



# ADMINISTRATIVE REGISTER OF KENTUCKY

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

## MEETING NOTICES

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet on January 12, 2021, at 1:00 p.m. in room 149 Capitol Annex.

**ARRS Tentative Agenda - 1339** [Online agenda updated as needed](#)

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Title		Chapter	Regulation
806	KAR	050:	155
Cabinet, Department, Board, or Agency		Office, Division, Board, or Major Function	Specific Regulation

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**Administrative Regulation Review Subcommittee  
TENTATIVE Meeting Agenda  
Tuesday, January 12, 2021 at 1 p.m.  
Annex Room 149**



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

**BOARDS AND COMMISSIONS**

**Board of Medical Licensure**

- 201 KAR 009:081. Disciplinary proceedings.
- 201 KAR 009:270. Professional standards for prescribing, dispensing, or administering Buprenorphine-Mono Product or Buprenorphine-Combined-with-Naloxone.

**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)
- 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)

**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) (Deferred from December)

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET**

**Department of Education  
Office of Chief State School Officer**

- 701 KAR 005:150. Nontraditional instruction program.

**General Administration**

- 702 KAR 001:190E. District employee emergency leave. ("E" expires 06-10-2021) (Not Amended After Comments)

**Facilities Management**

- 702 KAR 004:090. Property disposal. (Amended After Comments)

**Office of Instruction**

- 704 KAR 003:035. Annual professional development plan.
- 704 KAR 003:305. Minimum requirements for high school graduation.
- 704 KAR 003:325. Effective Instructional Leadership Act.

**Academic Standards**

- 704 KAR 008:100. Kentucky Academic Standards for Library Media Elective.

**PUBLIC PROTECTION CABINET**

**Department of Insurance  
Administration**

- 806 KAR 002:095. Accounting and reporting requirements for collecting local government premium tax.

## VOLUME 47, NUMBER 7– JANUARY 1, 2021

### **Surplus Lines**

806 KAR 010:030. Surplus lines reporting and tax payment structure.

### **Trade Practices and Frauds**

806 KAR 012:010. Advertising.

806 KAR 012:020. Fair disclosure to consumers.

806 KAR 012:150. Annuity disclosures. (Amended After Comments)

806 KAR 012:180. Military sales practices.

### **Rates and Rating Organizations**

806 KAR 013:020. Excess rates; consent form.

### **Health Maintenance Organizations**

806 KAR 038:100. Risk-based capital for health organizations.

### **Insurance Fraud**

806 KAR 047:010. Fraud prevention.

## **PUBLIC PROTECTION CABINET**

### **Horse Racing Commission**

#### **Thoroughbred Racing**

810 KAR 001:001. Definitions for 810 KAR Chapter 001. (Deferred from December)

810 KAR 001:011. Pari-mutuel wagering. (Deferred from December)

810 KAR 001:120. Exotic wagering. (Deferred from December)

#### **Licensing**

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

#### **Harness Racing**

811 KAR 001:005. Definitions. (Deferred from December)

811 KAR 001:125. Pari-mutuel wagering. (Deferred from December)

811 KAR 001:250. Exotic wagering. (Deferred from December)

#### **Quarter Horse, Paint Horse, Appaloosa, and Arabian Racing**

811 KAR 002:010. Definitions. (Deferred from December)

811 KAR 002:060. Pari-mutuel wagering. (Deferred from December)

811 KAR 002:120. Kentucky Horse Breeders' Incentive Fund. (Deferred from December)

811 KAR 002:160. Exotic wagering. (Deferred from December)

### **Department of Housing, Buildings and Construction**

#### **Plumbing**

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#### **Electrical**

815 KAR 035:015. Certification of electrical inspections.

## **CABINET FOR HEALTH AND FAMILY SERVICES**

### **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) (Not Amended After Comments)

### **Office of Inspector General**

#### **Health Services and Facilities**

902 KAR 020:160 & E. Chemical dependency treatment services and facility specifications. ("E" expires 07-10-2021)

902 KAR 020:440 & E. Facilities specifications, operation and services; residential crisis stabilization units. ("E" expires 07-10-2021)

### **Department for Public Health**

#### **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)

902 KAR 045:190. Hemp-derived cannabidiol products and labeling requirements.

### **Department for Medicaid Services**

#### **Payments and Services**

907 KAR 003:250. Programs of All-Inclusive Care for the Elderly (PACE).

#### **Behavioral Health**

907 KAR 015:070 & E. Coverage provisions and requirements regarding services provided by residential crisis stabilization units. ("E" expires 07-10-2021)

907 KAR 015:080 & E. Coverage provisions and requirements regarding chemical dependency treatment center services. ("E" expires 07-10-2021)

## VOLUME 47, NUMBER 7– JANUARY 1, 2021

### **Department for Aging and Independent Living Aging Services**

910 KAR 001:151. Repeal of 910 KAR 001:150 and 910 KAR 001:160.

### **Guardianship**

910 KAR 002:060. Guardianship Trust Fund.

### **Department for Community Based Services Supplemental Nutrition Assistance Program**

921 KAR 003:020. Financial requirements.

921 KAR 003:030. Application process.

921 KAR 003:035 & E. Certification process. ("E" expires 05-27-2021) (Amended After Comments)

921 KAR 003:042. Supplemental Nutrition Assistance Program Employment and Training Program. (Deferred from December)

### **Child Welfare**

922 KAR 001:500. Educational and training vouchers. (Amended After Comments)

### **Department for Behavioral Health, Developmental and Intellectual Disabilities Daycare**

922 KAR 002:120. Child-care center health and safety standards.

## **3. REGULATIONS REMOVED FROM JANUARY'S AGENDA**

### **STATE BOARD OF ELECTIONS**

#### **Forms and Procedures**

~~031 KAR 004:193E. Procedures for November 3, 2020 Elections. ("E" expires 06-02-2021) (Withdrawn by Agency)~~

### **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) (Withdrawn; SOC not filed by deadline)~~

### **LABOR CABINET**

#### **Department of Workers' Claims**

~~803 KAR 025:091. Workers' compensation hospital fee schedule. (Comments Received, SOC ext. due 01-15-2021)~~

### **PUBLIC PROTECTION CABINET**

#### **Department of Insurance**

##### **Agents, Consultants, Solicitors, and Adjustors**

~~806 KAR 009:025. Licensing process. (Comments Received, SOC ext. due 01-15-2021)~~

~~806 KAR 009:360. Pharmacy benefit manager license. (Not Amended After Comments) (Deferred from January)~~

##### **Trade Practices and Frauds**

~~806 KAR 012:120. Suitability in annuity transactions. (Comments Received, SOC ext. due 01-15-2021)~~

### **CABINET FOR HEALTH AND FAMILY SERVICES**

#### **Department for Behavioral Health, Developmental and Intellectual Disabilities**

##### **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) (Comments Received, SOC due 12-15-2020) (Withdrawn by Agency)~~

**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**  
**201 KAR 002:410E**

This emergency administrative regulation is being promulgated to establish requirements that the Board of Pharmacy shall implement in order to comply with 85 Fed. Reg. 15198, 52136 (Third Amendment to the PREP Act Declaration) promulgated by the Department of Health and Human Services (HHS) as a federal emergency regulation to be in effect while a declaration of a public health emergency exists under 42 U.S.C. 247d..

The Third Amendment clarified that “covered countermeasures” include products that limit the harm that COVID19 might cause, and it amended the category of disease, health condition, and threat for which the HHS secretary recommends the administration or use of covered countermeasures to include the decrease in the rate of childhood immunizations during the pandemic. The Third Amendment included pharmacists as “qualified persons” to order and administer vaccinations to children ages three (3) and seventeen (17) pursuant to certain requirements, and for pharmacist interns to be “qualified persons” to administer vaccinations to children ages three (3) through seventeen (17) pursuant to certain requirements. The Third Amendment preempts narrower state scope-of-practice laws for pharmacists and pharmacy interns who meet the requirements set forth in the Third Amendment. The Third Amendment does not affect broader scope-of-practice laws.

This emergency administrative regulation is necessary, pursuant to KRS 13A.190(1)(a)3. and 4., to ensure state regulation meets federal floor requirements authorizing pharmacists to order and administer vaccines to children between the ages of three (3) and seventeen (17) and for pharmacist interns to be authorized to administer vaccinations to children between the ages of three (3) and seventeen (17) for the duration of the state of public health emergency. An ordinary administrative regulation is not a sufficient avenue to address the current emergency due to the time constraints of promulgating an ordinary administrative regulation. The federal regulation became effective on August 24, 2020, and without a change in state law, Kentucky does not comply with federal regulation. This emergency administrative regulation will not be replaced by an ordinary administrative regulation due to the scope of the administrative regulation only existing and being needed for the duration of the state of emergency.

ANDY BESHEAR, Governor  
 LARRY HADLEY, Executive Director

**BOARDS AND COMMISSIONS**  
**Board of Pharmacy**  
**(New Emergency Administrative Regulation)**

**201 KAR 002:410E. Ordering and administering vaccinations.**

EFFECTIVE: November 23, 2020

RELATES TO: KRS 39A.180, 315.010, 315.020, 315.050, 315.065, 315.135, 315.205, 315.500, 42 U.S.C. 247d-6d, 85 Fed. Reg. 15198, 52136

STATUTORY AUTHORITY: KRS 315.500, 315.505

NECESSITY, FUNCTION, AND CONFORMITY: The Third Amendment to the Department of Health and Human Services Declaration under the PREP Act, 85 Fed. Reg. 15198, 85 Fed. Reg. 52136, requires the Board of Pharmacy to promulgate an administrative regulation to conform state law to federal law during the period of this public health emergency. KRS 315.010(22) does not authorize pharmacists to order vaccinations. KRS 315.010(22) also does not authorize the use of prescriber-approved protocols for pharmacists or pharmacist interns to administer vaccinations to

children under the age of nine (9). The third amendment of 85 C.F.R. 15198, 85 Fed. Reg. 52136, requires that state-licensed pharmacists be authorized to order and administer vaccinations to children between the ages of three (3) and seventeen (17) and that state-registered pharmacist interns and pharmacy technicians be authorized to administer vaccinations to children between the ages of three (3) and seventeen (17). Department of Health & Human Services Guidance issued on October 20, 2020 authorizes pharmacy technicians to administer vaccinations if they meet specific federal requirements listed in the federal guidance. The Prep Act (42 U.S.C. 247d-6d(8)) preempts any state law that would prohibit or effectively prohibit activities authorized by the Secretary in a PREP Act Declaration, including pharmacists ordering and administering vaccinations and pharmacist interns administering vaccinations to children between the ages of three (3) and seventeen (17). According to Department of Health and Human Services Advisory Opinion 20-03, issued on October 22, 2020, state law does not need to mirror federal requirements; however, state law shall allow for pharmacists to be able to order and to administer vaccinations to children between the ages of three (3) and seventeen (17), and pharmacist interns shall be able to administer vaccinations to children between the ages of three (3) and seventeen (17). This administrative regulation establishes requirements for Kentucky to comply with 85 Fed. Reg. 52136.

