ordered by the presiding officer. Where evidence is embraced in a document containing matter not intended to be put in evidence, such document will not be received, but the person offering the same may present to the presiding officer the original document together with two (2) copies of those portions of the documents intended to be put in evidence. Upon presentation of such copies in proper form, the copies will be received in evidence.

(o) Subpoenas requiring the attendance of witnesses or the presentation of documents at any designated place of hearing may be issued by the presiding officer at his discretion, and any person appearing in the proceeding may apply in writing for the issuance by the presiding officer of the subpoena. Such application shall be timely and shall identify exactly the witness or document and state fully the nature of the evidence proposed to be secured.

(p) Witnesses summoned by the presiding officer shall be paid the same fee and mileage as are paid witnesses in the courts of the Commonwealth of Kentucky. Witness fees and mileage shall be paid by the party at whose instance witnesses appear, and the

presiding officer before issuing a subpoena may require a deposit of an amount adequate to cover the fees and mileage involved.

(q) The rules of evidence prevailing in courts of law or equity shall not be controlling.

(r) The presiding officer may, at his discretion, permit any person appearing in the proceeding to cross-examine any witness offered by another person insofar as is practicable, and to object to the admission or exclusion of evidence by the presiding officer. Requests for permission to cross-examine a witness offered by another person and objections to the admission or exclusion of evidence shall be stated briefly with the reasons for such request or objection. Such requests or objections shall become a part of the record, but the record shall not include argument thereon except as ordered by the presiding officer.]

Section 8 [42]. (1) The chairperson may [chairman shall have the power to] appoint standing and special committees.

(2) A committee shall meet at the call of its chairperson [chairman] or the chairperson [chairman] of the board at the time and place designated by either chairperson [the person making such call].

~~Section 13. Any rule, administrative regulation or standard promulgated, modified or revoked under these rules may contain a provision delaying its effective date for such period (not in excess of ninety (90) days) as the board determines may be necessary to ensure that affected employees and employers will be informed of the existence, modification or revocation of the rule, administrative regulation or standard and of its terms and that employers affected are given an opportunity to familiarize themselves and their employees with the existence of the requirements of the rule, administrative regulation or standard.~~

~~Section 14. Any interested person may at any time petition the board in writing to revise, amend, or revoke any provision of these rules. The petition shall set forth either the terms or the substance of the rule desired, with a concise statement of the reasons therefor and the effects thereof.~~

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: November 12, 2020

FILED WITH LRC: November 12, 2020 at 10:44 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at Labor Cabinet on January 21, 2021 at 10:00 a.m. (ET). The meeting will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph (8) b (2020) and the continuing state of emergency. Public access to the meeting will be available at <https://us02web.zoom.us/j/82709445892?pwd=SFVrbXgwdHNKcFRwOUhOMUpSMmp0Zz09>, password 256063, or telephone (713) 353-0212, or (888) 822-7517 toll free, conference code 533004. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, Telephone: (502) 564-4107, Facsimile: (502) 564-4769, Email: Robin.Maples@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation, effective since May 14, 1975, defines terms used in the regulation. Section 2 establishes who administers the oath of office and when it is administered. Section 3 establishes the frequency of Kentucky Occupational Safety and Health (OSH) Standards Board hearings. Section 4 establishes requirements for board decisions. Section 5 establishes the requirement for a record of board and committee meetings. Section 6 establishes the requirement for when the board meetings including meeting notice. Section 7 establishes procedures for board hearings. Section 8 establishes that standing and special board committees may be established and meet. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with House Bill (HB) 50 from the Regular Session of the 2017 General Assembly.

(b) The necessity of this administrative regulation: This administrative regulation establishes procedures for the Kentucky Occupational Safety and Health (OSH) Standards Board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky OSH Standards Board to promulgate OSH administrative regulations. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes procedures for the Kentucky OSH Standards Board.

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

(a) How the amendment will change this existing administrative regulation: Section 1 of this administrative regulation, effective since May 14, 1975, 1980, defines terms used in the regulation. Section 2 establishes who administers the oath of office and when it is administered. Section 3 establishes the frequency of Kentucky Occupational Safety and Health (OSH) Standards Board hearings. Section 4 establishes requirements for board decisions. Section 5 establishes the requirement for a record of board and committee meetings. Section 6 establishes the requirement for when the board meetings including meeting notice. Section 7 establishes procedures for board hearings. Section 8 establishes that standing and special board committees may be established and meet. This amendment also removes unnecessary language. This amendment updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. Amendments to this regulation are technical and intended to promote understanding of Kentucky OSH Standards Board procedures.

(b) The necessity of the amendment to this administrative regulation: This amendment updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. Amendments to this regulation are technical and intended to promote understanding of the Kentucky OSH Standards Board procedures.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061. KRS 338.051(3) and 338.061 authorize the Kentucky OSH Standards Board to promulgate OSH administrative regulations.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides all a clear understanding of the requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in general industry

activities covered by KRS Chapter 338.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are imposed and no immediate action is required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to the OSH Program to implement this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection will result from clarification of the regulation.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: (a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to the OSH Program to implement this administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Not applicable.

2. State compliance standards. This administrative regulation establishes procedures for the Kentucky OSH Standards Board.

3. Minimum or uniform standards contained in the federal mandate. Not applicable.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This administrative regulation does not impose stricter, additional, or different requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects any unit, part, or division of local government covered by KRS 338.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051; KRS 338.061.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

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

(b) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other explanation:

LABOR CABINET Department of Workers' Claims (Amendment)

803 KAR 25:092. Workers' compensation pharmacy fee schedule.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.020, 342.035, 342.260, 342.270, 342.735

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.035 requires the commissioner [Workers' Compensation Board] to periodically promulgate administrative regulations to adopt a schedule of fees for the purpose of ensuring that all fees, charges, and reimbursements under KRS 342.020 shall be fair, current, reasonable and limited to that paid for similar treatment of other patients in the same community. The increased security of payment afforded by the Workers' Compensation Act may be taken into consideration in determining what fees are reasonable. KRS 342.735 requires the commissioner [board] to establish administrative regulations to expedite the payment of medical expense benefits. The function of this administrative regulation is to regulate charges for pharmaceuticals provided pursuant to KRS 342.020, and to expedite the payment of this class of medical expense benefits.

Section 1. Definitions. (1) "Brand name" has the meaning set forth in KRS 217.814(1).

(2) "Compound" is defined in 803 KAR 25:270, Section 1(3).

(3)[(2)] "Equivalent drug product" has the meaning set forth in KRS 217.814(5).

(4)[(3)] "Generic name" has the meaning set forth in KRS 217.814(6)[(2)].

(5)[(4)] "Hospital" has the meaning set forth in 803 KAR 25:091, Section 1(1).

(6) "Medical payment obligor" is defined in 803 KAR 25:260(10).

(7) "Medical provider" is defined in 803 KAR 25:260(11).[

(5) "Practitioner" means any person licensed under the professional laws of Kentucky or any other state to prescribe and administer medicine and drugs.

(6) "Wholesale price" means the average wholesale price charged by wholesalers at a given time.]

(8) "NDC number" means the unique 10-digit, 3-segment, number assigned to a drug product and maintained in the NDC Directory published by the U.S. Food and Drug Administration.

(9) "Pharmacist" is defined in 803 KAR 25:260 (15).

(10) "Pharmacy benefit manager" means an entity licensed pursuant to KRS 304.9-053 that, on behalf of a medical payment obligor:

(a) Contracts directly or indirectly with pharmacies to provide prescription drugs to individuals;

(b) Administers a prescription drug benefit;

(c) Processes or pays pharmacy claims;

(d) Makes or assists in making prior authorization determinations on prescription drugs; or

(e) Establishes a pharmacy network.

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(11) "Prescription drug" is defined in 803 KAR 25:270 (18).

(12) "Repackage" means the act of taking a finished drug product from the container in which it was distributed by the original manufacturer and placing it into a different container without further manipulation of the drug.

Section 2. Payment for Pharmaceuticals. (1) Reimbursement shall be determined on the date of service. The maximum allowable reimbursement for prescription drugs shall be a dispensing fee of five (5) dollars and the lesser of:

(a) The provider's usual and customary charge for the drug;

(b) The amount the medical payment obligor has agreed to pay under its contract with a pharmacy benefit manager or other pharmacy service provider, in which case, upon request, the medical payment obligor shall certify or otherwise disclose the applicable reimbursement provision contained in the contract;

(c) If it is a generic drug, sixty (60) percent of the average wholesale price of the lowest priced equivalent drug product; or

(d) If it is a brand name drug, eighty-five (85) percent of average wholesale price.

(2) Average wholesale price shall be determined from the publication in effect on the date of service. The publication to be used is:

(a) Medi-Span, produced by Wolters-Kluwer;

(b) If the drug is not included in Medi-Span, then the Red Book, produced by Micromedex, shall be used.

(3) The usual and customary charge of the provider for the prescription drug must be included on each statement for services.

(4) A generic drug must be substituted for a brand name drug unless there is no equivalent drug product available or the prescribing medical provider indicates that substitutions are prohibited by including the words "Dispense as Written" or "No Substitution Allowed" along with a statement that the brand name drug is medically necessary.

(5) If a claimant chooses a brand name drug when a generic drug is available and allowed by the medical provider, the claimant shall pay the difference in price between the brand name and the generic drug as determined pursuant to subsection (1) of this section.

(6) A dispensing provider that is not a pharmacist shall be reimbursed the same as a pharmacist, but shall not receive a dispensing fee;

(7) Repackaged or Compounded Drugs.

(a) Pharmaceutical bills submitted for repackaged or compounded drugs must include the NDC Number of the original manufacturer registered with the U.S. Food and Drug Administration.

(b) Reimbursement shall be determined using the original manufacturer's NDC number for the product or ingredient, calculated on a per unit basis, as of the date of service. The maximum reimbursement limitations provided in subsection (1) of this section apply to each product or ingredient contained in the repackaged or compounded drug.

(c) An NDC number obtained for a repackaged or compounded drug shall not be considered the original manufacturer's NDC Number.

(d) If the original manufacturer's NDC Number is not provided on the bill, then the reimbursement shall be based on the average wholesale price of the lowest priced equivalent drug product, calculated on a per unit basis.

(e) A single dispensing fee may be reimbursed for a repackaged or compounded drug when applicable.

(1) An employee entitled to receive pharmaceuticals under KRS 342.020 may request and require that a brand name drug be used in treating the employee. Unless the prescribing practitioner has indicated that an equivalent drug product should not be substituted, an employee who requests a brand name drug shall be responsible for payment of the difference between the equivalent drug product wholesale price of the lowest priced therapeutically equivalent drug the dispensing pharmacist has in stock and the brand name drug wholesale price at the time of dispensing.

(2) Any duly licensed pharmacist dispensing pharmaceuticals

pursuant to KRS Chapter 342 shall be entitled to be reimbursed in the amount of the equivalent drug product wholesale price of the lowest priced therapeutically equivalent drug the dispensing pharmacist has in stock, at the time of dispensing, plus a five (5) dollar dispensing fee plus any applicable federal or state tax or assessment.]

(8)[(3)] If an employee's prescription is marked "Do Not Substitute," the employee shall receive a brand name drug.[the dispensing pharmacist shall be entitled to reimbursement in an amount equal to the brand name drug wholesale price, at the time of dispensing, plus a five (5) dollar dispensing fee plus any applicable federal or state tax or assessment.]

Section 3. Disputes; Applicability. (1) Any dispute arising under this administrative regulation shall be resolved pursuant to 803 KAR 25:012.

(2) This administrative regulation shall apply to prescriptions dispensed to a workers' compensation patient by a hospital pharmacy if the patient is not otherwise being treated or obtaining medical care from the hospital.

(3) This administrative regulation shall not apply to prescriptions dispensed by a hospital pharmacy, of a hospital regulated pursuant to 803 KAR 25:091, to a workers' compensation patient receiving medical treatment or care from the hospital on an inpatient or outpatient basis.

(4) Any insurance carrier, self-insured employer or group self-insured employer may enter into an agreement [with any pharmacy] to provide reimbursement at a lower amount than that required in this administrative regulation.

Section 4. Balance Billing. No pharmacy filling a prescription covered under KRS 342.020 shall knowingly collect, attempt to collect, coerce, or attempt to coerce, directly or indirectly, the payment by a workers' compensation patient of any charge in excess of that permitted under this administrative regulation, except as provided in Section 2(2)[(4)] of this administrative regulation. This prohibition is applicable to prescriptions filled pursuant to KRS 342.020 and any prescription which is denied or disputed by the medical payment obligor may be billed directly to the party presenting the prescription for filling.

ROBERT L. SWISHER, Commissioner

APPROVED BY AGENCY: October 28, 2020

FILED WITH LRC: October 29, 2020 at 8:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2021, at 10:00 a.m. (EDT) by video teleconference pursuant to KRS 61.800, et seq. In keeping with KRS 13A.270, individuals interested in attending or being heard at this hearing shall notify this agency in writing of their intent to attend no later than five (5) workdays prior to the hearing along with contact information. Upon notification of intent to attend, individuals will be provided information necessary to attend the video teleconference. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2021. 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: The function of this administrative regulation is to regulate charges for pharmaceuticals provided pursuant to KRS 342.020, and to expedite the payment of this class of medical expense benefits.

(b) The necessity of this administrative regulation: Amendment to this administrative regulation is necessary to ensure reimbursement for pharmaceuticals is fair, current, reasonable and limited to that paid for similar treatment of other patients in the same community.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 342.035 requires the commissioner to periodically promulgate administrative regulations to adopt a schedule of fees for the purpose of ensuring that all fees, charges, and reimbursements under KRS 342.020 shall be fair, current, reasonable and limited to that paid for similar treatment of other patients in the same community. The increased security of payment afforded by the Workers' Compensation Act may be taken into consideration in determining what fees are reasonable. KRS 342.735 requires the commissioner to establish administrative regulations to expedite the payment of medical expense benefits. This administrative regulation does so with respect to pharmaceuticals.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the reimbursement for pharmaceuticals.

(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 establishes the method by which reimbursement for pharmaceuticals is calculated.

(b) The necessity of the amendment to this administrative regulation: The current language created confusion; the amendment is to clarify the confusion.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment updates language to comply with the current methodology for reporting required claims information.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation provides guidance to those paying and receiving reimbursement for pharmaceuticals.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Insurance companies writing workers' compensation policies in the Commonwealth, group of self-insurers, employers carrying their own risk, and those who dispense pharmaceuticals under the provisions of KRS Chapter 342.

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

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

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost to perform the calculation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Reimbursement will be fair, current, reasonable and limited to that paid for similar treatment of other patients in the same community.

(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: There should be no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Workers' Claims normal budget is the source of funding.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied; the administrative regulation applies to all parties equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Workers' Claims and all agencies or departments of government with employees.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 342.020, 342.035, 342.260, 342.270, 342.735.

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. Without knowing the compensation to which employees of those agencies may be entitled under KRS Chapter 342, it is impossible to estimate the effect on expenditures; however, any change from current expenditures should be minimal.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

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

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? It does not appear there will be additional costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There should be no increase or decrease in the cost to administer this amendment.

LABOR CABINET

Department of Workers' Claims
(Amendment)

803 KAR 25:170. Filing of claims information with the Office of Workers' Claims.

RELATES TO: KRS 342.038, 342.039

STATUTORY AUTHORITY: KRS 342.039

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.039 requires the Commissioner [~~Executive Director~~] of the Department [~~Office~~] of Workers' Claims to promulgate administrative regulations by which each insurance company writing workers' compensation policies in the Commonwealth, every group of self-insurers, and each employer carrying its own risk shall file detailed claim information contained in the model regulation developed by the National Association of Insurance Commissioners (NAIC) in

conjunction with the International Association of Industrial Accident Boards and Commissions (IAIABC). This administrative regulation establishes the requirements for filing claims information with the Department [Office] of Workers' Claims.

Section 1. Definitions. (1) "Carrier" is defined in KRS 342.0011(6).[

(2) ~~"Data collection agent" means a business or entity that keys information in an electronic format and transmits the resulting data to a value added network used by the Office of Workers' Claims.]~~

(2)[(3)] "Commissioner" ["Executive director"] is defined in KRS 342.0011(9).

(3) "Vendor" means an entity that transcribes information into an electronic format, accepts electronic data transmissions, and sorts the resulting data for delivery to and from the Department of Workers' Claims.]

(4) ~~"Value added network" means a business or entity that accepts electronic data transmissions and sorts the transmissions for delivery to various addressees.]~~

Section 2. Reporting Requirements. (1) Each carrier shall file the information required on the Form IA-1 through [with] a vendor approved [data collection agent or a value added network designated] by the Department [Office] of Workers' Claims, in electronic format, according to the time periods prescribed by KRS 342.038.

(2) Each carrier shall file the information required on the Form IA-2 through [with] a vendor approved [data collection agent or a value added network designated] by the Department [Office] of Workers' Claims, in electronic format:

(a) As soon as practicable and not later than one (1) week from the date payments to an employee are commenced, terminated, changed, or resumed; and

(b) Every sixty (60) days during temporary total disability.

Section 3. Vendors. The Department of Workers' Claims shall maintain a directory of approved vendors. The directory may be accessed at <https://labor.ky.gov/Documents/VendorList%20Info.pdf>. [Data Collection Agents. (1) If a carrier is unable to transmit the information required under this Office of Workers' Claims using its own facilities and resources, it shall employ a data collection agent capable of transmitting the information to a value added network utilized by the Office of Workers' Claims.

(2) ~~The Office of Workers' Claims shall maintain a directory of authorized data collection agents and value added networks. The directory may be accessed at <http://labor.ky.gov/dwc/getstart.htm>.]~~

(2) ~~The Office of Workers' Claims shall maintain a directory of authorized data collection agents and value added networks. The directory may be accessed at <http://labor.ky.gov/dwc/getstart.htm>.]~~

Section 4. Acknowledgements. An acknowledgement of an accepted filing made pursuant to this administrative regulation, or a request by the Department [Office] of Workers' Claims for resubmission of a report due to incomplete or incorrect information, shall be made in electronic format through the same vendor [data collection agent or value added network] used for the filing.

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

(a) Form IA-1 (October 10, 1995 edition); and

(b) Form IA-2 (October 10, 1995 edition).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department [Office] of Workers' Claims, Mayo-Underwood Building, 3rd Floor, 500 Mero Street, [Prevention Park, 657 Chamberlain Avenue], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the commissioner has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 342.260 and 342.035.

ROBERT L. SWISHER, Commissioner

APPROVED BY AGENCY: October 19, 2020

FILED WITH LRC: October 21, 2020 at 8:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 22, 2021, at 10:00 a.m. (EDT) by video teleconference pursuant to KRS 61.800, et seq. In keeping with KRS 13A.270, individuals interested in attending or being heard at this hearing shall notify this agency in writing of their intent to attend no later than five (5) workdays prior to the hearing along with contact information. Upon notification of intent to attend, individuals will be provided information necessary to attend the video teleconference. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2021. 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 establishes the requirements for filing claims information with the Department of Workers' Claims.

(b) The necessity of this administrative regulation: Amendment to this administrative regulation is necessary to comply with subsequent technological changes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 342.039 requires the commissioner to promulgate administrative regulations by which each insurance company writing workers' compensation policies in the Commonwealth, every group of self-insurers, and each employer carrying its own risk shall file detailed claim information contained in the model regulation developed by the National Association of Insurance Commissioners (NAIC) in conjunction with the International Association of Industrial Accident Boards and Commissions (IAIABC).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the mechanism for filing required claim information with the Department of Workers' Claims.

(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 establishes the currently accepted methodology for reporting claims information.

(b) The necessity of the amendment to this administrative regulation: The current language does not comply with current industry practices.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment updates language to comply with the current methodology for reporting required claims information.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation provides guidance to those required to report claims information to the Department of Workers' Claims.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Insurance companies writing workers' compensation policies in the Commonwealth, group of self-insurers, and employers carrying their own risk.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this

administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities will report through a vendor rather than a value added network.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will be able to properly report claims information.

(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: There should be no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Workers' Claims normal budget is the source of funding.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied; the administrative regulation applies to all parties equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Workers' Claims and all agencies or departments of government with employees.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 342.038; 342.039

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There should be no direct effect on expenditures.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

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

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? It does not appear there will be additional costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There should be no increase or decrease in the cost to administer this amendment.

LABOR CABINET Department of Workers' Claims (Amendment)

803 KAR 25:175. Filing of insurance coverage and notice of policy change or termination.

RELATES TO: KRS 342.0011(22), 342.340(2)

STATUTORY AUTHORITY: KRS 342.260(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.340 requires an insurance carrier to file proof of workers' compensation insurance coverage for an employer and notice of policy change or termination in a format [on a form] prescribed by the commissioner [executive director]. KRS 342.260(1) requires the commissioner [executive director] to promulgate administrative regulations necessary to carry on the work of the Department [office]. This administrative regulation establishes the requirements for filing proof of coverage and policy change or termination of coverage.

Section 1. Definition. "Insurance carrier" is defined in KRS 342.0011(22).

Section 2. Reporting Requirements. (1) Each insurance carrier shall file the information required on the Form POC-1 for each new policy or a change or termination of a policy.

(2) The information required on the [completed] Form POC-1 shall be filed electronically by an approved vendor with the Department [Office] of Workers' Claims. [

(3) An electronic transmission of data shall have:

(a) ~~Demonstrated its reliability in tests rendered by the office;~~
and

(b) ~~Received the approval of the executive director].~~

Section 3. (1) The Department [Office] of Workers' Claims shall acknowledge a filing in an electronic format with either an acceptance or rejection through the vendor used for filing [to the carrier or its agent].

(2) A report that is incomplete or provides incorrect information shall be rejected and not be considered in compliance with KRS 342.340(2) until the information is completed or corrected and refiled with the Department [Office of Workers' Claims].

Section 4. Incorporation by Reference. (1) "Form POC-1", December 1996 Edition, Department [Office] of Workers' Claims, is incorporated by reference.

(2) The material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department [Office] of Workers' Claims, Mayo-Underwood Building, 3rd Floor, 500 Mero Street, [Prevention Park, 657 Chamberlin Avenue,] Frankfort, Kentucky 40601, Monday through Friday, 9 a.m. to 4 p.m.

ROBERT L. SWISHER, Commissioner

APPROVED BY AGENCY: October 19, 2020

FILED WITH LRC: October 21, 2020 at 8:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 22, 2021, at 10:00 a.m. (EDT) by video teleconference pursuant to KRS 61.800, et seq. In keeping with KRS 13A.270, individuals interested in attending or being heard at this hearing shall notify this agency in writing of their intent to attend no later than five (5) workdays prior to the hearing along with contact information. Upon notification of intent to attend, individuals will be provided information necessary to attend the video teleconference. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2021. 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, 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 establishes the requirements for filing proof of coverage and policy change or termination of coverage.

(b) The necessity of this administrative regulation: Amendment to this administrative regulation is necessary to comply with subsequent technological changes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 342.340 requires an insurance carrier to file proof of workers' compensation insurance coverage for an employer and notice of policy change or termination in a format prescribed by the commissioner.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the mechanism for filing proof of workers' compensation insurance coverage for an employer and notice of any policy change or termination with the Department of Workers' Claims.

(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 establishes the currently accepted methodology for reporting policy information.

(b) The necessity of the amendment to this administrative regulation: The current language does not comply with current practices.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment updates language to comply with the current practices for reporting required policy information.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation provides guidance to those required to report policy information to the Department of Workers' Claims.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Insurance companies writing workers' compensation policies in the Commonwealth, group of self-insurers, and employers carrying their own risk will be affected by the amendments to the administrative regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities will report through an approved vendor.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no increase in cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will be able to properly report policy information.

(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: There should be no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Workers' Claims normal budget is the source of funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative

regulation, if new, or by the change if it is an amendment: No increase in fees or funding is needed to implement this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied; the administrative regulation applies to all parties equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Workers' Claims and all agencies or departments of government with employees.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 342.0011(22); 342.340(2).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There should be no direct effect on expenditures.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

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

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? It does not appear there will be additional costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

LABOR CABINET Department of Workers' Claims (Amendment)

803 KAR 25:185. Procedure for e-mail notification of cancellation or removal of location of specific workers' compensation coverage.

RELATES TO: KRS 342.0011(9), (16), 342.260, 342.340

STATUTORY AUTHORITY: KRS 342.260(2), 342.340

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260(2) requires the commissioner of the Department of Workers' Claims to promulgate administrative regulations on or before December 31, 2015, establishing information necessary to be received to create an e-mail notification system for a person to enter his or her e-mail address into the Insurance Coverage Look-up database and be notified of any cancellation of a specific business' workers' compensation coverage. This administrative regulation establishes procedures and standards for email notification of cancellation of specific business workers' compensation coverage to persons registered with the Department of Workers' Claims Insurance Coverage Look-up database.

Section 1. Definitions. (1) "Cancellation of coverage" means coverage lapse notice or an employer location has been removed from the policy.

(2) "Commissioner" is defined by KRS 342.0011(9).

(3) "Insurance Coverage Look-up database" means a location in Department of Workers' Claims (DWC) Litigation Management System (LMS) Web site that links a subscriber to the DWC Insurance Coverage database.

(4) "Litigation Management System" or "LMS" means the electronic filing system utilized in the filing and processing of workers' compensation claims in the Commonwealth of Kentucky.

(5) "Person" is defined by KRS 342.0011(16).

(6) "Workers' compensation coverage" means the insurance required by KRS 342.340(1)(a).

Section 2. Subscription Requirements. (1) Any person who wishes to receive electronic mail notification of cancellation of a specific business' workers' compensation coverage shall subscribe with the Department of Workers' Claims through [at] its website [Web site] at <https://kyworkersclaims.lms.ky.gov/CoverageLookup>. [www.labor.ky.gov/workersclaims by using the specific link to the LMS.]

(a) The subscriber shall provide through the link the name and address of each business whose policy is to be monitored.

(b) The subscriber shall provide through the link the e-mail address to which notices of cancellation of coverage are to be sent.

(2)(a) The term for a specific subscriber shall be for a period of one (1) year from the date of subscription.

(b) There shall not be a limit as to how many times subsequent consecutive subscriptions may occur.

Section 3. Notification by the Commissioner. Upon notification from the insurance carrier that the specific policy selected has been cancelled or that the selected location has been removed from the policy, the commissioner shall notify the subscriber by e-mail to the registered e-mail address within five (5) days of the receipt of a notification of cancellation or removal by the Department of Workers' Claims.

ROBERT L. SWISHER, Commissioner

APPROVED BY AGENCY: October 19, 2020

FILED WITH LRC: October 21, 2020 at 8:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 22, 2021, at 10:00 a.m. (EDT) by video teleconference pursuant to KRS 61.800, et seq. In keeping with KRS 13A.270, individuals interested in attending or being heard at this hearing shall notify this agency in writing of their intent to attend no later than five (5) workdays prior to the hearing along with contact information. Upon notification of intent to attend, individuals will be provided information necessary to attend the video teleconference. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2021. 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, 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 establishes procedures and standards for email notification of cancellation of specific business workers' compensation coverage to persons registered with the Department

of Workers' Claims Insurance Coverage Look-up database.

(b) The necessity of this administrative regulation: Amendment to this administrative regulation is necessary to comply with subsequent technological changes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 342.260(2) requires the commissioner of the Department of Workers' Claims to promulgate administrative regulations on or before December 31, 2015, establishing information necessary to be received to create an e-mail notification system for a person to enter his or her e-mail address into the Insurance Coverage Look-up database and be notified of any cancellation of a specific business workers' compensation coverage. This administrative regulation establishes that procedure.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the mechanism for being notified of the cancellation of a specific business workers' compensation coverage.

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

(a) How the amendment will change this existing administrative regulation: The amendment updates the address at which a person registers for notification and clarifies that notice of the removal of a specific location from a policy will trigger notification.

(b) The necessity of the amendment to this administrative regulation: The current language does not comply with current practices.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment updates language to allow for proper registration and notification of the cancellation of a specific employer's workers' compensation insurance coverage.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation provides guidance to those desiring to be notified when the insurance coverage for a specific business has been cancelled.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Every person desiring to know when a specific business has had its workers' compensation insurance policy cancelled or when a specific location is removed from a policy.

(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: Persons desiring to be notified must register.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Registered persons will know when a specific business has had its workers' compensation insurance policy cancelled or when a specific location is removed from the policy.

(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: There should be no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Workers' Claims normal budget is the source of funding.

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

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

This administrative regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied; the administrative regulation applies to all parties equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Workers' Claims and any agencies or departments of government that register to be notified when a specific employer's workers' compensation insurance has been cancelled or a specific location removed from a policy..

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 342.260; 342.340.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There should be no direct effect on expenditures.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

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

(c) How much will it cost to administer this program for the first year? These amendments will create no additional cost.

(d) How much will it cost to administer this program for subsequent years? It does not appear there will be additional costs.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (Amendment)

810 KAR 2:020. Thoroughbred and flat racing officials.

RELATES TO: KRS 230.215, 230.240, 230.260

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize[authorizes] the Kentucky Horse Racing Commission (the "commission") [eommission] to promulgate administrative regulations prescribing conditions under which all horse racing is conducted in Kentucky[the Commonwealth]. This administrative regulation establishes the qualifications, duties, powers, and responsibilities of racing officials.

Section 1. Racing Officials.

(1) Racing officials at a thoroughbred or other flat race meeting shall include:

- (a) Steward;
- (b) Racing secretary;
- (c) Assistant racing secretary;
- (d) Clerk of scales;
- (e) Paddock judge;
- (f) Starter;
- (g) Placing judge;
- (h) Timer;
- (i) Identifier;
- (j) Veterinarian;

- (k) Assistant starter;
- (l) Jockey room custodian;
- (m) Jockey room employee;
- (n) Valet; and
- (o) Outrider.

(2) Persons appointed by the association to serve as racing officials during a race meeting shall:

- (a) First be approved by the commission;
- (b) Serve only so long as approved by the commission; and
- (c) Be under the supervision of the stewards.

(3) While serving as a racing official, a person shall not:

- (a) Indirectly or directly, own a beneficial interest in:

1. A horse of the breed in which the person is engaged as a racing official; or

2. An association under his or her supervision;

(b) Cause to be bought or sold, for himself or another, a horse under his or her supervision;

(c) Buy or sell, for himself or another, a right to, or contract with, a jockey or apprentice jockey under his or her supervision;

(d) Wager on a race under his or her supervision;

(e) Write or solicit horse insurance; or

(f) Have a monetary interest in a business which seeks the patronage of horsemen or racing associations.

(4) A racing official serving in the capacity of steward, placing judge, clerk of scales, starter, or horse identifier shall take and satisfactorily pass an optical examination within one (1) year prior to the race meeting at which he or she serves. The examination shall show corrected twenty-twenty (20-20) vision and an ability to distinguish colors correctly.

(5) A racing official who desires to leave his or her employment during the race meeting shall notify the stewards; if a vacancy occurs among racing officials other than stewards, the association shall promptly appoint a successor, subject to approval of the commission. If the association does not appoint a successor in time to permit the orderly conduct of racing, then the stewards shall immediately appoint a temporary successor.

(6) A racing official shall not officiate in multiple capacities on any one (1) race. The stewards may, in case of emergency, approve a racing official to serve in more than one (1) capacity until such time as an additional official can be appointed by the association and approved by the commission.

Section 2. Racing Secretary.

The racing secretary shall be responsible for:

(1) The programming of races during the race meeting;

(2) Compiling and publishing condition books;

(3) Assigning weights for handicap races;

(4) Receiving entries, subscriptions, declarations, and scratches;

(5) Safekeeping of registration certificates, virtual or digital certificates, and racing permits for horses, recording information required on the certificates and permits, and returning the certificates and permits to owners at the conclusion of the race meeting;

(6) Maintaining a record of stakes fees received, arrears, jockeys' fees, purchase money in claiming races, and other monies received incident to the race meeting, and making available payment to those persons entitled thereto within fourteen (14) days after the conclusion of the race meeting;

(7) Supervision of the horsemen's bookkeeper's handling of the "horseman's account";

(8) Daily posting of entries for the benefit of the public as soon as possible after entries have been closed and declarations have been made;

(9) Assigning stall applicants stabling as he or she may deem proper after consultation with the stewards, and maintaining a record of arrival and departure of all horses stabled on association grounds; and

(10) Publishing the official daily program, and ensuring that it contains accurate information of the following:

(a) Sequence of races to be run and post time for the first race;

(b) Purse, conditions, and distance for each race, and current track record for the distance;

(c) The full name of licensed owners of each horse, indicated as lessee if applicable, and description of racing colors to be carried;

(d) The full name of the trainer and the jockey named for each horse together with the weight to be carried;

(e) Notices that:

1. Jockeys will carry approximately three (3) pounds more than the published weight to account for safety helmets and safety vests that are not included in required weighing out procedures; and

2. Upon approval of the stewards, a jockey may be allowed up to three (3) pounds additional clothing and equipment for inclement weather or track conditions;

(f) The saddle cloth number or designation for each horse, and the post position for each horse, if there is a variance with the saddle cloth designation;

(g) Identification of each horse by name, color, sex, age, sire, and dam; and

(h) Other information as may be requested from time to time by the association or the commission including changes of equipment, use of permitted race day medications, and wagering types available.

Section 3. Clerk of Scales. The clerk of scales shall be responsible for:

(1) The security, regulation, and control of the jockeys' room, its equipment, and the determination of which personnel are permitted access;

(2) Weighing out a jockey no later than fifteen (15) minutes prior to the race in which the jockey is scheduled to ride and recording all overweights, which shall immediately be posted and announced to the public before each race;

(3) Weighing in a jockey immediately after the finish of each race in which the jockey rode and promptly notifying the stewards whether a jockey weighed in underweight;

(4) Safekeeping of all racing colors;

(5) Reporting all color changes or jockey changes from that listed in the official daily program and causing the changes to be posted and announced to the public before each race;

(6) Supervision of all valets and the issuance of numbered saddle cloths and equipment for each horse;

(7) Ensuring accuracy of the scales and periodic tests of them;

(8) Submitting to the racing secretary at the close of each racing day a statement of weight carried in each race by each jockey, noting overweight, if any; and

(9) Immediately transmitting all complaints, protests, objections, or disputes submitted to the clerk of scales to the stewards, and if the stewards are unavailable, to the commission.

Section 4. Paddock Judge. The paddock judge shall have general supervision of the paddock and shall be responsible for:

(1) Assembling the horses and jockeys in the paddock no later than fifteen (15) minutes before the scheduled post time for each race;

(2) Maintaining a written record of all equipment for each horse saddled, inspecting all the equipment, and reporting any changes in the equipment to the stewards;

(3) Inspecting the bandages of each horse. The paddock judge may order the bandages removed or replaced;

(4) Paddock schooling of horses approved for schooling by the stewards; and

(5) Ensuring that the saddling of horses is orderly, open to public view and free from interference, and ensuring that horses are mounted at the same time and leave the paddock for the post in proper sequence.

Section 5. Starter.

(1) The starter shall be responsible for the fair and equal start of horses in a race at the scheduled starting time by means of a starting gate and bell, or other device activated by his or her signal.

(2) So far as practical, the starter shall cause horses to be loaded in order of post position, except the starter may in his or her discretion load an unruly or fractious horse out of order or may start the unruly or fractious horse on the outside of the starting gate

and one (1) length behind the starting line. With permission of the stewards, a race may be started without a starting gate. The starter may employ as many assistant starters as needed and shall daily change the gate position of each assistant starter without notice to the assistant starters until the field for the first race comes upon the track.

(3) A horse shall not be permitted to start in a race unless approval is given by the starter. The starter shall maintain a schooling list that shall be posted in the racing secretary's office listing the names of horses ineligible to start due to inadequate training at leaving the gate. Horses shall be schooled under the supervision of the starter or his or her assistants.

(4) The starter shall:

(a) Have constant radio or telephone communication with the stewards from the time the horses leave the paddock until the field is sent away;

(b) Report to the stewards any disobedience of his or her orders or attempts to take unfair advantage at the starting gate and recommend penalties for offenders.

(5) An assistant starter shall not handle a horse until instructed to do so by the starter.

(6) A starter or assistant starter shall not:

(a) Accept a gratuity or payment other than his regular salary, directly or indirectly, for services in starting a race;

(b) Wager on a race; or

(c) Strike a jockey or use abusive language to a jockey.

(7) The starter shall maintain a written record showing the names of starters during the day and the names of the assistant starters who handled each horse. This record shall be made available to the stewards upon request.

Section 6. Placing Judges.

(1) Three (3) placing judges shall occupy a stand directly above the finish line during the running of each race. The placing judges shall:

(a) Take special note of racing colors and distinguishing equipment carried by each horse;

(b) Determine the order of the horses as they cross the finish line by consideration of the respective noses of the horses; and

(c) Cause the numbers of the first four (4) horses to cross the finish line to be posted on the result board. The numbers of additional horses shall be posted in their correct order of finish if necessitated by an exotic wager.

(2) A photo finish camera approved by the commission shall be used as an aid by the placing judges in determining the order of the horses as they cross the finish line. Placing judges may request a photo to assist in determining margins of less than a half-length (1/2).

Section 7. Timer.

(1) The timer shall occupy a stand directly above the finish line during the running of each race to record the official time.

(2) The timer shall:

(a) Record the fractional time of leading horses during each race and the final time of the first horse to cross the finish line; and

(b) Maintain a written record of fractional and final times of each race and have them available for inspection by the stewards or commission on request.

(3) The timer may use an electrical or mechanical timing device approved by the commission as an aid in determining the official time of each race.

Section 8. Horse Identifier.

(1) The commission may employ a horse identifier who shall be responsible for the proper identification of all horses entered to be raced.

(2) The horse identifier may accompany the commission veterinarian on the prerace examination of all starters.

(3) The horse identifier shall:

(a) Certify that each starter in the paddock matches its registration certificate, virtual or digital certificate, or racing permit by examining the horse's:

1. Sex, age, color, markings, and lip tattoo or microchip; and

2. Photographs as an aid in identification.

(b) Notify the paddock judge and the stewards if he or she has any doubt as to the identity of a horse entered to be raced;

(c) Be responsible for the safekeeping and return to owners at the conclusion of the race, the following:

1. Registration certificates, virtual or digital certificates, or racing permits; and

2. Racing permits for horses; and

(d) Record information from registration certificates, virtual or digital certificates, and racing permits.

JONATHAN RABINOWITZ, Chair

KERRY HARVEY, Secretary

APPROVED BY AGENCY: October 29, 2020

FILED WITH LRC: October 29, 2020 at 8:55 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at January 21, 2021 at 9:00 a.m. EST 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 January 31, 2021. 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 administrative regulation establishes the category of "racing officials" at horse races in the Commonwealth and sets forth the responsibilities of the more important of these officials.

(b) The necessity of this administrative regulation: This regulation is necessary to precisely define who racing officials are and to set forth their responsibilities in presiding over and assisting with horse races in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) authorizes the Commission to promulgate administrative regulations prescribing conditions under which all horse racing is conducted in the Commonwealth. This administrative regulation sets forth qualifications, duties, and authority of racing officials who assist in the conduct of horse races in the Commonwealth.

(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 ensuring that race officials perform certain duties to promote the efficiency and integrity of horse races 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: First, Section 1(6) is amended to preclude racing associations from assigning a racing official to work in more than one (1) position during a race. The amendment allows for multiple-capacity work during a race in the event of an emergency. However, the amendment will prevent racing associations from making an emergency assignment into a permanent one. Second, Section 8 is amended to state that the Commission may approve a horse identifier hired by the association, who will be responsible for

properly identifying all horses entered to be raced.

(b) The necessity of the amendment to this administrative regulation: The amendment to Section 1 is necessary for at least two (2) reasons. First, an official working multiple jobs increases the possibility of errors, which negatively affects the integrity of racing. Second, this amendment preserves the Commission's initial approval of racing officials, which almost always includes different people working in every position. The amendment to Section 8 is necessary because the horse identifier provision was inadvertently removed during the Red Tape Reduction initiative in the previous administration. The amendment seeks to correct that error and preserve the horse identifier position, which is important to ensure racing integrity.

(c) How the amendment conforms to the content of the authorizing statutes: Both proposed amendments constitute conditions under which horse racing will be conducted in the Commonwealth. Therefore, this amendment conforms to KRS 230.215(2).

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendments will improve racing integrity, and better preserve the Commission's initial approvals of racing officials.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Commission is affected by this administrative regulation, and any licensed participant in horse racing is potentially affected by this administrative regulation. In 2017, the Commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to year.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: To comply with the proposed amendments, licensed racing associations will be required to hire and retain one official per position and will need to seek Commission approval for anyone working in a horse identifier position.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Racing associations are required to employ the racing officials whose duties are set forth in this administrative regulation. No other significant costs are associated with performing the prescribed duties.

(c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance with the proposed regulatory amendments, integrity in horse racing will be preserved. This benefits the associations, the patrons, and the Commonwealth as a whole.

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

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to implement this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this amended regulation will apply to all similarly situated entities in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215, 230.240, and 230.260 requires or authorizes the action taken by this 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 revenue for state or local government.

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

(c) How much will it cost to administer this program for the first year? No cost will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No cost will be required to administer this regulation for subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**PUBLIC PROTECTION CABINET
Kentucky Horse Racing Commission
(Amendment)**

810 KAR 4:010. Horses.

RELATES TO: KRS 230.215

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) and 230.260(8) authorize the Kentucky Horse Racing Commission (the "commission") to promulgate administrative regulations regulating horse racing in Kentucky. This administrative regulation establishes requirements for the participation of horses in horse race meetings, protects the safety and welfare of the horse, and creates a level playing field for participants thereby protecting the integrity of pari-mutuel [pari-mutuel] wagering.

Section 1. Definition. "Electronic registration system" means a software application available online and approved by the commission that allows an association's racing secretary or the secretary's designee, or horse identifier or the identifier's designee, full access to horse and trainer records from all tracks in North America, including current owner information.

Section 2. Registration and Identification Required.

(1) A horse shall not be entered or raced in Kentucky [this state] unless:

(a) The horse is duly registered, as applicable, in The Jockey Club breed registry, the American Quarter Horse Association, the Appaloosa Horse Club, the Arabian Horse Association Registry, or

the American Paint Horse Association, or their respective successors; and

(b)1. The registration certificate, virtual or digital certificate, or racing permit issued by the applicable breed registry for the horse is on file with the racing secretary; or

2. The information contained on the registration certificate, virtual or digital certificate, or racing permit is available to the racing secretary through the electronic registration system.

(2) The stewards may at any time require presentation of a horse's registration certificate, virtual or digital certificate, or racing permit or other proof of ownership.

(3) Upon claim, sale, or any other transfer of ownership, the horse's registration certificate or racing permit shall be given to the new owner, and any virtual or digital certificate shall be transferred to the new owner electronically. The new owner shall report the change in ownership to the stewards.

(4) If the electronic registration system fails for any reason, the stewards may require presentation of a horse's registration certificate, virtual or digital certificate, or racing permit prior to a horse being entered or raced in Kentucky.

Section 3. Ringers Prohibited.

(1) A horse shall not be entered or raced in Kentucky [this state] designated by a name other than the name under which the horse is currently registered with the applicable breed registry. If a horse's name is changed with the applicable breed registry, and the horse has raced under its previous name, the horse's former name shall be shown parenthetically in the daily race program the first three (3) times the horse races after the name change.

(2) A person shall not cause or permit the correct identity of a horse to be concealed or altered. A person shall not refuse to reveal the correct identity of a horse that he or she owns or is in his or her care to a racing official or member of the regular news media.