Section 1. Definitions. (1) “Administer” is defined by KRS 315.010(1).

(2) “Certified Pharmacy Technician” is an individual who:

(a) Has successfully completed the Pharmacy Technician Certification Exam administered by the Pharmacy Technician Certification Board (PTCB) or the examination for the Certification of Pharmacy Technicians by the National Healthcare Association (NHA);

(b) The certificate issued by the PTCB or NHA is current.

(3) “Order” means an original or new order from a pharmacist for an FDA approved or authorized vaccination or medication to treat emergency reactions to vaccines, including epinephrine.

(4) “Pharmacist” is defined by KRS 315.010(17).

(5) “Pharmacist intern” is defined by KRS 315.010(18).

(6) “Pharmacy technician” is defined by KRS 315.010(21).

Section 2. Pharmacist Requirements. A pharmacist may order and administer a vaccine to an individual, age three (3) or older, pursuant to the Advisory Committee on Immunization Practices’ (ACIP) standard immunization schedule, if the pharmacist:

(1) Reports the administration of each vaccination by the pharmacist, pharmacist intern, or pharmacy technician to the Kentucky Immunization Registry administered by the Cabinet for Health and Family Services;

(2) Completes, or has completed, a practical training program accredited by the Accreditation Council for Pharmacy Education (ACPE) that includes hands-on injection technique and the recognition and treatment of emergency reactions to vaccines;

(3) Completes a minimum of two (2) hours of immunization-related continuing education accredited by ACPE per each licensing period;

(4) Provides notification of the immunization to the individual’s primary care provider upon the request of the individual or the individual’s parent or guardian, if the individual:

(a) Is under eighteen (18) years of age; or

(b) Has a court-appointed guardian; and

(5) Possesses a current certificate in basic cardiopulmonary resuscitation.

Section 3. Pharmacist Intern Requirements. A pharmacist intern may administer a vaccine ordered by a pharmacist, or pursuant to a prescriber-approved protocol or prescription drug order, to an

individual, aged three (3) or older, if the pharmacist intern:

- (1) Completes, or has completed, a practical training program accredited by the Accreditation Council for Pharmacy Education (ACPE) that includes hands-on injection technique and the recognition and treatment of emergency reactions to vaccines; and
- (2) Possesses a current certificate in basic cardiopulmonary resuscitation.

Section 4. Pharmacy Technician Requirements. A pharmacy technician may administer a vaccine ordered by a pharmacist or pursuant to prescriber-approved protocol or prescription drug order to an individual, aged three (3) or older, if the pharmacy technician:

- (1) Is a certified pharmacy technician;
- (2) Completes a minimum of two (2) hours of immunization-related continuing education accredited by the Accreditation Council for Pharmacy Education (ACPE) per each state registration period;
- (3) Completes, or has completed, a practical training program accredited by the Accreditation Council for Pharmacy Education (ACPE) that includes hands-on injection technique and the recognition and treatment of emergency reactions to vaccines; and
- (4) Possesses a current certificate in basic cardiopulmonary resuscitation.

Section 5. Prescriber-approved Protocols. (1) A pharmacist may utilize prescriber-approved protocols or a prescription drug order as a means to provide a vaccine for individuals aged nine (9) and older pursuant to KRS 315.010 (22), while the vaccine may be administered by a pharmacist, pharmacist intern or pharmacy technician. The pharmacy technician shall meet the conditions established in Section 4 of this administrative regulation, if administering a vaccination that has been provided by prescription drug order or prescriber-approved protocol.

(2) A pharmacist may utilize prescriber approved protocols or a prescription drug order as a means to provide a vaccine for individuals aged three (3) to eight (8), while the vaccine may be administered by a pharmacist, pharmacist intern or pharmacy technician. The pharmacist, pharmacist intern or pharmacy technician shall meet the conditions established in section 2, 3 or 4, respectively, of this administrative regulation.

Section 6. Effective Date. (1) This administrative regulation shall become effective at 5 p.m. on the date it is filed.

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

- (a) Expiration of the time period established by KRS 13A.190; or
- (b) Withdrawn in accordance with KRS 13A.190(12).
- (3) The Board of Pharmacy shall regularly consult with the Governor's Office, the Centers for Disease Control and Prevention, and other public health authorities to determine if this administrative regulation shall be withdrawn prior to its expiration under KRS 13A.190.

LARRY HADLEY, Executive Director

APPROVED BY AGENCY: November 23, 2020

FILED WITH LRC: November 23, 2020 at 1:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 23, 2021 at 9 a.m. Eastern Time via zoom teleconference. A link to the public hearing shall be provided on the Board's website no fewer than (5) days before the hearing. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request is received. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through February 28, 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: Larry Hadley, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Larry.Hadley@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Larry Hadley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation authorizes pharmacists to order and to administer vaccinations to individuals three (3) and older, pursuant to specific requirements. This administrative regulation also authorizes pharmacy technicians and pharmacist interns to administer vaccinations to individuals three (3) and older, pursuant to specific requirements.

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

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 315.500 and KRS 315.505 authorize the Board of Pharmacy to promulgate regulations during a state of emergency pursuant to KRS 39A.100 within the scope of the enumerated reasons listed in KRS 315.500, including administering immunizations to children pursuant to protocols established by the Centers for Disease Control and Prevention, the National Institutes of Health, or the National Advisory Committee on Immunization Practices or determined to be appropriate by the commissioner of public health or his or her designee.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will allow for vaccinations that are recommended by the Advisory Committee on Immunization Practices' (ACIP) standard immunization schedule to be ordered and administered by a greater number of individuals. This will allow for an increase in childhood immunizations that are currently in decline.

(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 regulation impacts any pharmacist, pharmacist intern or pharmacy technician that desires to order or to administer vaccinations to individuals three and up.

(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 is no requirement for pharmacists, pharmacy technicians or pharmacist interns to order or to administer vaccinations; however, this administrative regulation provides pharmacists with an authorization to order and to administer vaccinations pursuant to this administrative regulation's requirements and for pharmacy technicians and pharmacist interns with an authorization to administer vaccinations pursuant to this administrative regulation's requirements. Should the pharmacist, pharmacist intern or pharmacy technician choose to order or to administer vaccinations, the pharmacist, pharmacist intern or pharmacy technician shall meet the conditions set forth in this regulation, including completing a training, being CPR certified and other conditions specifically enumerated.

(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 does not require pharmacists, pharmacist interns or pharmacy technicians to order or to administer vaccinations and therefore this administrative regulation does not create any cost to the potentially impacted individuals. However, should the pharmacist choose to order or to administer vaccinations or the pharmacist intern or pharmacy technician choose to administer vaccinations, those individuals will have the cost of completing an accredited training program, potential yearly continuing education requirements and the cost of becoming CPR certified.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The ability to vaccinate more individuals age three and up. Not only will this improve vaccination rates, ensuring a healthier Commonwealth, but the qualified individuals ordering or administering the vaccination will potentially garner greater business as well as increased revenue streams for the companies or organizations in which they are employed.

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

(a) Initially: No cost to the administrative body.

(b) On a continuing basis: No cost to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Board of Pharmacy will inspect pharmacies, pharmacist practice and pharmacist intern and pharmacy technician practices to ensure compliance with this administrative regulation. The Board of Pharmacy already employs inspectors, and this regulation will not increase any cost of enforcement for the Board of Pharmacy.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied, as this administrative regulation does not mandate that any pharmacist, pharmacist intern or pharmacy technician order or administer vaccines, it simply provides an opportunity for those qualified individuals to do so if they choose.

#### 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? There will be no impact on local or state government outside of the Board of Pharmacy's enforcement of the regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 U.S.C. 247d-6d, 85 Fed. Reg. 15198, 85 Fed. Reg. 52136, KRS 315.500, KRS 315.505.

(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 will be no effect on the expenditures and revenue 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 will not generate any revenue for the state or local government.

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

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

(d) How much will it cost to administer this program for subsequent years? This regulation will not generate 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:

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 42 U.S.C. 247d-6d, 85 Fed. Reg. 15198, 85 Fed. Reg. 52136. This is an emergency federal mandate only in effect during the national state of emergency.

(2) State compliance standards. Without this administrative regulation, the Commonwealth is not in compliance with the federal mandate.

(3) Minimum or uniform standards contained in the federal mandate. That pharmacists shall be authorized to order and to administer vaccinations to children ages three (3) through seventeen (17) and that pharmacist interns be authorized to administer vaccinations to children ages three (3) through seventeen (17).

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will not impose stricter requirements than the federal mandate. Rather, this administrative regulation will be more permissive than the federal mandate in that it allows for pharmacists to order and to administer vaccinations to all individuals three and older. It allows for pharmacists to order vaccines or to use prescription drug orders or prescriber-approved protocols. The conditions for pharmacists to be authorized to order and administer vaccinations are fewer in this administrative regulation than the federal mandate. Moreover, pharmacist interns have been authorized to administer vaccinations to individuals three and older. The conditions for pharmacist interns to administer vaccinations are fewer in this administrative regulation than the federal mandate. Also, pursuant to non-binding federal guidance, this administrative regulation will authorize technicians that comply with specific requirements to administer vaccinations to individuals three and up.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. If this regulation were to mirror the federal regulations, it would have the effect of severely limiting the number of pharmacists that could order and administer vaccinations due to the majority of Kentucky pharmacists not having completed a twenty-hour training program on immunizing. Therefore, it was critical that federal floor standards be adopted, but with fewer conditions than the federal regulation.

#### STATEMENT OF EMERGENCY 922 KAR 2:410E

This emergency administrative regulation is necessary in order to ensure that licensed child care centers, certified family child care homes, and limited duration child care programs are operating under Centers for Disease Control and Prevention and public health guidelines to prevent the spread of the Novel Coronavirus Disease (COVID-19) as agencies remain open or reopen in the midst of the pandemic. This emergency administrative regulation also waives the fingerprint-based criminal record check required for adults working in child care institutions, as permitted by federal guidance issued pursuant to 42 U.S.C. 5141. Due to the public health emergency caused by the outbreak of COVID-19, it has been deemed unsafe to conduct in-person fingerprint-based checks. Name-based criminal background checks shall be required at this time and fingerprint-based checks shall be conducted once it is deemed safe to do so. This amendment is deemed to be an emergency pursuant to KRS 13A.190(1)(a)1. and 4., as the administrative regulation is necessary in order to address imminent threats to public health, safety, and welfare as child care agencies remain open or reopen in the midst of the COVID-19 pandemic and necessary in order to protect human health and welfare. The federal Children's Bureau has also deemed it unsafe to require fingerprint-based criminal record checks during the pandemic. This

emergency administrative regulation will not be replaced by an ordinary administrative regulation as these additional health and safety standards are in direct response to the declared public health emergency caused by COVID-19 and are deemed to be temporary. Pursuant to KRS 13A.190(6)(f), this administrative regulation differs from the previously filed emergency administrative regulation governing the same subject matter, 922 KAR 2:405E, in the following manner:

Includes a limitation on the operation of limited duration child care programs;

Allows an exception to keeping groups of children separate throughout the day for sibling groups if they are the only children in the facility;

References Kentucky Department of Education pupil transportation guidance for providing transportation;

Includes criteria for an exemption to wearing a face mask consistent with the Kentucky Department for Public Health's face covering administrative regulation;

Provides the option for a child who is between three (3) years of age and first grade to wear a face mask in a child care setting if the incorporated form is completed by the parent or guardian and the child care provider;

Requires a child who is in first grade or above to wear a face mask if temperament and developmental ability allow, with exceptions listed; and

Incorporates the DCC-410, Child Care Face Mask Permission Form, to be utilized by a parent or guardian and child care provider who are in agreement to permit a child who is between three (3) years of age and first grade to wear a face mask.

ANDY BESHEAR, Governor  
ERIC C. FRIEDLANDER, Secretary

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

**922 KAR 2:410E. Enhanced requirements for certified and licensed child care and limited duration child care programs as a result of a declared state of emergency.**

EFFECTIVE: December 10, 2020

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

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2), 199.898(1)(f), 214.020

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.896(2) and KRS 199.898(1)(f) authorize the Cabinet for Health and Family Services to promulgate administrative regulations and standards for child care centers and family child care homes. KRS 214.020 requires the cabinet to take such action as deemed efficient in preventing the introduction or spread of infectious or contagious disease within the state. This administrative regulation establishes additional health and safety standards for certified family child care homes, licensed child care centers, and limited duration child care programs due to the COVID-19 pandemic and declared state of emergency to prevent the spread of disease in child caring homes and facilities. The Children's Bureau identified the requirement of fingerprint-based checks of national crime information databases as an administrative condition that may be modified pursuant to federal authority given that a state conduct all available name-based criminal background checks for applicants during the public health emergency and conduct fingerprint-based checks as soon as it is safe to do so.

Section 1. Definitions. (1) "Child" is defined by KRS

199.011(4).

(2) "Child care" means care of a child in a center or home that regularly provides full or part-time care, day or night, and includes developmentally appropriate play and learning activities.

(3) "Child care center" is defined by KRS 199.894(3).

(4) "Child care provider" is defined by 45 C.F.R. 98.43(a)(2)(i).

(5) "Director" means an individual:

(a) Who meets the education and training requirements as specified in 922 KAR 2:090, Section 10;

(b) Whose primary full-time job responsibilities are to ensure compliance with 922 KAR 2:090, 922 KAR 2:120, 922 KAR 2:280, and this administrative regulation; and

(c) Who is responsible for directing the program and managing the staff at a child care center.

(6) "Family child care home" is defined by KRS 199.894(5).

(7) "School-age" means a child who meets the age requirements of KRS 158.030 or who attends kindergarten, elementary, or secondary education.

Section 2. Reopening Protocol. (1) If a child care provider chooses to delay reopening after the pandemic closure, the provider shall communicate this to the Division of Regulated Child Care.

(2) When a child care provider reopens:

(a) The director shall update the staff roster in the Kentucky National Background Check Program pursuant to 922 KAR 2:280 and the cabinet-designated database maintained pursuant to 922 KAR 2:240 to confirm all staffing records are current for inspection purposes; and

(b) If there is a new director, the program shall contact the Division of Regulated Child Care immediately to file director change paperwork in accordance with 922 KAR 2:090.

Section 3. Limited Duration Child Care Programs. (1) A limited duration child care program shall have a maximum group size of fifteen (15) children per group.

(2) A limited duration child care program shall have the same staff-to-child ratio as required for licensed child care centers pursuant to 922 KAR 2:120.

(3)(a) Except as provided by paragraph (b) of this subsection, a minimum of two (2) staff members shall be present in each room of a limited duration child care program.

(b) If all staff in the program have a completed fingerprint-based background check via the Kentucky National Background Check Program in accordance with 922 KAR 2:280, one (1) staff member shall be present in each room, subject to the staff-to-child ratios established in subsection (2) of this section.

(4) Limited duration child care programs shall be monitored by the Division of Regulated Child Care.

(5) A limited duration child care program shall only be in operation for ninety (90) calendar days before being required to close or obtain child care center licensure pursuant to 922 KAR 2:090.

Section 4. Social Distancing Requirements for Child Care Programs. (1)(a) Except as provided by paragraph (b) of this subsection, a child care center shall meet the maximum group size requirements established in 922 KAR 2:120.

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

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

(3) Each child shall remain in the same group throughout the day without interacting with another group, except that sibling groups may be combined if they are the only children in the facility.

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

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

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

(b) Shall be stable;

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

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

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

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

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

(a) Facility staff;

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

(c) A necessary utility worker;

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

(e) A child enrolled in the facility;

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

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

(7) A child care provider shall:

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

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

(c) Stagger playground time between classroom groups so as to separate one (1) group of children from another;

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

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

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

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

(h) If providing transportation, reference the Kentucky Department of Education's pupil transportation guidance for the 2020-2021 school year and provide transportation consistent with that guidance.

(8) A child care provider may:

(a) Use virtual classroom observations for practicum students;

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

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

(9) A child care provider shall not:

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

(b) Hold center-wide family events;

(c) Permit field trips;

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

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

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

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

(1) Conduct business practices by telephone or internet;

(2) Use digital documents instead of paper documents;

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

(4) Utilize digital billing and invoices; and

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

Section 6. Cleaning and Sanitizing Requirements for Child Care Providers. (1) A child care provider shall:

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

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

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

(d) Prohibit the use of communal water fountains.

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

(3) Machine washable toys shall not be used.

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

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

(a) Able to be washed;

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

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

(6) Children and staff shall:

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

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

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

Section 7. Screening and Illness Requirements. (1) Children and adults shall be screened for fever and contagious symptoms upon entry into the child care center or family child care home each day and shall not be allowed to enter if displaying a contagious fever or symptom of COVID-19.

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

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

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

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

(6) If a child demonstrates a fever or other contagious symptom, the child shall be removed from the classroom setting immediately and placed in a safe, low-traffic area until the parent or guardian arrives to pick up the child. The provider shall require the parent or guardian to pick up the child within one (1) hour of being contacted.

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

Section 8. Personal Protective Equipment (PPE) Requirements. (1) Each adult, including parents and guardians at drop-off and pick-up, shall wear a face mask while inside a child care center or family child care home:

(a) Unless they meet any of the exemption criteria established in subsection (5) of this section;

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

(c) Except for staff working with infant or toddler groups who

choose to wear a face shield instead.

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

(3)(a) A provider shall not require a child who is not in the first grade or above to wear a face mask.

(b) A child who is two (2) years of age or younger shall not wear a face mask due to increased risk of suffocation and strangulation.

(c) A child who is between three (3) years of age and first grade may wear a face mask if the provider and the parent or guardian complete the DCC-410, Child Care Face Mask Permission Form, to be kept on site at the facility.

(d) A child who is in first grade or above shall wear a face mask if temperament and developmental ability allow, unless the child meets any of the exemption criteria established in subsection (5) of this section.

(e) A face mask lanyard shall be prohibited for all children due to increased risk of suffocation and strangulation.

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

(5) The following shall not be required to wear a face mask:

(a) An individual who possesses documentation from a health professional that states that wearing a face mask would represent a serious risk to the health or safety of the individual;

(b) An individual who is required to temporarily remove the face mask to confirm the person's identity or for security purposes;

(c) An individual who is deaf or hard of hearing who chooses to wear a face shield;

(d) A child with a documented disability or physical or mental impairment that prevents the child from safely wearing a face covering;

(e) Children who are actively engaged in vigorous play or exercise;

(f) Children who are outdoors and have six (6) or more feet of separation between each other; and

(g) Children who are eating, drinking, or napping, but otherwise wear a face mask.

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

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

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

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

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

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

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

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

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

Section 11. Safety and Background Check Requirements. (1) Staff with expired tuberculosis skin tests and newly hired staff shall

be given an extension through the end of the public health emergency to be tested for tuberculosis.

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

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

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

(5) New staff shall:

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

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

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

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

Section 12. Incorporation by Reference. (1) DCC-410, "Child Care Face Mask Permission Form", 12/20, 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: December 9, 2020

FILED WITH LRC: December 10, 2020 at 11:36 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 22, 2021, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. (The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing.) Individuals interested in attending this virtual hearing shall notify this agency in writing by February 15, 2021, five (5) workdays prior to the hearing, of their intent to attend virtually. 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 virtually 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 February 28, 2020. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact persons: Laura Begin and Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: Kentucky Governor Andy Beshear announced on March 16, 2020, that all child care centers would close by the end of business on March 20, 2020, due to the declared state of emergency caused by the COVID-19 pandemic. On May 21, 2020, Governor Beshear announced that a portion of childcare centers would be allowed to reopen on June 8, 2020, with the rest being allowed to reopen on

June 15, 2020, with certain health and safety requirements in place to prevent the spread of the Novel Coronavirus Disease (COVID-19) within facilities and homes. This administrative regulation contains requirements to ensure the health and safety of staff and families in child care centers, family child care homes, and limited duration child care programs who remain open or choose to reopen during the COVID-19 pandemic.

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

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing health and safety standards for child care centers, family child care homes, and limited duration child care programs.

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

(a) How the amendment will change this existing administrative regulation: This is a new, temporary administrative regulation. However, this version differs from the previous version in that it includes a limitation on the operation of limited duration child care programs, allows an exception to keeping groups of children separate throughout the day for sibling groups if they are the only children in the facility, references Kentucky Department of Education pupil transportation guidance for providing transportation, makes masks optional for children between the ages of three (3) and first grade with the permission of the provider and parent or guardian on the incorporated form, and includes exemptions consistent with the Department for Public Health face mask administrative regulation. These changes are being made in response to public comments that were received on 922 KAR 2:405E.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently, there are 9 limited duration child care programs, 1,757 licensed child care centers, and 217 certified family child care homes in Kentucky. The Department for Community Based Services, Division of Child Care, and the Office of the Inspector General, Division of Regulated Child Care, will be impacted as the child care regulating and monitoring agencies, respectively.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Certified family child care homes, licensed child care centers, and limited duration child care programs will be required to meet the additional CDC and public health guidance contained in this administrative regulation to prevent the spread of the virus within child care facilities. This administrative regulation includes exemptions consistent with the

Kentucky Department for Public Health face mask 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 is no additional cost to the Division of Child Care or the Division of Regulated Child Care. These requirements are consistent with Centers for Disease Control and Prevention (CDC) guidance at this time and many provisions of this administrative regulation are consistent with other states. Federal Coronavirus Aid, Relief, and Economic Security (CARES) Act funding and Child Care and Development Funds have been distributed to cover the cost of fixed expenditures during the closure and to assist with the purchase of personal protective equipment and cleaning supplies needed for reopening.