(3) A horse shall not race in Kentucky [this state] unless identified by:

(a) A legible lip tattoo number applied by agents of the Thoroughbred Racing and Protective Bureau, or by the comparable authorized organization applicable to the breed of the horse;

(b) An electronic horse identification microchip that accurately identifies the horse, [and] is compliant with the international standards ISO 11784, is verified by agents of the Thoroughbred Racing Protective Bureau, and is documented in The Jockey Club database or by the comparable authorized organization applicable to the breed of the horse; or

(c) With regards to a horse from a foreign jurisdiction participating in a graded stakes race, has otherwise been correctly identified to the stewards' satisfaction.

(4) A horse shall not be entered or raced in Kentucky [this state] if previously involved in a "ringer" case to the extent that:

(a) A person having control of the horse knowingly entered or raced the horse while designated by a name other than the name under which the horse was registered with The Jockey Club; or

(b) The person having control of the horse participated in or assisted in the entry or racing of some other horse under the name registered as belonging to the horse in question.

Section 4. Denerving.

(1) A horse that has had a chemical, surgical, or thermal neurectomy at or above the fetlock shall not be permitted to race.

(2) A horse that has had a palmar or plantar digital neurectomy may be permitted to race if:

(a) The neurectomy has been reported by the trainer to the stewards; and

(b) The horse has been approved for racing by the commission veterinarian prior to being entered to race.

(3) A horse on which a neurectomy has been performed shall have that fact designated on its registration certificate, virtual or digital certificate, racing permit, and entry in the electronic registration system. Responsibility for ensuring that the neurectomy is correctly noted on the horse's registration certificate, virtual or digital certificate, racing permit, and entry in the electronic

registration system shall fall:

(a) Jointly on the practicing veterinarian who performed the operation and the trainer of the denervated horse if the neurectomy was performed at a location under the commission's jurisdiction; and

(b) Solely on the owner of the denervated horse if the neurectomy was performed at a location not under the commission's jurisdiction.

(4) If a horse races in violation of this administrative regulation and participates in the purse distribution, then a protest shall not be considered unless submitted in writing to the stewards within forty-eight (48) hours after the race.

(5) If a horse races in violation of this administrative regulation and is claimed, then a protest shall not be considered unless the successful claimant submits a protest in writing within forty-eight (48) hours after the race requesting the claim be voided. If the claim is voided, the horse shall be returned to the owner who started the horse in the race, and the claim price shall be returned to the claimant.

(6) A list of all denervated horses shall be posted in the racing secretary's office.

Section 5. Health Certificate Required.

(1) A horse shall not be stabled on the grounds of a licensed association or any training center under the jurisdiction of the commission unless a Certificate of Veterinary Inspection is issued by an accredited veterinarian:

(a) Not more than ten (10) days prior to the horse's arrival on the grounds; or

(b) Within a lesser interval as prescribed by the racing association in consultation with the Kentucky[State] Department of Agriculture.

(2) Notice of this requirement shall be included in the stall application of all licensed associations and training centers under the jurisdiction of the commission and all condition books of licensed associations.

Section 6. Workouts. A horse shall not be schooled in the paddock or taken onto a track on association grounds for training or workout, other than during normal training hours posted by the association, without special permission of the stewards.

Section 7. Thoroughbred Age Restrictions.

(1) A maiden six (6) years of age or older that has made five (5) life time starts on the flat shall not be entered or start.

(2) A first time starter five (5) years of age or older shall be approved by a commission veterinarian prior to entry.

Section 8. Other Age Restrictions. A quarterhorse, paint horse, Arabian, or Appaloosa horse six (6) years of age or older shall not be entered or raced in a race restricted to maidens. A horse thirteen (13) years of age or older shall not be entered or raced.

Section 9. Fillies and Mares Bred.

(1) A filly or mare that has been covered by a stallion shall:

(a) Be so reported to the racing secretary prior to being entered in a race; and

(b) Not be entered in a claiming race, unless a written release from the stallion owner is attached to the filly's or mare's registration certificate, or otherwise provided to the stewards, indicating that the stallion service fee has been paid or satisfied.

(2) A list of all fillies and mares so reported, showing the names of stallions to which they have been bred, shall be posted in the racing secretary's office.

(3) A filly or mare in-foal shall not be entered in a race 120 days or more after the date of last cover.

Section 10. Serviceable for Racing. A horse shall not be entered or raced that:

(1) Is not in serviceable, sound racing condition. The stewards may at any time require a horse on association grounds to be examined by a qualified person;

(2) Is posted on a veterinarian's list, stewards' list, or starter's

list in any racing jurisdiction;

(3) Has previously raced, but has made no starts in the last 365 days or more, unless approved by a commission veterinarian prior to entry;

(4) Is suspended in any jurisdiction;

(5) [(4)] Has been administered any drug in violation of 810 KAR 8:010;

(6) [(5)] Is blind or has seriously impaired vision in both eyes;

(7) [(6)] Is not correctly identified to the satisfaction of the stewards; or

(8) [(7)] Is owned wholly or in part by or is trained by an ineligible person.

Section 11. Equipment.

(1) Riding crops and blinkers shall be used consistently on a horse while racing.

(2) Permission to change use of any equipment used on a horse from its previous start shall be obtained from the stewards.

(3) A horse's tongue may be tied down during a race with a clean bandage or gauze.

(4) A horse's bridle shall not weigh more than two (2) pounds.

(5) Bits shall be of a metallic alloy base of stainless steel or aluminum and may be encased in rubber, plastic, or leather.

(6) War bridles and bitless bridles shall not be used.

(7) Bar shoes may be used for racing only with permission of the stewards.

(8) Any goading device, chain, spurs, electrical or mechanical device, or appliance, except for a riding crop, that can be used to alter the speed of a horse shall not be used on a horse in a race or workout.

(9)(a) Any riding crop shall be subject to inspection and approval by the stewards or the clerk of the scales to ensure conformity with the specifications of paragraphs (c) through (e) of this subsection.

(b) Only riding crops meeting the specifications of this subsection, including the mandatory shock absorbing characteristics, may be used in thoroughbred racing and training.

(c) A riding crop shall have a:

1. Maximum weight of eight (8) ounces;

2. Maximum length, including flap, of thirty (30) inches; and

3. Minimum diameter of the shaft of three-eighths (3/8) inch.

(d)1. The only additional feature that may be attached to the riding crop is a flap that shall have a:

a. Maximum length from the end of the shaft of one-half (1/2) inch; and

b. Maximum width of one and six-tenths (1.6) inches, with a minimum width of eight-tenths (0.8) inch;

2. The flap from the end of the shaft shall not contain any reinforcements or additions;

3. There shall not be binding within seven (7) inches of the end of the flap;

4. The contact area of the shaft shall be smooth, with no protrusion or raised surface, and covered by shock absorbing material throughout its circumference; and

5. The flap shall have similar shock absorbing characteristics to that of the contact area.

(e) A riding crop shall not have:

1. Stingers or projections extending through the hole of a popper; and

2. Any metal parts.

(10)(a) The following shall not be used on the front shoes of horses while racing or training on any racing surface:

1. Horse shoes that have toe grabs;

2. Bends;

3. Jar calks;

4. Stickers; and

5. Any other traction device worn on the front shoes of horses.

(b) Wear plates with a height no greater than two (2) millimeters may be used on the front shoes of horses while racing or training.

(11) Indiscriminate or brutal use on a horse of a riding crop or any other equipment, as determined by the stewards, at any time on the grounds of a licensed racing association or training center

under the jurisdiction of the commission shall be prohibited.

Section 12. Sex Alteration. Any alteration in the sex of a horse shall be reported by the horse's trainer to the racing secretary and to the appropriate breed registry applicable to the horse. The alteration shall be noted on the horse's registration certificate, racing permit, virtual or digital certificate, or entry in the electronic system.

Section 13. Reporting Death of Horse. A licensed racing association or training center under the jurisdiction of the commission shall report the death or euthanization of any horse on its grounds immediately to the chief commission veterinarian.

Section 14. Postmortem Examination. A horse that dies or is euthanized on the grounds of a licensed association or training center under the jurisdiction of the commission shall undergo a postmortem examination at the discretion of the commission. If a postmortem examination is conducted:

(1) All shoes and equipment on the horse's legs shall be left on the horse;

(2) The commission, through its designee:

(a) Shall take possession of the horse upon death;

(b) Shall, if commission personnel are present, collect and submit for analysis blood, urine, bodily fluids, or other biologic specimens immediately, if possible before euthanization occurs; and

(c) Shall coordinate with the owner or owner's licensed authorized agent to determine and address any insurance requirements.

(3) The remains of the horse shall not be returned after completion of the postmortem examination.

(4) The presence of a prohibited substance in a specimen collected during the postmortem examination may constitute a violation of 810 KAR 8:010.

Section 15. Incorporation by Reference.

(1) "ISO 11784", 2004 is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

JONATHAN RABINOWITZ, Chair

KERRY HARVEY, Secretary

APPROVED BY AGENCY: October 29, 2020

FILED WITH LRC: October 29, 2020 at 8:55 a.m.

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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 administrative regulation establishes the rules concerning horses in thoroughbred and other flat racing.

(b) The necessity of this administrative regulation: This regulation is necessary to provide specific rules concerning the health and safety of horses in thoroughbred and other flat racing.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This administrative regulation prescribes the conditions relating to the integrity of racing, as well as the health and safety of horses in thoroughbred and other flat racing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth requirements and rules concerning the health and safety of horses in thoroughbred and other flat racing that enhance the integrity of racing.

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

(a) How the amendment will change this existing administrative regulation: First, Section 1 will be amended to refer to a horse's virtual or digital registration certificate. The current version of the regulation uses the term "virtual certificate." However, The Jockey Club refers to electronic certificates as "digital certificates." The amendment uses both terms to avoid confusion. Second, Section 3 will be amended to require that a horse's identification microchip must be verified by agents of the Thoroughbred Racing Protective Bureau. The microchip should also be documented in the database of The Jockey Club or a comparable, authorized organization applicable to the horse's breed. Third, Section 7 is amended to require Commission veterinary approval for a first-time starter aged five (5) years of age or older prior to entry. Fourth, Section 9 is amended to prohibit a filly or mare in-foal from entering a race 120 days or more after the date of last cover. Fifth and finally, Section 10 is amended to require Commission veterinary approval for a horse that has previously raced, but has made no starts in the last 365 days or more, prior to entry.

(b) The necessity of the amendment to this administrative regulation: The first two amendments are necessary to avoid confusion and promote racing integrity by properly identifying horses. The remaining three amendments are necessary to ensure the safety and well-being of the horses participating in racing.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. The proposed amendments prescribe the conditions relating to the integrity of racing, as well as the health and safety of horses in thoroughbred and other flat racing.

(d) How the amendment will assist in the effective administration of the statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This administrative regulation assists in the administration of those statutes by ensuring that horses are properly identified. The regulation also ensures the health and safety of horses in thoroughbred and other flat racing by establishing rules limiting the entry of certain horses who may be at risk for racing-related injuries.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky's five licensed thoroughbred race tracks, and all individual participants in horse racing, are potentially affected by this administrative regulation's establishment of fundamental rules pertaining to the conduct of racing. In the year 2017, the Commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to year.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Participants in horse racing, and especially owners, trainers, veterinarians, and jockeys, will be required to adhere to the requirements and rules set forth in these proposed amendments, which pertain to racing integrity and the health and safety of horses in thoroughbred and other flat racing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: No significant costs are associated with complying with these proposed amendments.

(c) As a result of compliance, what benefits will accrue to the entities: Participants in racing will benefit from clearly defined rules concerning the health and safety of horses and the integrity of horse racing.

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

(a) Initially: There is no initial administrative cost to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No significant funding will be necessary to implement and enforce this administrative regulation. Any minimal costs will be funded from the Commission's budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional fees or funding are necessary to implement these proposed amendments.

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

(9) TIERING: Is tiering applied? Tiering was not applied, because this administrative regulation will apply to all similarly situated entities in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.215, 230.260.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for state or local government for the first year.

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

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

(d) How much will it cost to administer this program for subsequent years? There will be no cost to administer this regulation for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (Amendment)

810 KAR 4:030. Entries, subscriptions, and declarations.

RELATES TO: KRS 230.215, 230.240, 230.260, 230.290, 230.310, 230.320

STATUTORY AUTHORITY: KRS 230.215(2), 230.260(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission (the "commission") to promulgate administrative regulations prescribing the conditions under which all horse racing is conducted in Kentucky. KRS 230.260(8) grants the commission the authority to regulate conditions under which horse racing shall be conducted in Kentucky. This administrative regulation establishes requirements for entry, subscription, and declaration of horses in order to race.

Section 1. Definition. "Subscriber" means an owner who enters a horse into a stakes race and pays the requisite entry fee.

Section 2. Entering Required. A horse shall not be qualified to start in any race unless it has been, and continues to be, entered in the race. Entries or subscriptions for any horse, or the transfer of entries or subscriptions for any horse, may be refused or cancelled by the association without notice or reason given.

Section 3. Procedure for Making Entries.

(1) An entry, subscription, declaration, or scratch shall be filed with the racing secretary and shall not be effective until received by the racing secretary. The racing secretary shall maintain a record of the time of receipt of an entry, subscription, declaration, or scratch for a period of at least one (1) year.

(2) An entry shall be made by the owner, the trainer, or an authorized agent of the owner or trainer. An entry shall be in the name of a horse's licensed owner, as completely disclosed and registered with the racing secretary pursuant to subsection (3) of this section.

(3) An entry shall be submitted in writing or by telephone to the racing secretary. A telephone entry shall be confirmed promptly in writing if requested by the stewards, the racing secretary, or an assistant to the racing secretary.

(4) An entry shall clearly designate the horse entered as reflected by its registration certificate, racing permit, or virtual certificate.

(a) A horse shall not race unless registered pursuant to 810 KAR 4:010 or otherwise correctly identified to the satisfaction of the stewards.

(b) Establishing the identity of a horse shall be the responsibility of its owner and of any other person required to certify the identity of the horse. A person shall be subject to appropriate disciplinary action under 810 KAR 8:030 for incorrect identification.

(5) The entry shall indicate usage of furosemide pursuant to 810 KAR 8:010.

(6) An entry shall not be altered after the closing of entries, except to correct an error with permission of the stewards.

(7) A horse shall not be entered in two (2) races to be run on the same day.

(8)(a) A horse that has not started in the past forty-five (45) days shall not be permitted to start unless it has at least one (1)

published workout within twenty (20) days of entry at a distance satisfactory to the stewards. If a horse has performed the requisite workout, but the workout does not appear in the past performances, the horse shall be permitted to start if the stewards determine that the workout failed to be published through no fault of the trainer.

(b) A horse starting for the first time shall not be permitted to start unless it has three (3) workouts, one (1) of which is from the starting gate, one (1) of which is within twenty (20) days of entry, and at least one (1) of which is published.

(c) A workout not appearing in the official program shall be publicly displayed on television monitors, the tote board, and, if available, the bulletin boards where photo finishes are shown at the time when mutuel windows are opened and shall be displayed until the conclusion of the race in which the horse is entered.

(d) A horse that has never started shall not be entered until the trainer has produced a document or card issued by the starter indicating that the horse has been adequately trained to race from the starting gate.

(9) If the published conditions of the race permit, an association may accept in a turf race an entry designated "main track only." Preference shall apply to all horses drawn into a race, except that horses entered as "main track only" shall be listed as also-eligible and be considered only if the race is taken off the turf.

(10) A horse shall only be permitted to enter if at the time of entry, the owner, trainer, or an authorized agent of the owner or trainer submits a complete medical record for the horse for the fourteen (14) day period prior to the entry date.

Section 4. Limitation as to Spouses.

(1) An entry in a race shall not be accepted for a horse owned wholly or in part or trained by a person whose spouse is under license suspension, revocation, or is otherwise ineligible to be licensed, at the time of the entry except as established in subsection (2) of this section.

(2) If the license of a jockey has been suspended for a routine riding offense, depending on the severity of the offense, the stewards may waive the application of this section as to the licensed spouse of the suspended jockey.

Section 5. Mutuel Entries.

(1) More than two (2) horses having common ties through training shall not be entered in a purse race.

(2) Horses entered in the same race and owned wholly or in part by the same owner or spouse, shall be joined as a mutuel entry and single betting interest, except as established in subsection (5) of this section.

(3) More than two (2) horses having common ties through ownership shall not be joined as a mutuel entry in a purse race. If making a double entry of horses owned wholly or in part by the same owner or spouse, a preference for one (1) of the horses shall be made.

(4)(a) Two (2) horses having common ties through ownership shall not start in a purse race to the exclusion of a single entry, unless the horses have been uncoupled pursuant to subsection (5) of this section.

(b) In a purse race, the racing secretary may uncouple entries having common ties through training to make two (2) separate betting interests.

(5) In any stakes race with added money of \$50,000 or more, the racing secretary may uncouple mutuel entries of horses sharing common ties through training or ownership or both.

Section 6. Subscriptions.

(1) A subscriber to a stakes race may transfer or declare a subscription prior to the closing of entries for the race.

(2) Joint subscriptions and entries may be made by any one (1) of the joint owners of a horse. Each owner shall be jointly and severally liable for all payments due.

(3) Death of a horse or a mistake in its entry if the horse is eligible shall not release the subscriber or transferee from liability for all stakes fees due. Fees paid in connection with a subscription to a stakes race that is run shall not be refunded, except as

otherwise stated in the conditions of the stakes race.

(4) Death of a nominator or original subscriber to a stakes race shall not render void any subscription, entry, or right of entry. All rights, privileges, and obligations shall attach to the successor owner, including the legal representatives of the decedent.

(5) If a horse is sold privately, sold at public auction, or claimed, stakes engagements for it shall be transferred automatically with the horse to its new owner. If the horse is transferred to a person whose license is suspended, revoked, or is otherwise ineligible to be licensed, the subscription shall be void as of the date of the transfer.

(6) All stakes fees paid toward a stakes race shall be allocated to the winner unless otherwise provided by the condition for the stakes race. If a stakes race is cancelled for any reason, all subscription fees paid shall be refunded.

Section 7. Closings.

(1) Entries for purse races and subscriptions to stakes races shall close at the time designated by the association in previously published conditions for the races.

(a) If a race is not split, an entry, subscription, or declaration shall not be accepted after closing time.

(b) If a purse race fails to fill, or in an emergency, the racing secretary may extend the closing time, if the approval of a steward has been obtained.

(2) Entries that have closed shall be compiled without delay by the racing secretary and shall be posted along with declarations.

Section 8. Number of Starters in a Race.

(1) The maximum number of starters in any race shall be limited to the number of starting positions afforded by the association starting gate and any extensions approved by the commission as can be positioned across the width of the track at the starting point for the race. The maximum number of starters further shall be limited by the number of horses that, in the opinion of the stewards after considering the safety of the horses and riders and the distance from the start to the first turn, may be afforded a fair and equal start.

(2)(a) A maiden, starter, or claiming race shall be run if:

1. Eight (8) or more horses are entered;
2. The horses entered represent different betting interests; and
3. The race is listed in the printed condition book.

(b) Except as established in paragraph (c) of this subsection, any other purse race shall be run if:

1. Six (6) or more horses are entered;
2. The horses entered represent different betting interests; and
3. The race is listed in the printed condition book.

(c) If a purse race under paragraph (b) of this subsection includes two (2) horses having common ties through training, the race shall be run if eight (8) or more horses are entered.

(3) If a purse race in the printed condition book fails to fill with the minimum number of entries required by subsection (2) of this section, the association may cancel or declare the race off. The names of all horses entered in the race shall be publicly posted in the office of the racing secretary on the date of entry.

Section 9. Split or Divided Races.

(1) If a race is cancelled or declared off, the association may split any race programmed for the same day that may previously have been closed. Races printed in the condition book shall have preference over substitute and extra races.

(2) If a purse race is split, forming two (2) or more separate races, the racing secretary shall give notice of the split not less than fifteen (15) minutes before the races are closed in order to grant time for the making of additional entries to the split races.

(3) Division of entries upon the splitting of any race shall be made in accordance with the conditions under which entries and subscriptions were made and the conditions established in paragraphs (a) through (c) of this subsection.

(a) Horses originally joined as a mutuel entry may be placed in different divisions of a split race unless the person making the multiple entry, at the time of the entry, indicates the coupling of

horses is not to be uncoupled if the race is split.

(b) Division of entries in any split stakes race may be made according to age, sex, or both.

(c) Entries for any split race not divided by any method provided for in this administrative regulation shall be divided by lot so as to provide a number of betting interests as nearly equal as possible for each division of the split race.

Section 10. Post Positions.

(1) Post positions for all races shall be determined by lot, except as established in Section 11(5) of this administrative regulation. Owners, trainers, and their representatives shall have the opportunity to be present at the drawing.

(2) The racing secretary shall assign program numbers for each starter to conform with the post position drawn, except if a race includes two (2) or more horses joined as a single betting interest.

Section 11. Also-Eligible List.

(1) If the number of entries for a race exceeds the number of horses permitted to start, as established by Section 8 of this administrative regulation, the names of no more than eight (8) horses entered but not drawn into the race as starters shall be posted on the entry sheet as "also-eligible" to start.

(2) After a horse has been excused from a race at scratch time, also-eligible horses shall be drawn into the body of the race based on preference. If preference is equal, horses shall be drawn by lot, unless otherwise stipulated in the conditions of the race.

(3)(a) An owner or trainer of a horse on the also-eligible list not wishing to start the horse in a race shall notify the racing secretary prior to scratch time for the race. The horse shall forfeit any preference to which it may have been entitled.

(b) If there are no scratches in the body of a race, a horse on the also-eligible list not drawn into the race shall retain its previously established preference.

(4) A horse on the also-eligible list for a race on the present day that has been drawn into the body of a race on a future [the succeeding] race day, shall not be permitted to run in the race on the present day for which it had been listed as also-eligible. This shall not include stakes, [and] handicaps, races at subsequent meets, or races in other jurisdictions.

(5) A horse on the also-eligible list shall be assigned a post position by preference. If preference is equal, post positions shall be drawn by lot, unless otherwise stipulated in the published conditions of the race.

Section 12. Preferred List.

(1) The racing secretary shall maintain a list of horses that were entered but denied an opportunity to race because they were eliminated from a race included in the printed condition book either by overfilling or failure to fill.

(2) The racing secretary shall submit, for approval of the commission at least thirty (30) days prior to the opening date of a race meeting, a detailed description of the manner in which preference will be allocated.

(3) Preferences shall not be given to a horse otherwise eligible for a race if it is also entered for a race on a future [the succeeding] race day. This shall not include stakes and handicaps.

Section 13. Arrears. Unless approved by the racing secretary, a horse shall not be entered or raced unless its owner has paid all stakes fees owed.

Section 14. Declarations.

(1) Declarations shall be made in the same form, time, and procedure as required for the making of entries.

(2) Declarations shall be irrevocable.

(3) A declaration fee shall not be required by any licensed association.

Section 15. Scratches.

(1) Scratches shall be irrevocable and shall be permitted under the conditions established in this section.

(a) Except as established in paragraph (b) of this subsection, a horse may be scratched from a stakes race for any reason at any time until four (4) hours prior to post time for the race by obtaining approval from the stewards. Upon receiving a scratch from a stakes race, the racing secretary shall promptly notify the stewards and pari-mutuel manager, and shall cause public announcement of the scratch to be made.

(b) If a list of also-eligible horses has been drawn, scratches shall be filed at the regular scratch time as posted by the racing secretary. Scratch time may be extended by the stewards at their discretion if warranted. Thereafter, a horse shall not be scratched unless:

1. A valid physical reason exists; or
2. The scratch is related to adverse track conditions or change of racing surface.

(c) A horse shall not be scratched from a purse race unless:

1. The approval of the stewards has been obtained; and
2. Intention to scratch has been filed in writing with the racing secretary or the secretary's assistant at or before scratch time.

(2) A scratch of one (1) horse coupled in a mutual entry in a purse race shall be made at or before scratch time, unless permission is granted by the stewards to allow both horses to remain in the race until a later appointed scratch time.

(3) In a purse race, a horse that is physically disabled or sick shall be permitted to be scratched first. If horses representing more than eight (8) betting interests remain in after horses with physical excuses have been scratched, an owner or trainer may scratch horses without physical excuses at scratch time, down to a minimum of eight (8) betting interests. This privilege shall be determined by lot if an excessive number of owners or trainers wish to scratch their horses.

(4) A horse that has been scratched or excused from starting by the stewards because of a physical disability or sickness shall be placed on the commission's veterinarian list for six (6) calendar days beginning the day after the horse was scratched or excused.

(5) Each association shall keep records and statistics documenting the effect upon field sizes of the six (6) day veterinarian list requirement in subsection (4) of this section. Records and statistics kept pursuant to this section shall be retained by the licensed racing association for at least one (1) year.

Section 16. Official Publication Statistics. In determining eligibility, allowances and penalties, the reports, records, and statistics as published in the Daily Racing Form or similar publication as the commission considers appropriate to advise the public and the monthly chart books, or corresponding official publications of any foreign country, shall be considered official, but may be corrected until forty-five (45) minutes prior to post time of the race.

Section 17. Examination by Attending Veterinarian.

(1) Subject to the exception in subsection (4), a horse shall only be entered if:

(a) The horse has been examined by an attending veterinarian licensed by the veterinary regulatory body in the jurisdiction where the examination occurs no more than three (3) days prior to entry;

(b) The attending veterinarian certifies in writing that the horse is in serviceable, sound racing condition; and

(c) The written certification is provided to the Equine Medical Director or designee[~~racing secretary~~] no later than the time of entry.

(2) The examination required by paragraph (a) of subsection (1) of this section shall include watching the horse jog in hand.

(3) If the attending veterinarian who examines the horse prescribes a diagnostic test as part of the evaluation of the horse's soundness, the results of the test shall be provided to the commission's veterinarian no later than one (1) day before the horse is set to start.

(4) If a racing secretary contacts a trainer to fill a [an extra] race, the trainer may enter a horse prior to obtaining the examination and written certification required in this section, if the certification required in this section is provided to the Equine Medical Director or designee on the day that the horse is

entered [racing secretary:

- (a) On the same day that the horse is entered; and
- (b) Prior to the race in which the horse is entered.]

JONATHAN RABINOWITZ, Chair
KERRY HARVEY, Secretary

APPROVED BY AGENCY: October 29, 2020

FILED WITH LRC: October 29, 2020 at 8:55a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on January 21, 2021, 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 January 31, 2021. 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 administrative regulation establishes the requirements for entries, subscriptions, and declarations for all horse racing falling under the commission's jurisdiction. These rules provide an orderly means of determining which horses will be considered eligible to enter a race.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide specific requirements and methods for entries, subscriptions, and declarations for all horse racing falling under the commission's jurisdiction.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This administrative regulation prescribes the conditions related to entries, subscriptions, and declarations for all horse racing falling under the commission's jurisdiction.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth requirements and rules concerning entries, subscriptions, and declarations for all horse racing falling under the commission's jurisdiction, and it therefore assists in ensuring the integrity of racing by requiring a uniform application of the rules for all entries, subscriptions, and/or declarations.

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

(a) How the amendment will change this existing administrative regulation: Section 11 of 810 KAR 4:030 currently allows owners to enter into the also-eligible list for a race at the first part of the week, and to enter the body of a race in the latter part of the week. Since horses do not race more than once a week, this practice allows horse owners to investigate both races, and to then make their choice as to which race to run. This leaves an undetermined situation for the racing association. Such a practice can harm the association if the owner chooses to race on their also-eligible day. This is because the association then loses that horse on the day

when the horse was originally scheduled to run in the body of the race. The association may not have an also-eligible list from which to draw another horse. The proposed amendment to Section 11 bars a horse from racing on its also-eligible day when it is entered for a race on a future race date. This prohibition does not include instances where the horse is listed in the body of the race at a subsequent meet in Kentucky, or a race in another jurisdiction. Additionally, the proposed amendment changes the word 'succeeding' to 'future,' in hopes of using language that will generate less confusion. Due to the above issues, the proposed amendment also includes a change to Section 12(3), which would now state that preferences shall not be given to a horse if it is also entered for a race at a future race day. Section 15 of 810 KAR 4:030 also contains a proposed amendment. The current version of the regulation requires scratch time to be at a specific time when there is an also-eligible list. However, as amended, the stewards would be afforded discretion to extend that scratch time if needed. For instance, if it is raining and there is a possibility that horses will have to race off the turf, the stewards could extend scratch time so that all parties can make a decision as to whether to race their horses. Finally, Section 17 of the regulation, relating to the veterinarian's examination, has been amended as follows: two (2) obsolete references to the racing secretary have been replaced with references to the Equine Medical Director or his or her designee. Additionally, the regulation currently contains an exception for a situation in which a racing secretary contacts a trainer to fill an extra race. This reference has been broadened in the amended version of the regulation to allow for the exception anytime the secretary contacts a trainer to fill any race. Lastly, the reference to providing paperwork prior to the race has been removed from the amended version of the regulation, as it is redundant and confusing.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure: (1) that the also-eligible list is not used in a way that could harm racing associations and negatively impact the integrity of horse racing; (2) that the stewards are afforded necessary discretion to extend that scratch time, if warranted by the circumstances; and (3) that the regulation uses consistent, current language throughout.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.215(2) and 230.260(8) authorize the Commission to promulgate administrative regulations prescribing the conditions under which racing shall be conducted in Kentucky. This amendment addresses the conditions related to entries, subscriptions, and declarations for all horse racing falling under the commission's jurisdiction.

(d) How the amendment will assist in the effective administration of the statutes: This amendment addresses the conditions related to entries, subscriptions, and declarations for all horse racing falling under the commission's jurisdiction, and it therefore assists in ensuring the integrity of racing by requiring a uniform application of the rules for all entries, subscriptions, and/or declarations.

(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 eight 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, 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: Participants in horse racing, and especially owners and trainers, will be required to adhere to the requirements and rules set forth in this administrative regulation pertaining to entries, subscriptions, and declarations for all horse racing falling under the commission's jurisdiction.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: No significant costs are associated with complying with the proposed

amendment to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities: Participants in racing will benefit from clearly defined rules that enhance the integrity of racing.

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

(a) Initially: There is no initial administrative cost to implement the proposed amendment to this administrative regulation.

(b) On a continuing basis: There is no continuing cost to implement the proposed amendment to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No significant funding will be necessary to implement and enforce the proposed amendment to this administrative regulation. Any minimal costs will be funded from the budget of the Commission.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional fees are funding are necessary to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment to this administrative regulation does not establish any new fees or increase any current fees to participate.

(9) TIERING: Is tiering applied? Tiering was not applied because this administrative regulation will continue to apply to all similarly situated entities in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 230.215, 230.240, KRS 230.260, 230.290, 230.310, 230.320.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for state or local government for the first year.

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

(c) How much will it cost to administer this program for the first year? No funds will be required to administer this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No funds will be required to administer this regulation for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

PUBLIC PROTECTION CABINET Kentucky Horse Racing Commission (Amendment)

810 KAR 8:060. Post-race sampling and testing procedures.

RELATES TO: 230.215, 230.240, 230.260, 230.265(2), 230.290(2), 230.320(1)

STATUTORY AUTHORITY: KRS 230.215(2), 230.240(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2) authorizes the Kentucky Horse Racing Commission (the "commission") to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and pari-mutuel wagering thereon is conducted in Kentucky[the Commonwealth]. KRS 230.240(2) requires the commission to promulgate administrative regulations restricting or prohibiting the administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation establishes requirements and controls in post-race sampling and testing to ensure that prohibited substances are not used.

Section 1. Test Barn. In addition to the procedures established in 810 KAR 8:010, Section 10, the commission shall require the following procedures:

(1) A security guard employed by a licensed association shall regulate access to the test barn during and immediately following each race; and

(2) All individuals who wish to enter the test barn shall be:

(a) Currently licensed by the commission;

(b) Display their commission identification badge; and

(c) Have the permission of the commission veterinarian or his or her designee to be in the test barn.

Section 2. Race Classifications for Sampling.

(1) For races with purses of \$2,500 or less:

(a) The horse finishing first shall be sampled and a portion of the specimen shall be designated as a gold sample; and

(b) The chief state steward, presiding judge, or his or her designee, may select one or more other horses to be sampled and shall designate a portion of each specimen as a red sample or a gold sample in accordance with Section 4 of this administrative regulation.

(2) For races with purses that exceed \$2,500 but are less than ~~\$200,000~~[\$100,000]:

(a) The horse finishing first and at least one (1) other horse shall be sampled;

(b) The chief state steward, presiding judge, or his or her designee, shall designate a portion of each specimen as a red sample or a gold sample in accordance with Section 4 of this administrative regulation; and

(c) A portion of at least one (1) specimen from each race shall be designated as a gold sample.

(3) For races with purses of ~~\$200,000~~[\$100,000] or more:

(a) The horses finishing first, second, and third shall be sampled;

(b) The chief state steward, presiding judge, or his or her designee, may select one or more other horses to be sampled and shall designate a portion of each specimen as a red sample or a gold sample in accordance with Section 4 of this administrative regulation; and

(c) Portions of at least three (3) specimens shall be designated as gold samples.

Section 3. Selection of Horses and Designation of Samples.

(1) In selecting horses for sampling and designating portions of specimens as gold samples or red samples, the chief state steward, presiding judge, or his or her designee, shall consider all information available, including:

(a) The performance of a horse favored to win the race by the wagering patrons;

(b) The performance of horses considered to be long-shots to

win the race by the wagering patrons;

(c) The betting patterns of wagering patrons;

(d) A trainer's recent statistical performance in relation to his or her historical statistical performance; and

(e) Security intelligence.

(2) The chief state steward, presiding judge, or his or her designee shall notify the test barn promptly upon completion of a race as to which horse or horses shall be sampled.

(3) Prior to the close of business on the date of sampling, the chief state steward, presiding judge, or his or her designee shall notify the test barn in writing regarding which samples are designated as gold samples and which samples are designated as red samples.

Section 4. Sampling.

(1) A horse designated for sampling by the stewards or judges shall proceed immediately to the test barn following each race to have a specimen collected under the direction of the commission veterinarian.

(2) If an adequate specimen cannot be obtained from a horse designated for sampling within sixty (60) minutes after arrival at the testing barn, the commission veterinarian may require an individual employed by the commission to accompany the horse from the test barn to its stall and remain with the horse until an adequate specimen is obtained.

(3) All sampling shall be performed in accordance with 810 KAR 8:010, Section 11.

(4) Split samples shall be subject to the provisions and procedures established in 810 KAR 8:010, Section 12, and the chain of custody of any split sample shall be maintained in accordance with the procedures established in 810 KAR 8:010, Section 13.

Section 5. Shipment and Testing.

(1) All gold samples and red samples shall be labeled and sent to the commission laboratory for testing in accordance with the procedures established in 810 KAR 8:010, Section 11.

(2) A technician at the commission laboratory shall create a log of each sample received and enter the color code into the Laboratory Information Management System or other information management system approved by the commission.

(3) All gold samples shall be tested.

(4) Fifty (50) percent of all red samples shall be randomly selected by the Laboratory[Lab] Information Management System, or other information management system approved by the commission, and tested.

(5) All red samples that are not selected for testing shall be frozen or refrigerated and retained pursuant to a contract between the commission and the commission laboratory.

(6) If a sample tests positive for a prohibited substance by 810 KAR Chapter 8, all specimen or specimens collected from horses who competed in the same race shall be tested.

(7) All testing and reports shall be completed in accordance with 810 KAR 8:010 and 810 KAR 8:030.

JONATHAN RABINOWITZ, Chair

KERRY HARVEY, Secretary

APPROVED BY AGENCY: October 29, 2020

FILED WITH LRC: October 29, 2020 at 8:55 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on January 21, 2021, 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 January 31, 2021. 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 administrative regulation establishes the procedure by which posttrace samples are selected for testing. The regulation sets forth varying procedures to be followed depending upon the type of race that is being run.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to properly regulate the collection of samples from horses on racing dates at race meetings in the Commonwealth.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.240(2) states that the racing commission shall promulgate administrative regulations for effectively preventing the use of improper devices, and restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This administrative regulation is necessary to ensure that the commission has proper oversight of the use and administration of drugs or stimulants to horses participating in a race, in accordance with that statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures that samples are collected systematically and securely on racing days and in a manner that is consistent with the integrity of racing.

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

(a) How the amendment will change this existing administrative regulation: Currently, this regulation requires the commission to sample the first, second, and third finishers in all races with purses of \$100,000.00 or more. This amendment would instead require the commission to sample first, second, and third place finishers only in races with purses of \$200,000.00 or more. This amendment would still afford the stewards with discretion to send any horses to the test barn at any time.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary in order to bring the terms of 810 KAR 8:060 into line with the Kentucky horse racing industry's modern purse structures. The \$100,000.00 testing floor is an outdated number, which does not take into account modern purse structures. 810 KAR 8:060 was written when the average purse was considerably lower than it is now. When this regulation was initially promulgated, the \$100,000.00 floor encompassed only a few races per year that were outside of the stakes race provision. At this time, however, the Kentucky horse industry's purse structure is such that this \$100,000 floor includes maiden races, allowance races, and others that were not intended to be included.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 230.240(2) states that the racing commission shall promulgate administrative regulations for effectively preventing the use of improper devices, and restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. This amendment will allow the commission to maintain oversight of the use and administration of drugs or stimulants to horses participating in a race, in accordance with that statute, while bringing the terms of 810 KAR 8:060 into line with the Kentucky horse racing industry's modern purse structures.

(d) How the amendment will assist in the effective administration of the statutes: This amendment ensures that samples are collected systematically and securely on racing days

and in a manner that is consistent with the integrity of racing, while also accounting for the Kentucky horse racing industry's modern purse structures.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Horse Racing Commission is affected by this administrative regulation. In addition, Kentucky's licensed racing associations, and all individual participants in horse racing, are potentially affected by this administrative regulation's establishment of fundamental rules pertaining to the use of medication in horse racing. In the year 2017, the Commission licensed over 22,000 individuals to participate in horse racing. This number is consistent from year to year.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Participants in horse racing, and especially owners, trainers and veterinarians, will be required to adhere to the requirements and rules set forth in this administrative regulation pertaining to the collection of specimen samples on racing days at horse racing meetings in the Commonwealth.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: No new costs are anticipated to comply with the amendment to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities: Participants in horse racing will benefit from the implementation of a testing system that is in line with Kentucky horse racing industry's modern purse structures.

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

(a) Initially: There is no initial administrative cost to implement the proposed amendment to this administrative regulation.

(b) On a continuing basis: There is no continuing cost to implement the proposed amendment to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No significant funding will be necessary to implement and enforce the proposed amendment to this administrative regulation, and in fact, this proposed amendment will likely decrease current expenditures. Any minimal costs will be funded from the budget of the Commission.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional fees are funding are necessary to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment to this administrative regulation does not establish any new fees or increase any current fees to participate.

(9) TIERING: Is tiering applied? Explain why or why not. Tiering was not applied because this administrative regulation will continue to apply to all similarly situated entities in an equal manner.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 230.215, 230.240, 230.260, 230.265, 230.290, 230.320.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for

the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for state or local government for the first year.

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

(c) How much will it cost to administer this program for the first year? No additional funds will be required to administer the amendment to this regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? No additional funds will be required to administer the amendment to this regulation for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Public Health Protection and Safety (Amendment)

902 KAR 10:010. Public Restrooms.

RELATES TO: KRS 211.970, 211.990, 381.780 [244.480]

STATUTORY AUTHORITY: KRS 194A.050, 211.180, 318.160 [244.090, 244.990]

NECESSITY, FUNCTION AND CONFORMITY: KRS 194A.050(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 211.180(1)(c) requires[authorizes] the cabinet [for Human Resources] to regulate the sanitation of public restrooms. KRS 318.160 authorizes the cabinet to review all applications for construction, installation, or alteration when a sewage subsoil drainage system or other type of on-site sewage disposal system that does not have a surface discharge is used. This administrative regulation provides standards for public restrooms in order to protect the health of the public.

Section 1. Definitions. [~~The following definitions shall apply in the interpretation and enforcement of this administrative regulation:~~]

(1) "Cabinet" is defined by KRS 211.970(2).

(2) "On-site sewage disposal system", "on-site sewage system", or "on-site system" means a system installed on a parcel of land under the control or ownership of a person that accepts sewage for treatment and ultimate disposal under the surface of the ground, including:

(a) A conventional system consisting of a sewage pretreatment unit, distribution devices, and lateral piping within rock-filled trenches or beds;

(b) A modified system consisting of:

1. A conventional system enhanced by shallow trench or bed placement;

2. Artificial drainage systems;

3. Dosing;

4. Alternating lateral fields;

5. Fill soil over the lateral field; or

6. Other necessary modifications to the site, system, or wasteload to overcome site limitations;

(c) An alternative system consisting of:

1. A sewage pretreatment unit;
2. Necessary site modifications;
3. Wasteload modifications; and
4. A subsurface soil treatment and dispersal system using methods and technologies other than a conventional or modified system to overcome site limitations;

(d) A cluster system; and

(e) A holding tank that provides limited pretreatment and storage for off-site disposal where site limitations preclude immediate installation of a subsurface soil treatment and dispersal system or connection to a municipal sewer.

(3) "Person" is defined by KRS 211.970(6).

(4) [means the Cabinet for Human Resources and the local health department having jurisdiction and their duly designated representatives.

(2) "Public restroom[rest room]" means a facility that provides toilet and hand-washing facilities for the general public.[

(3) "Septic tank" means a watertight receptacle which receives the discharge of a building sanitary drainage system (or part thereof) and is designed and constructed so as to digest organic matter through a period of detention that allows the liquids to discharge into the soil outside the tank through a system of open joints or perforated piping, or a seepage pit].

Section 2. General Requirements for Public Restroom[Water Flushed Toilet] Facilities. If public restroom[water flushed toilet] facilities are provided for the accommodation of the public or patrons at public places:

(1) The floors shall be of smooth construction and relatively impervious to water.

(2) The walls and ceilings shall:

(a) Have a smooth washable surface;

(b) [and shall] Be painted or finished in light color; and

(c) [shall] Be maintained in good condition.

(3) All openings shall be effectively screened against flies and other insects.

(4) All doors shall be self-closing.

(5) The plumbing installations shall comply with 815 KAR Chapter 20[the state plumbing code].

(6) All wastes resulting from [flush] toilets, lavatories, or other fixtures shall be disposed of in a public sewer or, in the absence of a public sewer, by a method approved by the Energy and Environment Cabinet or Cabinet for Health and Family Services[Natural Resources and Environmental Protection Cabinet].

(7) An adequate supply of toilet tissue shall be provided at each restroom[toilet] facility at all times.

(8) The rooms shall be adequately lighted and ventilated.

(9) If drinking water is provided, it shall be from a source approved by the Energy and Environment[Natural Resources and Environmental Protection] Cabinet.

(10) If drinking fountains are provided, they shall be installed in accordance with 815 KAR Chapter 20 and[to the state plumbing code and shall be] maintained in a sanitary manner.

(11) The use of a[the] common drinking cup is prohibited.

(12) Hand-washing facilities, including running water, soap, and individual cloth or paper towels, or other method for drying hands approved by the cabinet, shall be provided.

(13) The use of a[the] common towel is prohibited.

(14) All trash or refuse shall be kept in nonabsorbent containers and removed from the premises as frequently as necessary to prevent an unsanitary condition from developing. A covered waste container shall be provided in each women's restroom[toilet] facility.

(15) The rooms, including all fixtures [therein], shall be kept clean, in good repair, and free from dust, dirt, insects, and other contaminating material.

Section 3. [Earth—Pit] Privies. (1) Outdoor toilets or privies[earth-pit privies] not connected to a public sewerage system or on-site system[septic tank] shall be prohibited within the boundaries of cities of the first or second class as provided by KRS 381.780.

(2) In other areas, if water under pressure is not available, [earth-pit] privies may be used for the accommodation of the public or patrons at a public place provided they comply with 902 KAR 10:081, 10:085, and the following requirements:

(a)[(4)] Construction of [pit] privies;

1.[-

(a)] The privy[pit] shall not be located within 100 feet of any source of water supply;

2. [and shall have a capacity of not less than fifty (50) cubic feet and shall be not less than four and one-half (1/2) feet or more than six (6) feet deep, measured from the original ground surface.