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

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

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

(b) On a continuing basis: This administrative regulation will not result in any ongoing costs to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Child Care and Development Fund Block Grant, state match and maintenance of effort for the block grant, and limited agency funds support the implementation of this administrative regulation. Federal CARES Act funding was secured and has been distributed to child care providers to cover the cost of fixed expenditures during the closure and to assist with the purchase of personal protective equipment and cleaning supplies needed for reopening.

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

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

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 9857-9858q

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

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

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation is more stringent than federal mandates as it contains temporary health and safety requirements for child care agencies reopening during the COVID-19 pandemic, consistent with CDC guidelines. The federal rule does give states flexibility in setting standards specific to state needs.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation contains different requirements than

federal requirements due to the declared state of emergency and nature of the COVID-19 virus.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services (Division of Child Care and Division of Regulated Child Care) is impacted by this administrative regulation. A local government or a school district reopening a licensed child care center, in whole or in part, will be impacted.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 U.S.C. 9857-9858q, KRS 194A.050(1), 199.896(2), 199.8982(1)(f), 214.020

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:



ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY  
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee  
IJC = Interim Joint Committee

UNIVERSITY OF KENTUCKY  
Agriculture Experiment Station  
(As Amended at ARRS, December 3, 2020)

12 KAR 5:010. Licenses.

RELATES TO: KRS 260.775-260.845, 260.992

STATUTORY AUTHORITY: KRS 260.825(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.825(1) requires[authorizes] the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 260.775 through[to] 260.845 regarding milk. This administrative regulation establishes a procedure to license a person or entity who is qualified as a milk handler, laboratory, sampler-weigher, tester, or transfer station.

Section 1. (1) License to Handle Milk, Laboratory License, and Transfer Station License. Upon receipt of an accurately completed[accurately-completed] application with fee as required by KRS 260.815, and if the applicant is deemed to be qualified, pursuant to this administrative regulation, and in compliance with KRS 260.775 through[to] 260.845, the director shall[may] issue a license to handle, laboratory license, or transfer station license. Each license shall be displayed as established in paragraphs (a) through (c) of this subsection.[accordingly:]

(a) A current license to handle milk shall be prominently displayed at each handling location.;

(b) A current laboratory license shall be prominently displayed at each laboratory location.;and

(c) A current transfer station license shall be prominently displayed at each transfer station location.

(2) Temporary license to sample and weigh milk. Upon receipt of an accurately completed[accurately-completed] application with fee as required by KRS 260.815, and if the applicant is deemed to be qualified, pursuant to this administrative regulation, and in compliance with KRS 260.775 through[to] 260.845, the director shall[may] issue a 120-day, temporary license to sample and weigh milk. A temporary license shall[may] only be reissued if a person does not pass the written examination requirement of paragraph (b) of this subsection.

(a) A person issued a temporary license to sample and weigh milk shall be provided informational material by the director with[to notify him of] proper sampling and weighing procedures. The person[He] shall become familiar with the informational material and shall perform the procedures under the supervision of a licensed sampler-weigher until a supervisor believes he or she is competent of proper procedures. Once the person[When he] has become familiar with and complies with proper procedures, he or she may sample and weigh milk without immediate supervision. The person[He] shall carry the temporary license to sample and weigh while[when] sampling and weighing milk.

(b) A person issued a temporary license to sample and weigh milk shall be scheduled for and required to attend a one (1) day training school and take a written examination administered by the director. Upon scoring a minimum of seventy (70) percent on the written examination, a license to sample and weigh milk shall[may] be issued. The person shall carry the license to sample and weigh while[when] sampling and weighing milk.

(3) Temporary license to test milk. Upon receipt of an accurately completed[accurately-completed] application with fee as required by KRS 260.815, and if the applicant is deemed to be qualified, pursuant to this administrative regulation, [and] competent, and in compliance with KRS 260.775 through[to] 260.845, the director shall[may] issue a 120-day temporary license to test milk. A temporary license shall[may] only be reissued if a person does not pass the written examination

requirement of paragraph (b) of this subsection.

(a) A person issued a temporary license to test milk shall be provided informational material by the director with[to notify him of] proper testing procedures. The person[He] shall become familiar with the informational material and shall perform the testing procedures for which he or she seeks approval under the supervision of a licensed tester until a supervisor believes the person[he] is competent of proper procedures. Once the person[When he] has become familiar with and complies with proper procedures, he or she may test milk without immediate supervision. A person shall conspicuously post the temporary license to test in the laboratory where testing is performed or carry the temporary license to test while[when] he or she is testing milk.

(b) A person issued a temporary license to test milk shall demonstrate competency in milking[milk-testing] procedures for which the person[he] seeks approval to the director and shall take a written examination administered by the director. Upon demonstrating competency and scoring a minimum of seventy (70) percent on the written exam, a license to test milk shall[may] be issued. The milk tester shall conspicuously post the license to test in the laboratory where testing is performed or carry the license to test while[when] he or she is testing milk.

(4) Renewal for a license to sample and weigh and renewal for a license to test. Upon receipt of an accurately completed[accurately-completed] renewal application with fee as required by KRS 260.815, and if the applicant is deemed by the director, pursuant to this administrative regulation, to be in compliance with KRS 260.775 through[to] 260.845, the director shall[may] issue a renewed license to sample and weigh or a renewed license to test. An applicant may renew a lapsed license for up to three (3) years past the expiration date by paying back-fees for each year and one (1) penalty fee established[provided for] in KRS 260.992(3).

(5) All licenses issued under the authority of KRS 260.775 through[to] 260.845 shall expire on June 30 of each year. The licenses shall be renewed on or before July 1 by accurately completing and submitting an application with the appropriate fee to the director. [Applications shall be provided by the director.]

(6) Reciprocity. The director shall[may] reciprocate with other states and issue a license to sample and weigh or a license to test upon submission of satisfactory evidence that the requirement for licensure in the other state is equivalent to the requirements of KRS 260.775 through[to] 260.845. The director may require an applicant for reciprocity to pass an examination if necessary to establish his or her competency. Applicants for reciprocity shall be required to submit an accurately completed[accurately-completed] application with fee to the director.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for License to Handle Milk", October 2000, Division of Regulatory Services;

(b) "Application for Milk Laboratory License", October 2000, Division of Regulatory Services;

(c) "Application for Milk Transfer Station License", October 2000, Division of Regulatory Services;

(d) "Application for Temporary License to Sample and Weigh Milk", March 2015[October 2000], Division of Regulatory Services;

(e) "Application for Temporary License to Test Milk", March 2015[October 2000], Division of Regulatory Services;

(f) "[Renewal]Application for Renewal License to Sample and Weigh Milk", March 2015[October 2000], Division of Regulatory Services; and

(g) "[Renewal]Application for Renewal License to Test Milk", March 2015[October 2000], Division of Regulatory Services.

(2) These materials may be inspected, copied or obtained,

subject to copyright law, at the Division of Regulatory Services, College of Agriculture, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: G. Alan Harrison, Feed and Milk Program Director, University of Kentucky, Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 257-2785, fax (859) 323-9931, email alan.harrison@uky.edu.

**UNIVERSITY OF KENTUCKY  
Agriculture Experiment Station  
(As Amended at ARRS, December 3, 2020)**

**12 KAR 5:020. Testing.**

RELATES TO: KRS 260.775-260.845, 260.992

STATUTORY AUTHORITY: KRS 260.825(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.825(1) requires/authorizes the Director of the Kentucky Agricultural Experiment Station to promulgate administrative regulations necessary for the effective enforcement of KRS 260.775 through/to 260.845 regarding milk. This administrative regulation establishes uniform standards and approved procedures and equipment for the analysis of milk components by licensed laboratories and testers.

Section 1. Laboratory Facilities and Environment[Equipment]. (1) A licensed laboratory's facilities shall meet the criteria established/described in Chapter 2.0310[2.3] of [""]Standard Methods for the Examination of Dairy Products[""], 17th[16th] Edition, 2004[1992].

(2) A licensed laboratory shall have established procedures for monitoring equipment performance and preventative maintenance. Specialized instrumentation shall be operated by the manufacturer's recommended procedures for operation and maintenance. Adequate records to document equipment performance monitoring and maintenance shall be kept. As applicable, equipment and supplies used by laboratories shall meet the criteria established/described in Chapter 2.0311[2.4] of [""]Standard Methods for the Examination of Dairy Products[""], 17th[16th] Edition, 2004[1992].

Section 2. Approved Testing Methods. (1) A laboratory and tester licensed by the director shall be approved for the methods of analysis routinely used for milk component testing. If the laboratory and tester are approved for an electronic method of analysis, they shall also be approved for any intralaboratory reference method used to monitor the electronic equipment.

(2) Methods of analysis used for testing milk samples for pay purposes or as reference methods shall include:

(a) Methods in [""]Official Methods of Analysis of AOAC International[""], Volume II, Chapter 33, 21st[17th] Edition, 2019[2000];

(b) Methods in [""]Standard Methods for the Examination of Dairy Products[""], 17th[16th] Edition, 2004[1992]; and

(c) Methods of analysis scientifically proven to be acceptable and approved by the director based on accuracy.

Section 3. Electronic Equipment. (1) Laboratories using electronic milk testing equipment associated with approved procedures shall maintain the following supplies and records:

(a) A thermostatically-controlled, circulatory water-bath of suitable size to maintain milk samples in a temperature range of 40-43° C (104-109.4° F). A milk sample being warmed in the water-bath shall not:

1. Remain in the water-bath in excess of forty (40) minutes prior to being tested; or

2. Be tested for payment purposes if the sample "oils off" while in the water-bath; and

(b) An approved electronic component testing instrument

including:

1. All required accessories and reagents; and

2. An instrument operation manual.

(2) Control samples. A minimum of four (4) control samples of unhomogenized milk shall be analyzed daily before routine testing begins. The control samples shall cover the component ranges of samples typically analyzed with the instrument. Control samples for milk fat analysis shall be in the fat range of two (2) to six (6) percent.

(a) The control samples shall be prepared and test results determined for each component tested for pay purposes by recognized procedures or those procedures approved by the director based on accuracy.

(b) Control samples shall be physically handled in a manner to ensure their integrity and in a temperature range of 0.5-4.4°C (33-40° F). Control samples to be stored more than seventy-two (72) hours shall be preserved with an approved preservative. Control samples shall be discarded if they appear to be churned, "oiled off," or spoiled.

(3) Daily performance checks. Written procedures shall be established to monitor electronic milk testing equipment for accuracy each day before testing begins. Minimum requirements for these procedures shall include:

(a) Zero check. Zero the machine for all components as prescribed by the instrument manufacturer. Run a single, unhomogenized milk sample through the machine at least eleven (11) times. Zero the machine again. Within two (2) cycles the instrument shall not deviate greater than 0.02 percent units from the original zero reading~~;~~;

(b) Repeatability check. Ten (10) consecutive readings on a single, well-mixed, unhomogenized milk sample shall be made for each component being tested for pay purposes. The repeatability check shall be acceptable when the comparison range of ten (10) consecutive readings is within ±04 percent units for each of these components. The sample used between the zero checks in paragraph (a) of this subsection may be used for the repeatability check~~;~~;

(c) Accuracy check. A subsample from each of the control samples shall be analyzed to obtain readings for each component tested for pay purposes. These results shall not differ from the control sample by more than ±0.09 percent units for total solids and ±0.05 percent units for each other component when compared to the established values of the control samples~~;~~;

(d) Hourly check. An accuracy check as established/described in paragraph (c) of this subsection shall be analyzed on at least one (1) sample each hour during which samples are tested for pay purposes~~;~~; and~~;~~;

(e) Electronic instruments not meeting the established/prescribed testing criteria shall not be used to test permitted producer's samples for pay purposes. Deficiencies shall be investigated and corrective action taken. A record of any corrective action shall be maintained for at least two (2) years.

(a) Calibration requirements.

(a) Electronic instrument calibrations shall be required if/when:

1. The instrument is installed or significantly moved;

2. The daily performance checks fail and cannot be corrected by other means; and

3. WhenAny part that could/may affect proper operation of the instrument has been replaced, rebuilt, or adjusted.

(b) A calibration shall be evaluated for accuracy:

1. At regular intervals not to exceed a thirty (30) day period; and

2. Using a minimum of eight (8) milk samples that shall cover the component ranges of samples typically analyzed with the instrument. These samples shall be in the milk fat range of two (2) to six (6) percent.

(c) Electronic instruments shall be calibrated according to the manufacturer's instructions using milk samples with known component values as determined by an approved reference method approved based on accuracy. Laboratories may use approved, commercially-prepared calibration samples in lieu of preparing their own reference calibration samples.

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Section 4. Wild Tests. (1) A "wild" test shall be/is defined as a test result for a producer's bulk-tank milk sample that is dissimilar to other test results for the producer during the pay period and for which the cause of the difference or differences~~difference(s)~~ cannot be determined.

(2) Each laboratory shall have written specifications for determining a "wild" test. Specifications for "wild" tests shall not exceed 0.50 percent units in/when comparing milk fat test results between or among samples for a permitted producer.

(3) "Wild" tests shall not be used for pay purposes and shall be conspicuously identified within laboratory test records.

Section 5. Check Samples. Periodically, the director may provide check samples to a licensed laboratory for test result comparisons and monitoring purposes. A licensed tester at the laboratory shall test each sample for components used for pay purposes using [approved] methods routinely utilized by the tester and approved based on accuracy. The tester's results shall be provided to the director within three (3) working days of receipt of the samples. The licensed laboratory shall be/is responsible for returning all check sample shipping containers and equipment to the director.

Section 6. Laboratory Records. (1) Laboratory records shall be kept in a manner consistent with 12 KAR 5:070, Section 2, and shall be retained for at least a two (2) year period.

(2) Equipment records. Records of the operation and maintenance of each electronic instrument shall include:

- (a) Maintenance records;
- (b) Daily performance check records; and
- (c) Complete calibration records.

(3) Test records. All records of tests to be used for pay purposes shall be original and recorded as tests are conducted.

(a) Records of retests and special tests shall be conspicuously identified.

(b) A licensed tester shall be responsible for the accuracy of test records for samples he or she tests for pay purposes.

Section 7. Sample Age. A permitted producer's sample being tested for pay purposes shall be tested within seventy-two (72) hours from the time of procurement, as identified on the sample container, unless the sample is preserved with a/an approved preservative approved based on efficacy.

Section 8. Hours of Operation. A licensed laboratory that is not open during the normal business hours of Monday through Friday, 8 a.m. to 4:30 p.m. shall submit a monthly testing schedule to the director one (1) month in advance.

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

- (a) "Official Methods of Analysis of AOAC International", Volume II, Chapter 33, 21<sup>st</sup>~~47th~~ Edition, 2019~~2000~~; and
- (b) "Standard Methods for the Examination of Dairy Products", 17<sup>th</sup>~~16th~~ Edition, 2004~~1992~~.

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

CONTACT PERSON: G. Alan Harrison, Feed and Milk Program Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 257-2785, fax (859) 323-9931, email alan.harrison@uky.edu.

12 KAR 5:030. Test samples.

RELATES TO: KRS 260.775-260.845, 260.992

STATUTORY AUTHORITY: KRS 260.825(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.825(1) requires~~authorizes~~ the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 260.775 through/to 260.845 regarding milk. This administrative regulation establishes criteria and procedures for the physical handling and storage of milk samples that will be tested for payment purposes.

Section 1. Producers' milk samples to be tested for payment purposes shall at all times be under the care of, and only be physically handled by, a licensed sampler-weigher or a licensed tester.

(1) The license requirement for the physical handling of milk samples to be tested for payment purposes excludes the shipping of samples via a commercial carrier. In these~~such~~ cases, the samples shall be packaged, the shipping container sealed, and unpacked by licensed sampler-weighers or licensed testers; and

(2) Milk samples shall be physically handled, stored, and shipped in a manner to maintain their integrity. The sample shall be maintained in a temperature range of 0.5-4.4°C (33-40° F).

Section 2. Milk-receiving stations, laboratories, transfer stations, and processors shall provide adequate storage for milk samples.

(1) These locations shall provide a minimum storage capacity for samples [typically–] representing at least three (3) days bulk-milk shipments; and

(2) Sample storage refrigerators shall be monitored daily with an accurate thermometer to ensure the proper temperature. The monitoring shall be documented with:

- (a) A recording device; or
- (b) A licensed sampler-weigher or licensed tester who shall keep a daily record that includes:
  - 1. Date;
  - 2. Time (including a.m. or p.m.);
  - 3. Temperature; and
  - 4. The sampler-weigher's or tester's initials.

CONTACT PERSON: G. Alan Harrison, Feed and Milk Program Director, University of Kentucky Division of Regulatory Services, 103 Regulatory Services Building, Lexington, Kentucky 40546, phone (859) 257-2785, fax (859) 323-9931, email alan.harrison@uky.edu.

UNIVERSITY OF KENTUCKY  
Agriculture Experiment Station  
(As Amended at ARRS, December 3, 2020)

12 KAR 5:040. Sampling and weighing.

RELATES TO: KRS 260.775-260.845, 260.992

STATUTORY AUTHORITY: KRS 260.825(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.825(1) requires~~authorizes~~ the Director of the Agricultural Experiment Station to promulgate administrative regulations necessary for the efficient enforcement of KRS 260.775 through/to 260.845 regarding milk. This administrative regulation establishes procedures for milk sampler-weighers for accurately sampling and weighing milk in farm bulk tanks.

Section 1. Each bulk farm tank shall/is required to be separately sampled and weighed. If a producer has multiple bulk farm tanks, samples and weights shall be obtained for each tank and the information recorded separately in the sampler-weigher's

records.

Section 2. Sampler-weigher Equipment. A sampler-weigher shall use the following equipment in his sampling and weighing procedures:

- (1) A sample case shall:
  - (a) Be rigidly constructed and insulated for safe transportation of the samples;
  - (b) Have ample space to hold samples;
  - (c) Maintain a refrigerant that is needed to cool and maintain the samples at a temperature range of 0.5-4.4° C (33-40° F);
  - (d) Contain a rack or float to keep the samples in an upright position and to keep the neck and the top of each sample container above the surface of the cooling medium; and
  - (e) Maintain a refrigerant at the level of the milk in the sample containers.~~;~~
- (2) Sample containers shall be clean, dry, and sterile. Sample vials shall have leak-proof caps and may be made of glass or molded, rigid plastic. ~~Plastic bags may also be used~~ if approved based on sterility. The sample containers shall hold a minimum of one (1) ounce of milk and provide sufficient air space for processing the sample in the laboratory;
- (3) A sample dipper or other sampling device of sanitary construction. The sampling device shall be stored in a receptacle containing a sanitizing solution. To be used, both the sampling device and the sanitizing solution shall be approved by the Milk Safety Branch of the Cabinet for Health Services based on sterility and efficacy;
- (4) An accurate dial or digital thermometer;
- (5) A waterproof, indelible marker to write information on sample containers;
- (6) A watch or other device to time the agitation of the milk in the bulk tank prior to sampling;
- (7) An indelible pen to complete the necessary paperwork; and
- (8) An adequate supply of bulk milk delivery tickets.

Section 3. Weighing Procedures. ~~While~~When measuring milk volume in farm bulk tanks with a gauge rod inside the tank or an external scale plate with gauge tube on the outside of the tank, the milk shall be motionless. A sampler-weigher shall:

- (1) Use the following procedures for measuring milk with a gauge rod on the inside of a bulk tank:
  - (a) Remove any milk foam from the measurement area by pushing it aside with the rod;
  - (b) Remove any milk residue from the rod by wiping the rod with a clean, single-service towel. If the milk residue cannot be removed by this method, rinse the rod in warm (not hot) water and again wipe the rod with a single-service towel;
  - (c) Lower the gauge rod slowly straight down until it reaches a point approximately one-quarter (1/4) inch above its base. Hold the rod in this position for a moment and then ease it down until it seats firmly and naturally in its base;
  - (d) Raise the gauge rod and immediately read it in a well-lighted area at eye level;
  - (e) The gauge rod shall be read to the nearest graduation mark on the rod. If the reading is exactly half-way between two (2) graduation marks, read to the nearest even mark; and
  - (f) Repeat the gauge rod reading until two (2) readings are in agreement and record the reading.~~;~~
- (2) Use the following procedures for measuring milk with an external scale plate and gauge tube on the outside of a bulk milk tank:
  - (a) If milk is in the external scale plate's gauge tube, it shall be drained and refilled with cold milk. The tube shall be clean and dry prior to filling it with milk;
  - (b) To fill the gauge tube, open the outlet valve slowly to prevent foaming of milk as it fills the tube;
  - (c) After the milk from the bottom of the tank fills the tube, read the highest point of the center of the milk's meniscus as the measuring point to compare to the scale plate;
  - (d) The scale plate shall be read to the nearest graduation mark. If the reading is exactly half-way between two (2) graduation marks, read to the nearest even mark; and

(e) Repeat the scale plate and gauge tube reading until two (2) readings are in agreement and record the reading.~~;~~

(3) Promptly convert the volume reading of the bulk milk tank to milk weight using the tank's conversion chart. The conversion ~~shall~~should be repeated until two (2) conversions are in agreement. Record the milk weight; ~~and~~;

(4) Procedures for weighing farm bulk milk in tanks that are not equipped with a gauge shall be approved by the director.