(b) The pit shall be lined with curbing of sound lumber, concrete, or other material approved by the cabinet and extend to the full depth of the pit.

(c) The floor and seat riser shall be constructed of impervious material or tongue and groove lumber, and in a manner to exclude insects and rodents;

3.[.] The seat riser shall be so constructed and bonded with the floor as to prevent seepage through the riser onto the floor and the seat opening shall be elevated at least twenty (20) inches above floor level; and

4.[-

(d)]The superstructure of the privy shall be constructed of substantial material fastened solidly to the floor.

(b)[(2)] Maintenance of [pit] privies;

1.[-(a)]The floor, seat, and other fixtures shall be kept in good repair and clean at all times;

2.[-(b)] An adequate supply of toilet tissue shall be provided; and

3.[-(c) If the pit is filled to within eighteen (18) inches of the floor, the pit shall be cleaned or a new pit shall be constructed. Old pits shall be filled and mounded with earth.

(d)] The privy shall be adequately ventilated.

(c) No person shall install a new or replace an existing on-site sewage disposal system if a publicly or privately owned treatment facility capable of treating the pollutants to be discharged is available pursuant to 902 KAR 10:085 Section 13(2)(a),(b) and 401 KAR 5:037 Section 2(5)(b).

STEVEN J. SLACK, MD, MBA, Commissioner

ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: October 23, 2020

FILED WITH LRC: November 2, 2020 at 8:32 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 25, 2021, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by January 15, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until January 31, 2021. 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 persons: Donna Little or Julie Brooks

(1) Provide a brief summary of:

(a) What this administrative regulation does: This

administrative regulation provides the standards for the sanitation and construction of public restrooms, including outdoor toilets or privies.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure public restrooms are provided in a safe and sanitary manner.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.180(1)(c) authorizes the cabinet to promulgate administrative regulations for the sanitation of public restrooms.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the sanitation of public restrooms as required by KRS 211.180(1)(c) by establishing the minimum standards for a public restroom and an outdoor toilet or privy.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation updates the authorizing statutes and defined terms, removes the provisions for an earth pit type privy, and adds the prohibition against installing an on-site sewage system if a publicly or privately owned sewage treatment works is available.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure all public restrooms, including outdoor toilets and privies, continue to operate in a safe and sanitary manner.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment provides for the sanitation of public restrooms as authorized by KRS 211.180; and provides for cabinet personnel to review construction plans as allowed by KRS 318.160.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist in ensuring all public restrooms, including outdoor toilets and privies, are designed and constructed in a safe and sanitary manner as authorized by KRS 211.180.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all public or private owned places of business offering restrooms to the general public, affects all other types of public restroom facilities, and affects all individuals utilizing public restrooms. This administrative regulation also affects all environmental management staff of the local health departments who conduct inspections of public restrooms or review construction plans.

(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: Business entities who offer a restroom to the general public will need to be aware of the design and construction provisions in this administrative regulation. Local health department staff will also need to be aware of the provisions for public restrooms when an inspection is necessary.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): The costs for complying with this administrative regulation cannot be determined. There would be a cost associated with any new construction that allows for a public restroom. There would also be a cost associated with any modification or renovation to a facility that currently provides a public restroom.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying with the provisions of this administrative regulation, all public and private entities offering a public restroom can assure patrons of a safe and sanitary facility.

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

(a) Initially: The total operating costs for the Environmental Management Branch is \$1,980,301. There is no anticipated increase in initial costs associated with this administrative regulation initially.

(b) On a continuing basis: There is no anticipated increase in costs on a continuing basis for this administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: There are no fees associated with this administrative regulation. An increase in funding is not necessary to implement the amendments to this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation equally affects all regulated entities.

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 all local health departments conducting inspections and the Environmental Management Branch in the Department for Public Health.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050, 211.180, and 318.160.

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. How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation does not generate revenue.

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

(c) How much will it cost to administer this program for the first year? The total costs for the Environmental Management Branch is \$1,980,301. There is no anticipated increase in costs associated with this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There is no anticipated increase in costs associated with this administrative regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Public Health Protection and Safety (Amendment)

902 KAR 10:110. Issuance of on-site sewage disposal system permits.

RELATES TO: KRS 211.357, 211.360, 211.370, 211.375, 211.350-211.380, 211.970, 211.976, 211.990(2)

STATUTORY AUTHORITY: KRS 211.350, 211.355, 194.050, 211.090(3), 211.180(1)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.350

provides that no person, firm, or corporation shall construct, install, alter or cause to be constructed, installed, or altered any on-site sewage disposal system subject to administrative regulation by the cabinet without having first obtained an on-site sewage disposal permit from the local health department. KRS 211.355 authorizes a local board of health to establish a schedule of fees reasonably related to the cost of administering programs including inspections incidental to construction, installation, and alteration of on-site sewage disposal systems, and inspections incidental to maintenance and operation of on-site sewage disposal systems. This administrative regulation establishes the ~~cabinet~~. The purpose of this administrative regulation is to set forth the requirements for issuance of permits.

Section 1. Definitions. [As used in this administrative regulation the following terms shall have the meanings set forth below:]

(1) "Alter" means to make a physical change in the original design, sizing, layout, components, location, or method of operation, either ~~[(i) individually or in any combination of changes, (j)]~~ of an existing on-site sewage disposal system, as a result of necessary repair or a change in wasteload volume or wasteload characteristics.

(2) "Approved" is defined by KRS 211.970(1).

(3) "Cabinet" is defined by KRS 211.970(2).

~~(4) [means the Cabinet for Human Resources and includes its authorized agents.~~

~~(3) "Certified inspector" means an individual certified under the provisions of a person employed by the cabinet or by a local health department who has met the requirements for certification contained in] KRS 211.360.~~

~~(5) [(4)] "Certified installer" means a specific individual person who has met the requirements for certification contained in KRS 211.357 and 902 KAR 10:140.~~

~~(6) [(5)] "Component" means any device used in the construction, installation or alteration of an on-site sewage disposal system which forms an integral part of that [disposal] system[,] and has been approved for that specific use by the cabinet.~~

~~(7) [is necessary to its proper operation and maintenance. It includes, but is not limited to:~~

~~(a) Sewage pretreatment units, holding tanks, grease traps, pump or dosing tanks, and necessary equipment and appurtenances;~~

~~(b) Distribution boxes, alternating valves, filters, and similar devices; and~~

~~(c) Piping, fittings, valves, and leaching chambers.~~

~~(6) [(5)] "Construct" or "install" means the physical assembly of various necessary components and materials into an on-site sewage disposal system and includes all necessary design, site layout, excavation, backfilling, and additional site fill work that may be required to produce a finished on-site system. [The term "install" shall be considered to have the same meaning.]~~

~~(8) [(7)] "Homeowner" means a specific individual person who actually occupies the single family residence where[that] a proposed new on-site sewage disposal system is intended to serve, or where[that] an existing system that is proposed to be altered serves, or who proposes to construct or have constructed a single family residence for [his] personal use and occupancy where[that] a proposed new on-site system is intended to serve. This term shall not include any person who is a builder or contractor who engages in a business of constructing or rehabilitating residential structures for sale or resale.~~

~~(9) [(8)] "On-site sewage disposal system", "on-site sewage system", or "[and] on-site system" means[mean] a [complete] system installed on a parcel of land, under the control or ownership of a[any] person, that[which] accepts sewage for treatment and ultimate disposal under the surface of the ground, including[. Examples of such systems are:]~~

~~(a) A conventional system consisting of a sewage pretreatment unit[unit(s)], distribution devices[box(es)], and lateral piping within rock-filled trenches or beds;~~

~~(b) A modified system consisting of:~~

~~1. A conventional system enhanced by shallow[shallower] trench or bed placement;~~

~~2.[.] Artificial drainage systems;~~

~~3.[.] Dosing;~~

~~4.[.] Alternating lateral fields;~~

~~5.[.] Fill soil over the lateral field[.]; or~~

~~6. Other necessary modifications to the site, system, or wasteload to overcome site limitations;~~

~~(c) An alternative system consisting of:~~

~~1. A sewage pretreatment unit;~~

~~2. [unit(s).] Necessary site modifications;~~

~~3.[.] Wasteload modifications[.]; and~~

~~4. A subsurface soil treatment and dispersal[absorption] system using [other] methods and technologies other than a conventional or modified system to overcome site limitations;~~

~~(d) A cluster system[systems which accept effluent from more than one (1) structure's or facility's sewage pretreatment unit(s) and transport the collected effluent through a sewer system to one (1) or more common subsurface soil absorption system(s) of conventional, modified or alternative design]; and~~

~~(e) A holding tank that[which] provides limited pretreatment and storage for off-site disposal where site limitations preclude immediate installation of a subsurface soil treatment and dispersal[absorption] system[.] or connection to a municipal sewer.~~

~~(10) [(9)] "Person" is defined by KRS 211.970(6) [means any individual, firm, association, organization, partnership, business trust, corporation, company or governmental unit].~~

Section 2. Issuance of Permits. (1) A certified installer or homeowner meeting the requirements of this administrative regulation shall complete and submit to the local health department certified inspector having jurisdiction:

(a) A DFS-307, On-site Sewage Disposal System Construction Application and Permit;

(b) The on-site sewage disposal permit fee of fifty (50) dollars; and

(c) The required fee as established by the local board of health in accordance with KRS 211.355.

(2) The on-site sewage disposal cluster system plan review shall be:

(a) Submitted to the Environmental Management Branch; and

(b) Accompanied by the \$600 permit fee payable by check or money order to the Kentucky State Treasurer.

(3) Except as otherwise provided by subsection (4) [(2)] of this section, permits to construct, install, or alter on-site sewage disposal systems shall be issued only to certified installers.

(4) [(2)] Permits to construct, install, or alter on-site sewage disposal systems may be issued to homeowners provided:

(a) Application is made for a permit as specified in 902 KAR 10:085, Section 2(1)(g), (h), and (i) [3(4)(d)] prior to construction of any portion of the proposed on-site sewage disposal system; [and]

(b) All work is performed in compliance with 902 KAR 10:081, 902 KAR 10:085, and this administrative regulation; [regulation(s); and]

(c) All work is personally performed by the homeowner, except that necessary excavation and backfilling work may be performed by a certified installer if notification of intent is made at the time of application for a permit, and the certified installer's name and certification number are included on the application; [and]

(d) If local electrical codes require electrically operated components of an on-site sewage disposal system to be connected to electrical service only by a certified or licensed professional electrician, and do not permit homeowner performed work, that work shall also be excepted from the requirements of paragraph (c) of this subsection; and

(e) No person shall be issued more than one (1) homeowner permit to construct or alter an on-site sewage disposal system in any five (5) year period, except in instances of necessary repair or alteration of the originally permitted on-site system.

Section 3. Incorporation by Reference. (1) DFS-307, "On-site Sewage Disposal System Construction Application and Permit", (10/20) is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Public

Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

STEVEN J. STACK, MD, MBA, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: October 23, 2020

FILED BY LRC: November 2, 2020 at 8:32 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held January 25, 2021, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by January 15, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until January 31, 2021. 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

Cabinet Contacts: Donna Little or Julie Brooks

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the issuance of a permit to install or alter an on-site sewage disposal system.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that an on-site sewage disposal system is installed and maintained in a safe and sanitary manner.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.350 requires that no person, firm, or corporation construct, install, alter or cause to be constructed, installed or altered any on-site sewage disposal system without obtaining an on-site sewage disposal permit from the local health department. KRS 211.355 authorizes a local board of health to establish a reasonable fee schedule related to the cost of administering programs.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure all on-site sewage disposal systems are installed or maintained in a safe and sanitary manner and are in full compliance with KRS 211.350.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation incorporates the application for a permit to construct or alter an on-site sewage disposal system; adds the fee required to be submitted with the permit application; adds the plan review process, including the fee required, for an on-site sewage disposal cluster plan review; and makes other changes necessary to comply with KRS Chapter 13A drafting rules.

(b) The necessity of the amendment to this administrative regulation: As part of the initiative to improve cabinet operations, 902 KAR 10:060, On-site sewage disposal application fee, will be repealed and the fee structure added to this administrative regulation.

(c) How the amendment conforms to the content of the

authorizing statutes: KRS 211.350(10) authorizes the cabinet to fix a schedule of fees for the functions performed by the cabinet related to the regulation of on-site sewage disposal systems. KRS 211.355 authorizes a local board of health acting as an agent of the cabinet for the issuance of permits for on-site sewage disposal systems to set a schedule of fees reasonably related to the cost of administering such programs. The fees established by both statutes shall be set to fully cover the cost of the services but shall not exceed the costs of the services performed. This amendment establishes a reasonable fee structure that does not exceed the costs to the cabinet and a local board of health for the issuance of permits for on-site sewage disposal systems and for the plan review for cluster systems.

(d) How the amendment will assist in the effective administration of the statutes: This amendment sets a reasonable fee structure and will help to ensure any on-site sewage disposal system, whether installed by a certified installer or approved homeowner, is designed, constructed, and maintained in a safe and sanitary manner.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The changes to this administrative regulation will impact those individuals certified to install on-site sewage disposal systems and homeowners meeting the requirements to install their on-site sewage disposal system. Local health department staff will also be impacted by this administrative regulation. There are approximately 6,300 on-site sewage disposal system permits issued by local health department staff each year and approximately five (5) cluster plan reviews completed by Department for Public Health staff each year.

(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: Certified installers or homeowners seeking to construct, install, or alter an on-site sewage disposal system will need to be aware of the permit application process, including the required fees for permit application and site inspection.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): The application permit fee for the certified installer or homeowner will cost the individual fifty (50) dollars; a twenty (20) dollar increase from the current fee amount. The fee for a cluster system plan review is not being changed at this time. The total fee for inspections conducted by local health department staff related to the construction, installation, and alteration of an on-site sewage disposal system or the maintenance and operation of an on-site sewage disposal system cannot be determined. This fee is set by the local board of health and is dependent on the type of system to be constructed, installed, altered, and the location of where the system will be installed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Certified installers and qualified homeowners will continue to be able to receive a permit for the construction, installation, or alteration of an on-site sewage disposal system.

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

(a) Initially: The total operating costs for the Environmental Management Branch is \$1,980,301. There is no anticipated increase in initial costs associated with this administrative regulation initially.

(b) On a continuing basis: There is no anticipated increase in costs on a continuing basis for this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds and revenue received from the permitting, inspection, and plan review fees are the source of funding for 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: An increase in the permit application fee is included in this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. The permit application fee is being raised from thirty (30) dollars to fifty (50) dollars in this administrative regulation, an increase of twenty (20) dollars.

(9) TIERING: Is tiering applied? Tiering is applied. While the application permit and plan review fees are applied equally to all applicants, the fee for local health department inspections will vary depending on the location of the on-site system. In addition, only homeowners who meet the requirements of this administrative regulation can be issued a permit to construct, install, or alter an on-site sewage disposal system.

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 all local health departments conducting inspections and the Environmental Management Branch in the Department for Public Health.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 211.350 and 211.355.

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 current permit application fee of thirty (30) dollars generates approximately \$189,000 in revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The increased permit application fee to fifty (50) dollars will generate approximately \$315,000 in revenue. This represents an increase of approximately \$126,000. This fee has not been updated since 2001.

(c) How much will it cost to administer this program for the first year? The total costs for the Environmental Management Branch is \$1,980,301. There is no anticipated increase in costs associated with this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There is no anticipated increase in ongoing costs associated with this administrative regulation.

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

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

CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Public Health Protection and Safety (Amendment)

902 KAR 10:140. On-site sewage disposal system installer certification program standards.

RELATES TO: KRS 211.015, 211.360, 211.375, 211.970[211.350-211.380], 211.990(2)

STATUTORY AUTHORITY: KRS Chapter 13B, 211.350[194.050, 211.090(3), 211.180(3)], 211.357[-EQ 96-862]

NECESSITY, FUNCTION AND CONFORMITY: KRS 211.350 authorizes[to 211.380 directs] the cabinet to regulate the

construction, installation, or alteration of on-site sewage disposal systems except for systems with a surface discharge.[-] KRS 211.357 authorizes[directs] the cabinet to establish a program of certification for installers of on-site sewage disposal systems. [~~The purpose of]~~ This administrative regulation establishes the[is to fulfill the requirement to establish a] certification program including competency testing, training, continuing education, and enforcement procedures relative to maintenance of an acceptable standard of competency for installers. [~~Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services.~~]

Section 1. Definitions. [As used in this administrative regulation the following terms shall have the meanings set for the below:](1) "Approved" is defined by KRS 211.970(1)[means that which has been considered acceptable to the cabinet].

(2) "Cabinet" is defined by KRS 211.015(1)(a)[means the Cabinet for Health Services and includes its authorized agents].

(3) "Certification level" means the level of technical skills and knowledge attained by an installer as categorized below:

(a) "Probationary level" means the certification entry level for an installer as specified in KRS 211.357(2) and Section 2(3) of this regulation.[221.357(2). Installers at this level may possess minimal technical knowledge and require additional training and frequent technical assistance in design and installation procedures; and]

(b) "Full level" means the certification level attained by an installer as specified in KRS 211.357(2) and Section 2(4) of this regulation:

(c) "Advanced level" means the certification level attained by an installer as specified in Section 2(5) of this regulation; and

(d) "Master level" means the certification level attained by an installer as specified in Section 2(6) of this regulation[installers at this level are expected to possess competency in design and installation of conventional and modified conventional on-site systems but may require additional training and occasional technical assistance for alternative systems or complex designs].

(4) "Certified inspector" means a person employed by the cabinet or by a local health department who has met the requirements for certification contained in KRS 211.360[211.357].

(5) "Certified installer" means a specific individual person who has met the requirements for certification contained in KRS 211.357 and the certification maintenance requirements contained in this regulation.

(6) "Competency" means an acceptable level of professional conduct, workmanship, and technical knowledge in the design and installation of on-site sewage disposal systems.

(7) "On-site sewage disposal system", "on-site sewage system", or "on-site system" means a complete system installed on a parcel of land, under the control or ownership of any person, that[which] accepts sewage for treatment and ultimate disposal under the surface of the ground, including[-The common terms "on-site sewage system" or "on-site system" also have the same meaning. This definition includes, but is not limited to, the following]:

(a) A conventional system consisting of a sewage pretreatment unit or units[unit(s)], distribution devices[box(es)], and lateral piping within rock-filled trenches or beds;

(b) A modified system consisting of a conventional system enhanced by shallower trench or bed placement, artificial drainage systems, dosing, alternating lateral fields, fill soil over the lateral field, or other necessary modifications to the site, system or wasteload to overcome site limitations;

(c) An alternative system consisting of a sewage pretreatment unit or units[unit(s)], necessary site modifications, wasteload modifications, and a subsurface soil treatment and dispersal[absorption] system using other methods and technologies than a conventional or modified system to overcome site limitations;

(d) A cluster system[systems which accept effluent from more than one (1) structure's or facility's sewage pretreatment unit(s) and transport the collected effluent through a sewer system to one (1) or more common subsurface soil absorption system(s) of

conventional, modified or alternative design]; and

(e) A holding tank ~~that~~[which] provides limited pretreatment and storage for off-site disposal where site limitations preclude immediate installation of a subsurface soil treatment and dispersal[absorption] system, or connection to a municipal sewer.

(8) "Person" is defined by KRS 211.970(6)[means any individual, firm, corporation, association, organization, partnership, business trust, company or governmental unit].

Section 2. Application for Certification. (1) No person shall offer services to construct, install, alter, or repair on-site sewage disposal systems without:

(a) Meeting the application requirements of the cabinet for certification; and

(b) Obtaining a valid certification card from the cabinet.

(2) Certification shall be:

(a) Nontransferable from one (1) person to another; and

(b) Valid statewide subject to the provisions of KRS 211.357 and this administrative regulation.

(3)(a) Persons seeking probationary certification shall:

1. Be of legal age to conduct business in Kentucky;

2. Have sufficient skills and knowledge of regulations and construction techniques to pass a minimum competency examination;

3. Submit a completed DFS-303, Application for Certification or Registration, incorporated by reference in 902 KAR 45:065, to the local health department;

4. Provide proof of liability insurance; and

5. Pay the test registration fee of twenty-five (25) dollars by check or money order made payable to the local health department.

(b) A passing score of at least seventy (70) percent must be achieved on the exam.

(c) Individuals failing to achieve a passing score may retake the exam by re-registering and submitting another registration fee.

(d) Individuals who pass the exam shall submit to the cabinet a forty-five (45) dollar certification fee by check or money order made payable to the Kentucky State Treasurer.

(4) Persons seeking full certification shall:

(a) Have continuously maintained probationary level status in good standing;

(b) Meet the requirements as specified in KRS 211.357(2);

(c) Submit the documentation required in subsection (3)(a)3 and 4 of this section; and

(d) Maintain requirements for certification as specified in Section 4 of this administrative regulation.

(5) Persons seeking advanced certification shall:

(a) Have continuously maintained full level status in good standing;

(b) Submit the documentation required in subsection (3)(a)3 and 4 of this section;

(c) Complete the necessary training workshops with passing scores on workshop tests to obtain advanced level certification as required by the cabinet; and

(d) Maintain requirements for certification as specified in Section 4 of this administrative regulation.

(6) Persons seeking master certification shall:

(a) Have continuously maintained advanced level status in good standing;

(b) Submit the documentation required in subsection (3)(a)3 and 4 of this section;

(c) 1. Installed a minimum of two (2) systems as specified in Section 3(4) of this administrative regulation; and

2. Submit written verification of passed inspection from a certified inspector employed by the local health department having jurisdiction; and

(d) Maintain requirements for certification as specified in Section 4 of this administrative regulation[Any person proposing to offer services to construct, install, alter or repair on-site sewage disposal systems shall first have met the application requirements of the cabinet for certification and have obtained a valid certificate from the cabinet. Applications shall be made on form DFS-233—Application for Certification to Install On-site Sewage Disposal

Systems provided by the cabinet and shall include necessary information about the applicant, and shall be accompanied by an applicable fee as established in KRS 211.357(3).

(2) For probationary certification applicant's qualifications shall be as follows:

(a) Applicant shall be a specific individual person of legal age to conduct business in Kentucky;

(b) Applicant shall have sufficient skills and knowledge of regulations and construction techniques to pass a minimum competency examination;

(c) Applicant shall possess or have ready access to use of necessary construction equipment including a backhoe, dump truck, hand tools, transit or level and leveling rod; and

(d) Applicant shall submit proof of liability insurance.

(3) Applicant's qualifications for full certification shall be as follows:

(a) As specified in subsection (2)(a) through (d) of this section; and

(b) As specified in KRS 211.357(2)

(4) Applicants meeting the qualifications listed above shall be issued the appropriate certificate by the cabinet.

(5) Certification shall be valid only for the specific individual person to which it was issued and is not transferable to another person. Certification shall remain in effect and be valid statewide subject to the provisions of this regulation and KRS 211.357].

Section 3. Certification Level Standards. Certification level standards shall be limited to on-site systems that utilize only the following:

(1) Probationary certification level is limited to residential, on-site systems utilizing:

(a) Gravity distribution;

(b) Rock-filled trenches or beds;

(c) Leaching chamber trenches or beds; or

(d) Evaporation-absorption lagoons.

(2) Full certification level is able to install residential, commercial, industrial, or public facility systems utilizing:

(a) Dosed systems;

(b) Fill and wait systems;

(c) Leaching chambers at grade; or

(d) Constructed wetlands; and

(e) Probationary certification level system listings.

(3) Advanced certification level is able to install residential, commercial, industrial, or public facility systems utilizing:

(a) Low pressure pipe systems;

(b) Mounds;

(c) Drip irrigation;

(d) Advanced treatment;

(e) Experimental technology; or

(f) Cluster systems; and

(g) Probationary and full certification level system listings.

(4) Master certification level is able to install residential, commercial, industrial, or public facility systems utilizing probationary, full, and advanced certification level system listings.

Section 4. Maintenance of Certification. (1) All persons holding valid certification under KRS 211.357 shall be required to:

(a) Attend training workshops offered by the cabinet to maintain certification and improve competency based on the level of certification attained;

(b) Maintain and submit proof of liability insurance annually to the local health department; and

(c) Annually pay the certification fee as required by Section 2(3)(d) of this administrative regulation to the Kentucky Department for Public Health.

(2) An installer whose certification has expired shall:

(a) Comply with subsection (1) of this section;

(b) Submit proof of completion of continuing education units; and

(c) Receive a renewal certification card prior to installing an on-site sewage system.

(3) For all certification levels, [Attendance at] a minimum of two (2) training workshops for a total of six (6) approved continuing

education units per year with passing scores on workshop tests shall meet certification maintenance requirements.

(4)(3) Attendance at workshops, seminars, or conferences not sponsored by the cabinet may be substituted on a one (1) for one (1) basis to meet certification maintenance requirements at the discretion of the cabinet. Requests for consideration of other training for substitution shall be based upon the following:

(a) Submission of a copy of the training agenda, speaker or presenter biographies, and course outlines; and

(b) Submission of proof of attendance and results of any testing or other performance measurement with verification by the training sponsor.

(5)(4) Upon receipt of a request for training substitution the cabinet shall compare that training for equivalency with similar training it provides. If equivalency is demonstrated, the cabinet shall accept that training for substitution as specified in subsection (4)(3) of this section.

(6)(5) Any person failing to meet certification maintenance requirements shall be subject to administration action under Section 7(6) of this regulation and KRS 211.357(4).

Section 5(4). Training. (1) The cabinet shall develop and implement a series of training workshops for certified installers in the areas of on-site sewage disposal system design, technology, application and function.

(2) Training workshops shall be conducted throughout the state at frequencies, times, and locations necessary to provide all certified installers a reasonable opportunity to attend a number of workshops sufficient to maintain certification.

(3) A schedule of training workshops, including dates, times, location, and topics, ~~and registration forms~~ shall be prepared and made available to all certified installers to notify them of training opportunities and allow for scheduling attendance.

(4) A series of training courses shall be developed including instructor and student manuals, and other audiovisual and written materials.

(5) The cabinet may charge a reasonable fee at each training workshop to support program costs.

(6) The cabinet shall establish, through grants or contracts, a training staff composed of local health department fully certified inspectors to conduct training workshops on a regional basis. These local instructors shall serve as supplemental staff to the cabinet and act under the direct supervision of the cabinet.

(7) Training workshops for staff and supplemental staff instructors shall be conducted to assure uniformity of training for certified installers.

(8) The cabinet may contract with other governmental agencies, private consultants, or professional organizations for specialized instructor services.

Section 6(5). Materials and Equipment. (1) Each training course shall be developed into a training materials packet consisting of the following:

- (a) Course outline.
- (b) Instructor script.
- (c) Trainee guide.
- (d) Audiovisual materials.
- (e) Trainee worksheets and reference sheets.
- (f) Test.
- (g) Instructor comment sheet.
- (h) Trainee comment sheet.

(2) A complete training materials packet, in hardcopy or digital format ~~assembled in a loose-leaf, three (3)-ring binder,~~ shall be provided to each instructor for each course.

(3) A training material packet, excluding subsection (1)(b), (d) and (g) of this section, shall be provided to each trainee for each course.

(4) ~~A loose-leaf, three (3)-ring binder shall be provided to each trainee at the first workshop attended. This binder shall be used by the trainee to assemble a reference manual for the first course and all subsequent courses attended.~~

(5) Sufficient stocks of instructor and trainee material packets shall be maintained for each course to meet demand.

(5)(6) Audiovisual equipment ~~including an overhead projector, slide projector, projection screen, videocassette player, and television monitor~~ shall be available to each instructor.

Section 7(6). Enforcement. (1) Failure of any certified installer to comply with the requirements of KRS 211.350, 211.357(4) and (5), 902 KAR 10:081, 902 KAR 10:085, or this administrative regulation shall result in administrative action being taken.

(2) A minimum six (6) months probationary period shall be assigned to any certified installer who:

(a) Fails final inspection on any two (2) consecutive systems ~~that~~which require follow-up inspections before approval is granted;

(b) Backfills any system before final inspection is conducted and approval to backfill is given;

(c) Fails final inspection on any system ~~that~~which results in reconstruction of the system before approval can be given;

(d) Fails to place, cause to be placed, or fails to supervise placement of any required additional fill soil over an installed system;

(e) Fails to call for final inspection of any system;

(f) Fails to be present on the site anytime work is being performed on the system under construction;

(g) Fails to provide name, certification number, and notification of intent on application of permit when performing excavation and backfilling work on permitted homeowner installations; or

(h) Performs work on any system outside of the designated certification level.

(3) Probation may be assigned to a certified installer by the cabinet or by the certified inspector having local jurisdiction. Terms of the probationary period shall stipulate any restrictions, requirements, or additional training deemed necessary to correct performance.

(4) For other violations, the provisions of KRS 211.357(4) and (5) relating to suspension or revocation of certification shall apply. ~~[In addition, if necessary to correct damaged or abandoned systems or sites, surrender of business bond shall be required.]~~

(5) In all instances of administrative action being taken for probation, suspension or revocation, a certified installer shall have the right to request an administrative conference~~hearing~~. The request shall be submitted in writing on form DFS-212 - Request for Conference, incorporated by reference in 902 KAR 1:400~~[Hearing]~~ to the local health department having jurisdiction or to the cabinet. All administrative conferences~~hearings~~ shall be conducted pursuant to~~[in accordance with]~~ 902 KAR 1:400.

(6) If immediate legal action is necessary to prevent the creation or continuance of a health hazard, damage to the environment, or compel compliance with KRS 211.350(5), (7), (8), and (9) ~~[(2) and (3)]~~, 211.357(4) and (5) or regulations pursuant to those statutes, the cabinet or local health department concerned may maintain, in its own name, injunctive action against any person engaged in the construction, installation, or alteration of an on-site sewage disposal system.

(7) The cabinet shall be notified within two (2) business days~~[in writing]~~ of any administrative action taken by a local health department against any certified installer, so that other local health departments can be alerted to that installer's status.

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

APPROVED BY AGENCY: October 23, 2020

FILED WITH LRC: November 2, 2020 at 8:32 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 25, 2021, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by January 15, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public

hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until January 31, 2021. 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

Cabinet Contacts: Donna Little or Julie Brooks

Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the certification process and standards for installers of on-site sewage disposal systems.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure persons seeking to install on-site sewage disposal systems meet the minimum competencies for certification.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.357 authorizes the cabinet to establish a program to certify persons as installers of on-site sewage disposal systems.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures all installers of on-site sewage disposal systems are properly trained and certified based on their level of experience.

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

(a) The amendment will change this existing administrative regulation: The amendment to this administrative regulation updates defined terms, establishes advanced level and master level certifications, updates the application for certification process, adds the application fee required for certification, and adds installer certification level standards.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to ensure individuals who install on-site sewage systems are properly trained. The addition of advanced and master level certifications and installer certification levels will ensure more advanced systems are properly installed.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.357 authorizes the cabinet to promulgate administrative regulations to establish a certification fee that does not exceed the costs to the cabinet.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will help to ensure all certified installers of on-site sewage disposal systems are properly trained and certified based on their level of experience.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently there are 1,540 certified septic system installers. On average the department certifies twenty-five (25) new installers on a yearly basis.

(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: Certified installers will have to be aware of the continuing education requirements to maintain certification, and will have to be aware of the systems they are able to install based on certification level. Individuals seeking a higher level certification will need to be aware of the requirements to reach the

higher certification.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): Individuals seeking a probationary certification will be required to pay a twenty-five (25) dollar fee to register to take the initial certification test. There is a yearly registration fee of forty-five (45) dollars for all installers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying with this administrative regulation, certified installers will receive training and be able to maintain their current certification. As an installer gains more experience they will be able to move up to a higher level of certification which will allow them to complete additional installations.

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

(a) Initially: The total operating costs for the Environmental Management Branch is \$1,980,301. There is no anticipated increase in costs associated with this administrative regulation initially.

(b) On a continuing basis: There is no anticipated increase in costs on a continuing basis for this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds and revenue received from the permitting fees are the source of funding for 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: An increase in the annual registration fee is included in this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. An applicant for a probationary certificate will pay a twenty-five (25) dollar test registration fee. On average there are twenty-five (25) new applicants on a yearly basis. An installer pays an annual registration fee. That fee was previously twenty-five (25) dollars. This administrative regulation increases the annual registration fee to forty-five (45) dollars.

(9) TIERING: Is tiering applied? Tiering is not applied. While this administrative regulation does provide varying certification levels based on skills and experience, the permit application process, required fee, and continuing education requirements are the same for all certification levels.

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 local health departments and the Environmental Management Branch within the Department for Public Health.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 211.350 and 211.357.

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 increase in the annual registration fee will generate an average revenue of \$69,300 in the first year. This amount is calculated by multiplying the current number of certified installers (1,540) by the proposed annual registration fee of forty-five (45) dollars: $1,540 \times \$45 = \$69,300$

(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 increase in the annual registration fee will generate an

average revenue of \$70,425 in subsequent years. This amount is calculated by multiplying the anticipated increase in the number of certified installers (1,540 + 25) by the proposed annual registration fee of forty-five (45) dollars: 1,565 X \$45 = \$70,425.

(c) How much will it cost to administer this program for the first year? The total operating costs for the Environmental Management Branch is \$1,980,301. There is no anticipated increase in costs associated with this administrative regulation initially.

(d) How much will it cost to administer this program for subsequent years? There is no anticipated increase in costs on a continuing basis for this administrative regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amendment)

902 KAR 10:150. Domestic septage disposal site approval procedures.

RELATES TO: KRS 211.360, 211.970, 211.974, 211.976, 211.981[211.982]

STATUTORY AUTHORITY: KRS 194A.050(1)[Chapter 13B,] 211.980[, 211.090, EO-96-862]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 211.980 authorizes the secretary[KRS 211.970 to 211.982 direct the Cabinet for Health Services] to promulgate administrative regulations relating to approval of domestic septage treatment, land application, and surface disposal sites. This administrative regulation establishes the approval process for domestic septage disposal sites[sets forth the procedures for complying with KRS 211.970 to 211.982. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services].

Section 1. Definitions. [In addition to the definitions given in KRS 211.970, as used in this administrative regulation, the following terms shall have the meanings set forth below:]

(1) "Cabinet" is defined by KRS 211.970(2).

(2) "Certified Inspector" means a specific individual who has met the requirements for certification contained in KRS 211.360.

(3) "Deep incorporation" means land application by subsurface injection, trench disposal, or a furrow-placement-cover operation.

(4)[(2)] "Domestic septage" means liquid or solid material removed from a septic tank, holding tank[cesspool], portable toilet, Type III marine sanitation device, or similar treatment works that receives only domestic sewage. Domestic septage shall not include:

(a) Liquid or solid material removed from a septic tank that contains commercial wastewater or industrial wastewater processes;

(b) [Cesspool];

(c) Similar treatment works that receives commercial or industrial wastewater processes or individual wastewater processes; or

(c)[(d)] Grease removed from a grease trap at a restaurant or similar grease producing business.

(5)[(3)] "Grease" is defined by[pursuant to] KRS 211.970(3) [and shall not apply to mineral-based oils or greases].

(6)[(4)] "Land application" means:

(a) The spraying or spreading, while the vehicle is in motion, of domestic septage or domestic septage mixed with grease at a ratio of three (3) parts domestic septage to one (1) part grease onto the land surface;

(b) The injection of domestic septage below the land surface; or
(c) The incorporation of domestic septage into the soil.

(7)[(5)] "Operator" means a person operating or owning a domestic septage disposal, treatment, or recycling site, including their authorized agents.

(8)[(6)] "Restrictive horizon" means a soil horizon that is relatively impervious to the downward movement of water, grease, domestic septage, or mixture because of its cemented, compacted or structural condition.

(9) "Shallow incorporation" means land application by surface spreading followed by plowing, disking, or harrowing.

(10) "Surface disposal site" means an area of land that is used for domestic septage disposal.

(11) "Tank" is defined by KRS 211.970(12).

(12)[(7)] "Water table" means the zone of soil saturation by groundwater.

Section 2. Application for Site Evaluation. (1)(a) Form DFS-345, ["Application for[and] Site Evaluation and Permit to Operate a Disposal Site, (12/18), incorporated by reference in 902 KAR 10:160" (6/94)], shall be submitted by the owner or operator[applicant] to the local health department for[on] any site that is to be used as a domestic septage disposal site.

(b)[Form DFS-345, "Application and Site Evaluation", is incorporated by reference and may be viewed or obtained at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.] A farm that properly disposes of[receives] less than 2,000 gallons of its own domestic septage per year shall not be required to be permitted.[however] The farm shall be registered with the local health department.

(2) The disposal area where domestic septage is to be applied shall meet the requirements in Section 4 of this administrative regulation.

(3)[(2)] The following documents shall accompany the application:

(a) A plat or recording in the local county clerk's office, an original and current 7.5 minute U. S. Geological Survey Quadrangle topographical map with proposed site boundaries clearly marked, or dimensioned site plan showing:

1. Number of acres and site boundaries;
2. Structures and other facilities;
3. Proposed disposal area;

4. Setback distances for features on the site and adjacent to the site as listed in Section 4, Table 8, of this administrative regulation;

5. North and prevailing wind direction; and

6. Access roads and other features outside of the boundaries of the site that may have an impact on site approval.

(b) Proposed operations plan including:

1. Methods and equipment for application, treatment, recycling, or storage;
2. Land usage and the nitrogen requirement for the crop or vegetation;
3. Application rate;
4. Monitoring program for vector and pathogen reduction;
5. State and federal endangered species impact statement, if applicable; and
6. Other information deemed necessary by the cabinet.

Section 3. Site Evaluation Fee. (1) An evaluation fee shall be required for the cost of conducting a site evaluation by the local health department.

(2) In accordance with KRS 211.355, the site evaluation fee shall be established by the local board of health having jurisdiction.

(a) Fifty (50) dollars per proposed disposal site that contains five (5) acres or less;

(b) \$100 per sites greater than five (5) acres but less than twenty-five (25) acres;

(c) \$150 per sites greater than twenty-five (25) acres but less than fifty (50) acres;

(d) \$200 per sites greater than fifty (50) acres but less than 100 acres; and

(e) \$300 per sites greater than 100 acres;

(2) Fee shall be made payable to the local health department.]

Section 4. Site Approval Procedures. (1) A certified inspector shall evaluate each proposed site based on the factors listed in Tables 1 through 8 of this section. An official site evaluation form shall be completed classifying each factor using the following rating method:

(a) An "A" rating means that the site is acceptable for that site factor.

(b) An "M" rating means the site factor is acceptable with modification or restriction to the site or disposal method.

1. M₁ - Upslope surface water diversion required.

2. M₂ - Shallow placement of domestic septage shall maintain a minimum separation distance of eighteen (18) inches between the domestic septage and a water table or bedrock. Lined wetland cells, storage, or treatment facilities may be excluded from this requirement;

3. M₃ - Shallow placement of domestic septage shall be required to maintain a minimum separation distance of eighteen (18) inches between the domestic septage and a restrictive horizon.

4. M₄ - Acceptable if a curtain drain is installed to lower the water table to a level of eighteen (18) inches below the domestic septage application.

(c) A "U" rating means the site factor is not acceptable. Reclamation site areas with "U" ratings may be acceptable for disposal sites if the disposal activity will not contaminate the groundwater or create a public health nuisance.

(2) Topography.

TABLE 1 - SITE TOPOGRAPHY			
Disposal Method	Slope 0 to 12%	Slopes >12% to 25%	Slopes >25% or complex/nonuniform
Surface Application	A	U	U
Shallow Incorporation	A	U	U
Deep Incorporation	A	M	U

(3) Landscape position.

TABLE 2 - LANDSCAPE POSITION			
Disposal Method	Flat Or Convex: Ridgetop; Natural Terraces; Shoulder Slope; Sideslope; Footslopes; Terraces	Concave: Shoulder Slope; Sideslope	Concave: Ridgetops; Terraces; Footslopes; Toeslopes; Sinkholes; Karst Depressions; Floodplains
Surface Application	A	M ₁	U
Shallow Incorporation	A	M ₁	U
Deep Incorporation	A	M ₁	U

(4) Soil texture. Soil texture shall be classified as follows:

(a) Soil Group I. Sandy texture soils containing more than the seventy (70) percent sand-sized particles including the sand and loamy sand soil textural classes;

(b) Soil Group II. Coarse loamy texture soils containing more than thirty (30) percent clay-sized particles including sandy loam and loam soil texture classes;

(c) Soil Group III. Fine loamy soils containing less than forty (40) percent clay-sized particles and not more than thirty (30) percent sand-sized particles including sandy clay loam, silt loam, clay loam, and silty clay loam textural classes; and

(d) Soil Group IV. Clay texture soils containing forty (40) percent

or more clay-sized particles including sandy clay, silty clay, and clay.

TABLE 3 - SOIL TEXTURAL GROUP

Disposal Method	Soil Textural Group I	Soil Textural Group II & III [ii & iii]	Soil Textural Group IV [iv]
Surface Application	U	A	A
Shallow Incorporation	U	A	A
Deep Incorporation	U	A	A

(5) Depth to a restrictive horizon.

TABLE 4 - DEPTH TO RESTRICTIVE HORIZON				
Disposal Method	Restrictive Horizon < 18"	Restrictive Horizon From 18" To 24"	Restrictive Horizon From 24" To 42"	Restrictive Horizon > 42"
Surface Application	U	A	A	A
Shallow Incorporation	U	M ₃	M ₃	A
Deep Incorporation	U	U	M ₃	A

(6) Depth to a water table.

TABLE 5 - DEPTH TO WATER TABLE				
Disposal Method	Water Table Depth < 18"	Water Table Depth From 18" To 24"	Water Table Depth From 24" To 42"	Water Table Depth > 42"
Surface Application	M _{2,4}	A	A	A
Shallow Incorporation	M _{2,4}	M _{2,4}	M _{2,4}	M _{2,4}
Deep Incorporation	M _{2,4}	M _{2,4}	M _{2,4}	M _{2,4}

(7) Soil depth.

TABLE 6 - SOIL DEPTH				
Disposal Method	Soil Depth <18"	Soil Depth 18" To 24"	Soil Depth 24" To 42"	Soil Depth > 42"
Surface Application	U	A	A	A
Shallow Incorporation	U	M ₂	M ₂	M ₂
Deep Incorporation	U	U	M ₂	M ₂

(8) Available space. The disposal site area shall be a minimum of one (1) acre (43,560 sq. ft.) after application of the setback distance requirements.

TABLE 7 - AVAILABLE SPACE		
Disposal Method	One Year Disposal Capacity	Less Than One Year Disposal Capacity
Surface Application	A	U
Shallow Incorporation	A	U
Deep Incorporation	A	U

TABLE 8 - MINIMUM SETBACK DISTANCES FOR DOMESTIC SEPTAGE DISPOSAL SITES

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Site Features	Surface Application; Experimental Disposal Methods	Shallow Incorporation	Deep Incorporation
Potable Water Supplies And Wells	500 Feet	300 Feet	300 Feet
Lakes, Ponds, Streams, Intermittent Water Ways Downslope	200 Feet	100 Feet	100 Feet
Sinkholes, Karst, Depressions	200 Feet	200 Feet	200 Feet
Dwellings, Business, Beaches, Public Gatherings	600 Feet	500 Feet	300 Feet
Property Line Or Easements	100 Feet	50 Feet	50 Feet
Public Roads	200 Feet	200 Feet	100 Feet

(9) Backhoe pits or a soil probe truck shall be used to determine soil characteristics and as necessary, soil samples shall be randomly spaced and taken to a depth of forty-two (42) inches unless limited by site conditions. The owner or operator[applicant] shall provide the backhoe or soil probe truck.

Section 5. Appeal Procedures. (1) An administrative conference[A hearing] shall be provided, pursuant to[in accordance with] 902 KAR 1:400, at the request of the owner or operator[applicant] if a site has been disapproved.