Section 4. Sampler-weigher Records. A sampler-weigher shall prepare and account for records pertaining to milk he samples and weighs.

- (1) Sampler-weigher records shall include;
  - (a) Bulk milk delivery tickets;
  - (b) Producer barn charts;
  - (c) Information recorded on sample containers; and
  - (d) Any other record relating to bulk milk sampling and weighing activities.
- (2) All records relating to sampler-weigher's daily activities shall be legible and written in indelible ink. Changes or corrections to records shall be made by drawing a single line through the entry and writing the correction nearby. Any changes or corrections shall be dated and initialed.
- (3) Bulk milk delivery tickets shall accompany all loads of milk to milk-receiving stations, transfer stations, and processors and shall include~~the following information~~;
- (a) Identification of the handler;
- (b) Identification of the milk-receiving station, transfer station, or processor;
- (c) Date of collection;
- (d) Producer identification (and tank identification if the producer has multiple tanks);
- (e) Time of pickup (including a.m. or p.m.);
- (f) Temperature of the milk;
- (g) Milk volumetric reading;
- (h) Converted milk weight;
- (i) Any comments related to unusual circumstances; and
- (j) Sampler-weigher's signature.
- (4) A sampler-weigher shall record the following information on producer barn charts for each tank sampled and weighed:
  - (a) Date;
  - (b) Time (including a.m. or p.m.);
  - (c) Milk temperature;
  - (d) Milk volumetric reading;
  - (e) Converted milk weight; and
  - (f) Sampler-weigher's signature or initials.
- (5) If more than one (1) sampler-weigher samples and weighs producers' milk for one (1) truckload, each sampler-weigher shall sign the bulk milk delivery ticket, regardless of who delivers the load to the milk-receiving station, transfer station, or processor.

Section 5. Sampling Procedures. A sampler-weigher shall use the following procedures to obtain a representative sample from a producer's standard farm bulk tank:

- (1) Each sample container shall be permanently marked with waterproof, indelible ink and shall be identified with the following information:
  - (a) Producer identification (and tank identification if the producer has multiple tanks);
  - (b) Date;
  - (c) Time (including a.m. or p.m.);
  - (d) Milk temperature; and
  - (e) Sampler-weigher's initials.~~;~~
- (2) Milk in the bulk tank shall be agitated sufficiently to provide a homogenous blend and to obtain a representative sample. A minimum of five (5) minutes of agitation time shall be~~is~~ required for tanks with less than a 1000 gallon capacity. Tanks with a 1000 gallon capacity or larger shall be agitated a minimum of ten (10) minutes;
- (3) To eliminate moisture and sanitizing solutions, the sampling device shall be rinsed with milk at least twice prior to taking samples;
- (4) The milk shall be transferred from the sampling device to

the sterile sample container away from the opening of the farm bulk tank. The container shall be filled to approximately three-fourths (3/4) full or to the container's "fill line." Enough air space shall be left in the container to allow the sample to be adequately mixed at the laboratory. After the milk has been transferred to the sample container, the container shall be tightly sealed and immediately placed in the sample case with appropriate refrigerant;

(5) At the time of sampling the first bulk milk tank on the sampler-weigher's route, an additional sample shall be collected for temperature determination. This sample's container shall be identified with the information established[outlined] in subsection (1) of this section and with adequate information to identify the sample as the temperature control;

(6) Any additional or special samples obtained on the sampler-weigher's route shall be clearly and specifically identified with waterproof, indelible markings stating the purpose of the sample;~~and]~~

(7) Sampling procedures for nonstandard or sealed farm bulk milk tanks shall be approved by the director based on accuracy and sanitation; and[-]

(8) Milk samples shall be under a sampler-weigher's immediate care at all times until the samples are delivered to the milk-receiving station, transfer station, or processor.

Section 6. Load Sample. A sampler-weigher shall obtain a load sample from the tank on the[his] truck immediately after the last producer's milk is pumped into the truck's tank.

(1) The load sample shall be taken from the porthole at the top of the tank on the truck using a sanitized sampling device. Care shall be taken to prevent any foreign material from entering the porthole. The load-sample container shall be identified with the following information]:

(a) Adequate information to identify the sample as the load-sample;

(b) Date;

(c) Time (including a.m. or p.m.);

(d) Sampler-weigher's initials; and

(e) The milk truck's assigned tanker number.

(2) The load sample shall[is-to] be used for comparisons of the load sample and individual producer's samples for the purpose of grading and evaluation of the sampler-weigher's competency in sampling;~~[- and]~~

(3) The load sample shall[is-to] be taken by all bulk sampler-weighers in addition to, not in lieu of, any other load samples required by the milk handler, transfer station, receiving station, or processor.

Section 7. Sample Set. A sample for each producer bulk milk tank, a temperature control sample, and a load sample shall accompany each load of milk to its final receiving station, transfer station, or processor. A sampler-weigher might[may] need to obtain multiple samples for his bulk milk route to meet this requirement.

Section 8. Milk Sample Transfer Procedures. To expedite the transport of samples to the appropriate laboratory, a sampler-weigher shall follow these procedures:

(1) For bulk milk deliveries to locations where producers' milk samples are routinely transported from the receiving station, transfer station, or processor to the appropriate laboratory; a sampler-weigher shall properly place the[his] samples in the location's sample storage refrigerator or refrigerated sample storage case after the bulk load of milk has been determined to be acceptable; or

(2) For bulk delivery if[when] producer's milk samples are not routinely transported from the receiving station, transfer station, or processor to the appropriate laboratory, a sampler-weigher shall follow written sample transfer procedures established by the licensed handler or handlers who issue[handler(s)-who-issues] payments to producers on the sampler-weigher's route or routes[route(s)]. Written sample transfer procedures shall be approved by the director based on sanitation.

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UNIVERSITY OF KENTUCKY  
Agriculture Experiment Station  
(As Amended at ARRS, December 3, 2020)

12 KAR 5:050. Inspections.

RELATES TO: KRS 260.775-260.845, 260.992

STATUTORY AUTHORITY: KRS 260.825(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.825(1) requires[authorizes] the Director of the Kentucky Agricultural Experiment Station to promulgate administrative regulations necessary for the effective enforcement of KRS 260.775 through[to] 260.845 regarding milk. This administrative regulation establishes a basis for monitoring licensed milk handlers, laboratories, transfer stations, sampler-weighers, and testers to ensure that these licensees are in compliance with KRS 260.775 through[to] 260.845.

Section 1. A milk handler, laboratory, and transfer station shall be inspected and evaluated for compliance with KRS 260.775 through[to] 260.845. The director shall provide written notice to the appropriate licensee to correct any observed discrepancies. Unsatisfactory compliance shall be dealt with in accordance with KRS 260.775 through[to] 260.845 and 260.992.

Section 2. A sampler-weigher shall be inspected and evaluated for compliance with KRS 260.775 through[to] 260.845.

(1) A sampler-weigher's records, equipment, samples, and procedures shall be examined to determine compliance.

(2) Milk samples obtained by a sampler-weigher may be collected and analyzed by the director to assist in the evaluation of the sampler-weigher's activities.

(a) Results of these analyses may be used to make comparisons among and between these samples. These comparisons may include the use of milk-component test results and other test results pertaining to milk quality and composition.

(b) Results of these analyses may be used to determine the amount of milkfat on a load of bulk milk as represented by the individual producer's bulk-tank samples and weights and as represented by the load sample and the sum of individual producers' bulk-tank weights. The deviation of the milkfat on the bulk milk load between these two (2) comparisons may, in part, determine the evaluation of the sampler-weigher.

(c) The deviation between the weight of the load of bulk milk represented by the sum of the individual producer's bulk-tank weights and, if available, the weight of the load of bulk milk as determined by an accurate scale or meter may, in part, determine the evaluation of the sampler-weigher. The scale or meter used in this determination shall be well maintained and approved by an accredited scale maintenance firm or appropriate government agency.

(3)(a) If there is a deviation between milkfat as represented by the load sample and the sum of the individual producers' bulk tank milkfat weights used in the evaluation of an inspection of a sampler-weigher, a grade shall be assigned. Grades shall be based on the difference between sum of milkfat weights from all bulk tanks on the load and pounds of milkfat calculated from the load sample. The grading scale shall be:

1. A: excellent (0.50% or less);

2. B: good (0.51 to 1.00%);

3. C: poor (1.01 to 2.00%); and

4. D: unsatisfactory (above 2.00%).

(b) Noncompliance with KRS 260.775 through 260.845 and 12 KAR Chapter 5 shall[An evaluation of an inspection of a sampler-weigher shall be awarded a grade. Grades given shall

~~be A—excellent; B—good; C—poor; D—unsatisfactory. Criteria for awarding grades shall be established by the director and shall be printed on the inspection report. Noncompliance with KRS 260.775 to 260.845 and 12 KAR Chapter 5 may~~ result in a D grade inspection.

(4) A sampler-weigher who receives three (3) "D" grade inspections within a twelve (12) month period shall be required to attend the next scheduled one (1) day sampler-weigher training school and take a written examination administered by the director. This shall not prevent the director from taking other actions under KRS 260.775 through~~[to]~~ 260.845~~;~~ and 260.992 for a sampler-weigher who receives a D grade inspection or who otherwise is not in compliance with KRS 260.775 through~~[to]~~ 260.845 and 260.992.

Section 3. A tester shall be inspected and evaluated for compliance with KRS 260.775 through~~[to]~~ 260.845.

(1) A tester's records, equipment, and procedures shall be examined, in part, to determine compliance.

(2) The results of a tester's analyses may be compared to results of the director's analyses. The deviation between these results shall, in part, determine compliance. The director shall provide written notice to the tester and to the licensed laboratory employing the tester to correct any discrepancies. Unsatisfactory compliance shall be dealt with in accordance with KRS 260.775 through~~[to]~~ 260.845 and 260.992.