(2) The request for an administrative conference[a hearing] shall be made in writing on Form DFS-212, Request for Conference, incorporated by reference in 902 KAR 1:400[Request for Hearing] (1/91), to the cabinet within ten (10) days after notification by the cabinet of an enforcement proceeding. Form DFS-212, "Request for Hearing", is incorporated by reference and may be viewed or obtained at the Office of the Commissioner for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

~~(3) All administrative hearings shall be conducted in accordance with 902 KAR 1:400. Service of process and proof of service shall comply with KRS 211.220.~~

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

APPROVED BY AGENCY: October 23, 2020

FILED WITH LRC: November 2, 2020 at 8:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 25, 2021, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by January 15, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative

regulation until January 31, 2021. 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 persons: Donna Little or Julie Brooks

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the approval process for domestic septage disposal sites.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure public health and environmental protection when a site is to be used for disposal of domestic septage.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.980 authorizes the secretary to promulgate administrative regulations for the approval of disposal and treatment sites and methods, inspection and administrative enforcement procedures, including the suspension or revocation of licensing, injunctive action, and other matters deemed necessary to protect public health and the environment.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures all domestic septage disposal sites are designed and installed in a manner that will protect public health and the environment as authorized by KRS 211.980.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation adds defined terms for clarification; updates the application process; clarifies that a farm that disposes of less than 2,000 gallons of its own domestic septage each year shall be registered with the local health department (LHD) but does not need to be permitted by the LHD; and revises the inspection fee schedule.

(b) The necessity of the amendment to this administrative regulation: House bill 327, enacted during the 2018 legislative session of the General Assembly, amended KRS 211.976 to allow the fee structure to be established in administrative regulation. This amendment is necessary to revise the fee structure for site evaluation to cover the costs to the cabinet.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment ensures a consistent application process for the owner or operator of a domestic septage disposal site, and establishes a fee structure does not exceed the costs to the cabinet,

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists owners and operators of a domestic septage site by providing a uniform application process, it allows a farm to dispose of its own generated domestic septage without being permitted by a LHD, and assists LHD inspectors in applying a uniform standard for site evaluation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The activities in this administrative regulation are only conducted one (1) time before a site is permitted. There are less than five (5) applications per year. This inspection process is conducted by the local health department environmental management staff.

(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: Any person seeking approval for a domestic septage disposal site would need to be aware of the application process and secure the necessary documentation for approval. Local health department staff will need to be aware of the change to this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): The exact costs associated with the application process cannot be determined. KRS 211.355 gives each local board of health the authority to establish the site evaluation fee to cover the costs of inspections incidental to the installation, construction and alteration of on-site sewage disposal systems. There may be costs associated with the other components required for approval and these costs would be outside the purview of the local board of health.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All domestic septage disposal sites will operate in a manner designed to protect public health and the environment.

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

(a) Initially: The total costs of all environmental management programs is \$1,980,301 on an annual basis. There will be no increased costs to implement this administrative regulation.

(b) On a continuing basis: There will be no increased ongoing costs to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds and revenue received from the inspection fee are the sources of funding for 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: An increase in funding is not needed to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. The fee for a site evaluation is determined by the local board of health having jurisdiction. Due to the varied topography of the types of sites evaluated it is difficult to set a specific fee amount. The current fee structure based of acreage does not adequately cover the costs associated with the site evaluation process.

(9) TIERING: Is tiering applied? Tiering is applied. An inspection and evaluation for a small site will take less time and costs less than the inspection and evaluation of a larger site.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the local health departments and the Environmental Management Branch within the Department for Public Health.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 and 211.980.

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 more than \$2,000 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 generate no more than \$2,000 in subsequent years.

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

year? The total costs of all Environmental Management Branch programs is \$1,980,301. There is no anticipated increase in costs.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Public Health Protection and Safety

(Amendment)

902 KAR 10:160. Domestic septage disposal site operation.

RELATES TO: KRS 211.220, 211.360, 211.970, 211.972, 211.974, 211.976, 211.981~~[211.982]~~

STATUTORY AUTHORITY: KRS 194A.050(1)~~[Chapter 13B]~~, 211.980, [211.090, EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 211.980 authorizes the secretary~~[KRS 211.970 to 211.982 direct the Cabinet for Health Services]~~ to promulgate administrative regulations relating to conduct of business; ~~[approval of domestic septage treatment and disposal methods;]~~ approval of domestic septage treatment, land application, and surface disposal sites; inspection and administrative enforcement procedures; and any other matters deemed necessary to protect public health and the environment. This administrative regulation establishes the requirements for issuing a permit to operate a domestic septage storage or disposal site, [sets forth] the procedures for operating a domestic septage storage or disposal site, and the inspection process of treatment or disposal sites~~[complying with KRS 211.970 to 211.982, Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services].~~

Section 1. Definitions. ~~[In addition to the definitions given in KRS 211.970, as used in this administrative regulation, the following terms shall have the meanings set forth below:]~~

(1) "Cabinet" is defined by KRS 211.970(2).

(2) "Certified inspector" means a specific individual who has met the requirements for certification contained in KRS 211.360.

(3)~~[(2)]~~ "Deep incorporation" means land application by subsurface injection, trench disposal, or a furrow-placement-cover operation.

(4)~~[(3)]~~ "Domestic septage" means liquid or solid material removed from a septic tank, holding tank~~[cesspool]~~, portable toilet, Type III marine sanitation device, or similar treatment works that receives only domestic sewage. Domestic septage shall not include:

(a) Liquid or solid material removed from a septic tank that contains commercial wastewater or industrial wastewater processes;

(b) [Cesspool];

(c)~~[(4)]~~ Similar treatment works that receives commercial or industrial wastewater processes ~~[or individual wastewater processes]; or~~

(c)~~[(4)]~~ Grease removed from a grease trap at a restaurant or similar grease producing business.

(5)~~[(4)]~~ "Grease" is defined by~~[pursuant to]~~ KRS 211.970(3) ~~[and shall not apply to mineral-based oils or greases].~~

(6)~~[(5)]~~ "Land application" means;

(a) The spraying or spreading, while the vehicle is in motion, of domestic septage mixed with grease at a ratio of three (3) parts domestic septage to one (1) part grease onto the land surface;

(b) The injection of domestic septage below the land surface; or

(c) The incorporation of domestic septage into the soil.

~~(7)(6)]~~ "Operator" means a person owning, operating, or controlling a septic tank domestic septage servicing business or a person operating or owning a domestic septage disposal, treatment, or recycling site, including their employees or agents.

~~(8) "pH" means the logarithm of the reciprocal of the hydrogen ion concentration.~~

~~(9) "Reclamation" means the approved reclaiming of strip mine and construction sites for the disposal of domestic septage.~~

~~(10)(7)] "Shallow incorporation" means land application by surface spreading followed by plowing, disking, or harrowing.~~

~~(11) "Surface disposal site" means an area of land that is used for domestic septage disposal.~~

Section 2. Application for Permit to Operate. (1)(a) No person shall construct or operate a site for domestic septage disposal or domestic septage mixed with grease at a ratio of three (3) parts domestic septage to one (1) part grease without having first obtained a permit from the cabinet.

~~(b) [Nothing in this administrative regulation shall require] A farm owner shall not be required to be permitted as a disposal site if that farm properly disposes of/receives less than 2,000 gallons of its own domestic septage per year. [However,] The farm shall be registered with the local health department and the disposal of its own domestic septage on the farm shall not contaminate the groundwater or surface water or create a public health nuisance.~~

~~(2) Form DFS-200, Application for Permit or License, incorporated by reference in 902 KAR 45:065, and form DFS-345, Application for Site Evaluation and Permit to Operate a Disposal Site, (12/18), "Application for Permit to Operate" (8/88), shall be submitted to the local health department for the initial application. [Form DFS-233 (10/87) "Application for Permit" shall be submitted to the local health department annually for permit renewal. Form DFS-234 (12/92) "Permit to Operate" shall be posted in a conspicuous place at the disposal site. Forms DFS-200, "Application for Permit to Operate"; DFS-233, "Application for Permit"; and DFS-234 (12/92); "Permit to Operate" are incorporated by reference and may be viewed or obtained at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.]~~

~~(3) The disposal area where domestic septage is to be applied shall meet the requirements of 902 KAR 10:150.~~

~~(4) The following documents shall be submitted with/accompany the initial application or any time changes to the operation or process occur:~~

~~(a) A plat or recording in the local county clerk's office, an original and current 7.5 minute U.S. Geological Survey Quadrangle topographical map with proposed site boundaries clearly marked, or dimensioned site plan showing:~~

- ~~1. Number of acres and site boundaries;~~
- ~~2. Structures and other facilities;~~
- ~~3. Approved disposal area;~~
- ~~4. Setback distances of features on and adjacent to the site;~~
- ~~5. North and prevailing wind direction; and~~
- ~~6. Access roads and other features outside of the boundaries of the site.~~

~~(b) Proposed operations plan including:~~

- ~~1. Methods and equipment for application or storage;~~
- ~~2. Land usage and the nitrogen requirement for the crop or vegetation;~~
- ~~3. Application rate; and~~
- ~~4. Pathogen reduction and vector control plan; and]~~

~~(5)(a) A[5-] certification statement shall be submitted to the local health department certified inspector with the initial permit application and annually thereafter.~~

~~(b) This statement shall read[stating]: "I certify, under penalty of law, that pathogen reduction and the vector attraction reduction requirements have been met, and no changes to the operation or process, as submitted in the original application, have occurred as per 902 KAR 10:150. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the requirements have been met."~~

~~(6)(4)] A permit to operate shall be issued after the owner or operator [applicant] meets the requirements of this administrative regulation and 902 KAR 10:150.~~

~~(7)(5)] The permit shall expire March 1 of each year.~~

Section 3. Permit and Inspection Fees. (1) An annual permit fee of \$187[150] is assessed for each permitted site to cover the costs of reviewing documentation and conducting inspections by the local health department.

(2) Fees shall be made payable to the local health department.

Section 4. Business Requirements. (1) The operator of a domestic septage disposal site shall:

(a) Refuse to accept any type of waste for which the site is not approved.

(b) Maintain the site, facilities, and equipment in a safe and sanitary condition.

(c) Direct and manage the unloading and application of domestic septage to the site during the hours of operation.

(d) Notify service vehicle operators if the site is closed during normal working hours.

(e) Notify the local health department certified inspector immediately of any person who discharges prohibited waste.

(f) Submit a written closure plan to the local health department prior to thirty (30) days of closure.

(2) The owner of a disposal site shall:

(a) Provide written notification to the subsequent owner prior to the sale that the land was used as a domestic septage disposal site.

(b) Maintain a list of the vehicle license numbers, disposal method, location, and total number of gallons of domestic septage or domestic septage mixed with grease received, retain these records for five (5) years, and make these records available to the cabinet during normal business hours.

Section 5. Approved Methods of Domestic Septage Disposal. (1) Domestic septage storage facilities capable of holding three (3) times the storage capacity of the largest pump truck, or at least 4,000 gallons, shall be provided at the disposal site.

(2) Unless previously added, sufficient alkali shall be applied to each application method of domestic septage or domestic septage mixed with grease to raise the pH to twelve (12) for thirty (30) minutes to control odors and vectors.

~~(3) Surface application and shallow incorporation.~~

~~(a) Equipment used for surface application shall have a spray bar, splash plate, or other device to evenly distribute the domestic septage while the equipment is in motion. The device shall be:~~

- ~~1. Designed to direct the contents away from the vehicle; and~~
- ~~2. [shall be] Rinsed prior to it leaving the site.~~

~~(b) The domestic septage shall be surface spread uniformly to prevent ponding.~~

~~(c) [Domestic septage storage facilities shall be provided during periods of inclement weather.~~

~~(d)] The site shall have a well-established and maintained sod covering or approved vegetation unless the domestic septage application is used to establish a vegetative cover in reclamation.~~

~~(d)(e) Sufficient alkali shall be applied to each surface application of domestic septage or domestic septage mixed with grease to raise the pH to twelve (12) for thirty (30) minutes to control odor and vectors, unless previously added.~~

~~(f)] Domestic septage on sites using shallow incorporation shall be incorporated into the soil within six (6) hours.~~

~~(e)(g)] Incorporation of domestic septage shall follow the contour of the site to minimize erosion and runoff.~~

~~(4)(2)] Deep incorporation.~~

~~(a) Deep incorporation of domestic septage shall follow the contour of the site to minimize soil erosion and runoff.~~

~~(b) If approved, trenches shall be a maximum of two (2) feet deep and two (2) to ten (10) feet wide. Actual configuration of the width and linear dimensions may be restricted by topography and soil conditions.~~

~~1. The excavated soil from the trench or bed shall be placed on the uphill side to control the movement of surface water into the trench or bed.~~

2. An additional application of alkali may be required [Sufficient alkali shall be spread over each application of domestic septage placed in a trench to control odor and vectors].

3. The trench shall be covered with a minimum of one (1) foot of soil when it reaches its holding capacity and has dewatered sufficiently.

4. Trenching of grease alone is prohibited.

Section 6. Experimental Disposal Methods. The following disposal methods shall be considered experimental and, if it is determined that they are likely to have an adverse environmental impact, the cabinet shall submit the application for review by the Energy and Environment [Natural Resources and Environmental Protection] Cabinet:

- (1) Lagoon [pretreatment];
- (2) Wetlands [pretreatment];
- (3) [Lagoon/Wetlands;
- (4)] In-vessel composting;
- (4)](5)] Static pile composting;
- (5)](6)] Windrow composting;
- (6)](7)] Recycling; and
- (7)](8)] Other proposed methods not specified by this

administrative regulation.

Section 7. [Disposal Restrictions. The following restrictions shall apply to all land disposal methods if alkali is not added to the domestic septage:

(1) Public access to the site shall be restricted for at least twelve (12) months.

(2) Grazing of animals whose products are consumed by humans shall be prohibited for one (1) month after application.

(3) If crops for direct human consumption are grown within eighteen (18) months of the last domestic septage application, and the edible portion of the crop is in contact with the domestic septage, any domestic septage applied to the land or incorporated into the soil shall be treated by a process to further reduce pathogens (PFRP) using one (1) the following technologies:

(a) Composting. Using the within-vessel composting method or the static aerated pile composting method, the temperature of the domestic septage shall be maintained at 131 degrees Fahrenheit or greater for three (3) days. Using the windrow composting method, the temperature of the domestic septage shall be maintained at 131 degrees Fahrenheit or greater for fifteen (15) days or longer. During the period when the compost is maintained at 131 degrees Fahrenheit or greater, there shall be a minimum of five (5) turnings of the windrow.

(b) Heat drying. Domestic septage shall be dried by direct or indirect contact with hot gases to reduce the moisture content of the domestic septage to ten (10) percent or lower. The temperature of the domestic septage particles shall exceed 176 degrees Fahrenheit or the wet bulb temperature of the gas in contact with the domestic septage as the domestic septage leaves the dryer shall exceed 176 degrees Fahrenheit.

(c) Heat treatment. Liquid domestic septage shall be heated to a temperature of 356 degrees Fahrenheit or greater for thirty (30) minutes.

(d) Thermophilic aerobic digestion. Liquid domestic septage shall be agitated with air or oxygen to maintain aerobic conditions and the mean cell residence time of the domestic septage is ten (10) days at 131 to 140 degrees Fahrenheit.

(e) Beta ray irradiation. Domestic septage shall be irradiated with beta rays from an accelerator at dosages of at least one (1.0) megard at room temperature (ca. sixty-eight (68) degrees Fahrenheit).

(f) Gamma ray irradiation. Domestic septage shall be irradiated with gamma rays from certain isotopes, such as Cobalt 60 and Cesium 137, at room temperature (ca. sixty-eight (68) degrees Fahrenheit).

(g) Pasteurization. The temperature of the domestic septage shall be maintained at 158 degrees Fahrenheit or greater for thirty (30) minutes or longer.

(h) Other methods or operating conditions may be acceptable if pathogens are reduced equivalent to any of the above add-on

methods.

$$AAR = \frac{N}{90026}$$

(4) The annual application rate for domestic septage applied to agricultural land, forest, or a reclamation site shall not exceed the annual application rate calculated using the following equation:

$$AAR = \frac{N}{90026}$$

Where:

AAR = Annual application rate in gallons per acre per 365-day period.

N = Amount of nitrogen in pounds per acre per 365-day period needed by the crop or vegetation grown on the land.

Section 8.] Domestic Septage Disposal Site Maintenance. (1) Sites shall be maintained to prevent the creation of a public health hazard or degrading conditions to the environment.

(2) The DFS-234, Permit to Operate (12/18), shall be posted at the entrance of the disposal site.

(3) A plot plan shall be posted at the site showing the following information:

- (a) Division of site by approved application methods; and
- (b) Number of gallons of domestic septage applied.

(4)](3)] Access roads shall be maintained to minimize dust and rutting.

(5)](4)] Surface application shall not be applied during or immediately after inclement weather or a hard freeze.

(6)](5)] Warning signs, fencing, or barriers shall[may] be required to prevent unauthorized entry into the disposal area.

Section 8.]9. Existing Domestic Septage Disposal Sites. (1) Domestic septage disposal sites existing prior to the effective date of this administrative regulation may continue to operate if the cabinet determines that the site and disposal methods do not create a health or safety hazard. The determination shall be made after a site evaluation and physical inspection by the cabinet of the existing site. Results of the determination shall be made in writing to the site owner. The site owner shall obtain a permit to operate using Form DFS-200 as required in Section 2 of this administrative regulation within thirty (30) days of the effective date of this administrative regulation.

(2) Vehicles, tanks, equipment, and facilities in use at the disposal site prior to the effective date of this administrative regulation, which do not meet the design, construction, or material requirements of this administrative regulation, may continue to be used if in good repair and maintained in a safe and sanitary condition. The determination shall be made after a physical inspection by the cabinet of the vehicles, tanks, equipment, and facilities. Results of the determination shall be made in writing to the owner.

(3) Replacement of existing vehicles, tanks, equipment, and facilities shall meet the requirements of this administrative regulation. The owner shall notify the cabinet of any replacement.

Section 10.] Inspection Procedures. (1) At least one (1) time every calendar year the local health department certified inspector [cabinet] shall inspect:

- (a) Vehicles;
- (b) Equipment;
- (c) Domestic septage storage facilities used at the site; and
- (d) The domestic septage disposal site.

(2) The cabinet shall have the right of access to inspect vehicles, equipment, domestic septage storage locations, and the domestic septage disposal sites during normal hours of operation. The right of access at all times shall not be denied in the event of a potential imminent health hazard.

(3) The findings shall be recorded on Form DFS-315, ["Inspection Report, (1/19)"] (11/92)], and a copy of the inspection report shall be provided to the owner or operator. [Form DFS-315, "Inspection Report", is incorporated by reference, and may be viewed or obtained at the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, between

the hours of 8 a.m. and 4:30 p.m., Monday through Friday.]

(4) If a violation is found, the inspection report shall:

(a) Set forth the specific violation;

(b) Set a time period for correcting the violation; and

(c) State that failure to comply with any notice issued pursuant to KRS 211.970 to 211.981[244.982] and this administrative regulation may result in initiation of the enforcement proceedings in Section 9[44] of this administrative regulation and KRS 211.995.

Section 9[44]. Administrative Enforcement Procedures. (1) A permit may be suspended or revoked upon evidence that the operator:

(a) Knowingly violates the provisions of KRS 211.970 to 211.981[244.980] or this administrative regulation;

(b) Accepts prohibited wastes;

(c) Practices fraud or deception in applying for a permit;

(d) Fails to pay required fees;

(e) Is incompetent to operate a domestic septage disposal site; or

(f) Interferes with the cabinet in the performance of its duties.

(2) An administrative conference[A hearing] shall be provided, after request by the operator, if:

(a) A permit is denied, suspended, or revoked; or

(b) An inspection indicates failure to comply with the requirements of KRS 211.970 to 211.981[244.982] or this administrative regulation.

(3) The request for an administrative conference[a hearing] shall be made in writing on Form DFS-212, Request for Conference, incorporated by reference in 902 KAR 1:400.

(4) ["Request for Hearing" (1/91), to the cabinet within ten (10) days after notification by the cabinet of an enforcement proceeding. Form DFS-212, "Request for Hearing", is incorporated by reference and may be viewed or obtained at the Office of the Commissioner for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

(4) All administrative hearings shall be conducted in accordance with 902 KAR 1:400.] Service of process and proof of service shall comply with KRS 211.220.

(5) An injunction may be obtained by the cabinet or local health department if immediate action is necessary to prevent the creation or continuance of a health hazard, damage to the environment, or to compel compliance with KRS 211.970 to 211.981[244.982] and this administrative regulation.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DFS-234, Permit to Operate a Disposal Site", (12/18);

(b) "DFS-315, Inspection Report", (1/19); and

(c) "DFS-345, Application for Site Evaluation and Permit to Operate a Disposal Site", (12/18).

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

STEVEN J. STACK, MD, MBA, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: October 23, 2020

FILED BY LRC: November 2, 2020 at 8:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 25, 2021, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by January 15, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative

regulation until January 31, 2021. 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

Cabinet Contacts: Donna Little or Julie Brooks

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for issuing a permit to operate a domestic septage storage or disposal site, the procedures for operating a domestic septage storage or disposal site, and the inspection process of treatment or disposal sites.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure public health and environmental protection when a site is to be used for the treatment or disposal of domestic septage.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.980 authorizes the secretary to promulgate administrative regulations for the approval of disposal and treatment sites and methods, inspection and administrative enforcement procedures, including the suspension or revocation of licensing, injunctive action, and other matters deemed necessary to protect public health and the environment.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures all domestic septage disposal sites and treatment operations are performed in a manner that will protect public health and the environment as authorized by KRS 211.980.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation updates defined terms for clarity; incorporates the applications for a site evaluation and a permit to operate a disposal site; updates the storage capacity requirements; updates the treatment requirements to control odor and vectors; clarifies that a permit must be renewed annually; adds the requirement of signage to be posted as the disposal site; removes the sections for disposal restrictions and the provisions for sites that existed prior to the effective date of the administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to add the permit and application forms; to ensure the treatment and disposal processes meet the highest level standard for odor and vector control; and to ensure an owner or operator of a disposal site is aware of the need to renew the permit annually and display proper signage at the disposal site.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment assists in protecting public health and the environment by ensuring proper treatment and signage of a domestic septage site as authorized in KRS 211.980.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will help to ensure all domestic septage treatment and storage sites are properly permitted and marked by uniform signage to give notice to anyone who happens upon the property.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently sixty-three (63) permits issued under this administrative regulation. This administrative regulation will also impact the local health departments who permit and inspect the domestic septage treatment and disposal sites.

(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: Owners and operators of domestic septage treatment and storage sites will need to be aware of the required signage and the need to annually renew the permit to operate.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): The permitting costs is increased by thirty-seven (37) dollars.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All domestic septage disposal and treatment sites will operate in a safe and sanitary manner designed to protect public health and the environment.

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

(a) Initially: The total costs of all environmental management programs is \$1,980,301 on an annual basis. There will be no increased costs to implement this administrative regulation.

(b) On a continuing basis: There will be no increased ongoing costs to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds and revenue received from the annual permit fee are the sources of funding for 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: An increase in fees is included in this administrative regulation but an increase in funding is not necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation does increase the annual permitting fee from \$150 to \$187.50. This increase is necessary to help offset the costs associated with reviewing the application paperwork and conducting a site evaluation.

(9) TIERING: Is tiering applied? Tiering is not applied. All current owners and operators of domestic septage treatment and storage sites will be impacted equally by this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the local health departments and the Environmental Management Branch within the Department for Public Health.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050 and 211.980.

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 increase in the permitting fee will generate approximately \$11,780 in revenue the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Because the permit is renewed annually the fee will generate approximately \$11,780 in revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? The total costs of all Environmental Management Branch programs is \$1,980,301. There is no anticipated increase in costs.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Department for Public Health Division of Public Health Protection and Safety (Amendment)

902 KAR 10:170. Septic tank servicing.

RELATES TO: KRS [194A.050,] 211.970, 211.972, 211.974, 211.981, 211.995[211.982]

STATUTORY AUTHORITY: KRS 194A.050(1), 211.976, 211.978, 211.979[Chapter 13B], 211.980[, 211.090, EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 211.980 authorizes the secretary[KRS 211.970 to 211.982 direct the Cabinet for Health Services] to promulgate administrative regulations relating to vehicle tank and equipment requirements; conduct of business; inspection and administrative enforcement procedures, including suspension or revocation of licensing; injunctive action; and any other matters deemed necessary to protect public health and the environment. This administrative regulation establishes the requirements for a septic tank service operator, the disposal of grease, vehicle, tank and equipment operations; licensing; inspection procedures; and enforcement actions[sets forth the procedures for complying with KRS 211.970 to 211.982. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services].

Section 1. Definitions. [In addition to the definitions given in KRS 211.970, as used in this administrative regulation, the following terms shall have the meanings set forth below:]

(1) "Cabinet" is defined by KRS 211.970(2) ["Agricultural land" means land on which a food crop, feed crop, or fiber crop is grown such as range land, pasture land or farms].

(2) "Domestic septage" means liquid or solid material removed from a septic tank, holding tank[cesspool], portable toilet, Type III marine sanitation device, or similar treatment works that receives only domestic sewage. Domestic septage shall not include:

(a) Liquid or solid material removed from a septic tank that contains commercial wastewater or industrial wastewater processes;

(b) [Cesspool;

(c)] Similar treatment works that receives commercial or industrial wastewater processes or individual wastewater processes; or

(c)][(d)] Grease removed from a grease trap at a restaurant or similar grease producing business.

(3) "Domestic sewage" means waste and wastewater from humans or household operations that is discharged to, or otherwise enters a wastewater treatment works.

(4) "Grease" is defined by[pursuant to] KRS 211.970(3) [and shall not apply to mineral-based oils or greases].

(5) ["Land with a high potential for public exposure" means land that the public uses frequently such as construction sites located in a city, public parks, ball fields, cemeteries, plant nurseries, turf farms, and golf courses.

(6) ["Land with a low potential for public exposure" means land that the public infrequently uses or is in contact with such as agricultural land, forest, and a reclamation site located in an unpopulated area.

(7) "Operator" means a person owning, operating, or controlling a septic tank servicing business, including their employees or agents.

(6) "Pathogen" ~~(8) "Pathogens"~~ means disease-causing organisms.

(7) "Site" is defined by KRS 211.970(11).

(8) "Tank" is defined by KRS 211.970(12) ~~[such as certain bacteria, protozoa, viruses, and viable helminth ova].~~

(9) "[pH]" ~~means the logarithm of the reciprocal of the hydrogen ion concentration.~~

(10) "Reclamation site" ~~means drastically disturbed land that is reclaimed using domestic septage as in strip mine and construction sites.~~

(11) "Vector attraction" means the characteristics of domestic septage that attract rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents.

(12) "Surface disposal site" ~~means an area of land that is used for domestic septage disposal.~~

Section 2. Licensing and Fees for Septic Tank Servicing. (1) An annual application for a business license to service or maintain septic tanks, holding tanks, seepage pits, portable toilets, Type III marine sanitation devices, or similar treatment works that receive domestic sewage, grease traps, or domestic septage mixed with grease, shall be:

(a) Submitted to the cabinet on DFS-306 Application for a License (1/19); and

(b) Accompanied by:

1. A business license fee of \$150, and

2. A vehicle license fee of fifty (50) dollars for each vehicle; and

(c) Accompanied by a surety bond in the amount of \$5000.

(2) The business license fee established in subparagraph (1)(b)1. of this section shall be paid by check or money order made payable to the Kentucky State Treasurer and mailed to the Kentucky Department for Public Health, 275 East Main Street, Mailstop HS1C-D, Frankfort, Kentucky 40621.

(3) The vehicle license fee established in subparagraph (1)(b)2. of this section shall be made payable to the local health department having jurisdiction.

(4) Applications shall be made to the cabinet prior to March 1 of each year.

(5) A late renewal fee \$100 shall be assessed on all annual license renewal applications not received by April 1 each year.

Section 3. Conduct of Business. A septic tank service operator shall:

(1) Not dispose of domestic septage or domestic septage mixed with grease unless approved by the cabinet at a permitted site, treatment facility, or registered farm that properly disposes ~~[receives]~~ less than 2,000 gallons of its own domestic septage per year.

(2) Register a farm that properly disposes ~~[receives]~~ less than 2,000 gallons of its own domestic septage or domestic septage mixed with grease per year with the local health department.

(3) Not apply additional domestic septage or domestic septage mixed with grease to any disposal site if the annual application rate has been reached during a 365-day period.

(4) Verify in writing that the vector attraction reduction and pathogen reduction requirements have been met if disposing of domestic septage or domestic septage mixed with grease.

(5) Maintain setback distances from features as required in 902 KAR 10:150, Section 4 (8), Table 8.

(6) Not dispose of domestic septage or domestic septage mixed with grease during adverse weather or if the site is snow covered or frozen.

(7) Provide an adequate storage facility capable of holding three (3) times the storage capacity of the largest pump truck, during adverse weather, wet site conditions, or if the disposal site is not accessible.

(8) Maintain written authorization from the land owner or facility operator to use the site to dispose of domestic septage or domestic septage mixed with grease. The authorization shall be maintained in each licensed vehicle and at the business office.

(9) Remove all domestic septage from the tank being serviced.

(10) Not use chemicals or biological cleaners, starters, or other

agents as part of the service unless the material has been approved by the cabinet. An additive may be approved if it can be demonstrated that the product has a positive benefit and no adverse effect on the operation and performance of an on-site sewage disposal system.

(11) Re-cover access openings and leave the property in a safe and sanitary condition.

(12) Notify the owner of any damage to the sewage treatment or disposal system found during the servicing operation.

(13) Provide the customer an invoice containing the following minimum information:

(a) Customer's name;

(b) Location of service;

(c) Date of service;

(d) Amount of domestic septage and grease from grease traps removed in gallons;

(e) Vehicle license number;

(f) Name and address of servicing business;

(g) Printed and signed name of individual vehicle operator; and

(h) Name and location of approved disposal site, registered farm, landfill, or treatment facility.

(14) Retain copies of customer invoices and other records pertaining to the business operation for five (5) years and make available upon request by the cabinet during normal business hours.

(15) Maintain the following information if domestic septage or domestic septage mixed with grease has been applied to an approved site:

(a) Location by street address, descriptive location, or latitude and longitude of each site where domestic septage or domestic septage mixed with grease has been applied;

(b) The number of acres in each site;

(c) The date and time of application of the domestic septage or domestic septage mixed with grease;

(d) ~~[The nitrogen requirement for the crop or vegetation grown on the site during the 365-day period;~~

(e) Application rate, in gallons, per acre per 365-day period of domestic septage or domestic septage mixed with grease;

(f) ~~[The following certification statement: "I certify, under penalty of law, that the pathogen reduction and vector attraction reduction requirements have been met. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the pathogen requirements and vector attraction reduction requirements have been met."]~~

(f) ~~[I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.];~~

(g) A description of how the pathogen and vector attraction reduction requirements have been met; and

(g) ~~[(h)]~~ Name and location of wastewater treatment facility or landfill used to dispose of the domestic septage or domestic septage mixed with grease.

(16) Submit ~~[plans and]~~ a statement of compliance with KRS 211.979(244-979) and this administrative regulation prior to transportation or disposal of domestic septage or domestic septage mixed with grease within the borders of the Commonwealth.

(17) Provide employees with necessary personal protective equipment suitable for the work being performed such as gloves, clothing, and respiratory masks.

Section 4[3]. Grease Disposal. (1) Grease traps serviced at restaurants, residential, or institutional food preparation may be mixed at a ratio of three (3) parts domestic septage to one (1) part grease and disposed at approved disposal sites.

(2) Grease alone may be discharged into a publicly owned wastewater treatment works that will accept grease pumpings.

(3) Grease may be dewatered and disposed at a landfill that will accept grease pumpings.

(4) Grease alone shall not be land applied.

Section 5[4]. Vehicle, Tank, and Equipment Requirements. (1) All vehicles, tanks, towable tank trailers, and equipment used in the pumping, transporting, treatment, or disposal of domestic septage or

grease traps shall be maintained in safe and sanitary condition.

(2) Tanks used in the pumping or transporting of domestic septage shall meet the following additional requirements:

(a) Tanks shall be leak-proof, constructed of, or coated with, a corrosion resistant material, and securely attached to the vehicle chassis;

(b) Discharge openings shall be constructed so the tank completely drains and the discharge stream is not obstructed by any part of the vehicle or equipment, except for splash plates, spray bars, or similar devices; and

(c) Valves at the tank inlet and outlet shall be water-tight and fitted with caps or plugs for use during transport or storage.

(3) Pumps, valves, and hoses shall be maintained to prevent leakage and meet the following requirements:

(a) Pumps shall be self-priming and;

(b) Pump shall be maintained to prevent backflow;

(c) Connections or openings shall be water-tight and fitted with caps or plugs when the pumping system is not in use;

(d) Pulleys, chains, belts, or flexible shafts shall have guards to prevent injury; and

(e) Hoses shall have leak-proof connectors, caps, or plugs unless stored in leak-proof compartments.

(4) The license for each vehicle shall be visible in accordance with KRS 211.978(2).

(5) The vehicle license number is nontransferable from one vehicle to another.

Section 5. Existing Vehicles, Tanks, and Equipment. (1) Any vehicle, tank, or equipment in use prior to the effective date of this administrative regulation, which does not meet the design, construction, or material requirements in Section 3 of this administrative regulation, may continue to be used if in good repair and maintained in a safe and sanitary condition as determined by the cabinet.

(2) Replacement of existing vehicles, tanks, and equipment after the effective date of this administrative regulation shall meet the requirements of this administrative regulation.]

Section 6. Inspection Procedures. (1) At least one (1) time every calendar year the cabinet shall inspect:

(a) Vehicles;

(b) Equipment; and

(c) The domestic septage storage locations[location].

(2) The cabinet shall have the right of access to inspect vehicles, equipment, and domestic septage storage locations during normal hours of operation. The right of access shall not be denied in the event of an imminent health hazard.

(3) The findings shall be recorded on form DFS-315, ["Inspection Report, (1/19), incorporated by reference in 902 KAR 10:160, (9/93)], and a copy of the inspection report [shall be] provided to the owner or operator. [Form DFS-315, "Inspection Report", is incorporated by reference, and may be viewed or obtained at the Office of the Commissioner for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.]

(4) If a violation is found, the inspection report shall:

(a) Set forth the specific violation;

(b) Set a time period for correcting the violation; and

(c) State that failure to comply with any notice issued pursuant to KRS 211.970 to 211.981[244.982] and this administrative regulation may result in initiation of the enforcement proceedings in Section 7 of this administrative regulation and KRS 211.995.

Section 7. Administrative Enforcement Procedures. (1) A license may be suspended or revoked [upon] if the operator:

(a) [Knowingly] Violates the provisions of KRS 211.970 to 211.981[244.980] or this administrative regulation;

(b) Practices fraud or deception in applying for a license;

(c) Fails to pay required fees or maintain bonding requirements; or

(d) Interferes with the cabinet in the performance of its duties.

(2) An administrative conference[A hearing] shall be provided, after request by the operator, if:

(a) A license is denied, suspended, or revoked; or

(b) An inspection indicates repeated violations or failure to comply with the requirements of KRS 211.970 to 211.981[244.982] or this administrative regulation.

(3) The request for an administrative conference[a hearing] shall be made in writing on Form DFS-212, Request for Conference, incorporated by reference in 902 KAR 1:400.

(4) "Request for Hearing" (1/91), to the cabinet within ten (10) days after notification by the cabinet of an enforcement proceeding. Form DFS-212, "Request for Hearing", is incorporated by reference and may be viewed or obtained at the Office of the Commissioner for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

(4) All administrative hearings shall be conducted in accordance with 902 KAR 1:400. Service of process and proof of service shall comply with KRS 211.220.

(5) An injunction may be obtained by the cabinet or local health department if immediate legal action is necessary to prevent the creation or continuance of a health hazard, damage to the environment, or to compel compliance with KRS 211.970 to 211.981[244.982] or this administrative regulation.

Section 8. Incorporation by Reference. (1) The "DFS-306, Application for a License", (1/19) is incorporated by reference.

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

STEVEN J. STACK, MD, MBA, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: October 23, 2020

FILED BY LRC: November 2, 2020 at 8:15 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 25, 2021, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by January 15, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until January 31, 2021. 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 persons: Donna Little or Julie Brooks

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for a septic tank service operator; the disposal of grease; vehicle, tank and equipment operations; licensing; and inspection procedures, and enforcement actions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure public health and environmental protection during the hauling of domestic septage or grease, and when a site is to be used for the treatment or disposal of domestic septage or grease.

(c) How this administrative regulation conforms to the content

of the authorizing statutes: KRS 211.978 requires all trucks or other vehicles used to transport or carry wastes from sewage pretreatment units, grease traps, or holding tanks to be licensed by the cabinet; and KRS 211.979 restricts the use of any vehicle licensed to haul sewage, sewage sludge, or grease from hauling any product or substance intended for human or animal consumption, or substances or materials classified as hazardous substances or hazardous waste constituents. KRS 211.980 authorizes the promulgation of administrative regulations related to vehicle tank and equipment requirements; conduct of business; approval of disposal and treatment sites and methods; inspection and administrative enforcement procedures, including suspension or revocation of licensing; injunctive action; and other matters deemed necessary to protect public health and the environment.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation helps to ensure all processes and procedures related to the hauling, storage, disposal of domestic septage, sewage, sewage sludge, and grease is performed in a manner that is safe and sanitary for the protection of public health and the environment.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation incorporates the application process for a business license to service or maintain septic tanks; the application process for each vehicle used to haul domestic septage, sewage, sewage sludge, or grease; establishes the surety bond amount; updates the storage facility capacity limits; updates the administrative enforcement procedures; and incorporates the application form.

(b) The necessity of the amendment to this administrative regulation: As part of an initiative to improve cabinet operations, 902 KAR 10:130, which contains the business license and vehicle application procedures, will be repealed and those procedures added to this administrative regulation. House Bill 327, enacted during the 2018 legislative session, removed the required amount for the surety bond from KRS 211.976. The amount of the surety bond is included in this administrative regulation. The clarification for the storage facility capacity is necessary to ensure proper storage when domestic septage, sewage, sewage sludge or grease cannot be immediately disposed of.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 211.978 requires all trucks and other vehicles used to transport or carry waste from sewage pretreatment units, grease traps, or holding tanks be licensed and identified. KRS 211.976 requires all persons proposing to engage in the business of waste hauling be licensed and bonded.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will help to ensure all businesses engaged in the hauling of domestic septage, sewage, sewage sludge, or grease, are properly licensed and bonded. Tanks used to haul these substances will be properly licensed and identified.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are currently 260 permitted septic tank servicing agents registered under this administrative regulation. This administrative regulation will also impact local health departments who perform vehicle and disposal site inspections.

(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: Septic tank servicing agents will need to be aware of the change to the application process. They will also need to ensure each vehicle used is properly licensed and identified in accordance with KRS 211.978. Local health department inspectors will also need to be aware of the amendments to this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): The business license fee increase will cost each septic tank servicing agent an additional thirty (30) dollars. The vehicle license fee increase will cost an additional ten (10) dollars for each vehicle licensed. The surety bond amount is increased by \$3,000.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): By complying with this administrative regulation, businesses engaged in the hauling of domestic septage, sewage, sewage sludge, or grease will be operating in a safe and sanitary manner. This will help to protect public health and the environment. By meeting the surety bond requirements, business entities will be properly covered should an incident that threatens public health or the environment occur.

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

(a) Initially: The total costs of all environmental management programs is \$1,980,301 on an annual basis. There will be no increased costs to implement this administrative regulation.

(b) On a continuing basis: There will be no increased ongoing costs to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds and revenue received from the annual permit fee are the sources of funding for 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: An increase in funding is not necessary to implement the amendments to this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. The administrative cost to the cabinet is approximately \$150 per hour for inspectors of septic tank servicing businesses. This cost includes the salary of the inspector, fiscal year 2018 Kentucky Employee Retirement System (KERS) and Federal Insurance Contributions Act (FICA) contributions, and health and life insurance cost. The chart below shows the changes in revenue from the increase in the business license fee. This increase is necessary to help off-set the costs associated with processing the applications.

Application fee	
Avg. Hourly Rate (including FY-18 KERS, FICA, health & life, indirect)	\$150
Minimum number of routine inspections/year.	1
Current Fee Established in 902 KAR 10:130 for business license	\$120
Current Fee Established in 902 KAR 10:130 for vehicle license	\$40 for each vehicle
Proposed Fee for business license	\$150
Proposed Fee for vehicle license	\$50 for each vehicle
Current revenue from business license	\$31,200
Proposed revenue from business license	\$39,000

The late renewal fee is necessary to address the costs associated with follow-up activities when a business license is not renewed in a timely manner.

The increase in the surety bond amount from \$2,000 to \$5,000 is necessary to help cover the cabinet's costs should a public health hazard or damage to the environment result from faulty workmanship in the servicing or maintaining of sewage pretreatment units, grease traps, or holding tanks.

(9) TIERING: Is tiering applied? Tiering is not applied as the provisions of this administrative regulation are applied equally to all businesses engaged in the transport and hauling of domestic septage, sewage, sewage sludge, and grease.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the local health departments and the Environmental Management Branch within the Department for Public Health.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 211.970 to 211.981.

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 increase in business licensing fees will generate approximately \$39,000 in revenue the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The increase in business licensing fees will continue to generate approximately \$39,000 in revenue in subsequent years.

(c) How much will it cost to administer this program for the first year? The total costs of all Environmental Management Branch programs is \$1,980,301. There is no anticipated increase in costs in the first year.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(Amendment)

922 KAR 2:230. Director's credential.

RELATES TO: KRS [~~Chapter 13B,~~ 164.518(3), 199.8941(4), 199.896(15) - (17) [~~, 200.451, 200.711(2)~~]

STATUTORY AUTHORITY: KRS 194A.050(1), 200.703(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires [authorizes] the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 200.703(3) requires the cabinet [Cabinet for Families and Children] to implement programs funded by the Early Childhood Advisory Council. KRS 164.518(3) requires the cabinet to participate in the promulgation of administrative regulations including monetary incentives for scholarship program participants[Development Authority. In addition, KRS 199.896(17) requires the cabinet to make available training for child care providers through the development or approval of a model training curriculum and training materials, including video instruction material]. This administrative regulation establishes the requirements for individuals to obtain a directors credential.

Section 1. Eligibility[for Candidates]. (1) An individual eligible for a director's credential shall have completed twelve (12) college credit hours in the following [major] areas [~~of core knowledge as follows~~]:

(a) Local, state, and federal regulations and laws;

(b) Ethics;

(c) Programming for families and children;

(d) Supervision and staff development;

(e) Health and safety;

(f) Financial management and marketing; and

(g) Community collaboration and resource management.

(2) Completion of the twelve (12) college credit hours required by subsection (1) of this section shall be obtained at an accredited institution of higher education [~~in Kentucky~~] offering a program:

(a) Meeting the curriculum requirements specified in subsection (1) of this section; and

(b) Approved by the Cabinet for Health and Family Services [~~and the Division of Early Childhood Development within the Department of Education~~].

(3) An individual seeking the director's credential may:

(a) Earn the twelve (12) college credit hours as part of an early childhood education degree program; or

(b) Enroll specifically for director's credential course work.

Section 2. Award of Credential. A director's credential shall be awarded by the cabinet [~~and the Division of Early Childhood Development~~] upon:

(1) Successful completion of program requirements established [as specified] in Section 1(1)(a) through (g) of this administrative regulation; and

(2) Recommendation by the institute of higher education where the course work was completed.

Section 3. Denial of Credential. (1) If the individual fails to comply with the eligibility requirements of Section 1 of this administrative regulation, the director's credential shall be denied.