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**UNIVERSITY OF KENTUCKY  
Agriculture Experiment Station  
(As Amended at ARRS, December 3, 2020)**

**12 KAR 5:060. Purchases from farm bulk tanks.**

RELATES TO: KRS 260.775-260.845, 260.992

STATUTORY AUTHORITY: KRS 260.825(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.825(1) requires~~[authorizes]~~ the Director of the Kentucky Agricultural Experiment Station to promulgate administrative regulations necessary for the effective enforcement of KRS 260.775 through~~[to]~~ 260.845 regarding milk. This administrative regulation establishes criteria for recordkeeping and reporting practices to ensure that bulk farm milk is fairly and accurately marketed.

Section 1. A licensed bulk milk handler or licensed transfer station shall review bulk milk delivery tickets to ensure compliance with KRS 260.775 through~~[to]~~ 260.845.

(1) A bulk-milk delivery ticket representing a load of milk for a permitted Kentucky producer shall be examined to ensure that a licensed sampler-weigher sampled and weighed the milk.

(2) A bulk-milk delivery ticket representing a shipment of milk from a producer shall be examined for compliance with 12 KAR 5:040, Section 4(3).

(3) Discrepancies shall be reported to the director.

Section 2. Personnel at a licensed laboratory who test permitted producers' samples for pay purposes shall review the information recorded on sample containers to ensure compliance with 12 KAR 5:040, Section 5(1). An agent of the laboratory shall report discrepancies to the director.

Section 3. Licensed Milk Handler Reporting Requirements. (1) Each licensed milk handler shall submit to the director an accurately-completed Kentucky Farm Milk Handlers Report each quarter with payment of inspection fee as required by KRS 260.821. ~~[The Kentucky Farm Milk Handlers Report form shall~~

~~be provided to handlers by the director.]~~

(2) Each licensed milk handler who issues payments to permitted producers shall submit to the director, upon request, a current list of these permitted producers to whom payments are being issued. The list shall be submitted with the ~~[handler's annual—license]~~Application for License to Handle Milk, incorporated by reference in 12 KAR 5:010, and shall be updated when the handler submits its quarterly Kentucky Farm Milk Handlers Report. The listing shall include the following information about each permitted producer:

- (a) Name;
- (b) Identification number issued by the handler if different from permit number; and
- (c) Mailing address.

Section 4. A licensed milk handler who issues payments to permitted producers shall submit to the director, upon request, a copy of each permitted producer's bulk-tank conversion chart or charts~~[chart(s)]~~ to whom they issue payments. These charts may be reviewed by the director to determine if a permitted producer's bulk milk has been accurately weighed by sampler-weighers.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference: "Kentucky Farm Milk Handlers Report", July 2020~~[October 2000]~~, Division of Regulatory Services.

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

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**UNIVERSITY OF KENTUCKY  
Agriculture Experiment Station  
(As Amended at ARRS, December 3, 2020)**

**12 KAR 5:070. Uniform standards for payment.**

RELATES TO: KRS 260.775-260.845, 260.992

STATUTORY AUTHORITY: KRS 260.825(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.825(1) requires~~[authorizes]~~ the Director of the Kentucky Agricultural Experiment Station to promulgate administrative regulations necessary for the effective enforcement of KRS 260.775 through~~[to]~~ 260.845 regarding milk. This administrative regulation establishes criteria for uniform standards of payment for producer milk.

Section 1. Number of Samples Required for Milk Component Testing for Pay Purposes. (1) Grade A milk producers shall be paid based on calculations of component tests from a minimum of five (5) bulk tank samples representative of and ~~[fairly—evenly]~~spaced throughout the monthly pay period.

(2) Manufacturing grade milk producers shall be paid based on calculations from a minimum of three (3) bulk tank samples representative of and ~~[fairly—evenly]~~spaced throughout the fifteen (15) day pay period.

(3) Payment calculations for producers with multiple farm bulk tanks shall be made for each tank separately or shall include a weighted-average computation. A daily weighted average shall be based on a test from a sample representing each farm bulk tank and a recorded weight for each farm bulk tank.

Section 2. Pay Records. (1) Written records shall be recorded legibly in ink by an agent of the handler and ~~[include the following information]~~.

(a) Each page shall be signed and dated by a responsible person; and

(b) Changes or corrections to records shall be made by drawing a single line through the entry and writing the corrected entry nearby. Any changes or corrections shall be dated and initialed.

(2) Persons who use electronic systems to create, modify, maintain, or transmit records relating to milk samples, weights, tests, or payments shall employ procedures and controls designed to ensure the authenticity and integrity of the records.

~~[Such] Procedures and controls shall include [the following]:~~

(a) The ability to generate accurate and complete copies of records in printed and electronic form ~~that shall be [which are]~~ suitable for inspection, review, and copying by the director;

(b) Protection of records to enable their accurate and ready retrieval throughout the retention period of the records;

(c) Limiting electronic record access only to authorized individuals;

(d) Determination that persons who develop, maintain, or use electronic systems have the training and qualifications to perform assigned tasks; ~~and~~

(e) ~~Protection [The establishment of and adherence to written policies]~~ to deter record falsification; ~~and~~

(f) ~~Holding [The policies shall hold]~~ a person responsible for ~~[his tasks relating to]~~ electronic records.

(3) The consolidated pay records shall be compiled from the sampler-weigher's weight records, valid laboratory test records, and other factors affecting the price. All records relating to payments shall be properly documented and retained for at least a two (2) year period.

(4) A statement that agrees with the pay record shall be provided to each permitted producer with the final payment for each month. The statement shall include ~~[the following]:~~

(a) Dates covered by payment;

(b) Amount of milk paid for;

(c) Detailed pricing description;

(d) Test ~~results~~~~[result(s)]~~ and component yield~~[yield(s)]~~ used to calculate payment; and

(e) Any deductions.

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**FINANCE AND ADMINISTRATION CABINET  
Kentucky Retirement Systems  
(As Amended at ARRS, December 3, 2020)**

**105 KAR 1:149. Quasi-governmental employer cessation window.**

RELATES TO: KRS 18A.205, 18A.225, 61.510 to 61.705, 26 U.S.C. 401, 402, 403

STATUTORY AUTHORITY: KRS 61.522(9), 61.645(9)(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(e) requires the Board of Trustees of Kentucky Retirement Systems to promulgate administrative regulations necessary or proper in order to carry out the provisions of KRS 61.510 to 61.705. KRS 61.522(6) authorizes certain quasi-governmental employers in the Kentucky Employees Retirement System to cease participation of its nonhazardous employees under the provisions and requirements of KRS 61.522(8). The ceased quasi-governmental employer shall pay the full actuarial cost of benefits accrued by its current and former nonhazardous employees through June 30, 2021~~[2020]~~, except as provided by KRS 61.522(8)(g)4. KRS 61.522(9) requires the Board to promulgate administrative regulations to administer the provisions of the statute. This administrative regulation establishes the temporary procedures and requirements for quasi-governmental employer cessation from participation in the Kentucky Employees

Retirement System pursuant to KRS 61.522.

Section 1. Definitions. (1) "Alternative retirement program" means a plan provided by a ceased quasi-governmental employer, which meets the qualification requirements of 26 U.S.C. 401(a) or 26 U.S.C. 403(b), is eligible to receive direct trustee-to-trustee transfers of pre-tax and post-tax contributions, and does not include a defined benefit plan.

(2) "Ceased employer" means a quasi-governmental employer who, on or after April 1, 2020~~[2021]~~~~[2020]~~, but prior to May 1, 2021, or in the case of university or community college employers it shall be prior to January 1, 2021~~[2020]~~, submits a resolution to cease participation in Kentucky Employees Retirement System ("KERS"), which is accepted by the Board on or before June 30, 2021~~[2020]~~.

(3) "Employer", for the purposes of this administrative regulation, means a quasi-governmental employer including local and district health departments governed by KRS Chapter 212, state-supported universities and community colleges, the Kentucky Higher Education Student Loan Corporation, and any other agency otherwise eligible to voluntarily cease participating in KERS pursuant to KRS 61.522.

(4) "Employer election" means an election by ceasing employers set forth in the resolution to cease participation in KERS regarding whether nonhazardous employees hired prior to June 30, 2021~~[2020]~~, who began participating in KERS prior to January 1, 2014, will continue to participate in KERS after June 30, 2021~~[2020]~~. Nonhazardous employees of employers who do not elect for their employees to continue participating in KERS will not accrue additional service credit or benefits with KERS through the ceased employer after June 30, 2021~~[2020]~~.

(5) "Nonhazardous employee" means a regular full-time employee participating in KERS in a position other than a position classified as hazardous by the board pursuant to KRS 61.592.

Section 2. (1) An employer may request an estimate of the actuarial cost of ceasing participation in KERS of its nonhazardous employees prior to December 31, 2019. The request shall be made by completing the Form 7726, Request for Estimated Cost of Voluntary Cessation from KERS under KRS 61.522(8).

(2) Kentucky Retirement Systems (hereafter "Systems") shall provide the estimate of the cost within sixty (60) days of receipt of the Form 7726, however, no estimate shall be required to be provided prior to January 31, 2020.

(3) Systems shall provide the estimate of the cost based on the information currently in its database and projecting the service and creditable compensation of all nonhazardous employees as if they remain employed in a regular full-time position through June 30, 2020.

(4) The estimated actuarial cost of ceasing participation shall not be binding on the Systems.

(5) The employer shall not rely on the estimated actuarial cost of ceasing participation.

(6) Systems shall notify the employer of the administrative cost to process the Form 7726. The administrative cost shall be calculated as follows:

(a) If the number of employees and former employees to be submitted to the actuary for purposes of determining the estimated actuarial cost of cessation equals one (1) to 100 employees, the administrative cost shall be \$1,500.

(b) If the number of employees and former employees to be submitted to the actuary for purposes of determining the estimated actuarial cost of cessation equals 101 or more employees, the administrative cost shall be \$4,000.

(7) Systems shall process the Form 7726 after the employer has remitted its payment for the administrative cost.

Section 3. (1) The governing body of an employer seeking to cease participation in KERS through KRS 61.522(8) shall pass a resolution to cease participation and submit the resolution to the board on or after April 1, 2020~~[2021]~~~~[2020]~~, but prior to May 1, 2021, or January 1, 2021, in the case of university or community college employers~~[2020]~~.