(2) If the director's credential [~~Commonwealth Child Care Credential~~] is denied, the individual:

(a) Shall be informed as to the [of which] requirements that resulted in the denial; and

(b) May reapply after the requirements that caused [resulting in] the denial are met.

MARTA MIRANDA-STRAUB, Commissioner

ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: November 5, 2020

FILED WITH LRC: November 6, 2020 at 10:47 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 25, 2021, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by January 15, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until January 31, 2021. 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

Cabinet Contact: Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements and processes for individuals to obtain a director's credential.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement statutory requirements relating to the Early Childhood Advisory Council and child care credentialing programs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 200.703(3) requires the cabinet to implement programs funded by the Early Childhood Advisory Council. KRS 164.518(3) requires the cabinet to participate in the promulgation of administrative regulations including monetary incentives for scholarship program participants.

(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 criteria and processes through which an individual may obtain a director's credential.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation allows for the twelve college credit hours required for eligibility of this credential to be obtained at an accredited institution of higher education outside of Kentucky. Minor technical updates are being made for compliance with formatting requirements established in KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation was last opened for regulatory amendment in 2003; therefore, minor technical amendments were necessary to prevent the administrative regulation from expiring and for compliance with KRS Chapter 13A. The cabinet also recognizes that quality college credit hours relating to this program may be obtained at an accredited institution outside of the Commonwealth.

(c) How the amendment conforms to the content of the authorizing statutes: Only minor updates are being made through this amendment. The administrative regulation is necessary to implement statutory requirements relating to the Early Childhood Advisory Council and child care credentialing programs.

(d) How the amendment will assist in the effective administration of the statutes: Only minor updates are being made through this amendment. This administrative regulation assists in the effective administration of the statutes by establishing criteria and processes through which an individual may obtain a director's credential.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:
As of June 30, 2020, 2,358 individuals held a director's credential.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: An individual attempting to obtain this credential may complete the required twelve (12) hours of college credit at an accredited institution of higher education that is in Kentucky or another state. The administrative regulation previously required the institution be in Kentucky. Therefore, the amendment results in the credential being more obtainable.

(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 this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The credential will be easier to obtain for individuals who completed the required college credit out of state.

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

(a) Initially: There are no costs associated with the implementation of this amendment.

(b) On a continuing basis: There are no costs associated with this amendment on a continuing basis.

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

implementation and enforcement of this administrative regulation: Tobacco Master Settlement Agreement funds are the source of funding for this program.

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied to eligible individuals in the same manner statewide.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services, Division of Child Care, administers this program.

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), 200.703(3).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for state or local government.

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

(c) How much will it cost to administer this program for the first year? Tobacco Master Settlement Agreement funds are used in the administration of this program. No costs are associated with this amendment.

(d) How much will it cost to administer this program for subsequent years? No costs are associated with this amendment.

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

Revenues (+/-)
Expenditures (+/-)
Other Explanation

CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Child Care (Amendment)

922 KAR 2:240. Kentucky Early Care and Education Trainer's Credential and training approval.

RELATES TO: KRS 164.518(3), [199.8941(4), 199.896(15) - (17), 199.8982(1)(a)6, (2), [200.151, 45 C.F.R. 98,] 42 U.S.C. [604-649,] 9831-9852

STATUTORY AUTHORITY: KRS 194A.050(1), 199.8941(4), 199.896(17), 199.8982(3), 200.703(3)[, EQ-2011-534]

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 cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 200.703(3) requires the cabinet to implement programs funded by

the Early Childhood Advisory Council [established by Executive Order 2011-534]. KRS 199.896(17) and 199.898(3) require the cabinet to make available training for child care providers through the development or approval of a model training curriculum and training materials, including video instruction material. KRS 199.894(4) requires the cabinet to encourage the professional development of persons who are employed or provide training in a child care or early childhood setting by facilitating their participation in the scholarship program. KRS 164.518(3) requires the cabinet to assist in the promulgation of administrative regulations that include a system of monetary incentives for scholarship program participants. This administrative regulation establishes the requirements for an individual to obtain a Kentucky Early Care and Education Trainer's Credential and identifies whom the credentialed individual may train.

Section 1. Definitions. (1) "Adult learning theory" means the concepts and principles that explain how adults gain knowledge and skills that result in relatively long-term changes in attitude and behavior.

(2) "Asynchronous learning" means forms of education, instruction, and learning that occur at different times and in different places, and may be accessed individually by trainees.

(3)[(2)] "Child Development Associate" or "CDA" means the nationally recognized credential approved by the Council for Professional Recognition.

(4)[(3)] "Clock hour" means a sixty (60) minute period of instruction.

(5)[(4)] "Full-time, paid experience" means working at least thirty (30) hours per week or the equivalent in an early care and education setting.

(6) "Synchronous learning" means forms of education, instruction, and learning that occur at the same time in real time, but not in the same place.[

(5) "Introduction to Kentucky Resources for Early Care and Education Trainers" means a cabinet-approved training for a potential trainer as specified in Section 2(1)(c) of this administrative regulation.

(6) "Trainer's seminar" means a cabinet-approved educational seminar which includes training as specified in Section 4 of this administrative regulation.]

Section 2. Eligibility Criteria for the Kentucky Early Care and Education Trainer's Credential. [(4)] An individual shall:

(1)[(a)] Be at least twenty-one (21) years of age;

(2)[(b)] Have a high school diploma[;] or equivalent;

(3)[(c)] Complete the two (2) clock hour cabinet-approved Introduction to Kentucky Resources for Early Care and Education Trainers training that provides an overview of:

(a)[1-] Early care and education systems in Kentucky; and

(b)[2-] Resources available to assist early care and education professionals;

(4)[(d)] Complete the two (2) clock hours of cabinet-approved training on the cabinet-designated data system; and

(5)[(e)] Have training or experience in the following topics of early care and education:

(a)[1-] Child growth and development;

(b)[2-] Health, safety, and nutrition;

(c)[3-] Professional development;

(d)[4-] Learning environments and curriculum;

(e)[5-] Child assessments;

(f)[6-] Family and community partnerships; and

(g)[7-] Program management and evaluation.[

(2) A credentialed trainer approved prior to the effective date of this administrative regulation shall provide one (1) time verification that the trainer has received the cabinet-approved training on the cabinet-designated data system as a condition of renewal in accordance with Section 13 of this administrative regulation.]

Section 3. Application and Approval for a Kentucky Early Care and Education Trainer's Credential. (1) An individual applying for a Kentucky Early Care and Education Trainer's Credential shall:

(a) Complete a DCC-200, Kentucky Early Care and Education

Trainer's Credential Application, which includes documentation that the individual meets the education and work experience requirements for a training level established [as specified] in Sections 5 through 10 of this administrative regulation; and

(b) Submit the [required] documents required by [of] paragraph (a) of this subsection to the cabinet or its designee.

(2) Applicants and trainers conducting online trainings or webinars shall complete the cabinet-approved online training development course.

(3)[(2)] Upon approval of the application required by [described in] subsection (1) of this section, the cabinet or its designee shall award the individual a:

(a) Letter of approval; and

(b) Kentucky Early Care and Education Trainer's Credential for a training level specified in Sections 5 through 10 of this administrative regulation.

(4) A first-time applicant for a Kentucky Early Care and Education Trainer's Credential may seek a waiver from completing the Fundamentals of Effective Training seminar, required by Section 4 of this administrative regulation, if the applicant:

(a) Completed eligible coursework equivalent to that required in Section 4 of this administrative regulation within the last ten (10) years; and

(b) Provides documentation that the curriculum of coursework matches the content and focus of the required seminar.

Section 4. Trainer's Seminar. An individual applying for a Level 2 through 5 Kentucky Early Care and Education Trainer's Credential shall complete a seventeen (17) clock hour trainer's seminar, the [also known as] Fundamentals of Effective Training, consisting of the following areas, unless exempted by Section 3(4) of this administrative regulation:

(1) Core content and training levels;

(2) Principles of adult learning;

(3) Supporting transfer of learning;

(4) Ethics and professionalism;

(5) Needs assessment and evaluation;

(6) Training design and methods; and

(7) Conducive learning environments and organizational strategies.

Section 5. Level 1 Kentucky Early Care and Education Trainer's Credential Requirements. For a Level 1 Kentucky Early Care and Education Trainer's Credential, an individual:

(1) Shall have three (3) years of full-time, paid experience in the early care and education field; and

(2) May only train as a co-trainer [cotrainer] on a single topic of early care and education, pursuant to [as specified in] Section 2(1)(e) of this administrative regulation, with a credentialed trainer at a higher level.

Section 6. Level 2 Kentucky Early Care and Education Trainer's Credential Requirements. (1) For a Level 2 Kentucky Early Care and Education Trainer's Credential, an individual shall:

(a) Have:

1.a. A CDA or director's credential, as established [specified] in 922 KAR 2:230; and

b. Three (3) years of full-time, paid experience, or equivalent, as approved by the cabinet in the early care and education field; or

2. Ten (10) years of full-time, paid experience in a field related to early care and education as approved by the cabinet and the equivalent of forty-five (45) clock hours of formal early care and education training;

(b) Co-train [Cotrain] at least twelve (12) clock hours with a Level 4 or 5 Kentucky Early Care and Education trainer before training solo; and

(c) Complete the trainer's seminar requirement established [requirements as specified] in Section 4 of this administrative regulation, or equivalent, approved by the cabinet or its designee.

(2) An individual who is awarded a Level 2 Kentucky Early Care and Education Trainer's Credential may provide training to an individual to meet the:

(a) Training requirements established [as specified] in:

1. KRS 199.896(15) and (16);
2. KRS [.] 199.8982(1)(a)6 and (2); or
3. [.] 922 KAR 2:090, 2:100, [~~2:140, 2:170,~~] 2:180, 2:230 [~~2:240,~~] or 2:250;
- (b) Final sixty (60) hours required for the CDA if co-training [~~co-training~~] with a Level 4 or Level 5 credentialed trainer; or
- (c) Level 1 or Level 2 Kentucky Early Care and Education Trainer's Credential.

Section 7. Level 3 Kentucky Early Care and Education Trainer's Credential Requirements. (1) For a Level 3 Kentucky Early Care and Education Trainer's Credential, an individual shall:

- (a) Have:
 1. Three (3) years of full-time, paid experience in the early care and education field and:
 - a. An associate degree in early care and education; or
 - b. The equivalent of thirty (30) credit hours in early care and education coursework;
 2. One (1) year of full-time, paid experience in the early care and education field and a bachelor's degree in a field related to early care and education; or
 3. Ten (10) years of full-time, paid experience in the early care and education field and a bachelor's degree in a field not related to early care and education; and
- (b) Complete the trainer's seminar requirement established [~~requirements as specified~~] in Section 4 of this administrative regulation, or equivalent, as approved by the cabinet or its designee.

(2) An individual who is awarded a Level 3 Kentucky Early Care and Education Trainer's Credential may provide training to an individual to meet the:

- (a) Training requirements established in:
 1. [~~as specified by~~] KRS 199.896(15) and (16);
 2. KRS [.] 199.8982(1)(a)6 and (2); or
 3. [.] 922 KAR 2:090, 2:100, [~~2:140, 2:170,~~] 2:180, 2:230 [~~2:240,~~] or 2:250;
- (b) Requirements of the CDA; or
- (c) Requirements of a Level 1 [~~level one (1)~~] through Level 3 [~~three (3)~~] Kentucky Early Care and Education Trainer's Credential.

Section 8. Level 4 Kentucky Early Care and Education Trainer's Credential Requirements. (1) For a Level 4 Kentucky Early Care and Education Trainer's Credential, an individual shall:

- (a) Have:
 1. One (1) year of full-time, paid experience in the early care and education field and a bachelor's degree in early care and education;
 2. One (1) year of full-time, paid experience in the early care and education field and:
 - a. A bachelor's degree in a field related to early care and education; and
 - b. The equivalent of three (3) credit hours in child development; or
 3. At least ten (10) years of full-time, paid experience in the early care and education field and:
 - a. A bachelor's degree in a field not related to early care and education; and
 - b. The equivalent of three (3) credit hours in child development; and
- (b) Complete the trainer's seminar requirement established [~~requirements as specified~~] in Section 4 of this administrative regulation, or equivalent, as approved by the cabinet or its designee.

(2) An individual who is awarded a Level 4 Kentucky Early Care and Education Trainer's Credential may provide training to an individual to meet the:

- (a) Training requirements established [as specified] in:
 1. KRS 199.896(15) and (16);
 2. KRS [.] 199.8982(1)(a)6 and (2); or
 3. [.] 922 KAR 2:090, 2:100, [~~2:140, 2:170,~~] 2:180, 2:230 [~~2:240,~~] or 2:250;
- (b) Requirements of the CDA; or
- (c) Requirements for a Level 1 through Level 4 Kentucky Early Care and Education Trainer's Credential.

Section 9. Level 5 Kentucky Early Care and Education Trainer's Credential Requirements. (1) For a Level 5 Kentucky Early Care and Education Trainer's Credential, an individual shall:

(a) Have one (1) year of full-time, paid experience in the early care and education field and a:

1. Master's degree or higher in early care and education; or
2. Master's degree in a field related to early care and education with three (3) credit hours in child development or the equivalent; and

(b) Complete the trainer's seminar requirement established [~~requirements as specified~~] in Section 4 of this administrative regulation, or equivalent, as approved by the cabinet or its designee.

(2) An individual who is awarded a Level 5 Kentucky Early Care and Education Trainer's Credential may provide training to an individual to meet the:

- (a) Training requirements established [as specified] in:
 1. KRS 199.896(15) and (16);
 2. KRS [.] 199.8982(1)(a)6 and (2); or
 3. [.] 922 KAR 2:090, 2:100, [~~2:140, 2:170,~~] 2:180, 2:230 [~~2:240,~~] or 2:250;
- (b) Requirements of the CDA; or
- (c) Requirements for a Level 1 through Level 5 Kentucky Early Care and Education Trainer's Credential.

Section 10. Specialty Level Kentucky Early Care and Education Trainer's Requirements. (1) To receive a Specialty Level Kentucky Early Care and Education Trainer's Credential, an individual shall have, in the individual's area of expertise:

- (a) A license, certification, or equivalent; and
- (b) Three (3) years of related experience.
- (2) A Specialty Level Kentucky Early Care and Education Trainer may provide training in the individual's approved area of expertise to an individual who is training to meet the:
 - (a) Training requirements established [as specified] in:
 1. KRS 199.896(15) and (16);
 2. KRS [.] 199.8982(1)(a)6 and (2); or
 3. [.] 922 KAR 2:090, 2:100, [~~2:140, 2:170,~~] 2:180, 2:230 [~~2:240,~~] or 2:250;
 - (b) Requirements of the CDA; or
 - (c) Requirements for a Level 1 through Level 5 Kentucky Early Care and Education Trainer's Credential.

(3) A Specialty Level Kentucky Early Care and Education Trainer shall not provide training on the general topics of early care and education pursuant to Section 2(1)(e) of this administrative regulation.

Section 11. General Training Requirements. (1) Except for an employee of a child care center program authorized by 42 U.S.C. 9831-9852, no owner or employee holding a Kentucky Early Care and Education Trainer's Credential shall train an employee of the same child care center or family child care home to meet the training requirements:

- (a) Established in:
 1. [~~in~~] KRS 199.896(15) and (16);
 2. KRS [.] 199.8982(1)(a)6 and (2); or
 3. [.] 922 KAR 2:090, 2:100, [~~2:140, 2:170,~~] 2:180, 2:230 [~~2:240,~~] or 2:250;
- (b) Of the [~~The~~] CDA; or
- (c) Of a [~~A~~] Level 1 through Level 5 Kentucky Early Care and Education Trainer's Credential.

(2) The cabinet may monitor training events for compliance with this administrative regulation.

(3) A trainer shall have a current Kentucky Early Care and Education Trainer's Credential to be eligible to train individuals to meet the:

- (a) Training requirements established [as specified] in:
 1. KRS 199.896(15) and (16);
 2. KRS [.] 199.8982(1)(a)6 and (2); or
 3. [.] 922 KAR 2:090, 2:100, [~~2:140, 2:170,~~] 2:180, 2:230 [~~2:240,~~] or 2:250;
- (b) Requirements of the CDA; or

(c) Requirements of a Level 1 through Level 5 Kentucky Early Care and Education Trainer's Credential.

(4) Post-secondary early care and education coursework sponsored by an accredited institution of higher learning shall meet the training requirements ~~[as specified in]~~:

(a) Established in:

1. KRS 199.896(15) and (16);

2. KRS ~~[199.8982(1)(a)6 and (2); or~~

3. ~~[199.8982(1)(a)6 and (2); or~~ 922 KAR ~~2:090, 2:100, [2:110, 2:170,] 2:180, 2:230 [2:240], or 2:250;~~

(b) ~~Of the [The] CDA; or~~

(c) ~~Of a [A] Level 1 through Level 5 Kentucky Early Care and Education Trainer's Credential.~~

(5) A training shall consist of a minimum of one (1) clock hour and may increase in fifteen (15) minute intervals.

(6) A training that is not conducted face-to-face between a trainer and trainee shall:

(a) Consist of a combination of alternative modes of delivery; and

(b) Not consist solely of:

1. Reading an article;

2. Reading an article and answering questions;

3. Watching a video; or

4. Watching a video and answering questions.

(7) Synchronous learning events shall contain interactive modes to demonstrate that the participant is verifiably and actively engaged in the training and content.

(8) Asynchronous learning events shall meet the requirements of subsection (6) of this section and shall include a method to gauge participation.

(9)[(7)] A training shall be consistent with the principles of the trainer's seminar established ~~[as specified]~~ in Section 4 of this administrative regulation.

(10) The cabinet and state contracted partners shall have the ability to audit trainings as necessary.

(11) A trainee shall not repeat online training courses, including orientation, unless:

(a) Five (5) years have passed since the online training was completed; or

(b) Required to as part of a disciplinary directive by a state agency or employer.

Section 12. Maintenance of Records for Kentucky Early Care and Education Credentialed Trainers. (1) Credentialed trainers shall:

(a) Enter records of training attendance and trainees into the cabinet-designated data system within ten (10) days of the training;

(b) Maintain records of training and trainees for three (3) years; and

(c) Submit records of training provided and trainees to the cabinet upon request.

(2) All certificates issued by a credentialed trainer or an approved sponsor shall include the:

(a) Name of the training;

(b) Name of the sponsoring organization;

(c) Name of the trainee;

(d) Number of training clock hours completed;

(e) Training start and end date;

(f) Trainer:

1. Signature;

2. Credential number; and

3. Credential number expiration date; and

(g) Core content subject areas.

(3) Cabinet staff shall maintain a database of credentialed trainers.

Section 13. Renewal of a Kentucky Early Care and Education Trainer's Credential. (1) A Level 1 Kentucky Early Care and Education Trainer's Credential shall:

(a) Be valid for three (3) years; and

(b) Not be renewable.

(2) A Level 2 through Level 5 Kentucky Early Care and Education Trainer's Credential shall be renewed every three (3)

years.

(3) A trainer renewing a Level 2 through Level 4 Kentucky Early Care and Education Trainer's Credential shall submit to the cabinet or its designee:

(a) A completed DCC-200;

(b) Documentation of thirty (30) clock hours of continuing education since the previous issue date of the credential to include:

1. A minimum of seven (7) clock hours of training on how to train other adults to include:

a. Adult learning theory;

b. Affecting change in behavior; or

c. Organization of training;

2. A minimum of eight (8) clock hours in early care and education; and

3. Any remaining clock hours in training:

a. As required for other related professional licensure, certification, or credential; or

b. In accordance with subparagraph 1 or 2 of this paragraph; ~~[and]~~

(c) Verification of cabinet-approved training on the cabinet-designated data system, as required by [specified in] Section 2 of this administrative regulation, if verification has not been previously provided; and

(d) Verification that a training coach has observed the trainer prior to renewal for coaching purposes.

(4) A trainer renewing a Level 5 Kentucky Early Care and Education Trainer's Credential shall submit to the cabinet or its designee:

(a) A completed DCC-200; and

(b) Verification of cabinet-approved training on the cabinet-designated data system, as required by [specified in] Section 2 of this administrative regulation, if verification of the training has not been previously provided.

(5) A trainer renewing a Specialty Level Kentucky Early Care and Education Trainer's Credential shall:

(a) Be renewed every three (3) years; and

(b) Submit to the cabinet or its designee:

1. A completed DCC-200;

2. Proof of current license, certification, or credential in the trainer's area of expertise; and

3. Verification of cabinet-approved training on the cabinet-designated data system, required by [specified in] Section 2 of this administrative regulation, if verification has not been previously provided.

(6) Upon receipt and approval of the required documentation of subsections (3) through (5) of this section, the cabinet or its designee shall award the individual a:

(a) Letter of approval; and

(b) Renewed Kentucky Early Care and Education Trainer's Credential for the appropriate level.

Section 14. Denial of Application or Renewal. (1) The cabinet shall deny a Kentucky Early Care and Education Trainer's Credential~~;~~ if the individual fails to comply with:

(a) Sections 2 through 4 of this administrative regulation; and

(b) Section 5, 6, 7, 8, 9, or 10 of this administrative regulation.

(2) The cabinet shall not renew a Kentucky Early Care and Education Trainer's Credential for an individual who fails to comply with Section 13 of this administrative regulation.

(3)(a) Individuals denied a Kentucky Early Care and Education Trainer's Credential have the right to request a review of the denial by the commissioner [Commissioner] of the Department for Community Based Services or designee.

(b) A request for review shall be submitted to the commissioner or designee within ten (10) days of the denial.

(c) Upon completion of the review, the commissioner or designee shall issue a written order regarding the complaint within thirty (30) days unless:

1. Extenuating circumstances prolong the review of the complaint; and

2. The commissioner or designee notifies the complainant of the need for an extension to the timeframe specified in this paragraph.

(d) The individual shall abide by the order.

Section 15. Revocation of Credential. (1) The cabinet shall revoke a Kentucky Early Care and Education Trainer's Credential from a trainer who:

- (a) Falsifies a record;
- (b) Fails to comply with the requirements established [as specified] in Section 11 or 12 of this administrative regulation; or
- (c) Does not preserve the confidentiality of training and trainee records.

(2) An individual whose credential has been revoked may:

- (a) Request a hearing pursuant to 922 KAR 2:260 [as specified in 922 KAR 1:320]; or
- (b) Reapply after a two (2) year period for a Kentucky Early Care and Education Trainer's Credential.

Section 16. Preapproval of Conferences, Seminars, Institutes, Workshops, Independent Studies, and Online Early Care and Education Training. (1) A conference, seminar, institute, workshop, independent study, or online early care and education training using a presenter not holding a current Kentucky Early Care and Education Trainer's Credential shall apply to the cabinet for preapproval to offer training to meet requirements established [as specified] in:

- (a) 1. KRS 199.896(15) and (16);
2. KRS [.] 199.8982(1)(a)6 and (2); or
3. [.] 922 KAR 2:090, 2:100, [2:140, 2:170,] 2:180, 2:230 [2:240], or 2:250;
- (b) The CDA; or
- (c) A Level 1 through Level 5 Kentucky Early Care and Education Trainer's Credential.

(2) Each training event using a presenter not holding a current Kentucky Early Care and Education Trainer's Credential shall apply thirty (30) days prior to the date of the training event. The cabinet shall make a determination within ten (10) working days of receipt of a complete application.

(3) An individual applying for preapproval of a conference, seminar, institute, workshop, independent study, or online training shall submit a completed:

- (a) DCC-201, Application for Registration of Conference, Seminar, Institute, Independent Study, or Workshop; or
- (b) DCC-201a, Application for Registration of Online Training.

(4)[(a)] A presenter not holding a Kentucky Early Care and Education Trainer's Credential shall:

- (a) Be [be] identified; and [.]
- (b) Attach a [A] resume or vita for the presenter [shall be attached] to the application required by [described in] subsection (3)(a) of this section.

(5) Approval for each presenter not holding a Kentucky Early Care and Education Trainer's Credential shall apply only to the training event approved by the cabinet.

(6) An individual not holding a Kentucky Early Care and Education Trainer's Credential may apply for a maximum of five (5) cabinet-approved training events per calendar year.

(7) Approval for each online training shall expire two (2) years from date of approval.

(8) A sponsor of an in-state approved conference, seminar, institute, workshop, independent study, or online early care and education training shall comply with Section 17 of this administrative regulation.

(9) If preapproval is denied, the decision may be reviewed, upon request, by the commissioner [Commissioner] of the Department for Community Based Services or designee, in accordance with Section [Sections] 14(3)(a) through (c) of this administrative regulation.

(10) If a sponsor of an in-state approved conference, seminar, institute, workshop, independent study, or online early care and education training fails to comply with Section 17 of this administrative regulation, the cabinet shall deny preapproval of future training for two (2) years.

(11) An independent study shall be submitted and preapproved pursuant to this section of this administrative regulation for Kentucky credentialed trainers and trainers not holding a Kentucky trainer's credential.

Section 17. Maintenance of Records for Approved Conferences, Seminars, Institutes, Workshops, Independent Studies, and Online Early Care and Education Training. (1) A sponsor of an approved conference, seminar, institute, workshop, independent study, or online training shall:

(a) 1. Maintain records of each training provided and trainees to include:

- a. A copy of the DCC-201 or the DCC-201a; and
- b. The employer at the time of training for each trainee; and
- 2. Provide records on the training provided and trainees to the cabinet upon request; or
- (b) Submit information from records required in paragraph (a) of this subsection into the cabinet-designated data system.

(2) Certificates issued for a conference, seminar, institute, workshop, independent study, or online early care and education training shall be in accordance with Section 12(2) of this administrative regulation.

(3) To the extent funds are available, the cabinet shall:

- (a) Maintain a list of pre-approved conferences, seminars, institutes, workshops, independent studies, and online trainings or other early care and education trainings from a nationally recognized organization; and
- (b) Make the list available to the public.

Section 18. Cabinet-Approved Training Agencies. (1) In order to become a cabinet-approved training agency, an agency shall:

(a) Complete the DCC-203, Application to Become a Cabinet-Approved Training Agency;

(b) Be approved as meeting the requirements established in this section of the administrative regulation and the DCC-203 within forty-five (45) days of receipt of the DCC-203; and

(c) Be recorded and maintained on the cabinet-approved training agency list by state administrators.

(2) The approval status of a training agency shall not be based solely on the density of existing approved training agencies in an Area Development District.

(3) A cabinet-approved training agency may provide:

(a) Sixty (60) clock hours of planned program instruction with field-based assignments pursuant to the requirements of the Council for Professional Recognition and 922 KAR 2:250 to obtain the Commonwealth Child Care Credential from the cabinet; and

(b) An additional sixty (60) clock hours of planned program instruction pursuant to the requirements of the Council for Professional Recognition within two (2) years to obtain the Child Development Associate Credential from the Council for Professional Recognition.

Section 19. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DCC-200, Kentucky Early Care and Education Trainer's Credential Application", edition 2020[2012];

(b) "DCC-201, Application for Registration of Conference, Seminar, Institute, Independent Study, or Workshop", edition 2020 [2012]; [and]

(c) "DCC-201a, Application for Registration of Online Training", edition 2020; and

(d) "DCC-203, Application to Become a Cabinet-Approved Training Agency", edition 2020 [2012].

(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 FRIEDLANDER, Secretary

APPROVED BY AGENCY: November 5, 2020

FILED WITH LRC: November 6, 2020 at 10:47 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 25, 2021, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing

shall notify this agency in writing by January 15, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until January 31, 2021. 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 persons: Laura Begin and Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for an individual to obtain a Kentucky Early Care and Education Trainer's Credential and the requirements for approved trainings to count towards child care licensure, certification, registration, and credential renewal training requirements. The training by a Kentucky Early Care and Education credentialed trainer or an "approved" training meets the requirements established in KRS 199.896(15) and (16); KRS 199.8982(1)(a)6 and (2); 922 KAR 2:090, 2:100, 2:180, 2:230, or 2:250; or Level 1 through Level 5 Kentucky Early Care and Education Trainer's Credential.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set forth the requirements of KRS 199.896(17) and 199.8982(3), which require the cabinet to make available training for child care providers through the development or approval of a model training curriculum and training materials. The credential and approval contained in this administrative regulation ensures model training is available for child care providers.

(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 criteria to be a Kentucky early care and education credentialed trainer or an approved training, which ensures the training is delivered by a credible, qualified trainer and in the best interest for the child care providers of Kentucky.

(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 criteria and requirements for a Kentucky Early Care and Education Trainer's Credential or approved training. KRS 199.896(17) and 199.8982(3) require the cabinet to make available training for child care providers through the development or approval of a model training curriculum and training materials.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the administrative regulation to address asynchronous learning, synchronous learning, online trainings or webinars, and independent studies. The amendment prohibits the repetition of online training courses in order to meet the required training hours with appropriate exceptions and includes requirements for becoming a cabinet-approved training agency. Technical amendments are included for compliance with KRS Chapter 13A, references to repealed child care administrative regulations have been replaced, and material incorporated by reference is updated through this amendment.

(b) The necessity of the amendment to this administrative

regulation: This administrative regulation was last opened for regulatory amendment in 2011; therefore, minor technical amendments were necessary to prevent the administrative regulation from expiring and for compliance with KRS Chapter 13A. The amendment also includes updated language to account for modern methods of delivery for training.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to authorizing statutes by clarifying and making technical corrections to the requirements for an individual to obtain a Kentucky Early Care and Education Trainer's Credential and requirements for approved trainings to count towards child care licensure, certification, registration, and credential renewal training requirements.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will assist in the effective administration of the statutes through its establishment of criteria and requirements for a Kentucky Early Care and Education Trainer's Credential or approved training.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of June 30, 2020, 760 individuals held a Kentucky trainer's credential.

(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 primarily consists of minor technical amendments, but does address more modern methods of conducting trainings including online trainings and webinars and independent studies.

(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 this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): More modern methods of trainings may be approved as counting towards child care licensure, certification, registration, and credential renewal training requirements.

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

(a) Initially: There are no costs associated with the implementation of this amendment.

(b) On a continuing basis: There are no costs associated with the implementation of this amendment on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Tobacco Master Settlement Agreement funds are the source of funding for this program.

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services, Division of Child Care, administers this program.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.8941(4), 199.896(17),

199.8982(3), 200.703(3).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for state or local government.

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

(c) How much will it cost to administer this program for the first year? Tobacco Master Settlement Agreement funds are used in the administration of this program. No costs are associated with this amendment.

(d) How much will it cost to administer this program for subsequent years? No costs are associated with this amendment.

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

Revenues (+/-)

Expenditures (+/-)

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(Amendment)

922 KAR 2:250. Commonwealth Child Care Credential.

RELATES TO: KRS [~~Chapter 13B,~~] 164.518(3), 199.8941(4), 199.896(17), 200.151, 200.744(2)]

STATUTORY AUTHORITY: KRS 194A.050(1), 199.8982(3), 199.896(17), 200.703(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 200.703(3) requires the cabinet [~~Cabinet for Families and Children~~] to implement programs funded by the Early Childhood Advisory Council [~~Development Authority~~]. In addition, KRS 199.896(17) and 199.8982(3) require [~~requires~~] the cabinet to make available training for child care providers through the development or approval of a model training curriculum and training materials, including video instruction material. This administrative regulation establishes the requirements for child care providers to obtain a Commonwealth Child Care Credential.

Section 1. Definitions. (1) "Candidate" means a child care provider making application for the Commonwealth Child Care Credential.

(2) "Credentialed child care provider" means a child care provider awarded the Commonwealth Child Care Credential.

(3) "Planned program of instruction" means a program consisting of training for a child care provider provided by an organization approved by the cabinet.

(4) "Professional development counselor" means an individual approved by the cabinet who provides guidance to a potential candidate applying for a Commonwealth Child Care Credential.

Section 2. Eligibility for Candidates. A candidate for a Commonwealth Child Care Credential shall:

(1) Be at least eighteen (18) years of age;

(2) Be employed as an early child care provider in a licensed or certified facility in Kentucky; and

(3) Have completed within two (2) years of applying for

credential authorization sixty (60) hours of a planned program of instruction that includes [~~as follows~~]:

(a) Fourteen (14) hours in child growth and development;

(b) Fifteen (15) hours in learning environments, curriculum, and social-emotional development [~~and nutrition~~];

(c) Nine (9) hours in health, safety, and nutrition;

(d) Seven (7) hours in family and community partnerships;

(e) Four (4) hours in child assessment;

(f) Six (6) hours in professional development and professionalism; and

(g) Five (5) hours in program management and evaluation.

Section 3. Award of Credential. (1) A candidate shall submit to a professional development counselor verification of completing the sixty (60) hours of planned program instruction required [~~as specified~~] in Section 2(3) of this administrative regulation.

(2) The cabinet shall award a Commonwealth Child Care Credential to a candidate who meets [~~completes~~] the requirements established [~~as specified~~] in Section 2(3) of this administrative regulation.

Section 4. Renewal of Credential. (1) The cabinet shall issue a ninety (90) day notice for renewal of the Commonwealth Child Care Credential to a credentialed child care provider and a professional development counselor.

(2) The cabinet shall renew a Commonwealth Child Care Credential annually from date of credential authorization to a credentialed child care provider who:

(a) Completes an additional fifteen (15) hours of training that includes [~~to include~~]:

1. Twelve (12) clock hours of child development training [~~meeting the training requirement specified in 922 KAR 2:110, Section 3(13)~~]; and

2.a. Three (3) additional clock hours of child development training approved by the cabinet, pursuant to KRS 199.896(17); or

b. One (1) college credit; and

(b) Submits verification of training specified in paragraph (a)1 and 2 of this subsection:

1. To a professional development counselor; and

2. By thirty (30) days prior to the expiration date of the credential verification of training.

(3) Upon receipt of verification of training from a professional development counselor, the cabinet shall award the credential.

Section 5. Denial of Credential. (1) If the candidate fails to comply with Sections 2 and 3 of this administrative regulation, the Commonwealth Child Care Credential shall be denied.

(2) If the credentialed child care provider fails to comply with Section 4 of this administrative regulation, renewal of the Commonwealth Child Care Credential shall be denied.

(3) If the Commonwealth Child Care Credential is denied, the individual:

(a) Shall be informed as to the [~~of which~~] requirements that resulted in the denial; and

(b) May reapply after the requirements that caused [~~resulting in~~] the denial are met.

MARTA MIRANDA-STRAUB, Commissioner

ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: November 5, 2020

FILED WITH LRC: November 6, 2020 at 10:47 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 25, 2021, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by January 15, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is

made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until January 31, 2021. 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

Cabinet Contacts: Donna Little and Laura Begin

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for child care providers to obtain a Commonwealth Child Care Credential.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement statutory requirements relating to the Early Childhood Advisory Council and child care credentialing programs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 200.703(3) requires the cabinet to implement programs funded by the Early Childhood Advisory Council. KRS 164.518(3) requires the cabinet to participate in the promulgation of administrative regulations including monetary incentives for scholarship program participants.

(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 criteria and processes through which an individual may obtain a Commonwealth Child Care Credential.

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

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation makes correction in the planned program instruction required for this credential and makes many minor technical updates for compliance with formatting requirements established in KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation was last opened when it was first promulgated in 2003; therefore, minor technical amendments were necessary to prevent the administrative regulation from expiring and for compliance with KRS Chapter 13A.

(c) How the amendment conforms to the content of the authorizing statutes: Only minor updates are being made through this amendment. The administrative regulation is necessary to implement statutory requirements relating to the Early Childhood Advisory Council and child care credentialing programs.

(d) How the amendment will assist in the effective administration of the statutes: Only minor updates are being made through this amendment. This administrative regulation assists in the effective administration of the statutes by establishing criteria and processes through which an individual may obtain a Commonwealth Child Care Credential.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of June 30, 2020, 669 individuals held a Commonwealth Child Care Credential.

(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 only change in content within this amendment is that the required instruction include hours in learning curriculum and social-emotional development. Other changes are only technical in nature and required for compliance

with KRS Chapter 13A.

(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 this amendment.

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

This amendment will not result in changes in practice or process.

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

(a) Initially: There are no costs associated with the implementation of this amendment.

(b) On a continuing basis: There are no costs associated with this amendment on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Tobacco Master Settlement Agreement funds are the source of funding for this program.

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied to eligible individuals in the same manner statewide.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services, Division of Child Care, administers this program.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.8982(3), 199.896(17), 200.703(3).

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for state or local government.

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

(c) How much will it cost to administer this program for the first year? Tobacco Master Settlement Agreement funds are used in the administration of this program. No costs are associated with this amendment.

(d) How much will it cost to administer this program for subsequent years? No costs are associated with this amendment. Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-)

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](#).

**GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(New Administrative Regulation)**

201 KAR 9:280. Interpretation and Application of KRS 311.901(1) and KRS 311.903(4).

RELATES TO: KRS 311.901(1) and KRS 311.903(4)

STATUTORY AUTHORITY: KRS 311.901(1) and KRS 311.903(4)

NECESSITY, FUNCTION & CONFORMITY: KRS 311.901(1) and KRS 311.903(4) require that the Kentucky Board of Medical Licensure promulgate administrative regulations relating to procedures for eligibility and credentialing, procedures for license renewal and reinstatement, procedures for complaints and disciplinary actions, a code of ethical standards, standards of practice, objectives of athletic training, procedures for name and contact information changes, procedures of licensure renewal and reinstatement of active duty military individuals, procedures for documentation standards, requirements for foreign-trained athletic trainers, a formulary of legend medications that may be obtained, transported, provided, and administered when providing athletic training services, and requirements for invasive procedures. This administrative regulation establishes the procedures for eligibility and credentialing of US-trained and foreign-trained athletic trainers, procedures for license renewal and reinstatement including for active duty military individuals, procedures for complaints and disciplinary actions, a code of ethical standards, standards of practice, objectives of athletic training, procedures for name and contact information changes, procedures for documentation standards, a formulary of legend medications that may be obtained, transported, provided, and administered when providing athletic training services, and requirements for invasive procedures.

Section 1. Definitions. (1) "BLS" means basic life support.

(2) "Board" means the Kentucky Board of Medical Licensure.

(3) "BOC" means Board of Certification and is the successor organization to the National Athletic Trainers Association Board of Certification, Inc. referenced in KRS 311.905(1)(c).

(4) "CAATE" means the Commission on Accreditation of Athletic Training Education.

(5) "Dry needling" is also known as "intramuscular manual therapy" and means the insertion of a dry solid filiform needle, without medication, into a trigger point with the goal of releasing or inactivating the trigger points for the treatment of myofascial or musculoskeletal pain or soft tissue dysfunction.

(6) "IM" means intramuscular.

(7) "IV" means intravenous.

(8) "Legend drug" or "legend medication" means any drug, except for Schedule II, III, IV, or V drugs as defined in the Controlled Substances Act, 21 U.S.C. secs. 801 et seq., approved by the U.S. Food and Drug Administration that can be dispensed to the public only with a prescription from a medical doctor or other licensed practitioner.

(9) "NATA" means the National Athletic Trainers Association.

(10) "OTC" means an over-the-counter medication and is any medicine sold directly to a consumer without a requirement for a prescription from a healthcare professional.

(11) "SubQ" means subcutaneous.

(12) "Supervising physician" means a medical or osteopathic physician licensed by the Board.

(13) "Supervision" means advising, consenting to, or directing the activities of an athletic trainer through written or oral orders by a physician licensed by the Board, including pre-existing written protocols.

Section 2. Eligibility and Credentialing for US-trained and Foreign-Trained Athletic Trainers. In order to be eligible for licensure as an athletic trainer in the Commonwealth of Kentucky, regardless of whether trained in the United States or abroad, an applicant shall satisfy the requirements established in KRS 311.905.

Section 3. Renewal and Reinstatement. The procedures for renewal and reinstatement are those established in KRS 311.905 and 201 KAR 9:305 and 9:307.

Section 4. Procedures for complaints and disciplinary actions. All grievances, complaints and disciplinary proceedings against an athletic trainer shall be conducted in accordance with the provisions of KRS 311.591, 311.592, 311.593; 311.599 and 311.911; KRS Chapter 13B; and any related administrative regulations promulgated under KRS Chapter 311 which apply to physicians shall also apply to athletic trainers.

Section 5. Ethical Standards. An athletic trainer licensed to practice in the Commonwealth of Kentucky shall conform to the National Athletic Trainers' Association's Code of Ethics (March 2018).

Section 6. Standards of Practice. The standards of practice of an athletic trainer licensed to practice in the Commonwealth of Kentucky shall conform to current standards of practice taught within a CAATE-accredited athletic training program or a BOC-sponsored continuing education program, unless otherwise excluded by Kentucky statute or administrative regulation including those under 201 KAR Chapter 9.

Section 7. Objectives of Athletic Training. An athletic trainer licensed to practice in the Commonwealth of Kentucky shall practice with the intent of preventing, recognizing, evaluating, managing, disposing, treating, reconditioning, or rehabilitating athletic injuries.

Section 8. Name and Contact Information Changes.

(1) Any person licensed to practice as an athletic trainer in the Commonwealth of Kentucky shall report, in writing, to the Board:

(a) His or her full and official name, maiden name, and any aliases;

(b) The primary address(es) at which he or she maintains an office or practices athletic training and may be served correspondence from the Board;

(c) The electronic email address(es) at which he or she may receive correspondence from the Board; and

(d) His or her supervising physician(s).

(2) If unknown at the time of initial licensure, any new licensee shall make the report required in subsection (1) of this section within thirty (30) days after commencing the practice of athletic training within this state.

(3) Every athletic trainer who, after notifying the Board of the information required in subsections (1) and (2) of this section, moves, changes, or obtains a new name, address, electronic address, or supervising physician, shall notify the Board, in writing, within ten (10) business days thereof.

Section 9. Documentation Standards. An athletic trainer licensed to practice in the Commonwealth of Kentucky shall conform to the National Athletic Trainers' Association's Best Practice Guidelines for Athletic Training Documentation (August 2017).

Section 10. Formulary of Legend Medications which may be Obtained, Transported, Provided and Administered when Providing

Athletic Training Services.

(1) An athletic trainer licensed to practice in the Commonwealth of Kentucky may, in coordination with a supervising physician, obtain, transport, provide, and administer the following legend drugs:

- (a) Albuterol for administration via meter dose inhaler;
- (b) Albuterol Nebule for administration via small volume nebulizer or oxygen-driven nebulizer prepackaged;
- (c) Atrovent Nebule for administration via small volume nebulizer or oxygen-driven duonebulizer prepackaged;
- (d) Oxygen;
- (e) Nitroglycerin for administration via spray or tab;
- (f) Epinephrine 1:1000 for administration via IM or Epi-Pen for treatment of anaphylaxis;
- (g) The following fluids for IV administration:
 - 1. Normal Saline; and
 - 2. Lactated Ringers;
- (h) Naloxone for IM or nasal administration;
- (i) Glucagon for IM administration in the event of a diabetic emergency;
- (j) D50-Dextrose 50% and D25- Dextrose 25% for IV administration in the event of a diabetic emergency;
- (k) Flu Vaccine to any person nine (9) years of age or older;
- (l) Lidocaine (1% or 2%) for administration via injection, with or without Epinephrine;
- (m) Bupivacaine (.5%) for administration via injection, with or without Epinephrine;
- (n) Xylocaine (1% or 2%), with or without Epinephrine;
- (o) Lidocaine Topical; and
- (p) Dermabond tissue adhesive.

(2) An athletic trainer licensed to practice in the Commonwealth of Kentucky may, in coordination with a supervising physician, obtain, transport, provide, and administer OTC medications in accordance with the manufacturer's recommendations or upon order of a supervising physician.

(3) Unless there is a risk of death, physical disability, or impairment to the athlete, an athletic trainer licensed to practice in the Commonwealth of Kentucky shall not administer a legend drug or an OTC medication to a person under the age of eighteen (18) years without express parental or guardian consent and physician oversight.

Section 11. Invasive Procedures.

(1) An athletic trainer licensed to practice in the Commonwealth of Kentucky may, in coordination with a supervising physician, perform the following invasive procedures:

- (a) Rectal thermometry;
- (b) IM, IV or SubQ medication administration injections;
- (c) Airway adjuncts, if in conformity with BLS protocols and instruments;
- (d) Dry needling, if:
 - 1. The athletic trainer has completed at least fifty-four (54) classroom hours of BOC-approved dry needling training, which includes instruction in the clinical application of dry needling;
 - 2. The procedure is ordered by a supervising physician; and
 - 3. The treatment is administered in a designated room or facility separate from a gymnasium, locker room, sports field or sideline;
- (e) Phlebotomy;
- (f) Capillary finger sticks for purpose of testing blood glucose levels;
- (g) Suturing or stapling superficial lacerations involving only skin or subcutaneous tissues, if performed in a designated room or facility separate from a gymnasium, locker room, sports field or sideline; and
- (h) Draining of blisters.

(2) Unless there is a risk of death, physical disability, or impairment to the athlete, an athletic trainer licensed to practice in the Commonwealth of Kentucky shall not perform an invasive procedure on a person under the age of eighteen (18) years without express parental or guardian consent and physician oversight.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) The "National Athletic Trainers' Association's Code of Ethics", March 2018; and
 - (b) The "National Athletic Trainers' Association's Best Practice Guidelines for Athletic Training Documentation", August 2017.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, Monday through Friday, 8:00 a.m. to 4:30 p.m.

SANDRA R. SHUFFETT, President

APPROVED BY AGENCY: October 23, 2020

FILED WITH LRC: October 23, 2020 at 2:04 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 25, 2021, at 9:30 a.m., at the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. 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 January 31, 2021. 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: Leanne K. Diakov, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7943, fax (502) 429-7118, email Leanne.Diakov@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Leanne K. Diakov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes practice objectives for KY-licensed athletic trainers; practice, documentation and ethical standards for KY-licensed athletic trainers; procedures for name and contact information changes of KY-licensed licensed athletic trainers; invasive procedures that may be performed by KY-licensed athletic trainers; and formulary of legend medications which may be obtained, transported, provided and administered by KY-licensed athletic trainers.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set forth practice objectives for KY-licensed athletic trainers; practice, documentation and ethical standards for KY-licensed athletic trainers; procedures for name and contact information changes of KY-licensed licensed athletic trainers; invasive procedures that may be performed by KY-licensed athletic trainers; and formulary of legend medications which may be obtained, transported, provided and administered by KY-licensed athletic trainers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish practice objectives for KY-licensed athletic trainers; practice, documentation and ethical standards for KY-licensed athletic trainers; procedures for name and contact information changes of KY-licensed licensed athletic trainers; invasive procedures that may be performed by KY-licensed athletic trainers; and formulary of legend medications which may be obtained, transported, provided and administered by KY-licensed athletic trainers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to establish practice objectives for KY-licensed athletic trainers; practice, documentation

and ethical standards for KY-licensed athletic trainers; procedures for name and contact information changes of KY-licensed licensed athletic trainers; invasive procedures that may be performed by KY-licensed athletic trainers; and formulary of legend medications which may be obtained, transported, provided and administered by KY-licensed athletic trainers.

(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: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment will affect all athletic trainers licensed to practice in the Commonwealth of Kentucky.

(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: Persons licensed to practice as athletic trainers in the Commonwealth of Kentucky will be required to conform to the defined practice objectives and practice, documentation and ethical standards; will be required to follow procedures for name and contact information changes; will be able to perform the delineated invasive procedures; and will be able to obtain, transport, provide and administer the delineated legend medications.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Licensed athletic trainers are not expected to incur any additional costs in order to comply with the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensed athletic trainers will be held to consistent and uniform standards and procedures.

(5) Provide an estimate of how much it will cost 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.

(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 of fees or funding will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all licensees regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Medical Licensure 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 311.901(1), KRS 311.903(4), KRS 311.565(1)(a) and (b)

3. Estimate the effect of this administrative regulation on the

expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None. 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.

4. 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.

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 (+/-):

Expenditures (+/-):

Other Explanation:

DEPARTMENT OF AGRICULTURE Office of the Consumer and Environmental Protection (New Administrative Regulation)

302 KAR 79:011. Motor fuel quality testing and inspection program.

RELATES TO: KRS 363.900-363.908, 16 C.F.R. 306.12, 40 C.F.R. 80.27

STATUTORY AUTHORITY: KRS 363.902, 16 C.F.R. 306, 16 C.F.R. 309, 40 C.F.R. 80.27

NECESSITY, FUNCTION, AND CONFORMITY: KRS 363.902 requires the commissioner of the department to implement and administer an inspection and testing program for motor fuels. This administrative regulation establishes procedures to implement and administer a motor fuels inspection and testing program.

Section 1. Definitions.

(1) "Alternative fuel" means methanol, denatured ethanol, and other alcohols; mixtures containing eighty-five (85) percent or more by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas; liquefied petroleum gas; hydrogen; coal – derived liquid fuels; fuels, other than alcohol, derived from biological materials.

(2) "Anti-Knock Index" or "AKI" means the arithmetic average of the Research Octane Number (RON) and Motor Octane Number (MON): $AKI = (RON + MON) / 2$; this value is called by a variety of names, in addition to anti-knock index, including: Octane rating, Posted octane, $(R + M) / 2$ octane.

(3) "ASTM International" means the international voluntary consensus standards organization formed for the development of standards on characteristics and performance of materials, products, systems, services and the promotion of related knowledge.

(4) "Automotive Fuel Rating" means the automotive fuel rating required under the amended Automotive Fuel Ratings, Certification and Posting Rule, 16 C.F.R. Part 306. The automotive fuel rating for alternative non-liquid automotive fuels is expressed in 16 C.F.R. Part 309.

(5) "Aviation gasoline" means a type of gasoline suitable for use as a fuel in an aviation spark-ignition internal combustion engine.

(6) "Aviation turbine fuel" means a refined middle distillate suitable for use as a fuel in an aviation gas turbine internal combustion engine.

(7) "Biodiesel" means a fuel comprised of, at least ninety-nine (99) percent by volume, mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B-100 or B-99.

(8) "Biodiesel blend" means hydrocarbon-based diesel fuel

blended with between six (6) and twenty (20) percent by volume biodiesel and may contain fuel additives.

(9) "Biomass-based diesel" means a diesel fuel substitute produced from nonpetroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under 42 U.S.C. 7545§ (c) (1) (D), and includes fuel derived from animal wastes, including poultry fats and poultry wastes, and other waste materials, or from municipal solid waste and sludges and oils derived from wastewater and the treatment of wastewater.

(10) "Compressed Natural Gas (CNG)" means natural gas which has been compressed and dispensed into fuel storage containers and is suitable for use as an engine fuel.

(11) "Department" means the Kentucky Department of Agriculture.

(12) "Diesel" means a refined hydrocarbon suitable for use as a fuel in a compression-ignition internal combustion engine that may contain fuel additives and up to five (5) percent by volume of biodiesel or biomass-based diesel.

(13) "Distributor" means any carrier or supplier who transports or stores, or causes the transportation or storage, of motor fuel without taking title to or otherwise having ownership of the motor fuel and without altering either the quality or quantity.

(14) "Ethanol flex fuel blends", commonly known as "Flex Fuel", means gasoline-ethanol mixtures of more than fifty-one (51) percent but not greater than eighty-three (83) percent ethanol by volume, restricted for use as fuel in vehicles equipped with flexible-fuel spark ignition engines.

(15) "EPA" means the United States Environmental Protection Agency.

(16) "Gasoline" means a volatile mixture of liquid hydrocarbons containing small amounts of additives for use as a fuel in a spark-ignition internal combustion engine and has not been blended with oxygenates; including neat, conventional, and recreational gasoline.

(17) "Gasoline-oxygenate blend" means a fuel consisting primarily of gasoline blended with more than one (1) percent by volume oxygenate, with more than three tenths (0.3) of a percent by volume methanol, or with not more than sixteen (16) percent isobutanol; this includes gasoline-ethanol blends.

(18) "internal combustion engine" means a device used to generate power by converting chemical energy bound in a fuel via spark-ignition or compression-ignition engine combustion into mechanical work to power a vehicle or other device.

(19) "License" means retail motor fuel license.

(20) "License holder" means the person, owner, retailer or their delegated representative, that is financially responsible for the cost of fees, fines, corrective actions and remediation of motor fuel quality, to ensure compliance with the Motor Fuel Inspection and Testing Program pursuant to KRS 363.900-908.

(21) "Liquefied natural gas" or "LNG" means natural gas that has been liquefied at negative two hundred sixty degrees Fahrenheit (-260 °F) and stored in insulated cryogenic tanks for use as a motor fuel.

(22) "Liquefied petroleum gas" or "LPG" means a mixture of normally gaseous hydrocarbons, predominantly propane that has been liquefied by compression or cooling, or both, to facilitate storage, transport, and handling for use as a motor fuel.

(23) "Manifolded" means a piping connection between two or more tanks that allows fuel to freely flow from one tank to another thus drawing product from multiple tanks.

(24) "Mid-level ethanol flex fuel blends" means gasoline-ethanol mixtures containing between sixteen (16) and fifty (50) percent ethanol by volume, restricted for use in flexible-fuel vehicles with automotive spark-ignition engines.

(25) "Oxygenate" means an oxygen-containing organic compound, such as an alcohol, like ethanol, that can be used as a fuel or fuel supplement.

(26) "Person" means an individual, partnership, corporation, company, firm, association, or other business entity.

(27) "Premium diesel" means diesel fuel identified on retail dispensers with an additional term incorporated directly in a product or grade name that differentiates the fuel and implies the

fuel provides properties that meet or exceed minimum specification limits or performance.

(28) "Product transfer documentation" means a bill of lading, invoice, loading, delivery, or meter ticket, bill of sale, or any combination of product delivery documentation meeting the requirements specified in this regulation, that shall accompany a shipment of motor fuel.

(29) "Racing gasoline" means a specialty fuel typically used in non-road racing vehicles that is generally of lower volatility, has a narrower boiling range and a higher octane rating than gasoline or gasoline-oxygenate blends made for use in conventional passenger vehicles.

(29) "Reid Vapor Pressure" or "RVP" means a measure of the volatility of gasoline and gasoline-oxygenate blends; it is the property of a liquid fuel that outlines its evaporation characteristics.

(30) "Retail facility" means a licensed service station, garage, truck stop or other outlet selling from a motor fuel retail dispensing device that is compliant with 302 KAR 81:010, for the purpose of engaging in the business of selling or distributing motor fuel to the consumer. A retail facility does not include an outlet using such dispensers exclusively for company and fleet use and price contract sales.

(31) "Stop-sale order", means when a motor fuel product(s) is removed from sale to the consumer.

(31) "Stop-sale order, administrative" means, when a motor fuel product(s) is ordered removed from sale to the consumer due to a violation(s) not related to motor fuel quality standards and specifications.

(32) "Stop-Sale Order, Motor Fuel Quality" means, when a motor fuel product(s) is ordered removed from sale to the consumer for failure to conform to minimum specifications for the particular type, class and grade.

(33) "Storage tank" means a tank located either above or below ground used to hold motor fuel intended for retail sale.

(34) "V/L" means vapor to liquid ratio.

Section 2. Licensing and Renewal.

(1) No person shall offer for sale retail motor fuel to consumers without first obtaining a license from the department.

(a) Operating a retail facility without a retail motor fuel license may result in the placement of an administrative stop-sale order pursuant to a Level 6 Civil Penalty on all motor fuel offered for sale.

(2) Each retail facility motor fuel license shall be effective from the date of issuance until January 31 and shall be renewed annually.

(3) After January 31, 2023, the department will provide the ability to apply for or renew retail motor fuel licenses online.

(a) Paper applications and payments will no longer be accepted after January 31, 2023.

(b) Paper applications and payments submitted after January 31, 2023 will not be processed.

(4) A valid retail motor fuel license shall be conspicuously displayed at the retail facility.

(5) Retail motor fuel licenses are non-transferable.

(6) A retail motor fuel license will not be issued without an application having been first submitted.

(a) Applications must be complete when submitted.

(b) Payment must be in the form of a money order or cashier's check, made payable to Kentucky State Treasurer and mailed to the Kentucky Department of Agriculture, Division of Regulation and Inspection, 107 Corporate Drive, Frankfort, Kentucky 40601.

(c) Applications without payment will not be processed.

(d) Payments received without a completed application will not be processed.

(e) The license holder shall affirm or modify the availability of each motor fuel offered for sale with each license application or renewal, this includes any motor fuel subject to a Declaration of Non-Sale, as provided for in 302 KAR 79:011(9)(10).

(f) The license holder shall confirm that all retail dispensing devices used for retail sales are compliant with 302 KAR 81:010.

(7) Unpaid fines assessed under the Motor Fuel Quality Testing and Inspection Program may result in the denial of license issuance.

(8) No license holder shall offer for sale a new motor fuel, or a motor fuel not identified in this administrative regulation or 302 KAR 79:012, without first notifying the department in writing.

(9) A license holder shall notify the department in writing within ten (10) consecutive days of when any of the following occurs or is likely to occur:

- (a) When the retail facility closes;
- (b) When license holder information changes;
- (c) When a license holder intends to permanently modify motor fuel products offered for sale, or storage tank allocation;
- (d) When a retail facility has a storage tank that has been entered into temporary closure, in accordance with any law or regulation.

Section 3. Labeling.

(1) The label showing the minimum automotive fuel rating shall meet the same specifications required in 16 C.F.R. Part 306 or 16 C.F.R. Part 309.

(2) Retail dispensing devices shall display the octane rating certified on the product transfer documentation to the license holder of gasoline and gasoline-oxygenate blends being offered for sale to consumers. At least one (1) label on the face of the dispenser shall identify the octane rating. If two (2) or more gasolines or gasoline-oxygenate blends with different octane ratings are sold from a single dispenser, then a separate label for each octane rating shall be placed on the face of the dispenser.

(3) Labels shall be placed conspicuously on the dispenser and be in full view of consumers. Labels shall be placed as near as reasonably practical to the price.

(4) During remediation the posted automotive fuel rating may differ from that certified on the product transfer documentation; otherwise, the posted automotive fuel rating must meet that which is certified on the product transfer documentation.

(5) In addition to this regulation, for gasoline containing less than one (1) percent by volume oxygenate a label shall be posted that contains words such as "neat," "conventional," "recreational," "alcohol free," "contains no ethanol," or other language approved by the department. The label shall not contain the following: "100 %" or "pure gasoline."

(6) Gasoline and gasoline-oxygenate blends must be labeled in accordance with 302 KAR 79:012 (1) (5) (a-c).

(7) Gasoline-ethanol blends with ethanol content greater than ten (10) percent, up to and including fifteen (15) percent, shall be labeled in accordance with the EPA dispenser labeling requirements in 40 C.F.R. 80.1501.

(8) "E-85" products must be labeled as "Ethanol Flex Fuel" at motor fuel retail facilities in Kentucky not later than January 31, 2023.

(9) Aviation gasoline shall be identified by the grade terms contained in the latest version of ASTM D6227 "Standard Specification for Unleaded Aviation Gasoline Containing a Non-hydrocarbon Component", ASTM D7547 "Standard Specification for Hydrocarbon Unleaded Aviation Gasoline" and ASTM D910 "Standard Specification for Leaded Aviation Gasolines" for the particular type and grade.

(10) Aviation turbine fuels shall be identified as grades Jet A, Jet A-1, or Jet B.

(11) Racing gasoline labels shall display an AKI that meets that which is certified on the product transfer documentation.

(12) Diesel fuel other than No. 2-D shall be identified on the dispenser by grade.

Section 4. Retail Product Storage Identification.

(1) To facilitate retail motor fuel product storage identification each product storage tank or vessel shall consist of a lid or access point, rim or fixed component, and collar or permanent label.

(a) Each lid or access point and rim or fixed component for any motor fuel product storage tank or vessel at the retail level shall be permanently, plainly, and vividly marked to identify the product contained inside by means of a description and color as designated in the published "API Recommended Practice 1637; Equipment Color-Symbols System, Figures 1-3 and with a collar or permanent label.

(b) In addition to a collar or permanent label, the lid or access point, and rim or fixed component shall be identified by one of the following methods:

1. Paint the lid or access point and rim or fixed component, then place a collar or permanent label near or around the access point that states the name or description of the product such as "Regular E10"; or

2. Paint the lid or access point and rim or fixed component, then fit a collar permanent label inside the lid or access point.

(2) If a retail motor fuel product is not covered in the publication "API Recommended Practice 1637; Figures 1-3 Equipment Color Symbols System", it shall be permanently, plainly, and vividly marked to identify the product contained inside.

(3) To identify motor fuel products stored at the retail facility, a license holder shall place, in a conspicuous location, a legible chart identifying any of the following, when applicable:

- (a) The location of each storage tank in use;
- (b) The type and grade of motor fuel in each storage tank;
- (c) Which, if any, storage tanks are manifolded;
- (d) Any dispenser displaying a single product or grade on multiple buttons;
- (e) The dispenser supplied by each storage tank; and
- (f) Any product(s) subject to a Declaration of Non-Sale.

Section 5. Product Transfer Documentation.

(1) The requirements of this section are to be in addition to, and not in substitution of, other requirements established in any federal statute or regulation.

(2) Products regulated by this administrative regulation shall be accompanied by transfer documentation that detail components of the motor fuel.

(3) A legible paper copy, or digital representation, of the product transfer documentation shall be made available to the department prior to the conclusion of the inspection or upon request.

(4) With the exception of 302 KAR 79:011(7) (2) (b), each license holder selling motor fuel shall retain product transfer documentation for each grade at the location where the motor fuel is transferred for the last five (5) deliveries.

(5) In addition to other product transfer documentation requirements set forth in this administrative regulation, when any person transfers motor fuel, except for transfers to the consumer, the transferor shall provide to the transferee product transfer documentation that shall state the following information for each type and grade of motor fuel:

- (a) The type of motor fuel being transferred;
- (b) The automotive fuel rating of the motor fuel being transferred;
- (c) The name and address of the transferor;
- (d) The name and address of the transferee;
- (e) The volume of motor fuel being transferred; and
- (f) The date of the transfer.

(6) In addition to other product transfer documentation requirements set forth in this section, the following information, or similar, shall also be included:

(a) For the period June 1 through September 15, "The RVP does not exceed {fill in appropriate value} psi."

(b) For gasoline the following statement "Contains no oxygenate".

(c) For gasoline blended with ethanol in concentration of at least one (1) percent by volume in the motor fuel shall also include the following information:

1. For gasoline blended with less than nine (9) percent by volume ethanol, the following statement: "Contains up to X % ethanol. The RVP does not exceed {fill in appropriate value} psi." The term X refers to the maximum volume percent of ethanol present in the gasoline.

2. For gasoline blended with between nine (9) and ten (10) percent, by volume ethanol, the following statement: "Contains between 9% and 10% ethanol."

3. For gasoline blended with greater than ten (10) percent, by volume, and not more than fifteen (15) percent, by volume ethanol the following statement: "Contains between 10% and 15 %

ethanol."

(d) For gasoline blended with an oxygenate other than ethanol, a statement declaring the name and percentage of any oxygenate or combination of oxygenates present.

(7) In addition to other product transfer documentation requirements set forth in this section, all mid-level ethanol flex fuel and ethanol flex fuel blends, must be represented by the numerical value representing the volume percentage of ethanol in the fuel, followed by the percentage sign followed by the term "Ethanol. Use Only in Flex Fuel Vehicles/May Harm Other Engines".

(a) For Mid-Level Ethanol Flex fuel blends containing more than sixteen (16) percent and no greater than fifty (50) percent ethanol by volume, the numerical value representing the volume percentage of ethanol in the fuel, must be rounded to the nearest multiple of ten (10), followed by the percentage sign followed by the term "Ethanol";

(b) For ethanol flex fuel blends containing more than, at least, fifty (50) percent and no greater than eighty-three (83) percent ethanol by volume, the numerical value representing the volume percentage of ethanol in the fuel, must be rounded to the nearest multiple of ten (10), followed by the percentage sign followed by the term "Ethanol", or the phrase, "contains 51% - 83% Ethanol".

(8) In addition to other product transfer documentation requirements set forth in this section, for biomass-based diesel, biodiesel, biomass-based diesel blends with more than five (5) percent biomass-based diesel, and biodiesel blends with more than five (5) percent biodiesel, a disclosure of the Biomass-based diesel or biodiesel component, expressed as the percentage by volume. Diesel fuel must also include a statement declaring the grade as either "No.1-D" or "No. 2-D".

(9) In addition to other product transfer documentation requirements set forth in this section, premium diesel must be identified as such.

(10) In addition to other product transfer documentation requirements set forth in this section, biodiesel blend stock shall be identified by the letter "B" followed by the numerical value representing the volume percentage of biodiesel either "B-99" or "B-100", followed by the term "Biodiesel Blend Stock."

(11) In addition to other product transfer documentation requirements set forth in this section one hundred (100) percent Biomass-Based diesel shall be identified by the phrase "contains 100 % Biomass-Based diesel."

(12) In addition to other product transfer documentation requirements set forth in this section, alternative fuel, with one (1) principal component, shall be identified by indicating the commonly-used name of the fuel along with a disclosure of the amount, expressed as a minimum percentage by volume; such as "M-85, Minimum 85% Methanol".

(13) In addition to other product transfer documentation requirements set forth in this section, alternative fuel, with two (2) principle components, shall be identified by indicating the commonly-used name of the fuel along with a disclosure of the two (2) principle components, expressed as a minimum percentage by volume; such as "LPG, Minimum 90% Propane, 2% Butane".

Section 6. Unattended Stations. The license holder of a retail motor fuel dispensing site that is unstaffed shall comply with all motor fuel quality requirements set forth in this administrative regulation.

Section 7. Inspection of Premises.

(1) The department's inspector shall present proper identification to the license holder prior to obtaining samples.

(2) (a) The department shall have access to all distributor and retail facility records relating to the distribution or sale of retail motor fuel.

(b) If a license holder sells retail motor fuel at more than one (1) location, the product transfer documentation may be retained at a central location, provided that the product transfer documentation is made available to the inspector prior to the conclusion of the inspection.

(3) At each retail facility, having more than one (1) dispenser per product, the license holder must identify and affix all

dispensers with an alphabetical or numerical designation.

(4) Each retail location shall have on file a chart or other means of determining each products volume in gallons. This information shall be supplied prior to conclusion of the inspection or upon request.

(5) The department shall have access to all motor fuel intended for retail sale for the purpose of examination, inspection, taking of samples, and investigations. A license holder shall not hinder or obstruct the department in the reasonable performance of its duties.

(a) If access is denied by the license holder, an administrative stop-sale order may be issued on the product identified by the department to be inspected until access is granted, even if the product(s) has been removed from sale.

(b) A license holder may be exempt from the requirement of this section by providing proof that no motor fuel is in the tank at the time of the inspection.

(6) A receipt, either printed by a device or written in clear hand script shall be provided to the department's inspector. Failure to meet the requirements of (a-g) shall result in the issuance of a Level 1 Civil Penalty. Receipts shall include:

(a) The retail facility address;

(b) The date of the transaction;

(c) The time of the transaction;

(d) The price per gallon of the motor fuel dispensed;

(e) The total volume of motor fuel dispensed;

(f) The identity of the product, by name, symbol or abbreviation; and

(g) The dispenser designation by either an alphabetical or numerical description.

(7) If the design, construction, or location of any storage tank is such as to require special equipment, accessories or access for use or motor fuel return, the equipment, accessories or access shall be supplied by the license holder.

Section 8. Sampling of Motor Fuel.

(1) Samples of motor fuel collected for testing shall be pumped, pulled, drawn, or otherwise procured in accordance with the most recent standard practice for the particular type, class and grade of the motor fuel, using a standard or method detailed in one of the following:

(a) ASTM D4057, "Standard Practice for Manual Sampling of Petroleum and Petroleum Products";

(b) ASTM D5842, "Standard Practice for Sampling and Handling of Fuels for Volatility Measurement"; or

(c) ASTM D4306, "Standard Practice for Aviation Fuel Sample Containers for Test Affected by Trace Contamination."

(2) Only gasoline, gasoline-oxygenate blends and diesel fuel will be subject to random sampling.

(3) Samples of not more than one (1) gallon per grade, per source, per inspection may be collected from any distributor or retail facility without cost to the state. When the same type and grade of motor fuel from multiple storage tanks, which are not manifolded, is offered for sale at a retail facility a sample of each type and grade may be obtained.

(4) Where a motor fuel quality Notice of Violation has been issued, for complaint, random and department initiated inspection, the department will pay the cost of the laboratory analysis associated with an initial inspection and the first and second follow-up inspections, if required.

(a) The license holder will be responsible for payment of a percentage of the cost of each subsequent laboratory analysis needed to verify compliance with KRS 363.900 - 363.908 and this administrative regulation. This includes a specification test that was not applicable at the time of the initial inspection but is applicable at the time of the subsequent inspection.

1. The license holder will be required to pay a fee equal to fifty (50) percent of the cost of the laboratory analysis for the third follow-up inspection.

2. The license holder will be required to pay a fee equal to one-hundred (100) percent of the cost of the laboratory analysis for the fourth and any subsequent follow-up inspections.

3. Laboratory analysis fees must be paid by the license holder

to the department prior to the follow-up inspection.

a. Payment of fees must be in the form of a money order or cashier's check, made payable to Kentucky State Treasurer and mailed to the Kentucky Department of Agriculture, Division of Regulation and Inspection, 107 Corporate Drive, Frankfort, Kentucky 40601

(b) If the department determines that a test, not performed in a previous laboratory analysis, is necessary the department will pay the cost of the additional testing.

Section 9. Enforcement.

(1) Any license holder found by the department to be in violation of KRS 363.900-363.908, this regulation or 302 KAR 79:012, shall receive a Notice of Violation by personal service or certified mail detailing the facts constituting the citation of the violation and the assessment of a fine, if applicable.

(a) Each Notice of Violation shall state the amount of the fine. Fine amounts will be determined in accordance with "Motor Fuel Quality Testing and Inspection Program Civil Penalty Guidelines" (Form KDA-OCEP-MF-01).

1. If a finding of the department results in the issuance of a Level 2, 3, 4, or 5 Civil Penalty, the assessed fine or order shall be afforded a case review upon written request.

2. If a finding of the department results in the issuance of any Level 1 Civil Penalty it shall be prima facie evidence of the fact or facts found therein; the fine amount shall constitute a final agency action and is therefore not subject to a case review.

(b) A follow-up inspection shall be conducted for every motor fuel quality violation resulting in a Level 2 Penalty and above.

(2) Operating without a retail motor fuel license is a violation of KRS 363.904 (1) which shall result in the placement of an administrative stop-sale order pursuant to a Level 6 Civil Penalty on all motor fuel offered for sale. The issuance of a citation for a violation of the statute shall be prima facie evidence of the fact or facts found therein. The administrative stop-sale order on all motor fuel offered for sale at the retail facility shall constitute a final agency action and is therefore not subject to a case review.

(a) A Level 6 Civil Penalty may be remediated by filing an application to obtain or renew a license.

(3) Remediation may be achieved, by removing and replacing or upgrading the motor fuel in storage to conform to minimum specifications for the particular type, class and grade; or otherwise addressing the cause of the violation.

(4) When a Notice of Violation or a Follow-up Failure has been issued, the license holder, within ten (10) consecutive day's receipt of the Notice:

(a) Shall provide remediation documentation to the department describing the corrective action taken to resolve the violation(s); or
1. If the license holder has not provided the department with documentation in writing by the expiration of the ten (10) consecutive days, the product(s) that were the subject of the violation(s), may be placed under an Administrative Stop-Sale Order and subject to a Level 5 Civil Penalty by the department.

(b) May request a case review, as provided in 302 KAR 79:011 (9) (1) (a) (1) of this section.

(5) The department shall obtain a follow-up sample from the retail facility for analysis within a period not to exceed three (3) business days, from receipt of remediation documentation as required in 302 KAR 79:011 (9) (4) (a).

(a) When the remediation action taken results in the downgrading of the posted automotive fuel rating, which is evidenced by photo documentation that complies with 302 KAR 79:011 (3) (1), a follow-up sample is not required.

(6) A Stop-Sale Order may be included with a Notice of Violation or Follow-up Failure Notification.

(a) If a motor fuel quality stop-sale order is issued, the product identified in the Notice of Violation shall be removed from sale to the consumer.

(b) Product(s) shall remain under a Stop-Sale Order until subsequent sampling and analysis by the department verifies its compliance.

(c) The department will notify the license holder of its decision to remove motor fuel quality stop-sale order within a period not to

exceed three (3) business days upon receipt of analysis indicating conformance with the minimum specification for the particular type, class and grade of the motor fuel.

(7) The department may issue a motor fuel quality stop-sale order for any motor fuel not in compliance with this administrative regulation. The license holder shall be notified of the motor fuel quality stop-sale order.

(a) The motor fuel quality stop-sale order shall be in writing and contain an explanation of the violation(s).

(b) When the department has made a determination that a violation has been resolved, the motor fuel quality stop-sale order shall be removed.

(c) A motor fuel quality stop-sale order shall apply to the product for which sample analysis indicates a violation.

(d) The Motor Fuel Quality Stop-Sale Order shall extend to motor fuels blended from any products placed under a motor fuel quality stop-sale order.

(8) Irrespective of ownership, any stop-sale order shall remain in effect until remediation documentation, detailing the corrective action taken, has been received, in writing, from the license holder. Such products shall continue to remain under a stop-sale order until subsequent sampling and analysis by the department verify compliance with KRS 363.900 - 363.908 and this administrative regulation. If needed, the department may obtain a follow-up sample from the retail facility for analysis. This rule will survive if there is a change in licensure or ownership.

(9) The fine shall be paid within thirty (30) consecutive day's receipt of the Notice of Violation unless a case review is requested pursuant to 302 KAR 79:011(9) (1) (a) (1). Failure to pay a fine within thirty (30) consecutive day's receipt of the violation may result in an administrative stop-sale order being issued by the department.

(10) Declaration of non-sale. If the license holder is unable to achieve, or elects not to achieve, motor fuel quality compliance the license holder may remove a non-compliant motor fuel from sale to the consumer by obtaining a Declaration of Non-Sale. A Declaration of Non-Sale shall have the effect of a motor fuel quality stop-sale order on any retail motor fuel product to which it applies.

(a) A retail facility shall have a maximum of two (2) motor fuels subject to a declaration of non-sale at a time.

(b) If the fine associated with a motor fuel quality violation(s) has been paid, and the license holder is unable to achieve, or elects not to achieve, motor fuel quality compliance, the license holder may provide a "Declaration of Non-Sale" to the department, on Form KDA-OCEP-MF-04, stating that the retail facility will no longer offer for sale a specific type and grade of motor fuel.

1. A separate Declaration of Non-Sale shall be submitted for each type and grade of motor fuel.

2. Each Declaration of Non-Sale must be complete when submitted.

3. An incomplete Declaration of Non-Sale will not be accepted or certified.

4. The certified Declaration of Non-Sale shall be conspicuously displayed at the retail facility.

(c) If the fine associated with a motor fuel quality violation(s) has not been paid, and the license holder made a timely request for a case review and is unable to achieve, or elects not to achieve, motor fuel quality compliance, the license holder may be granted a "Temporary Declaration of Non-Sale", contingent upon payment of the fine which is the subject of the case review.

1. A Temporary Declaration of Non-Sale is subject to the requirements specified in 302 KAR 79:011(9) (10) (b) (1-4).

2. The case review shall be conducted in accordance with 302 KAR 79:011(10).

3. After the license holder pays the fine stated in a Final Agency Action, the license holder may provide a "Declaration of Non-Sale" to the department, on Form KDA-OCEP-MF-04, stating that the retail facility will no longer offer for sale a specific type and grade of motor fuel.

4. If the license holder fails to pay a fine stated in a Final Agency Action, within fifteen (15) consecutive days after the receipt of the Final Agency Action, the Temporary Declaration of Non-Sale will be revoked and the product(s) subject to may be placed under

an Administrative Stop-Sale Order.

(d) Remediation. A Declaration of Non-Sale may be remediated by removing and replacing the affected motor fuel in storage and providing detailed documentation to the department of the corrective action taken.

1. The license holder under which the Declaration of Non-Sale was certified will be responsible for payment of a percentage of the cost of each laboratory analysis needed to verify compliance with KRS 363.900 - 363.908 and this administrative regulation.

a. The license holder will be required to pay a fee equal to fifty (50) percent of the cost of the laboratory analysis for the first inspection of remediation.

b. The license holder will be required to pay a fee equal to one-hundred (100) percent of the cost of the laboratory analysis for the second and any subsequent inspections of remediation.

c. Remediation documentation and Laboratory analysis fees must be received by the department prior to the follow-up inspection.

i. Payment of fees must be in the form of a money order or cashier's check, made payable to Kentucky State Treasurer and mailed to the Kentucky Department of Agriculture, Division of Regulation and Inspection, 107 Corporate Drive, Frankfort, Kentucky 40601.

d. If the department determines that a test, not performed in a previous laboratory analysis, is necessary the department will pay the cost of the additional testing.

2. When there has been a change in ownership and the license holder elects to achieve motor fuel quality compliance the license holder will be responsible for payment of a percentage of the cost of each laboratory analysis needed to verify compliance with KRS 363.900 - 363.908 and this administrative regulation.

a. The department will pay the cost of the laboratory analysis associated with an initial inspection of remediation.

b. The license holder will be required to pay a fee equal to fifty (50) percent of the cost of the laboratory analysis for the first inspection of remediation.

c. The license holder will be required to pay a fee equal to one-hundred (100) percent of the cost of the laboratory analysis for the second and any subsequent inspections of remediation.

d. Corrective action documentation must be received by the department prior to inspection of remediation. Except for the initial inspection of remediation, laboratory analysis fees must be received by the department prior to the follow-up inspection.

e. Payment of fees must be in the form of a money order or cashier's check, made payable to Kentucky State Treasurer and mailed to the Kentucky Department of Agriculture, Division of Regulation and Inspection, 107 Corporate Drive, Frankfort, Kentucky 40601.

f. If the department determines that a test, not performed in a previous laboratory analysis, is necessary the department will pay the cost of the additional testing.

(11) If a license holder fails to pay a fine stated in a Final Agency Action, within fifteen (15) consecutive day's receipt of the notice, the product(s) that were the subject of the violation(s), may be placed under an Administrative Stop-Sale Order and subject to a Level 5 Civil Penalty.

(12) Offering for sale a motor fuel product which has been placed under a Motor Fuel Quality Stop-Sale Order or which is subject to a Declaration of Non-Sale, shall be subject to a Level 5 Civil Penalty and fine.

(13) If a license holder offers motor fuel for sale in violation of an Administrative Stop-Sale Order pursuant to a Level 5 Civil Penalty, a fine will be assessed for each type, class and grade of fuel offered for sale.

(14) Each violation of the regulation shall be deemed a separate occurrence for the purpose of the Civil Penalty and Fine Assessment.

Section 10. case review and Appeal.

(1) A Level 1 Civil Penalty is not subject to a case review. A Level 1 Civil Penalty may be appealed to the Office of the Attorney General, in accordance with 302 KAR 79:011 (11).

(2) A Level 6 Civil Penalty is not subject to a case review. A

Level 6 Civil Penalty may be appealed to the Office of the Attorney General, in accordance with 302 KAR 79:011 (11).

(3) A request for a case review shall be made in writing, within ten (10) consecutive days receipt of the department's Notice of Violation.

(4) A license holder may respond to a Notice of Violation, within ten (10) consecutive days of receipt of the department's notice, by requesting a case review or paying the assessed civil penalty. If no request for a case review is made within the ten (10) day period, then the Notice of Violation shall be deemed to be a "final order" for the purposes of KRS Chapter 13B.

(5) Upon receipt of a request, the department will notify the license holder of a case review date. If the license holder is experiencing financial hardship and requests a reduction in a fine amount, prior to the date of the case review, the license holder shall submit three (3) most recent bank statements or other relevant documentation. The license holder may also submit, prior to the case review date, documentation detailing corrective action and cost incurred.

(6) Case reviews shall be heard by an administrative panel consisting of five (5) members which shall be designated by the department.

(a) Five (5) members present shall constitute a quorum.

(b) The panel shall include at least one (1) person who is not affiliated with the motor fuel program.

(7) The members of the administrative panel shall not be required to accept or consider information or documents that were not received at least three (3) business days prior to the case review date.

(8) A license holder may appear before the administrative panel either in person or via telephonic conference. A case review must be requested and scheduled in advance.

(9) Using the "Designation of Proxy for Case Review", (Form KDA-OCEP-MF-03), a license holder may designate a proxy to appear as its representative before the administrative panel. Although it is not required, a license holder may designate legal counsel to represent them. The form for proxy representation must be notarized and submitted at least three (3) business days prior to a case review. Nothing in this subsection should be construed as authorizing the unlicensed practice of law.

(10) A license holder may request to reschedule a case review for good cause.

(a) The request to reschedule must be submitted to the department in writing.

(b) The request to reschedule must be received at least seven (7) consecutive days prior to the case review date.

(11) The administrative panel may consider the degree and extent of harm caused by the violation(s), the cost of rectifying the noncompliance, the amount of financial benefit derived from the violation(s), whether the violation(s) was committed willfully, and the compliance record of the license holder when determining the fine's recalculation.

(a) The administrative panel shall document its review using the "Motor Fuel Administrative Case Review Guidelines", (Form KDA-OCEP-MF-02).

(12) Failure of a license holder to attend a scheduled case review will result in a determination by default and the department shall issue a final agency action stating that the violation(s) and fine assessed remain as originally issued.

(13) If a license holder fails to pay a fine stated in a Final Agency Action, within fifteen (15) consecutive days after the receipt of the Final Agency Action, the product(s) that were the subject of the violation(s), may be placed under an Administrative Stop-Sale Order by the department.

(14) Within ten (10) consecutive day's receipt of notice, a Formal Administrative Hearing may be requested to appeal the decision in a Final Agency Action.

Section 10. Formal Administrative Hearing.

(1) A final agency action shall be subject to a Formal Administrative Hearing to be conducted in accordance with KRS Chapter 13B.

(2) Upon receipt of a final agency action an aggrieved party

may, within ten (10) days, request in writing to the department, a hearing to contest the validity of the department's action.

(3) A request for a Formal Administrative Hearing shall be in writing.

(4) A request for a Formal Administrative Hearing shall state the reason(s) the aggrieved party believes the department's action was erroneous.

(5) A request for a Formal Administrative Hearing shall be submitted to the Department of Agriculture, Office of Legal Services, 107 Corporate Drive, Second Floor, Frankfort, Kentucky 40601, within ten (10) days after the final agency action is received.

Section 12. Civil Penalties.

Failure to comply with this administrative regulation may result in the combination of any of the following:

- (1) The issuance of a Notice of Violation(s);
- (2) The assessment of a fine;
- (3) The issuance of an Administrative Stop-Sale Order;
- (4) The issuance of a Motor Fuel Quality Stop-Sale Order; or
- (5) The placement of an Administrative Stop-Sale Order on all motor fuel offered for sale at the retail facility.

Section 13. Consumer Motor Fuel Quality Complaints.

(1) Any person wishing to make a complaint about a deficiency in the quality of a motor fuel that was purchased within the Commonwealth shall file, not later than fourteen (14) consecutive days after the date of the complainant purchase of that motor fuel from the retail facility, a written complaint to the department identifying the following information:

- (a) The name and contact information for the complainant;
 - (b) The name and street address of the retail facility where the motor fuel was purchased and the dispenser number, if known;
 - (c) The type of motor fuel that was purchased;
 - (d) The grade of the motor fuel that was purchased; and
 - (e) A description of the deficiency.
- (2) The department shall not be required to investigate complaints meeting one (1) or more of the following:

- (a) The complaint was submitted to the department more than fourteen (14) consecutive days after the date of the complainant purchase from the retail facility;
- (b) The complainant is unable to specifically identify the retail facility which is the source of the motor fuel that is the subject of the complaint;
- (c) The department has reason to believe that repeated complaints regarding the same retail facility are intended to unduly penalize the retail facility or to disrupt the essential functions of the department.
- (d) The complainant is not the owner of the vehicle or equipment damaged, the person who purchased the motor fuel or a member of that person's immediate family;
- (e) The complaint is determined by the department to relate to a topic other than the quality of a motor fuel; or
- (f) The motor fuel referenced in the complaint is not present in the storage tank(s) when the department arrives to conduct an investigation.

Section 14. Incorporated by Reference

- (1) The following material is incorporated by reference:
- (a) "16 C.F.R. 306 - Automotive Fuel Ratings, Certification and Posting", (2012);
 - (b) "16 C.F.R. 309 - Labeling Requirements for Alternative Fuels", (2003);
 - (c) "40 C.F.R. 80.41- Reformulated Gasoline Standards and Requirements for Compliance", (2007);
 - (d) "40 C.F.R. 80.1501- Labeling Requirements that Apply to Retailers and Wholesale Purchaser-Consumers of Gasoline-Ethanol Blends that Contain Greater than 10 Volume Percent Ethanol and Not More than 15 Volume Percent Ethanol", (2014);
 - (e) "API Recommended Practice" 1637; 4th Edition, (April 2020), Using the API Color-Symbol System to Identify Equipment, Vehicles, and Transfer Points for Petroleum Fuels and Related Products at Dispensing Facilities and Distribution Terminals.

(f) "ASTM Standard D4057-19, Standard Practice for Manual Sampling of Petroleum and Petroleum Products", (2019);

(g) "ASTM Standard D4306-20, Standard Practice for Aviation Fuel Sample Containers for Test Affected by Trace Contamination", (2020);

(h) "ASTM Standard D5842-19, Standard Practice for Sampling and Handling of Fuels for Volatility Measurement", (2019);

(i) "Form KDA-OCEP-MF-01, Motor Fuel Inspection and Testing Civil Penalty Guidelines", (November 2020 Edition);

(j) "Form KDA-OCEP-MF-02, Motor Fuel Administrative Case Review Guidelines", (November 2020 Edition);

(k) "Form KDA-OCEP-MF-03, Designation of Proxy for Case Review", (November 2020 Edition); and

(l) "Form KDA-OCEP-MF-04, Declaration of Non-Sale", (November 2020 Edition).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Department of Agriculture, Division of Regulation and Inspection, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: November 12, 2020

FILED WITH LRC: November 13, 2020 at 11:24 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2021 at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, fax (502) 564-2133, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Clint Quarles

- (1) Provide a brief summary of:

(a) What this administrative regulation does: The proposed rule will permit a wider range of "alternative" fuels and require those fuels to meet specified standards. Additionally, the proposed rule will require that a person who sells and distributes automotive fuels, including "alternative" fuels, to make certain disclosures, and that retailers of automotive fuels, including "alternative" fuels, must post certain information, in connection with the sale thereof.

(b) The necessity of this administrative regulation: This administrative regulation adopts rules that set forth standards relating to motor fuel quality, specifications, and sampling and testing methods.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 363.902 directs the Commissioner of Agriculture, or his authorized agent, to implement and administer an inspection and testing program for motor fuels to ensure compliance with KRS 363.900 to 363.908. KRS 363.902 instructs that the standards set forth in the annual book of ASTM standards, supplements, and revisions shall be applied; and further that the department shall conform to any provisions of federal law or regulations which impose requirements in conflict with the ASTM standard.

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

statutes by modernizing language and creating clear guidance for motor fuel regulation in Kentucky.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky Department of Agriculture, 2,800 retailers and possibly another 100 entities that are involved in the fueling industry.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Refiners, producers and distributors of motor fuels will benefit by adoption of the proposed amendment in that they will be allowed to offer new fuels, some or all of which may prove popular with consumers.

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

(a) Initially: \$700,000

(b) On a continuing basis: \$700,000

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? License Fees, General Fund

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment? No increase in fee amount is included. However, the retailer could be responsible for additional testing costs in a noncompliance scenario.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The fee amount is in statute. However, the retailer could be responsible for additional testing costs in a noncompliance scenario.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No income will be generated by this filing. The fee is set forth in statute. However, the retailer could be responsible for additional testing costs in a noncompliance scenario.

(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 income will be generated by this filing. The fee is set forth in statute. However, the retailer could be responsible for additional testing costs in a noncompliance scenario.

(c) How much will it cost to administer this program for the first year? 2019 program costs were \$50,000 for staff for the motor fuel

program.

(d) How much will it cost to administer this program for subsequent years? The KDA expects this spending trendline to continue for the motor fuel program as a whole.

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

Revenues (+/-): Fees generated by participants are established in statute. Approximately \$150,000 in revenue was collected last year.

Expenditures (+/-): 2019 program costs were \$700,000 for staff for the motor fuel program.

Other Explanation:

DEPARTMENT OF AGRICULTURE Office of the Consumer and Environmental Protection (New Administrative Regulation)

302 KAR 79:012. Motor fuel quality standards and specifications.

RELATES TO: KRS 363.900-363.908, 16 C.F.R. 306.12, 40 C.F.R. 80.27

STATUTORY AUTHORITY: KRS 363.902, 16 C.F.R. 306, 16 C.F.R. 309, 40 C.F.R. 80.27

NECESSITY, FUNCTION, AND CONFORMITY: KRS 363.902 requires the commissioner of the department to implement and administer an inspection and testing program for motor fuels. This administrative regulation establishes motor fuel quality standards and specifications.

Section 1. Motor Fuel Quality Standards and Specifications.

(1) When no standard exists, the department shall designate a test or specification based upon the most widely accepted scientific principles.

(2) If it is demonstrated that some impurity or imperfection exists in a motor fuel product offered for sale that renders it unfit for its intended purposes, the product may be subject to a Level 4 Civil Penalty.

(3) These requirements will not apply to any bulk fuel storage tanks where the product contained therein is being reconditioned and withheld from sale.

(4) Motor fuel containing less than one (1) percent by volume oxygenate, not dispensed from a dedicated hose shall be subject to a Level 2 Civil Penalty.

(5) Gasoline and gasoline-oxygenate blends containing between zero (0) and up to fifteen (15) volume percent ethanol shall meet the following requirements:

(a) Gasoline and gasoline-oxygenate blends shall not be offered for retail sale under the name "premium" or "super" gasoline blends unless its AKI is greater than or equal to ninety-one (91).

(b) Gasoline and gasoline-oxygenate blends shall not be offered for retail sale under the name "plus" or "mid-grade" gasoline unless its AKI is greater than or equal to eighty-nine (89).

(c) Gasoline and gasoline-oxygenate blends shall not be offered for retail sale under the name "regular" gasoline unless its AKI is greater than or equal to eighty-six (86).

(d) Pursuant to KRS 363.902 (2), gasoline and gasoline-oxygenate blends offered for sale at a retail facility shall conform to the most recent version of ASTM D4814, "Standard Specification for Automotive Spark Ignition Engine Fuel," with the following exceptions, as required by KRS 363.904 (2):

1. For gasoline-ethanol blends containing between one (1) percent by volume and fifteen (15) percent ethanol by volume, the ASTM International V/L ratio specification shall be waived.

2. For gasoline-ethanol blends containing between nine (9) percent and fifteen (15) percent by volume ethanol, the RVP shall be increased by one (1) pound per square inch.

(e) The maximum concentration of oxygenates permitted in gasoline-oxygenate blends shall be those permitted by the EPA under section 211 of the Clean Air Act and applicable waivers, as

set forth in the published version of the NIST Handbook 130 for Gasoline and Gasoline-Oxygenate Blends and for Gasoline-Ethanol blends.

(f) For gasoline and gasoline-oxygenate blends the Motor Octane Number (MON) shall not be less than eighty-two (82).

(6) Mid-level ethanol flex fuel blends containing between sixteen (16) and fifty (50) percent ethanol by volume, shall meet the latest version of ASTM D7794, "Standard Practice for Blending Mid-Level Ethanol Fuel blends for Flexible-Fuel Vehicles with Automotive Spark-Ignition Engines"; and

(7) Ethanol flex fuel blends containing between fifty-one (51) and eighty-three (83) percent ethanol by volume shall be blended, stored, and conveyed for consumption in accordance with the latest version of ASTM D5798, "Standard Specification for Ethanol Fuel Blends for Flexible-Fuel Automotive Spark-Ignition Engines."

(8) M-85 Fuel Methanol shall meet the requirements set forth in the most recent version of ASTM D5797, "Standard Specification for Fuel Methanol M51-M85 for Automotive Spark-Ignition Engines."

(9) Diesel fuel that contains not more than five (5) percent by volume biodiesel or biomass-Based diesel shall meet the requirements set forth in the latest version of ASTM D975, "Standard Specification for Diesel Fuel."

(10) All diesel fuels identified on retail dispensers and product transfer documentation with terms such as "premium," "super," "supreme," "plus," or "premier" shall meet the requirements set forth in the published version of the NIST Handbook 130 for Premium Diesel Fuel.

(11) Diesel fuel that contains biodiesel between six (6) percent and twenty (20) percent, by volume, shall meet the requirements set forth in the latest version of ASTM D7467, "Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6 to B20)."

(12) Biodiesel fuel blend stock intended for blending with diesel fuel shall meet the requirements set forth in the most recent version of ASTM D6751, "Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels."

(a) Biodiesel fuel blend stock shall be at least ninety-nine (99) percent biodiesel but no more than one (1) percent diesel fuel by volume.

(b) Biodiesel fuel blend stock with less than ninety-nine (99) percent biodiesel shall not be used as a commercial blend stock for biodiesel blends without written approval from the department.

(13) Aviation turbine fuels shall meet the requirements set forth in the most recent version of the following standards, as applicable:

(a) ASTM D1655, "Standard Specification for Aviation Turbine Fuels;"

(b) ASTM D7223, "Standard Specification for Aviation Certification Turbine Fuel;"

(c) ASTM D7566, "Standard Specification for Aviation Turbine Fuel Containing Synthesized Hydrocarbons;" and

(d) ASTM D6615, "Standard Specification for Jet B Wide-Cut Aviation Turbine Fuel."

(14) Aviation gasoline shall meet the most recent version of the following standards, as applicable:

(a) ASTM D910, "Standard Specification for Leaded Aviation Gasoline;"

(b) ASTM D6227, "Standard Specification for Unleaded Aviation Gasoline Containing a Non-hydrocarbon Component"; and

(c) ASTM D7547, "Standard Specification for Unleaded Only Aviation Gasoline."

(15) Liquefied petroleum gases intended for use as motor fuel shall meet the requirements set forth in the most recent version of ASTM D1835, "Standard Specification for Liquefied Petroleum (LP) Gases."

(16) Racing Gasoline shall meet the requirements set forth in the gasoline manufacturer's product specifications. Upon the request of the department, each conveyor of racing gasoline shall provide the department with a copy of the manufacturer's product specifications.

(17) Hydrogen fuel for fuel cell vehicles shall meet the requirements set forth in the most recent edition of SAE J2719 "Hydrogen Fuel Quality for Fuel Cell Vehicles." At such time that ASTM International develops applicable standards for Hydrogen

Fuel Quality, those standards shall prevail as rule.

(18) Compressed natural gas shall meet the requirements set forth in the most recent edition of SAE J1616, "Recommended Practice for Compressed Natural Gas Vehicle Fuel." At such time that ASTM International develops applicable standards for compressed natural gas, those standards shall prevail as rule.

(19) LNG vehicle fuel shall meet the requirements set forth in the most recent edition of SAE J2699 "Liquefied Natural Gas Vehicle Fuel." At such time that ASTM International develops applicable standards for LNG vehicle fuels, those standards shall prevail as rule.

Section 2. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "ASTM Standard D910-20a, (ASTM D910), Standard Specification for Leaded Aviation Gasolines", (2020);

(b) "ASTM Standard D975-20c, (ASTM D975), Standard Specification for Diesel Fuel", (2020);

(c) "ASTM Standard D1655-20c, (ASTM D1655), Standard Specification for Aviation Turbine Fuels", (2020);

(d) "ASTM Standard D1835-20, (ASTM D1835), Standard Specification for Liquefied Petroleum (LP) Gases", (2020);

(e) "ASTM Standard D4806-20, (ASTM D4806), Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark Ignition Engine Fuel", (2020);

(f) "ASTM Standard D4814-20a (ASTM D4814), Standard Specification for Automotive Spark Ignition Engine Fuel", (2020);

(g) "ASTM Standard D5797-18, (ASTM D5797), Standard Specification for Methanol Fuel Blends (M51-M85) for Methanol-Capable Automotive Spark-Ignition Engines", (2018);

(h) "ASTM Standard D5798-20, (ASTM D5798), Standard Specification for Ethanol Fuel Blends for Flexible-Fuel Automotive Spark-Ignition Engines", (2020);

(i) "ASTM Standard D6227-18, (ASTM D6227), Standard Specification for Unleaded Aviation Gasoline Containing a Non-hydrocarbon Component", (2018);

(j) "ASTM Standard D6615-15a, (ASTM D6615), Standard Specification for Jet B Wide-Cut Aviation Turbine Fuel", (2019);

(k) "ASTM Standard D6751-20a, (ASTM D6751), Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels", (2020);

(l) "ASTM Standard D7223-17, (ASTM D7223), Standard Specification for Aviation Certification Turbine Fuel", (2017);

(m) "ASTM Standard D7467-20a, (ASTM D7467), Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6 to B20)", (2020);

(n) "ASTM Standard D7547-18a, (ASTM D7547), Standard Specification for Hydrocarbon Unleaded Aviation Gasoline", (2018);

(o) "ASTM Standard D7566-20b, (ASTM D7566), Standard Specification for Aviation Turbine Fuel Containing Synthesized Hydrocarbons", (2020);

(p) "ASTM Standard D7794-20, (ASTM D7794), Standard Practice for Blending Mid-Level Ethanol Fuel Blends for Flexible-Fuel Vehicles with Automotive Spark-Ignition Engines", (2020);

(q) "ASTM Standard D7901-20, (ASTM D7901), Standard Specification for Dimethyl Ether for Fuel Purposes", (2020);

(r) "National Institute of Standards and Technology Handbook 130, 2020 Edition Natl. Inst. Stand. Technol. Handb. 130, 2020 Ed., Uniform Fuels and Automotive Lubricants Regulation, IV, G, §2; (Nov. 2019)"

(s) "SAE J1616-201703, Standard for Compressed Natural Gas Vehicle Fuel, Society of Automotive Engineers International", (2017);

(t) "SAE J2699-201802, Liquefied Natural Gas (LNG) Vehicle Fuel, Society of Automotive Engineers International", (2018); and

(u) "SAE J2719-202003, Hydrogen Fuel Quality for Fuel Cell Vehicles, Society of Automotive Engineers International", (2020).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Department of Agriculture, Division of Regulation and Inspection, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through

Friday, 8:00 a.m. to 4:30 p.m.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: November 12, 2020

FILED WITH LRC: November 13, 2020 at 11:24 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2021 at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, fax (502) 564-2133, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: The proposed rule will permit a wider range of "alternative" fuels and require those fuels to meet specified standards. Additionally, the proposed rule will require that a person who sells and distributes automotive fuels, including "alternative" fuels, to make certain disclosures, and that retailers of automotive fuels, including "alternative" fuels, must post certain information, in connection with the sale thereof.

(b) The necessity of this administrative regulation: This administrative regulation adopts rules that set forth standards relating to motor fuel quality, specifications, and sampling and testing methods.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 363.902 directs the Commissioner of Agriculture, or his authorized agent, to implement and administer an inspection and testing program for motor fuels to ensure compliance with KRS 363.900 to 363.908. KRS 363.902 instructs that the standards set forth in the annual book of ASTM standards, supplements, and revisions shall be applied; and further that the department shall conform to any provisions of federal law or regulations which impose requirements in conflict with the ASTM standard.

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(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.

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(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative

regulation, if new, or by the change if it is an amendment: Refiners, producers and distributors of motor fuels will benefit by adoption of the proposed amendment in that they will be allowed to offer new fuels, some or all of which may prove popular with consumers.

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

(a) Initially: \$700,000

(b) On a continuing basis: \$700,000

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? License Fees, General Fund

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment? No increase in fee amount is included. However, the retailer could be responsible for additional testing costs in a noncompliance scenario.

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(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

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

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No income will be generated by this filing. The fee is set forth in statute. However, the retailer could be responsible for additional testing costs in a noncompliance scenario.

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(c) How much will it cost to administer this program for the first year? 2019 program costs were \$50,000 for staff for the motor fuel program.

(d) How much will it cost to administer this program for subsequent years? The KDA expects this spending trendline to continue for the motor fuel program as a whole.

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

Revenues (+/-): Fees generated by participants are established in statute. Approximately \$700,000 in revenue was collected last year.

Expenditures (+/-): 2019 program costs were \$150,000 for staff for the motor fuel program.

Other Explanation:

**TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Licensing
(New Administrative Regulation)**

601 KAR 23:030. Motor vehicle speed title process exceptions.

RELATES TO: KRS 186.200, 186.115, 186A.070, 186A.120, KRS 186A.130, 186A.165, 186A.170, 186A.520

STATUTORY AUTHORITY: KRS 186A.170(1)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 186A.170(1)(b) authorizes the Transportation Cabinet, Department of Vehicle Regulation, to promulgate administrative regulations providing exceptions to the speed title procedure. This administrative regulation establishes the procedures necessary to apply to obtain a certificate of title by means of an accelerated process and establishes the process for the cabinet to issue a motor vehicle certificate of title within forty-eight (48) hours of receipt of electronic speed title application from a county clerk.

Section 1. Definitions. (1) "Kentucky Certificate of Title" is defined by 103 KAR 44:120.

(2) "Rebuilt title" means a certificate of title issued pursuant to 601 KAR 9:200 for a specific motor vehicle that had been damaged and subsequently restored to an operable condition by replacing two (2) or more major component parts.

(3) "Resident" is defined by KRS 186.010(12).

(4) "Salvage title" is defined by KRS 186A.520(1).

(5) "Speed title" or "Speed certificate of title" means an expedited issuance of a certificate of title by the Transportation Cabinet as established in KRS 186A.170.

Section 2. Application for Kentucky Certificate of Title and Registration, TC 96-182.

(1) A completed Application for Kentucky Certificate of Title and Registration shall be submitted to the Division of Motor Licensing if a vehicle changes ownership or if the owner is a new Kentucky resident.

(2) A copy of the vehicle owner's Kentucky driver's license and ownership document or documents shall be attached to the Application for Kentucky Certificate of Title and Registration.

Section 3. Forty-eight (48) Hour Exceptions. (1) An Application for Kentucky Certificate of Title and Registration for a speed certificate of title shall, pursuant to this administrative regulation and KRS 186A.170(1)(b), be exempt from the forty-eight (48) hour requirement established in KRS 186A.170(1) if the Application for Kentucky Certificate of Title and Registration:

(a) Is electronically received by the cabinet from the county clerk on a Friday or Saturday;

(b) Does not include all of the required supporting materials as established in KRS 186.020;

(c) Includes one (1) or more supporting documents that is fraudulent, incomplete, or incorrect;

(d) Is for a classic motor vehicle project as established in 601 KAR 23:010; or

(e) Is not timely delivered to the cabinet due to delays from the postal delivery services.

Section 4. Motor Vehicles Ineligible for a Speed Title. (1) The following motor vehicles shall not be eligible for a speed title. A motor vehicle:

(a) Assembled from parts of junked, un-rebuildable, or other similar classification that disqualifies the vehicle from being titled for highway use pursuant to KRS 186.115;

(b) Subject to the classic motor vehicle project as established in 601 KAR 23:010;

(c) In a condition that requires the owner to obtain a rebuilt title as established in 601 KAR 9:200; or

(d) In a condition that requires the owner to obtain a salvage title as established in KRS 186A.520.

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

(a) "Application for Kentucky Certificate of Title and Registration," TC 96-182, March 2020.

(2)(a) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet Building, Department of Vehicle Regulation, Division of Motor Licensing, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8:00 a.m. through 4:30 p.m.

(b) This material is also available on the cabinet's Web site at <http://drive.ky.gov>.

JIM GRAY, Secretary

MATT COLE, Acting Commissioner

JON JOHNSON, Assistant General Counsel

APPROVED BY AGENCY: November 9, 2020

FILED WITH LRC: November 9, 2020 at 4:17 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 10:00 AM on January 26, 2021, at the Transportation Cabinet, Transportation Cabinet Building, 200 Mero Street, Frankfort, Kentucky 40622. 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 January 26, 2021, 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://bluejeans.com/960803211/4352>

Or Telephone:

+1.408.419.1715(UnitedStates(SanJose))

+1.408.915.6290 (United States(San Jose))

Meeting ID: 960 803 211

Participant Passcode: 4352

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 on January 31, 2021. 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: Jon Johnson, Staff Attorney Manager/Assistant General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238, email jon.johnson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jon Johnson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the administration and implementation of the speed title process.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 189A.170.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes a form and establishes the process by which a person may apply for and potentially obtain a speed title.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will establish the regulatory requirements of KRS 189A.170.

(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: the cabinet's Division of Motor Licensing within the Department of Vehicle Regulation and the cabinet's Department of Vehicle Regulation; circuit clerks; individuals, businesses, organizations, and state or local governments that seek to obtain a speed title for an eligible motor vehicle.

(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: These entities will use the referenced application form and submit required documents in order to make their application(s) complete. Entities should be aware that certain motor vehicles are not eligible for a speed title.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This process is not associated with any additional cost.

(c) As a result of compliance, what benefits will accrue to the entities: Entities may be able to obtain a certificate of title by way of an accelerated process.

(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: The cabinet will implement and enforce this administrative regulation by way of its ordinary course of business.

(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 will not 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 or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied.

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 Transportation Cabinet's Department of Vehicle Regulation and Division of Motor Licensing; circuit clerks; and state or local governments that seek to obtain a speed title for an eligible motor vehicle.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 189A.170.

(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 is not anticipated to have an effect on the expenditures or revenues of a state or local government agency.

(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 revenue.

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

(c) How much will it cost to administer this program for the first year? There is no cost associated with the implementation of this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There is no cost associated with the implementation of this administrative regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Office of the Secretary (Repealer)

900 KAR 11:011. Repeal of 900 KAR 11:010.

RELATES TO: KRS 194A.050(1), 2019 Ky. Acts ch. 180, sec.

2

STATUTORY AUTHORITY: KRS 194A.050(1)

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 the programs and fulfill the responsibilities vested in the cabinet. 2019 Ky. Acts ch. 180, sec. 2, repealed KRS Chapter 216C regarding medical review panels, effective March 27, 2019. At the time the statutory authorization in KRS Chapter 216C was repealed, there were pending claims awaiting payment resolution. Those claims have now been resolved and the administrative regulation previously authorized by KRS Chapter 216C is no longer authorized. Therefore, this administrative regulation repeals 900 KAR 11:010, Medical review panels.

Section 1. 900 KAR 11:010, Medical review panels, is hereby repealed.

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: November 10, 2020

FILED WITH LRC: November 12, 2020 at 9:29 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 25, 2021 at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by January 15, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until January 31, 2021. 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: Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 900 KAR 11:010, Medical review panels, as the authorizing statutes in KRS Chapter 216C were repealed by 2019 Ky. Acts ch. 180, effective March 27, 2019.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because the statutes authorizing the administrative regulation being repealed were themselves repealed in 2019. The Cabinet for Health and Family Services did not immediately repeal 900 KAR 11:010 at the time the statutory authorization in KRS Chapter 216C was repealed as there were pending claims awaiting payment resolution. Those claims have now been resolved and the administrative regulation previously authorized by KRS Chapter 216C is no longer authorized.

(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 repealing an administrative regulation that is no longer authorized by a Kentucky statute. KRS Chapter 216C was repealed by 2019 Ky. Acts ch. 180, effective March 27, 2019.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This repealer administrative regulation will assist in the effective administration of the statutes by removing an administrative regulation that is no longer authorized by a Kentucky statute.

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

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

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

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

(d) How the amendment will assist in the effective administration of the statutes: This is a repealer 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 only impacts the Cabinet for Health and Family Services. The underlying statutory provisions were repealed by 2019 Ky. Acts ch. 180, sec. 2., effective March 27, 2019, so medical review panels have not been used in Kentucky for over eighteen (18) months.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The Cabinet for Health and Family Services will not have to take any additional actions to comply with this repeal. The repeal of 900 KAR 11:010 is required by KRS 13A.310 to reflect the repeal of the underlying, authorizing statutes that were enacted in KRS Chapter 216C.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is not any costs to repeal the administrative regulation.

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

The benefit that will accrue from this repeal is that the Cabinet for Health and Family Services will not have an administrative regulation in effect that is no longer authorized by statute.

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

(a) Initially: There are not any costs associated with this repeal.

(b) On a continuing basis: There are not any costs associated with this repeal. There will not be any costs on a continuing basis because 900 KAR 11:010 will no longer be in effect once this repeal becomes effective.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding is not needed to repeal the 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: An increase in fees or funding is not necessary to repeal the administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation simply repeals an existing 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 Cabinet for Health and Family Services will be impacted by this repeal.

(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), 2019 Ky. Acts ch. 180, sec. 2.

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

(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 repeal will not generate any revenue for state or local government.

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

(c) How much will it cost to administer this program for the first year? There are no costs to administer this program as this is a repealer administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There are no costs to administer this program for subsequent years as this is a repealer administrative regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Public Health Protection and Safety

(Repealer)

902 KAR 10:131. Repeal of 902 KAR 10:060 and 902 KAR 10:130.

RELATES TO: KRS 13A.310

STATUTORY AUTHORITY: KRS 211.350(5), 211.972

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.350(5) requires that no person, firm, or corporation construct, install, alter, or cause to be constructed, installed, or altered, any on-site sewage disposal system subject to regulation by the cabinet without first obtaining an on-site sewage disposal permit from the local health department. KRS 211.972 requires all

persons proposing to engage in the business of servicing or maintaining sewage pretreatment units, grease traps, or holding tanks, or the transporting of sewage sludge from those facilities within the Commonwealth be licensed and bonded. This administrative regulation repeals 902 KAR 10:060 and 902 KAR 10:130 as the fees for on-site sewage disposal permits and septic tank servicing have been added to the administrative regulations that cover those activities.

Section 1. The following administrative regulations are hereby repealed:

- (1) 902 KAR 10:060, On-site sewage disposal application fee; and
- (2) 902 KAR 10:130, Licensing fee for septic tank servicing.

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

APPROVED BY AGENCY: October 23, 2020

FILED WITH LRC: November 2, 2020 at 8:32 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 25, 2021, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by January 15, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until January 31, 2021. 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 persons: Donna Little or Julie Brooks

Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation repeals 902 KAR 10:060 and 902 KAR 10:130.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to repeal 902 KAR 10:060 as the on-site sewage disposal application fee has been included in the amendment to 902 KAR 10:110; and the repeal of 902 KAR 10:130 is necessary as licensing fees for septic tank servicing have been included in the amendment to 902 KAR 10:170.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 13A.310 by repealing regulations and including the provisions for the application to construct, install, or alter an on-site sewage disposal system in 902 KAR 10:110 and including the licensing of a septic tank servicing business in 902 KAR 10:170.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is in accordance with KRS 13A.310(3).

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

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

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

(c) How the amendment conforms to the content of the

authorizing statutes: This is a new administrative regulation.

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The repeal of 902 KAR 10:060 will impact the local health departments that collect fees for issuing on-site sewage disposal system permits and the Environmental Management Branch of the Department for Public Health that conduct cluster system plan reviews. The repeal of 902 KAR 10:130 impacts 260 licensed septic tank servicing businesses.

(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: 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: No action is required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): There are no costs associated with the compliance of this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation will result in the repeal of obsolete administrative regulations.

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

(a) Initially: There are no costs to the administrative body associated with this administrative regulation.

(b) On a continuing basis: There are no costs to the administrative body associated with this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There are no costs to the administrative body associated with this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: No increase in fees or funding is associated with this administrative regulation.

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

(9) TIERING: Is tiering applied? No. Tiering is not applicable as this administrative regulation repeals 902 KAR 10:060 and 902 KAR 10:130.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The repeal of 902 KAR 10:060 and 902 KAR 10:130 impacts the Environmental Management Branch within the Department for Public Health.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 211.350 and 211.972.

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.

How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation does not generate revenue.

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

(c) How much will it cost to administer this program for the first year? There are no costs to the administrative body associated with this administrative regulation.

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

subsequent years? There are no costs to the administrative body associated with this administrative regulation.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Behavioral Health, Developmental and
Intellectual Disabilities
Division of Behavioral Health
(New Administrative Regulation)

908 KAR 2:270. Community behavioral health training.

RELATES TO: KRS 210.053

STATUTORY AUTHORITY: KRS 210.053

NECESSITY, FUNCTION, AND CONFORMITY: KRS 210.053 requires the cabinet to promulgate administrative regulations to establish and administer the community behavioral health training program. This administrative regulation establishes the community behavioral health training program and the awarding of training grants.

Section 1. Definitions. (1) "Cabinet" means the Cabinet for Health and Family Services.

(2) "Community behavioral health training" means training to identify and assist individuals who may have or may be developing or experiencing a:

- (a) Mental health disorder;
- (b) Substance use disorder; or
- (c) Mental health or substance use crisis.

Section 2. Training. (1) The cabinet shall administer the community behavioral health training program to ensure trainers can provide education opportunities to the community on how to identify and assist an individual who is believed to be:

- (a) Developing or has developed a mental health disorder or an alcohol or substance use disorder; or
- (b) Experiencing a mental health or substance use crisis.

(2) The cabinet shall provide training information at <https://www.dbhddid.ky.gov>.

Section 3. Grants. (1) Subject to funding, the cabinet shall provide training grants for community behavioral health training provided by certified trainers.

(2) Training grants shall:

- (a) Cover the cost of training courses; or
 - (b) Provide hardship subsidies for training fees.
- (3) Grants shall be prioritized based on:
- (a) Underserved populations;
 - (b) Areas with health care provider shortages; and
 - (c) Rural areas.

(4) Grants shall be evaluated on the trainings ability to provide quality behavioral health training to areas in need and trainers serving populations in need.

WENDY T. MORRIS, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: November 5, 2020

FILED WITH LRC: November 6, 2020 at 10:52 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 25, 2021 at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by January 15, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public.

Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until January 31, 2021. 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 Persons: Donna Little or Justin Dearing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the community behavioral health training program and the awarding of training grants.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the community behavioral health training program and the awarding of training grants in accordance with KRS 210.053.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the community behavioral health training program and the awarding of training grants in accordance with KRS 210.053.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of the statutes by establishing the community behavioral health training program and the awarding of training grants in accordance with KRS 210.053.

(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 any individual or organization that provides mental health first aid training through the Department for Behavioral Health, Developmental and Intellectual Disabilities.

(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: Any individual or organization that provides mental health first aid training through the Department for Behavioral Health, Developmental and Intellectual Disabilities will have to use the training information provided by the Department and will have to complete the request process and comply with requirements in order to obtain grants.

(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 will create no new or additional costs to regulated entities.

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

allows for the potential for any individual or organization that provides mental health first aid training through the Department for Behavioral Health, Developmental and Intellectual Disabilities to access materials and training programs approved by the Department. This administrative regulation also allows for the awarding of grants for the training when funding is available.

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

(a) Initially: There will be no initial cost to implement this administrative regulation.

(b) On a continuing basis: There will be no continual cost to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: State general funds will be used 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: The administrative regulation does not require an increase in fees or funding.

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

(9) TIERING: Is tiering applied? (Explain why or why not) The administrative regulation does not apply tiering. The standards are applicable in a like manner statewide.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services 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 210.053

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate new revenue.

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

Minutes of November 9, 2020

Call to Order and Roll Call

The November meeting of the Administrative Regulation Review Subcommittee was held on Monday, November 9, 2020 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 October 2020 meeting were approved.

Present were:

Members: Senators Julie Raque Adams, Alice Forgy Kerr, Reginald Thomas, and Stephen West. Representatives Deanna Frazier, and Marylou Marzian.

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

Guests: Al Duncan, Donna Scrivener, Dennis Shepherd, Department of Veterans' Affairs; Jon Grate, Farrah, Petter, Jim Royse, Auditor of Public Accounts; Beau Barnes, Teachers' Retirement System; Morgan Ransdell, Board of Nursing; Bryan Morrow, Board of Alcohol and Drug Counselors; Clint Quarles, Department of Agriculture; Chad Collins, Julian Tackett, Kentucky High School Athletic Association; Todd Allen, David Couch, Robin Kinney, Marty Park, Laura Raganas, Micki Ray, Matt Ross, Department of Education; Michael "Howdy" Kurtsinger, Jeffrey Walther, Fire Commission; Dale Hamblin, Robert Swisher, Department for Workers' Claims; Joshua Newton, Allyson Taylor, Department of Alcoholic Beverage Control; Bryan Alvey, Kentucky Distillers' Association, Jay Hibbard, Distilled Spirits Council of the US; Marc Guilfoil, Chad Thompson, Jennifer Wolsing, Horse Racing Commission; Robert Heleringer, Attorney; Regina Covington, Doug Hardin, Ambrose Wilson IV, Department of Charitable Gaming; Julie Brooks, Sally Dabb, Donna Little, Kelli Redmon, Department for Public Health; Shannon Stiglitz, Agribusiness Association of Kentucky.

The Administrative Regulation Review Subcommittee met on Monday, November 9, 2020, and submits this report:

Administrative Regulations Reviewed by the Subcommittee:

GOVERNOR'S OFFICE: Department of Veterans' Affairs: Tuition Waiver Program

17 KAR 1:040. Application requirements for tuition waiver programs related to veterans. Al Duncan, director, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 3, and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

State Veterans' Nursing Homes

17 KAR 3:050. Drug testing procedures at Kentucky Department of Veterans' Affairs state veterans' nursing homes.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 4 through 6, and 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Veterans' Service Organization Burial Honor Guard Program

17 KAR 4:030. Veterans' Service Organization Burial Honor Guard Program.

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

17 KAR 4:040. Indigent Veterans' Burial Program.

In response to a question by Co-Chair West, Mr. Duncan stated that death from coronavirus (Covid-19) had resulted in the need for more indigent veteran burials. The program had buried fifteen (15) veterans at a cost of \$15,000 so far this year and expected more.

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 requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Recognitions

17 KAR 5:020. Kentucky Medal for Freedom.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 3 to comply with

the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

AUDITOR OF PUBLIC ACCOUNTS: Audits

45 KAR 1:050. Audits of fiscal courts. Jon Grate, general counsel; Farrah Petter, assistant state auditor; and Jim Royse, director of local audits, represented the Auditor of Public Accounts.

FINANCE AND ADMINISTRATION CABINET: Teachers' Retirement System

102 KAR 1:340. 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. Beau Barnes, deputy secretary and general counsel, represented the system.

In response to a question by Co-Chair West, Mr. Barnes stated that the amendments to this administrative regulation clarified provisions established by KRS 161.220(9)(b), which limited member compensation for the purposes of retirement calculation in the three (3) years immediately prior to retirement. There were two (2) exceptions, including if there was an increase in the employee's corresponding length of employment and if there was a change in the corresponding position. A change in corresponding position might be, for example, if a teacher became assistant principal.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Sections 1, 3, and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to add distinguishing language; and (3) to add a Section 6 regarding the limitation established by KRS 161.220. Without objection, and with agreement of the agency, the amendments were approved.

BOARDS AND COMMISSIONS: Board of Nursing

201 KAR 20:085. Licensure periods and miscellaneous requirements. Morgan Ransdell, general counsel, represented the board.

In response to a question by Co-Chair West, Mr. Ransdell stated that these administrative regulations provided for electronic communication with licensees and an audit mechanism for APRN practice review.

201 KAR 20:161. Investigation and disposition of complaints.

Board of Alcohol and Drug Counselors

201 KAR 35:040. Continuing education requirements. Bryan Morrow, attorney, represented the board.

GENERAL GOVERNMENT CABINET: Department of Agriculture: Industrial Hemp

302 KAR 50:013. Repeal of 302 KAR 050:020, 302 KAR 050:030, 302 KAR 050:055, and 302 KAR 050:090. Clint Quarles, attorney, represented the department.

In response to questions by Co-Chair West, Mr. Quarles stated that these administrative regulations had been considered by this subcommittee and by the Interim Joint Committee on Agriculture, along with other related administrative regulations. Changes were made for federal compliance. These represented the last administrative regulations related to Kentucky's Hemp Program currently going through the administrative regulation process.

302 KAR 50:021. Policies and procedures for hemp growers.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; and Sections 1 through 5, 7, 8, 10, 12, 14, 16 through 19, and 21 through 28 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 50:031. Policies and procedures for hemp processors and handlers.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE; the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; and Sections 1 through 7, 9, 12, and 13 through 21 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 18 to clarify that monetary civil penalties shall be calculated based on the severity of the violation, not to exceed \$2,500 per violation. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 50:045. Department's reports to USDA; records retention for three years.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 6 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

302 KAR 50:056. Sampling and THC testing; post-testing actions; disposal of noncompliant harvests.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Sections 1 through 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.

302 KAR 50:080. Materials incorporated by reference.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Department of Education: School Terms, Attendance, and Operation

702 KAR 7:065. Designation of agent to manage middle and high school interscholastic athletics. Todd Allen, general counsel, Kentucky Board of Education; Chad Collins, general counsel, Kentucky High School Athletic Association; and Julian Tackett, commissioner, Kentucky High School Athletic Association, represented the department.

In response to a question by Representative Frazier, Mr. Tackett stated that there was no intended difference pertaining to

forms incorporated by reference regarding the use of the terms "gender" and "sex at birth." Some of the forms were developed by the agency, and some were developed by the American Academy of Pediatrics and other groups. Mr. Collins stated that the terms were intended for use in a straight-forward manner.

A motion was made and seconded to approve the following amendment: to amend Section 7 to update material incorporated by reference. Without objection, and with agreement of the agency, the amendment was approved.

702 KAR 7:140E. School calendar.

In response to questions by Co-Chair West, Mr. Allen stated that he did not believe that Senate Bill 177 from the 2020 Regular Session of the General Assembly included statutory authority for this administrative regulation. As school districts reopened to in-person learning, there was a need for increased sanitization, temperature monitoring, and student safety measures related to coronavirus (Covid-19). This necessitated some flexibility to the instructional calendar. This emergency administrative regulation authorized up to thirty (30) minutes per day for coronavirus (Covid-19) prevention instruction and measures.

Office of Learning Programs Development: Office of Instruction

704 KAR 3:303. Required Academic Standards. Todd Allen, general counsel, Kentucky Board of Education, and Micki Ray policy advisor, represented the office.

Academic Standards

704 KAR 8:090. Required Kentucky Academic Standards for Technology. Todd Allen, general counsel, Kentucky Board of Education; David Couch, associate commissioner; and Dr. Marty Park, commissioner, represented the office.

In response to questions by Co-Chair West, Dr. Park stated that this administrative regulation updated the 2008 technology standards. The office worked with stakeholders to organize technology standards by grade bands.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to comply with the formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

COMMUNITY AND TECHNICAL COLLEGE SYSTEM: Kentucky Fire Commission: Commission on Fire Protection Personnel Standards and Education

739 KAR 2:050. Volunteer fire department aid. Michael Kurtsinger, division director, represented the commissioner.

In response to a question by Representative Frazier, Mr. Kurtsinger stated that this administrative regulation did not add any required training hours. This administrative regulation extended the deadline, giving an extra six (6) months to complete required training.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and STATUTORY AUTHORITY paragraphs and Section 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

LABOR CABINET: Department of Workers' Claims

803 KAR 25:089 & E. Workers; compensation medical fee schedule for physicians. Dale Hamblin, Jr., assistant general counsel, and Robert Swisher, commissioner, represented the department.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 3 and 5 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

803 KAR 25:240. Workers' compensation unfair claims settlement practices.

A motion was made and seconded to approve the following

amendments: to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 3, 5, and 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

PUBLIC PROTECTION CABINET: Department of Alcoholic Beverage Control: Licensing

804 KAR 4:415. Direct shipper license. Joshua Newton, general counsel, and Allyson Taylor, commissioner, represented the department. Representative Adam Koenig and Bryan Alvey, senior director of government and external affairs, Kentucky Distillers' Association, appeared in support of this administrative regulation. Jay Hibbard, vice president of government relations, Distilled Spirits Council of the US, appeared in opposition to this administrative regulation.

In response to a question by Co-Chair West, Representative Koenig stated that he supported this administrative regulation and wished to see it proceed quickly through the process.

In response to a question by Co-Chair West, Mr. Alvey stated that Kentucky Distillers' Association supported this administrative regulation.

In response to a question by Co-Chair West, Mr. Hibbard stated that, while the Distilled Spirits Council of the US generally approved of this administrative regulation, there were some specific outstanding concerns, including fulfillment center provisions, tied-house requirements, and the 600-gallon limitation. They wished for this administrative regulation to proceed, but hoped to work further with the agency to make changes in the future.

In response to a question by Senator Thomas, Ms. Taylor stated that this administrative regulation included wine shippers and importers, who would be able to ship in and out of Kentucky if they met the criteria.

Senator Thomas stated that, because his wife was an importer, pursuant to Section 57 of the Constitution of the Commonwealth of Kentucky, he was abstaining from any vote related to this administrative regulation and was not taking a position on the policy.

In response to a question by Representative Marzian, Representative Koenig stated that this administrative regulation included craft breweries and out-of-state wine shippers shipping into Kentucky.

In response to a question by Co-Chair West, Mr. Newton stated that, due to statutory constraints, in-state importers would not be able to get direct shipper licenses.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 4, 6, and 7 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 1 to add a category of distributor. Without objection, and with agreement of the agency, the amendments were approved.

Department of Charitable Gaming

820 KAR 1:050 & E. Raffles. Doug Hardin, staff attorney, and Ambrose Wilson IV, deputy commissioner, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 1 through 11 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Department of Public Health: Communicable Diseases

902 KAR 2:020 & E. Reportable disease surveillance. Donna Little, deputy executive director, Office of Legislative and Regulatory Affairs, represented the department.

In response to questions by Co-Chair West, Ms. Little stated that this administrative regulation added two (2) diseases caused by coronavirus (Covid-19), including SARS-CoV-2 and the Multi-system Inflammatory Syndrome in children, to the list of diseases

that required urgent reporting. This was consistent with US CDC guidelines to assist in tracking the true rate of infection. Both positive and negative test result reporting was required. This testing was for both adults and children. Laboratories and physicians performed the reporting.

Maternal and Child Health

902 KAR 4:030. Newborn screening program.

In response to a question by Representative Marzian, Ms. Little stated that the twenty-seven (27) dollar increase for testing was the result of new tests required by statute.

Sanitation

902 KAR 10:036. Repeal of 902 KAR 010:035.

Food and Cosmetics

902 KAR 45:110. Permits and fees for retail food establishments, vending machine companies, and restricted food concessions.

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

Milk and Milk Products

902 KAR 50:050. Manufacturing plant requirements.

902 KAR 50:071. Repeal of 902 KAR 050:070.

902 KAR 50:080. Standards of identity and labeling.

902 KAR 50:090. Milk adulteration.

902 KAR 50:120. Unpasteurized goat milk.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3 through 6, 8, and 12 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred or removed from the November 9, 2020, subcommittee agenda:

BOARDS AND COMMISSIONS: Board of Pharmacy

201 KAR 2:050. Licenses and permits; fees.

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 2:225. Special limited pharmacy permit – medical gas.

201 KAR 2:240. Special limited pharmacy permit- charitable.

201 KAR 2:320. Requirements or manufacturers and virtual manufacturers.

Board of Optometric Examiners

201 KAR 5:140. Dispensing.

Board of Architects

201 KAR 19:215. Accredited schools and colleges.

201 KAR 19:220. Application for examination.

201 KAR 19:225. Examinations required; general provisions.

201 KAR 19:230. Reexamination; reconsideration.

201 KAR 19:235. Reciprocity; registration without examination.

201 KAR 19:240. Resident licensed in another state; reciprocity.

201 KAR 19:245. Duplicate certificates.

201 KAR 19:250. Temporary licensing not permitted.

201 KAR 19:255. Fees.

201 KAR 19:260. Professional practice standards; violations, penalties.

201 KAR 19:265. Individual seals; office titles.

201 KAR 19:270. Plans and specifications standards.

201 KAR 19:275. Use of title "architect".

201 KAR 19:410. Accredited schools and colleges for certified interior designers.

201 KAR 19:415. Application for certification as an interior designer.

201 KAR 19:420. Qualifications for certification.

201 KAR 19:425. Limited period of certification by prior experience.

201 KAR 19:430. Certification by persons credentialed in other jurisdictions.

201 KAR 19:435. Certification renewal.

201 KAR 19:440. Fees for certification of interior designers.

201 KAR 19:445. Continuing education.

201 KAR 19:450. Signature of documents by certified interior designers; use of title.

201 KAR 19:455. Unprofessional conduct.

Board of Licensure of Marriage and Family Therapists

201 KAR 32:035. Supervision of marriage and family therapist associates.

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.

TRANSPORTATION CABINET: Department of Vehicle Regulation: Administration

601 KAR 2:231. Repeal of 601 KAR 002:030.

601 KAR 2:232 & E. Kentucky Ignition Interlock Program.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Department of Education: General Administration

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

Facilities Management

702 KAR 4:090. Property disposal.

PUBLIC PROTECTION CABINET: Horse Racing Commission: Licensing

810 KAR 3:020. Licensing of racing participants. Marc Guilfoil, executive director; Chad Thompson, deputy general counsel; and Jennifer Wolsing, general counsel, represented the commission. Robert Heleringer, attorney and former Kentucky Representative, appeared in opposition to this administrative regulation.

In response to a question by Co-Chair West, Ms. Wolsing stated that this administrative regulation made three (3) changes to provisions for the licensure of racing participants. A licensee would fail to meet the financial responsibility requirements if he or she failed to satisfy any final, non-appealable judgment related to horse racing, even if it related to a non-licensed racing participant. A licensee would no longer have to domesticate out-of-state judgments in order to bring the judgment to the attention of the commission. Additionally, anyone could bring a final judgment to the attention of the commission, not just a successful complainant.

In response to a question by Co-Chair West, Mr. Heleringer stated that he was opposed to this administrative regulation, which represented a huge expansion of authority. While this administrative regulation pertained to a former client, Mr. Heleringer was not appearing on behalf of any client. Financial responsibility was important for security at the track; however, the sole purpose for this change was retaliation against Mr. Heleringer's client after a judicial decision to which the commission was opposed. An owner or trainer, especially should be financially responsible. The current version of this administrative regulation covered licensee financial responsibility needs. A former client had a civil judgment issued in Ireland. That judgment was domesticated in California and Kentucky. The client had entered into an agreement to pay the judgment. Payments were being made monthly; however, the client was denied an owner license in Kentucky on the basis of financial irresponsibility. Mr. Heleringer argued to the commission in this case, that this administrative regulation did not apply in the case of his client, because breeders were not required to be licensed in Kentucky. Franklin Circuit Court agreed that the commission did not have the authority to invoke the financial responsibility requirements against his client. As a result, the commission issued a license. Then, the commission filed this version of the administrative regulation, which would allow the commission to revoke or refuse renewal of that license. If this version became effective, the commission could become a de facto collection agency, which was far afield of the purpose of the commission. The term "related to horse racing" was not defined and seemed overly broad. For example, a spouse suing for child support could be interpreted as being "related to horse racing" if one (1) of the spouses was affiliated with the industry.

In response to a question by Co-Chair West, Ms. Wolsing stated that this administrative regulation was not intended as retribution and the commission was within its statutory authority to promulgate this policy. Financial irresponsibility could have a negative impact on the integrity of horse racing in Kentucky. The commission would not be part of any collection process, and this administrative regulation did not apply to appealable judgments. These requirements were not expected to overwhelm the commission. This administrative regulation passed unanimously, with only one (1) abstention, at the commission meeting.

Senator Thomas stated that, for the purposes of disclosure, he owned race horses. It was important to maintain the enthusiasm, integrity, and prestige of the horse-racing industry by ensuring financial responsibility. Many professional licensure boards sanctioned licensees for matters of financial irresponsibility. In response, Mr. Heleringer stated that a license could be revoked even if a settlement had been reached if full satisfaction had not yet been made. The current version of this administrative regulation was for the purpose of ensuring financial responsibility pertaining to those at the track backside. This change would allow matters from anywhere to be brought to the

commission. Senator Thomas stated that human nature dictated that a person who would not pay one (1) debt would likely not pay other debts.

In response to questions by Representative Frazier, Mr. Heleringer stated that most states with a horse-racing industry had a financial responsibility statute. Most states interpreted those requirements as applying to matters between horse-racing licensees. This change to the administrative regulation would broaden the matters that could apply. Ms. Wolsing stated that most horse-racing industry states did have financial responsibility requirements. The commission was broadening requirements to apply to non-licensed horse-related entities, as well as those who were licensed. The commission was not expanding beyond its jurisdiction; however, it was including judgments related to non-licensed entities.

In response to a question by Representative Marzian, Mr. Heleringer stated that his client was in the process of paying the settlement and had his license denied until the court case. Representative Marzian stated that this administrative regulation seemed like overkill and it might be prudent for the agency to defer consideration of this administrative regulation to the December subcommittee meeting.

In response to a question by Senator Kerr, Mr. Heleringer stated that the current version of this administrative regulation adequately addressed financial responsibility related to the track backside. This version of this administrative regulation expanded financial responsibility provisions to include basically all matters anywhere if the aggrieved party is in any way related to the horse-racing industry. The volume of potential litigation cases might overwhelm the commission.

Senator Kerr stated that she had concerns similar to those of Representative Marzian. In response Jennifer Wolsing stated that the commission did not anticipate an overwhelming number of cases that would burden the commission.

Senator Raque Adams stated that it might be prudent to add a definition for the term, "related to horse racing," in order to clarify and narrow requirements.

In response to questions by Co-Chair West, Ms. Wolsing stated that enforcement of this administrative regulation was triggered by someone bringing to the attention of the commission, a final, non-appealable judgment rendered against one (1) of the commission's licensees if the judgment related to the horse-racing industry. Action would not be taken pertaining a judgment that had been satisfied or was appealable.

Co-Chair West stated concerns regarding equal protection. This administrative regulation seemed to need clarification.

Senator Thomas stated that it seemed as if this subcommittee was attempting to prejudge a licensure revocation proceeding. The outcome of a licensure revocation was not directly mandated.

In response to a request by Co-Chair West, Senator Kerr, and Representative Marzian, Ms. Wolsing agreed to defer consideration of this administrative regulation to the December meeting of this subcommittee. A motion for deferral was made and seconded. Without objection, and with agreement of the agency, this administrative regulation was deferred.

CABINET FOR HEALTH AND FAMILY SERVICES: Department of Public Health: Vital Statistics

901 KAR 5:120. Abortion reporting.

Communicable Diseases

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

Local Health Departments

902 KAR 8:160 & E. Local health department operations requirements.

902 KAR 8:170 & E. Local health department financial management requirements.

Sanitation

902 KAR 10:030. Registered environmental health

specialists and sanitarians.

Food and Cosmetics

902 KAR 45:180. Permits and fees for food processing plants, food storage warehouses, salvage processors and distributors, cosmetic manufacturers, and certificate of free sale. Sally Dabb, supervisor of food manufacturing, Food Safety Branch, and Donna Little, deputy executive director, Office of Legislative and Regulatory Affairs, represented the department. Shannon Stiglitz, senior vice president of government affairs, Agribusiness Association of Kentucky, appeared in opposition to this administrative regulation.

In response to a question by Representative Frazier, Ms. Little stated that the department initially wanted to revise the food processing establishment fee structure to be based on the total gross sale income of the establishment. Numerous concerns were submitted from stakeholders during the public comment period regarding the new fee structure; therefore, the department further amended this administrative regulation as part of the Statement of Consideration process. In the Amended After Comment version, the fee structure was changed to be based on the total sales and the highest risk of the food processed at the establishment. Those processors that make a high-risk food but have less than \$100,000 in yearly gross income will pay no more than \$250 per year. Processors that make a high risk food and have greater than \$1,000,000 in yearly gross income will pay up to \$2,800 per year. This was commensurate with the federal framework.

In response to a question by Co-Chair West, Ms. Stiglitz stated that Agribusiness Association of Kentucky was opposed to this administrative regulation. The term, "gross income," was confusing because it was unclear if this meant "gross revenue" or "net profit." Fees were being dramatically increased. For example, grain elevators previously were low risk. Now, depending on gross income, the fee might be even higher than before the public comment period. It was difficult to understand how gross income related to a public health matter. The food business operated on a tight margin; therefore, cost increases will be passed on to consumers. Grain elevators were inspected by the department and federal regulators, as well as the Department of Agriculture. In these uncertain economic times with food insecurity issues, it did not seem to be the appropriate time to significantly raise these fees. Agribusiness Association of Kentucky requested that the fee be lowered.

In response to questions by Co-Chair West, Ms. Little stated that House Bill 129 from the 2020 Regular Session of the General Assembly established a time limit for increasing related fees. The department wanted to file both administrative regulations simultaneously; therefore, this proposed fee structure change was included. None of the fee increases would take effect prior to the 2022 billing cycle. This administrative regulation served to give early notice that these fee changes would be forthcoming. The current fees did not suffice to meet the department's costs. Even after this change, the fees would be insufficient. KRS 217.125 required the department to establish fees to cover the costs of the program. The department agreed to submit budgetary deficit information to the subcommittee.

In response to a question by Co-Chair West, the department agreed to defer consideration of this administrative regulation to the December meeting of this subcommittee. A motion for deferral was made and seconded. Without objection, and with agreement of the agency, this administrative regulation was deferred.

Milk and Milk Products

902 KAR 50:040. Hauler requirements.

Department for Behavioral Health, Developmental and Intellectual Disabilities: Substance Abuse

908 KAR 1:381. Repeal of 908 KAR 001:380.

908 KAR 1:400. Licensing and standards for substance use and misuse prevention.

Department for Community Based Services: Supplemental Nutrition Assistance Program

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921 KAR 3:035 & E. Certification process.

922 KAR 1:520 & E. Supplements to per diem rates.

Child Welfare

922 KAR 1:450 & E. Eligibility confirmation for tuition waiver.

922 KAR 1:500. Educational and training vouchers.

The subcommittee adjourned at 2:50 p.m. The next meeting of the subcommittee is tentatively scheduled for December 3, 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 HEALTH, WELFARE, AND
FAMILY SERVICES
Meeting of September 23, 2020**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health, Welfare, and Family Services for its meeting of September 23, 2020, having been referred to the Committee on August 5, 2020 and September 2, 2020, pursuant to KRS 13A.290(6):

August 5, 2020
921 KAR 003:025 & E

September 2, 2020
201 KAR 006:100
201 KAR 020:065
201 KAR 020:110
201 KAR 020:411
922 KAR 001:490E

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

921 KAR 003:025 & E

The following administrative regulations were deferred pursuant to KRS 13A.300:

201 KAR 020:065

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the September 23, 2020 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON HEALTH, WELFARE, AND
FAMILY SERVICES
Meeting of October 28, 2020**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health, Welfare, and Family Services for its meeting of October 28, 2020, having been referred to the Committee on September 2, 2020 and October 7, 2020, pursuant to KRS 13A.290(6):

September 2, 2020
201 KAR 020:065

October 7, 2020
201 KAR 025:011
201 KAR 025:021
201 KAR 025:031
201 KAR 032:110 & E
201 KAR 046:010
201 KAR 046:035
201 KAR 046:040
201 KAR 046:050
201 KAR 046:060
201 KAR 046:070
201 KAR 046:081
201 KAR 046:100
900 KAR 005:020

902 KAR 004:140
902 KAR 030:010
907 KAR 001:604 & E
922 KAR 006:010 & E
922 KAR 008:010

The following administrative regulations were deferred pursuant to KRS 13A.300:

907 KAR 001:604 & E

The following administrative regulation was approved as amended at the Committee meeting pursuant to KRS 13A.320:

201 KAR 020:065

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the October 28, 2020 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON LOCAL GOVERNMENT
Meeting of November 17, 2020**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Local Government for its meeting of 11/17/20, having been referred to the Committee on 11/4/2020 , pursuant to KRS 13A.290(6):

739 KAR 2:040
739 KAR 2:155

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

NONE

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

NONE

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

NONE

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the 11/17/20 meeting, which are hereby incorporated by reference.

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Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON HEALTH, WELFARE, AND
FAMILY SERVICES
Meeting of November 19, 2020**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Health, Welfare, and Family Services for its meeting of November 19, 2020, having been referred to the Committee on October 7, 2020 and November 4, 2020, pursuant to KRS 13A.290(6):

October 7, 2020
907 KAR 001:604 & E

November 4, 2020
201 KAR 002:311
201 KAR 009:016
201 KAR 009:200
201 KAR 009:210
201 KAR 009:230
201 KAR 009:240
201 KAR 009:260
201 KAR 009:360
201 KAR 021:041
201 KAR 021:042
201 KAR 021:095
902 KAR 004:110
902 KAR 050:010
902 KAR 050:031
902 KAR 050:032
902 KAR 050:033
902 KAR 100:012
922 KAR 001:330

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the November 19, 2020 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON VETERANS', MILITARY
AFFAIRS, AND PUBLIC PROTECTION
Meeting of November 19, 2020**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Veterans, Military Affairs, and Public Protection for its meeting of November 19, 2020, having been referred to the Committee on August 11, 2020, pursuant to KRS 13A.290(6):

017 KAR 001:030

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

none

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

17 KAR 1:030

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

none

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the November 19, 2020 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

CUMULATIVE SUPPLEMENT

Unless otherwise noted, information contained in these indexes relates only to administrative regulations printed in this, the 47th year of the *Administrative Register of Kentucky*, from July 2020 through June 2021.

Locator Index - Effective Dates

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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

F - 11

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

F - 21

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

F - 22

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

F - 23

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			6-22-2020
031 KAR 004:191E	47 Ky.R.	***	6-22-2020
Withdrawn			7-13-2020
031 KAR 004:192E	47 Ky.R.	678	8-28-2020
Withdrawn			10-2-2020
031 KAR 004:193E	47 Ky.R.	893	10-2-2020
Withdrawn			11-2-2020
031 KAR 004:194E	47 Ky.R.	1180	11-2-2020
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
Replaced		707	10-28-2020
301 KAR 002:221E	47 Ky.R.	1184	10-30-2020
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
Expired			7-17-2020
501 KAR 006:080E	47 Ky.R.	1186	11-2-2020
601 KAR 002:232E	47 Ky.R.	247	6-30-2020
702 KAR 001:190E	47 Ky.R.	503	8-12-2020
702 KAR 003:270E	47 Ky.R.	254	7-14-2020
702 KAR 007:125E	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 025:089E	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
Expired			9-22-2020
900 KAR 006:075E	46 Ky.R.	2213	1-2-2020
Replaced		2332	7-29-2020
902 KAR 002:020E	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 008:160E	47 Ky.R.	268	7-10-2020
902 KAR 008:170E	47 Ky.R.	272	7-10-2020
902 KAR 020:160E	47 Ky.R.	897	10-13-2020
902 KAR 020:440E	47 Ky.R.	908	10-13-2020
902 KAR 030:010E	46 Ky.R.	2780	3-23-2020
907 KAR 001:604E	46 Ky.R.	2593	3-13-2020
Withdrawn			11-19-2020
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
907 KAR 015:070E	47 Ky.R.	915	10-13-2020
907 KAR 015:080E	47 Ky.R.	922	10-13-2020
921 KAR 002:015E	46 Ky.R.	2216	12-27-2019
Replaced	47 Ky.R.	84	7-29-2020
921 KAR 003:025E	46 Ky.R.	2784	4-15-2020
Replaced	47 Ky.R.	977	10-12-2020
921 KAR 003:035E	47 Ky.R.	510	7-29-2020
921 KAR 004:116E	47 Ky.R.	22	5-28-2020
Replaced		215	10-22-2020
922 KAR 001:450E	47 Ky.R.	279	7-10-2020
922 KAR 001:520E	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
Replaced		219	10-28-2020

ORDINARY ADMINISTRATIVE REGULATIONS

009 KAR 001:010			
Amended	47 Ky.R.	90	
009 KAR 001:040			
Amended	47 Ky.R.	91	
010 KAR 001:011	46 Ky.R.	3059	
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012 KAR 001:116			
Amended	47 Ky.R.	94	11-18-2020
012 KAR 001:120			
Amended	47 Ky.R.	95	
As Amended		700	11-18-2020
012 KAR 001:125			
Amended	47 Ky.R.	96	
As Amended		700	11-18-2020
012 KAR 001:130			
Amended	47 Ky.R.	97	
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012 KAR 001:140			
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012 KAR 001:155			

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Amended	47 Ky.R. 100		As Amended	1188	
As Amended	701	11-18-2020	017 KAR 004:030	47 Ky.R. 601	
012 KAR 001:160			As Amended	1191	
Amended	47 Ky.R. 102		017 KAR 004:040	47 Ky.R. 603	
As Amended	702	11-18-2020	As Amended	1191	
012 KAR 001:170			017 KAR 005:020	47 Ky.R. 605	
Amended	47 Ky.R. 103		As Amended	1192	
As Amended	702	11-18-2020	030 KAR 008:005	46 Ky.R. 2349	
012 KAR 001:175			Am Comments	2963	
Amended	47 Ky.R. 105		As Amended	47 Ky.R. 35	8-20-2020
As Amended	704	11-18-2020	031 KAR 004:120		
012 KAR 004:075	47 Ky.R. 224		Amended	45 Ky.R. 2152	
As Amended	934	11-18-2020	045 KAR 001:050		
012 KAR 004:080			Amended	47 Ky.R. 552	
Amended	47 Ky.R. 106		101 KAR 002:210		
Am Comments	734		Amended	47 Ky.R. 751	
As Amended	934	11-18-2020	101 KAR 001:325	46 Ky.R. 2290	9-1-2020
012 KAR 004:091	47 Ky.R. 225	11-18-2020	101 KAR 002:120		
012 KAR 004:100			Amended	46 Ky.R. 1915	
Amended	47 Ky.R. 108	11-18-2020	As Amended	2686	6-2-2020
012 KAR 004:110			101 KAR 006:010	47 Ky.R. 472	
Amended	47 Ky.R. 110	11-18-2020	102 KAR 001:125		
012 KAR 004:130			Amended	46 Ky.R. 1585	
Amended	47 Ky.R. 114		As Amended	2223	
As Amended	935	11-18-2020	As Amended	2389	6-2-2020
012 KAR 004:140			102 KAR 001:340		
Amended	47 Ky.R. 116		Amended	47 Ky.R. 360	
As Amended	936	11-18-2020	As Amended	1193	
012 KAR 004:170			103 KAR 002:005		
Amended	47 Ky.R. 118		Amended	46 Ky.R. 2104	
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012 KAR 005:010			103 KAR 026:080		
Amended	47 Ky.R. 740		Amended	46 Ky.R. 1919	6-2-2020
012 KAR 005:020			103 KAR 026:110		
Amended	47 Ky.R. 741		Amended	46 Ky.R. 1282	4-1-2020
012 KAR 005:030			103 KAR 026:120		
Amended	47 Ky.R. 744		Amended	46 Ky.R. 1920	
012 KAR 005:040			As Amended	2389	6-2-2020
Amended	47 Ky.R. 745		103 KAR 027:020		
012 KAR 005:050			Amended	46 Ky.R. 1922	
Amended	47 Ky.R. 747		As Amended	2390	6-2-2020
012 KAR 005:060			103 KAR 027:080		
Amended	47 Ky.R. 749		Amended	46 Ky.R. 1284	4-1-2020
012 KAR 005:070			103 KAR 027:100		
Amended	47 Ky.R. 750		Amended	46 Ky.R. 1285	4-1-2020
013 KAR 001:050			103 KAR 027:120		
Amended	46 Ky.R. 2977		Amended	46 Ky.R. 1923	
As Amended	47 Ky.R. 515		As Amended	2391	6-2-2020
013 KAR 004:010			103 KAR 028:090		
Amended	46 Ky.R. 1913		Amended	46 Ky.R. 1288	4-1-2020
Am Comments	2458		103 KAR 030:170		
As Amended	2597	6-30-2020	Amended	46 Ky.R. 2105	6-30-2020
016 KAR 003:090			103 KAR 040:050		
Amended	47 Ky.R. 355		Amended	46 Ky.R. 2107	6-30-2020
As Amended	937		103 KAR 043:100		
016 KAR 005:020			Repealed	46 Ky.R. 1996	6-2-2020
Amended	46 Ky.R. 2487		103 KAR 043:101(r)	46 Ky.R. 1996	6-2-2020
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016 KAR 009:010			As Amended	2391	6-2-2020
Amended	47 Ky.R. 359		Amended	47 Ky.R. 753	
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016 KAR 009:060			Amended	46 Ky.R. 1925	
Amended	46 Ky.R. 2100		As Amended	2395	6-2-2020
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016 KAR 009:071(r)	46 Ky.R. 2160	6-30-2020	As Amended	2396	6-2-2020
017 KAR 001:030	46 Ky.R. 3061		201 KAR 002:050	46 Ky.R. 2682	
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017 KAR 001:040	47 Ky.R. 597		Amended	45 Ky.R. 3405	
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201 KAR 002:106			Amendment	47 Ky.R. 762	
Amended	47 Ky.R. 123		201 KAR 014:105		
201 KAR 002:175	46 Ky.R. 2683		Amendment	47 Ky.R. 764	
As Amended	47 Ky.R. 41	7-29-2020	201 KAR 014:130		
201 KAR 002:225			Amendment	47 Ky.R. 765	
Amended	47 Ky.R. 362		201 KAR 014:135		
201 KAR 002:230	46 Ky.R. 2292		Amendment	47 Ky.R. 767	
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Amended	47 Ky.R. 125		201 KAR 016:500	46 Ky.R. 1720	
201 KAR 002:311	46 Ky.R. 3063		As Amended	2602	6-30-2020
Am Comments	47 Ky.R. 735		201 KAR 016:510	46 Ky.R. 1723	
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201 KAR 002:320			As Amended	2604	6-30-2020
Amended	47 Ky.R. 127		201 KAR 016:512	46 Ky.R. 1725	
201 KAR 005:140	47 Ky.R. 606		Am Comments	2461	
201 KAR 006:100	46 Ky.R. 3064	9-23-2020	As Amended	2605	6-30-2020
201 KAR 008:550			201 KAR 016:514	46 Ky.R. 1726	
Amended	46 Ky.R. 1928		Am Comments	2463	
Am Comments	2646		As Amended	2606	6-30-2020
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201 KAR 008:590	46 Ky.R. 2355		Am Comments	2465	
As Amended	47 Ky.R. 52	7-29-2020	As Amended	2608	6-30-2020
201 KAR 009:016			201 KAR 016:520	46 Ky.R. 1730	
Amended	47 Ky.R. 364		As Amended	2608	6-30-2020
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201 KAR 009:081			As Amended	2609	6-30-2020
Amended	47 Ky.R. 1053		201 KAR 016:540	46 Ky.R. 1732	
201 KAR 009:200			Am Comments	2466	
Amended	47 Ky.R. 366		As Amended	2610	6-30-2020
As Amended	943	11-19-2020	201 KAR 016:550	46 Ky.R. 1735	
201 KAR 009:210			Am Comments	2468	
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201 KAR 009:260			201 KAR 016:572	46 Ky.R. 1740	
Amended	47 Ky.R. 374		Am Comments	2472	
As Amended	944	11-19-2020	As Amended	2615	6-30-2020
201 KAR 009:270	46 Ky.R. 2294		201 KAR 016:580	46 Ky.R. 1741	
Am Comments	2790		Am Comments	2474	
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Amended	47 Ky.R. 1057		201 KAR 016:590	46 Ky.R. 1743	
201 KAR 009:280	47 Ky.R. 1312		Am Comments	2475	
201 KAR 009:360	47 Ky.R. 473		As Amended	2617	6-30-2020
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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
As Amended	2887	7-30-2020	201 KAR 019:215	47 Ky.R. 607	
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	
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As Amended	2894	7-30-2020	201 KAR 019:250	47 Ky.R. 617	
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As Amended	2895	7-30-2020	201 KAR 019:260	47 Ky.R. 620	
201 KAR 014:035			201 KAR 019:265	47 Ky.R. 622	
Amendment	47 Ky.R. 758		201 KAR 019:270	47 Ky.R. 624	
201 KAR 014:070			201 KAR 019:275	47 Ky.R. 625	
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201 KAR 014:095			201 KAR 019:415	47 Ky.R. 627	

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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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	902 KAR 010:150		902 KAR 050:033
	902 KAR 010:160		902 KAR 050:090
211.370	902 KAR 010:110	217.035	902 KAR 045:110
211.375	902 KAR 010:110		902 KAR 045:180
211.380	902 KAR 010:110		902 KAR 045:190
211.840-211.852	902 KAR 100:012		902 KAR 050:010
211.970	902 KAR 010:010		902 KAR 050:080
	902 KAR 010:110	217.037	902 KAR 045:110
	902 KAR 010:140		902 KAR 045:180
	902 KAR 010:150		902 KAR 045:190
	902 KAR 010:160		902 KAR 050:080
	902 KAR 010:170	217.045	902 KAR 050:033
211.972	902 KAR 010:160	217.085	902 KAR 045:110
	902 KAR 010:170		902 KAR 045:180
211.974	902 KAR 010:150	217.095	902 KAR 045:110
	902 KAR 010:160		902 KAR 045:180
	902 KAR 010:170	217.125	902 KAR 045:110
211.976	902 KAR 010:110	217.155	902 KAR 045:110
	902 KAR 010:150		902 KAR 045:180
	902 KAR 010:160		902 KAR 045:190
211.981	902 KAR 010:150	217.182	201 KAR 005:140
	902 KAR 010:160	217.811	902 KAR 045:110
	902 KAR 010:170	217B	302 KAR 050:021

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	302 KAR 050:045	230.300	810 KAR 001:011
	302 KAR 050:056		810 KAR 001:120
217C	902 KAR 050:120		810 KAR 003:020
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	230.310	810 KAR 003:020
217C.020	902 KAR 050:031		810 KAR 004:030
217C.030	902 KAR 050:010	230.320	810 KAR 003:020
	902 KAR 050:080		810 KAR 004:030
217C.050	902 KAR 050:071		810 KAR 008:060
217C.060	902 KAR 050:031	230.330	810 KAR 003:020
	902 KAR 050:071		811 KAR 002:120
	902 KAR 050:080	230.361	810 KAR 001:011
	902 KAR 050:090		810 KAR 001:120
217C.070	902 KAR 050:050		811 KAR 001:005
217C.100	902 KAR 050:031		811 KAR 001:125
	902 KAR 050:090		811 KAR 001:250
217C.990	902 KAR 050:031		811 KAR 002:010
	902 KAR 050:050		811 KAR 002:060
	902 KAR 050:080		811 KAR 002:160
218A.172	201 KAR 009:260	230.3615	810 KAR 001:011
218A.202	201 KAR 009:230		810 KAR 001:120
	902 KAR 020:160		811 KAR 001:125
218A.205	201 KAR 009:081		811 KAR 002:060
	201 KAR 009:200	230.370	810 KAR 001:011
	201 KAR 009:210		810 KAR 001:120
	201 KAR 009:240		811 KAR 001:125
	201 KAR 009:260		811 KAR 001:250
	201 KAR 009:270		811 KAR 002:060
	201 KAR 009:360		811 KAR 002:160
	201 KAR 020:161	230.398	810 KAR 001:011
	201 KAR 025:011		810 KAR 001:120
	201 KAR 025:021		811 KAR 001:125
	201 KAR 025:031		811 KAR 001:250
222.005	908 KAR 001:400		811 KAR 002:060
222.211	908 KAR 001:381		811 KAR 002:160
222.221	908 KAR 001:400	230.750	810 KAR 001:011
223.010	902 KAR 010:030		810 KAR 001:120
223.020	902 KAR 010:030		811 KAR 001:125
223.030	902 KAR 010:030		811 KAR 001:250
	902 KAR 010:036		811 KAR 002:060
223.060	902 KAR 010:030		811 KAR 002:160
223.080	902 KAR 010:030	230.804	811 KAR 002:120
223.990	902 KAR 010:030	238.545	820 KAR 001:050
227.450	815 KAR 035:015	238.550	820 KAR 001:050
227.480	815 KAR 035:015	243.027	804 KAR 004:415
227.489	815 KAR 035:015	243.028	804 KAR 004:415
227.491	815 KAR 035:015	243.029	804 KAR 004:415
227.492	815 KAR 035:015	243.030	804 KAR 004:415
227.495	815 KAR 035:015	244.050	804 KAR 004:415
230	810 KAR 001:001	244.440	804 KAR 004:415
230.215	810 KAR 002:020	244.585	804 KAR 004:415
	810 KAR 003:020	247.4453	902 KAR 050:010
	810 KAR 004:010	247.453	902 KAR 050:010
	810 KAR 004:030	250.021	012 KAR 001:116
	810 KAR 008:060		012 KAR 001:140
	811 KAR 001:005		012 KAR 001:155
	811 KAR 001:125	250.031	012 KAR 001:116
	811 KAR 002:010		012 KAR 001:140
230.225	811 KAR 002:120	250.041	012 KAR 001:116
230.240	810 KAR 002:020		012 KAR 001:140
	810 KAR 004:030	250.051	012 KAR 001:116
	810 KAR 008:060		012 KAR 001:140
230.260	810 KAR 002:260	250.061	012 KAR 001:116
	810 KAR 003:020		012 KAR 001:140
	810 KAR 004:030	250.071	012 KAR 001:116
	810 KAR 008:060		012 KAR 001:140
230.265	810 KAR 008:060	250.081	012 KAR 001:116
230.280	810 KAR 003:020		012 KAR 001:120
230.290	810 KAR 003:020		012 KAR 001:125
	810 KAR 004:030		012 KAR 001:130
	810 KAR 008:060		012 KAR 001:140

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	012 KAR 001:160	304.2-205	806 KAR 007:035
	012 KAR 001:170	304.2-140	806 KAR 047:010
	012 KAR 001:175	304.2-150	806 KAR 038:100
250.091	012 KAR 001:116	304.2-210-304.2-290	806 KAR 003:170
	012 KAR 001:140	304.2-250	806 KAR 038:100
250.101	012 KAR 001:116	304.2-260	806 KAR 038:100
	012 KAR 001:140	304.2-270	806 KAR 038:100
250.111	012 KAR 001:116	304.2-290	806 KAR 006:010
	012 KAR 001:140	304.2-310	806 KAR 009:360
	012 KAR 001:155		806 KAR 012:020
250.366	012 KAR 004:075	304.3-070	601 KAR 001:113
	012 KAR 004:080	304.3-120	806 KAR 003:170
	012 KAR 004:091	304.3-125	806 KAR 003:170
	012 KAR 004:100	304.3-240	806 KAR 003:170
	012 KAR 004:130		806 KAR 006:100
	012 KAR 004:170		806 KAR 012:010
250.371-250.451	012 KAR 004:080	304.3-241	806 KAR 003:170
	012 KAR 004:091	304.4-010	806 KAR 002:095
250.371-250.461	012 KAR 004:075		806 KAR 009:025
250.391	012 KAR 004:130		806 KAR 009:370
250.396	012 KAR 004:130	304.5-020	806 KAR 012:180
	012 KAR 004:140	304.5-030	806 KAR 012:120
250.401	012 KAR 004:130		806 KAR 012:180
250.406	012 KAR 004:110	304.6-070	806 KAR 006:080
250.411	012 KAR 004:170		806 KAR 006:100
258.005	902 KAR 008:160	304.6-130-304.6-180	806 KAR 006:010
258.065	902 KAR 002:020	304.6-150	806 KAR 006:100
258.990	902 KAR 002:020	304.6-155	806 KAR 006:100
260	302 KAR 050:013	304.6-171	806 KAR 006:100
	302 KAR 060:010	304.6-180	806 KAR 006:100
260.775-260.845	012 KAR 005:010	304.7-360	806 KAR 007:090
	012 KAR 005:020	304.7-361	806 KAR 007:035
	012 KAR 005:030	304.8-040	806 KAR 008:010
	012 KAR 005:040	304.8-120	806 KAR 008:010
	012 KAR 005:050	304.9-020	806 KAR 009:030
	012 KAR 005:060		806 KAR 009:370
	012 KAR 005:070		806 KAR 012:120
260.813	902 KAR 050:050		806 KAR 012:180
260.850-260.869	302 KAR 050:021	304.9-040	806 KAR 012:120
	302 KAR 050:031	304.9-053	806 KAR 009:360
	302 KAR 050:045	304.9-054	806 KAR 009:360
	302 KAR 050:056	304.9-105	806 KAR 009:025
	302 KAR 050:080	304.9-130	806 KAR 009:025
260.992	012 KAR 005:010	304.9-133	806 KAR 009:360
	012 KAR 005:020	304.9-135	806 KAR 009:190
	012 KAR 005:030	304.9-150	806 KAR 009:025
	012 KAR 005:040	304.9-160	806 KAR 009:025
	012 KAR 005:050	304.9-230	806 KAR 009:025
	012 KAR 005:060		806 KAR 009:370
	012 KAR 005:070	304.9-260	806 KAR 009:025
273.401	739 KAR 002:050		806 KAR 009:370
273.405-273.453	922 KAR 006:010	304.9-270	806 KAR 009:025
281.010	601 KAR 001:113	304.9-295	806 KAR 009:025
281.600	601 KAR 001:113	304.9-320	806 KAR 009:025
281.630	601 KAR 001:113	304.9-390	806 KAR 012:120
281.6301	601 KAR 001:113	304.9-430	806 KAR 009:025
281.631	601 KAR 001:113		806 KAR 009:030
281.640	601 KAR 001:113	304.9-440	806 KAR 012:020
281.650	601 KAR 001:113	304.9-432	806 KAR 009:030
281.655	601 KAR 001:113	304.9-440	806 KAR 009:030
281.656	601 KAR 001:113	304.10-010	601 KAR 001:113
281.990	601 KAR 001:113	304.10-030	806 KAR 010:030
286.3-030	806 KAR 009:190	304.10-040	806 KAR 009:360
304.1-010	806 KAR 012:010		806 KAR 010:030
	806 KAR 012:020	304.10-050	806 KAR 010:030
	806 KAR 013:020	304.10-070	601 KAR 001:113
304.1-040	806 KAR 012:120	304.10-170	806 KAR 010:030
	806 KAR 012:180	304.10-180	806 KAR 010:030
304.1-050	806 KAR 003:170	304.12-010	806 KAR 012:010
	806 KAR 009:360		806 KAR 012:020
	806 KAR 012:020		806 KAR 012:120
	806 KAR 046:040		806 KAR 012:150
304.1-070	806 KAR 010:030		806 KAR 012:170
304.2-065	806 KAR 003:170		806 KAR 012:180

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304.12-020	806 KAR 012:010	309.339	201 KAR 045:130
	806 KAR 012:020	310.021	902 KAR 020:160
	806 KAR 012:150	311.571	902 KAR 020:440
	806 KAR 012:170	311.840-311.862	902 KAR 020:440
304.12-030	806 KAR 012:120	311.282	902 KAR 002:020
	806 KAR 012:180	311.420	201 KAR 025:011
304.12-040	806 KAR 012:020	311.450	201 KAR 025:021
304.12-060	806 KAR 012:010		201 KAR 025:031
304.12-110	806 KAR 012:020	311.480	201 KAR 025:011
304.12-120	806 KAR 012:010		201 KAR 025:021
304.12-130	806 KAR 012:010	311.530-311.620	201 KAR 009:081
	806 KAR 012:020		201 KAR 009:260
304.12-230	803 KAR 025:240		201 KAR 009:270
	806 KAR 012:150	311.550	201 KAR 009:016
	806 KAR 012:170	311.560	902 KAR 020:160
304.12-240	806 KAR 009:370	311.565	201 KAR 009:200
304.13-051	806 KAR 013:020		201 KAR 009:210
304.13-100	806 KAR 013:020		201 KAR 009:230
304.14-120	806 KAR 012:020		201 KAR 009:240
304.14-180	806 KAR 012:020		201 KAR 009:360
304.14-642	806 KAR 009:025	311.571	201 KAR 009:200
304.15-310	806 KAR 012:180		201 KAR 009:210
304.17A-165	806 KAR 009:360		902 KAR 002:020
304.17A-607	806 KAR 009:360		902 KAR 020:160
304.17A-820	806 KAR 003:170	311.591	201 KAR 009:240
304.20-020	601 KAR 001:113	311.592	201 KAR 009:230
304.30-030	806 KAR 030:010		201 KAR 009:240
304.30-060	806 KAR 030:070	311.593	201 KAR 009:240
304.32-140	806 KAR 038:100	311.595	201 KAR 009:016
304.32-210	806 KAR 003:170		201 KAR 009:200
304.35-040	806 KAR 003:170		201 KAR 009:210
304.36-140	806 KAR 003:170		201 KAR 009:230
304.37-010	806 KAR 003:170		201 KAR 009:240
304.37-020	806 KAR 003:170		901 KAR 005:120
304.38-070	806 KAR 038:100	311.597	201 KAR 009:016
304.38A-080	806 KAR 038:100		201 KAR 009:230
304.38A-110	806 KAR 038:100	311.601	201 KAR 009:360
304.39-020	601 KAR 001:113	311.646	922 KAR 002:120
304.39-040	601 KAR 001:113	311.720	901 KAR 005:120
304.39-320	601 KAR 001:113		902 KAR 004:110
304.42-150	806 KAR 003:170	311.725	902 KAR 004:110
304.45-030	806 KAR 003:170	311.774	901 KAR 005:120
304.45-040	806 KAR 003:170	311.781	901 KAR 005:120
304.47-010	806 KAR 047:010	311.782	901 KAR 005:120
304.47-020	806 KAR 047:010	311.783	901 KAR 005:120
304.47-040	806 KAR 047:010	311.840-311.862	201 KAR 009:081
304.47-050	806 KAR 047:010		201 KAR 009:260
304.47-055	806 KAR 047:010		201 KAR 009:270
304.47-080	806 KAR 047:010		902 KAR 020:160
304.48-020	806 KAR 046:040	311.842	201 KAR 009:016
304.48-050	806 KAR 046:040		201 KAR 009:200
304.48-070	806 KAR 046:040		201 KAR 009:230
304.48-110	806 KAR 003:170		201 KAR 009:360
304.48-170	806 KAR 046:040	311.844	201 KAR 009:360
304.48-230	806 KAR 046:040	311.850	201 KAR 009:016
304.49	806 KAR 049:020		201 KAR 009:200
	806 KAR 049:030		201 KAR 009:210
304.49-070	806 KAR 003:170		201 KAR 009:230
304.49-080	806 KAR 003:170		201 KAR 009:360
304.49-090	806 KAR 003:170	311.852	201 KAR 009:230
304.50	806 KAR 052:010		201 KAR 009:240
304.50-060	806 KAR 003:170		201 KAR 009:360
304.50-075	806 KAR 003:170	311.901	201 KAR 009:280
304.99-020	806 KAR 012:120	311.903	201 KAR 009:280
304.99-085	806 KAR 010:030	311.990	201 KAR 009:081
309.080	902 KAR 020:160		201 KAR 009:260
	902 KAR 020:440		201 KAR 009:270
309.0831	902 KAR 020:160	312.015	201 KAR 021:001
	902 KAR 020:440	312.019	201 KAR 021:015
	907 KAR 015:080		201 KAR 021:025
309.085	201 KAR 035:040		201 KAR 021:045
309.130	902 KAR 020:160		201 KAR 021:055
	902 KAR 020:440		201 KAR 021:061
309.337	201 KAR 045:130		201 KAR 021:065

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312.021	201 KAR 021:085	317.400	201 KAR 014:035
	201 KAR 021:045	317.410	201 KAR 014:035
	201 KAR 021:065		201 KAR 014:100
312.055	201 KAR 021:025		201 KAR 014:105
312.085	201 KAR 021:041		201 KAR 014:130
	201 KAR 021:042	317.440	201 KAR 014:035
	201 KAR 021:055		201 KAR 014:095
	201 KAR 021:085		201 KAR 014:100
312.095	201 KAR 021:041		201 KAR 014:105
	201 KAR 021:042		201 KAR 014:130
312.145	201 KAR 021:041		201 KAR 014:135
	201 KAR 021:042		201 KAR 014:140
312.150	201 KAR 021:051	317.450	201 KAR 014:035
	201 KAR 021:052		201 KAR 014:070
	201 KAR 021:053		201 KAR 014:100
312.160	201 KAR 021:051		201 KAR 014:105
312.163	201 KAR 021:051		201 KAR 014:135
	201 KAR 021:053		201 KAR 014:140
312.175	201 KAR 021:041	317.540	201 KAR 014:135
	201 KAR 021:042		201 KAR 014:140
	201 KAR 021:095	318	922 KAR 002:120
312.200	201 KAR 021:075	318.090	815 KAR 020:150
	201 KAR 021:095	318.130	815 KAR 020:150
312.991	201 KAR 021:065	318.134	815 KAR 020:150
312.200	201 KAR 021:001	318.140	815 KAR 020:150
314.011	201 KAR 020:161	318.160	815 KAR 020:150
	201 KAR 020:320	318.170	815 KAR 020:150
	201 KAR 020:390	319.050	902 KAR 020:160
	902 KAR 020:160		902 KAR 020:440
	922 KAR 002:120	319.056	902 KAR 020:160
314.021	201 KAR 020:320		902 KAR 020:440
314.025	201 KAR 020:390	319.064	902 KAR 020:160
314.026	201 KAR 020:390		902 KAR 020:440
314.027	201 KAR 020:390	319A.010	907 KAR 001:604
314.031	201 KAR 020:161	319C.010	902 KAR 020:160
314.041	201 KAR 020:085		902 KAR 020:440
	201 KAR 020:320	320.210	201 KAR 005:140
314.042	902 KAR 020:160		902 KAR 020:160
	902 KAR 020:440	323.010	201 KAR 019:275
314.051	201 KAR 020:085	323.020	201 KAR 019:250
314.071	201 KAR 020:085		201 KAR 019:270
	201 KAR 020:161	323.050	201 KAR 019:215
314.073	201 KAR 020:085		201 KAR 019:220
314.091	201 KAR 020:161		201 KAR 019:225
314.107	201 KAR 020:161	323.060	201 KAR 019:235
314.111	201 KAR 020:320		201 KAR 019:240
314.131	201 KAR 020:320	323.080	201 KAR 019:255
314.475	201 KAR 020:161	323.090	201 KAR 019:230
314.991	201 KAR 020:161	323.095	201 KAR 019:260
315.010	201 KAR 002:105		201 KAR 019:265
	201 KAR 002:225	323.100	201 KAR 019:245
	201 KAR 002:320	323.110	201 KAR 019:255
	902 KAR 002:020	323.120	201 KAR 019:260
315.020	201 KAR 002:225	323.210	201 KAR 019:230
	201 KAR 002:320		201 KAR 019:235
315.035	201 KAR 002:106		201 KAR 019:245
	201 KAR 002:225	323.215	201 KAR 019:220
	201 KAR 002:240		201 KAR 019:225
315.036	201 KAR 002:106	323.230	201 KAR 019:275
	201 KAR 002:320	323.400-323.416	201 KAR 019:440
315.191	201 KAR 002:225		201 KAR 019:445
	201 KAR 002:311	323.400	201 KAR 019:415
	201 KAR 002:320		201 KAR 019:420
315.340	201 KAR 002:106		201 KAR 019:425
315.342	201 KAR 002:106		201 KAR 019:430
315.350	201 KAR 002:105		201 KAR 019:435
	201 KAR 002:106	323.402	201 KAR 019:430
315.351	201 KAR 002:106		201 KAR 019:450
315.400	201 KAR 002:320	323.406	201 KAR 019:410
315.402	201 KAR 002:105		201 KAR 019:420
	201 KAR 002:106		201 KAR 019:435
315.404	201 KAR 002:320		201 KAR 019:450
315.406	201 KAR 002:105	323.408	201 KAR 019:410
315.4102	201 KAR 002:106		201 KAR 019:415

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	201 KAR 019:420	527.070	922 KAR 002:120
	201 KAR 019:430	529.010	922 KAR 001:330
	201 KAR 019:450	532.045	922 KAR 001:330
	201 KAR 019:455	532.060	601 KAR 001:113
323.410	201 KAR 019:410	600.010	922 KAR 001:330
	201 KAR 019:415	600.020	922 KAR 001:330
	201 KAR 019:420		922 KAR 001:520
	201 KAR 019:425	605.090	922 KAR 001:330
	201 KAR 019:430	605.120	922 KAR 001:520
323.412	201 KAR 019:455	605.130	922 KAR 001:330
323.414	201 KAR 019:450	605.150	922 KAR 001:330
323.416	201 KAR 019:435	610.010	922 KAR 001:330
327.010	907 KAR 001:604	610.110	922 KAR 001:500
333.020	902 KAR 002:020		922 KAR 001:520
333.130	902 KAR 002:020	620.010-620.050	922 KAR 001:330
	902 KAR 002:190E	620.020	201 KAR 009:360
	902 KAR 002:210E		922 KAR 001:500
334A.020	907 KAR 001:604		922 KAR 001:520
335.010	201 KAR 023:070	620.030	908 KAR 001:400
335.080	201 KAR 023:070		922 KAR 002:120
	902 KAR 020:160	620.050	922 KAR 001:450
	902 KAR 020:440	620.070	922 KAR 001:330
335.100	201 KAR 023:070	620.072	922 KAR 001:330
	902 KAR 020:160	620.140	922 KAR 001:500
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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 045:140	10-27-2020	Remain As Is
201 KAR 045:150	10-27-2020	Remain As Is
201 KAR 045:160	10-27-2020	Remain As Is
201 KAR 037:010	08-07-2020	Remain As Is
703 KAR 005:080	10-23-2020	Remain As Is
803 KAR 002:411	10-01-2020	To be amended, filing deadline 04-01-22
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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201 KAR 028:170	10-16-2020		
201 KAR 028:200	10-16-2020		
201 KAR 045:110	10-16-2020		
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201 KAR 045:150	10-16-2020		
201 KAR 045:170	10-16-2020		
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702 KAR 003:270E	09-23-2020		
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815 KAR 002:020	05-29-2020		
815 KAR 004:025	05-29-2020		
815 KAR 007:070	05-29-2020		
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815 KAR 008:010	05-29-2020		
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Drug testing procedures at Kentucky Department of Veterans' Affairs state veterans' nursing homes; 017 KAR 003:050

Indigent Veterans' Burial Program; 017 KAR 004:040

Kentucky Medal for Freedom; 017 KAR 005:020

Veterans' Service Organization Burial Honor Guard Program; 017 KAR 004:030

WORKERS' CLAIMS

Filing of claims information with the Office of Workers' Claims; 803 KAR 025:170

Filing of insurance coverage and notice of policy change or termination; 803 KAR 025:175

Procedure for E-mail notification of cancellation or removal of location of specific workers' compensation coverage; 803 KAR 025:185

Workers' compensation hospital fee schedule; 803 KAR 025:091

Workers' compensation medical fee schedule for physicians; 803 KAR 025:089

Workers' compensation pharmacy fee schedule; 803 KAR 025:092

Workers' compensation unfair claims settlement practices; 803 KAR 025:240

WORKPLACE STANDARDS

Occupational Safety and Health

Board procedures; 803 KAR 002:010