(2) The resolution shall contain the following statements:

(a) That the employer has decided to voluntarily cease participation in KERS;

(b) The employer election and acknowledgement as to whether nonhazardous employees hired prior to June 30, 2021[2020], who began participating in the Systems prior to January 1, 2014, will, as a result of the employer election, either continue to participate or cease earning service credit and benefits after June 30, 2021[2020];

(c) That the employer acknowledges it is unable to rescind the resolution to cease participation after April 30, 2021, or after December 31, 2020 in the case of university or community college employers[2020];

(d) That the employer acknowledges it is subject to the requirements and restrictions of KRS 61.522 and this administrative regulation;

(e) That the employer acknowledges that in order to cease participation in KERS pursuant to KRS 61.522(8), the employer shall pay the actuarial cost of ceasing participation and all administrative costs associated therewith;

(f) That the employer agrees to cooperate with the Systems to educate its employees about the effect of cessation and the employer election on the employees' retirement accounts and the employees' options regarding their retirement accounts;

(g) That the employer shall not mandate, force, or require its employees to take a refund of their accumulated account balance as defined by KRS 61.510(41), or retaliate against its employees who chose not to take refunds of their accumulated account balance as defined in KRS 61.510(41); and

(h) That the employer shall hold the Commonwealth and the Systems, including board members and employees of the Systems, harmless from damages, attorney's fees and costs from legal claims for any cause of action brought by any member or retired member of the ceasing employer related to the cessation of the employer.

(3) The Board shall accept the resolution on or before June 30, 2021[2020], in order for the employer to cease participation.

(4) If a resolution to cease participation in the KERS is not received by the board prior to May 1, 2021, or January 1, 2021 in the case of university or community college employers[2020], the employer shall continue to participate in the KERS and pay the full actuarially determined contributions for fiscal years occurring on or after July 1, 2021[2020].

Section 4. (1) An employer shall file a completed Form 7727, Actuarial Study for Quasi-Governmental Employer Cessation with its resolution on or after April 1, 2020[2021][2020], but prior to May 1, 2021, or January 1, 2021 in the case of university or community college employers[2020], with the executive director of the Systems.

(2) The employer shall submit the following documents with its Form 7727:

(a) Documentation of the alternative retirement program created by or being created by the employer for its employees, such as the determination letter issued by the Internal Revenue Service or a written description of the alternative retirement program;

(b) The employer's most recent five (5) audited financial statements and independent auditor's reports; and

(c) The employer's most recent five (5) Comprehensive Annual Financial Reports, if applicable.

(3) The employer shall submit with its Form 7727, an encrypted electronic file in a format prescribed by the Systems listing each current and former nonhazardous employee, employed in a full-time position as defined by KRS 61.510(21), who was employed during any period the employer participated in KERS, containing:

(a) Full name;

(b) Last known address;

(c) Date of birth;

(d) Social security number or Systems member identification number;

(e) Beginning date of employment;

(f) Date employment ended, if applicable;

(g) Sick leave balance;

(h) Beginning and ending dates of any active duty military service when the employee was not employed by the employer filing the Form 7727, if available; and

(i) Beginning and ending dates of any active duty military service when the employee was employed by the employer filing the Form 7727.

Section 5. (1) The employer shall pay the administrative costs incurred by the Systems for the actuarial study completed in accordance with the Form 7727 to determine the final cost, as well as all other administrative costs incurred for ceasing participation pursuant to KRS 61.522(3)(a).

(2) The employer shall pay \$10,000 as a deposit with the Form 7727.

(3) Systems shall place the deposit in a designated account and shall utilize the funds to pay the administrative costs of processing the employer's Form 7727.

(4) Systems shall charge a reasonable fee for its administrative costs associated with processing of the employer's Form 7727 and send an invoice to the employer upon completion of the actuarial study.

(a) Systems shall apply the deposit received pursuant to subsection (2) of this section to any administrative costs incurred by the Systems attributable to the employer's cessation in accordance with KRS 61.522(8).

(b) Following the application of the deposit to the outstanding administrative costs, Systems shall submit an invoice to the employer for the additional administrative costs and the employer shall pay the invoice for the remaining administrative costs within thirty (30) days of the date of the invoice.

(5) If the total administrative cost is less than the deposit paid by the employer, Systems shall credit the remaining balance of the deposit to the employer.

Section 6. (1) Systems shall attempt to notify each nonhazardous employee identified on the list provided by the ceased employer that the employer is ceasing participation pursuant to KRS 61.522(8).

(2) For those eligible nonhazardous employees, the Systems shall provide notice informing the employee of the right to request an irrevocable refund, pursuant to KRS 61.522(3)(a)5., of their accumulated account balance as defined in KRS 61.510(41) by submitting a completed Form 1500, KRS 61.522 60-Day Transfer Request within sixty (60) days of June 30, 2021[2020] to Kentucky Retirement Systems. The notice shall be sent no later than June 19, 2021[2020].

(a) Systems shall send the notice to the active nonhazardous employees listed by the employer who has filed a Form 7727 on its most recent report required by KRS 61.675 submitted prior to the date the notices are mailed.

(b) The employer shall submit the name and contact information of each nonhazardous employee it hired between the completion of the Form 7727 and before June 30, 2021[2020], within five (5) days of the date the employee begins working for the employer.

(c) A Form 1500 submitted on or before June 30, 2021[2020], shall be void.

(d) A Form 1500 submitted after August 31, 2021[2020], shall be void.

(e) The employee shall be employed by the employer who has filed a Form 7727 on June 30, 2021[2020], to be eligible to request a refund of his accumulated account balance pursuant to KRS 61.522(3)(a)5.

(f) An employee who submitted Form 1500 to the Systems may rescind the form by submitting written notice to the Systems on or before August 31, 2021[2020].

(g) If an employee requests a refund pursuant to KRS 61.522(3)(a)5., the employee's accumulated account balance shall be transferred to the employer's alternative retirement program pursuant to this section even if the employee terminates employment with the employer after June 30, 2021[2020], unless the employee rescinds the Form 1500 on or before August 31,



2021[2020].

(3)(a) The employer shall establish an alternative retirement program on or before August 31, 2021[2020], as provided in KRS 61.522(3)(a)5.

(b) The employer shall submit the final plan documents for its alternative retirement program as well as an affirmative statement that the alternative retirement program does not include a defined benefit plan.

(c) The employer shall submit verification that it has established an alternative retirement program qualified under 26 U.S.C. 401(a) or 26 U.S.C. 403(b) that is eligible to receive direct trustee-to-trustee transfers of pre-tax and post-tax contributions and does not include a defined benefit plan. Systems shall accept one (1) of the following as verification that the employer has established a valid alternative retirement program:

1. A determination letter from the Internal Revenue Service providing that the alternative retirement program established by the employer is a qualified plan pursuant to 26 U.S.C. 401(a) or 26 U.S.C. 403(b) capable of accepting trustee-to-trustee transfers;

2. A letter from the employer's legal counsel certifying that the alternative retirement program satisfies the requirements of 26 U.S.C. 401(a) or 26 U.S.C. 403(b) capable of accepting trustee-to-trustee transfers; or

3. Other reliable verification as determined by the Systems.

(d) Refunds requested pursuant to KRS 61.522(3)(a)5. shall be transferred to the alternative retirement program established by the ceased employer by trustee-to-trustee transfer after August 31, 2021[2020].

1. The alternative retirement program shall accept and separately account for post-tax employee contributions.

2. The ceased employer's legal counsel shall provide written certification that its alternative retirement program shall accept and separately account for post-tax employee contributions.

(e) If the ceased employer fails to establish an alternative retirement program pursuant to paragraph (a) of this subsection, the refund requests pursuant to KRS 61.522(3)(a)5. shall be void. The employees who filed the refund requests pursuant to KRS 61.522(3)(a)5. shall remain members of the system and shall be included in the full actuarial cost.

(4) Former employees of the ceased employer who are currently participating in the State Police Retirement System, County Employees Retirement System, or Kentucky Employees Retirement System, due to employment with a participating agency, shall not be eligible to take a refund of their accumulated account balance until terminating employment with the current participating employer.

(5) Current employees of the ceased employer who are also employed by another employer participating in the State Police Retirement System, County Employees Retirement System, or Kentucky Employees Retirement System shall not be eligible to take a refund of their accumulated account balance until terminating employment with the participating employer.

(6) Current employees of the ceased employer on June 30, 2021[2020], may request a refund pursuant to KRS 61.522(3)(a)5.

(7)(a) Former employees of the ceased employer who are not participating in State Police Retirement System, County Employees Retirement System, or Kentucky Employees Retirement System shall not be eligible to take a refund of their accumulated account balance pursuant to KRS 61.522(3)(a)5.

(b) The account balance of former employees of the ceased employer who are not participating in State Police Retirement System, County Employees Retirement System, or Kentucky Employees Retirement System, but who were employed with the ceased employer on June 30, 2021[2020], and who submitted a valid Form 1500 pursuant to this section, shall be transferred to the employer's alternative retirement program unless the employee rescinds the Form 1500 on or before August 31, 2021[2020].

(8) The four (4) percent employer pay credit and applicable interest accrued shall vest as of June 30, 2021[2020], for those nonhazardous employees who began participating on or after January 1, 2014, and who request a refund pursuant to KRS 61.522(3)(a)5.

Section 7. (1)(a) The employer shall continue to file reports and remit employer contributions on all employees in accordance with KRS 61.675 and 105 KAR 1:140 for creditable compensation paid through June 30, 2021[2020].

(b) If the employer elects for nonhazardous employees to continue participation through the employer election, the employer shall continue to file reports in accordance with KRS 61.675 and 105 KAR 1:140. In addition, the employer shall continue to report all applicable pick up installments for pre-tax service purchases pursuant to KRS 61.552(14)(c). However, pursuant to KRS 61.522(8)(d)2., the employer shall not remit employer contributions for nonhazardous employees after June 30, 2021[2020], as those amounts are factored into the cost calculation established by KRS 61.522(7).

(c) The employer shall continue to remit employer contributions for all hazardous employees.

(2)(a) If a member who is an employee of a ceased employer files for disability retirement benefits but does not establish a last day of paid employment prior to June 30, 2021[2020], and does not continue participation, the Systems shall use June 30, 2021[2020], as the member's last day of paid employment.

(b) If a member who is an employee of a ceased employer continues participation because of the employer election and files for disability retirement benefits, the member's last day of paid employment shall be established pursuant to KRS 61.510(32).

(3)(a) The ceased employer shall continue to pick-up payments for installment purchase of service for any employee who is purchasing service pursuant to KRS 61.552(14) and 105 KAR 1:150 through June 30, 2021[2020].

(b) An employee that ceases participation in KERS on June 30, 2021[2020], shall have sixty (60) days from the date of cessation to pay in full any outstanding balance on the installment purchase agreement pursuant to KRS 61.552(14) and 105 KAR 1:150.

Section 8. (1) Employees of a ceased employer shall comply with the provisions of KRS 61.590, 61.625 and 61.637.

(2) Employees of a ceased employer shall terminate employment with all participating employers of the State Police Retirement System, County Employees Retirement System, Kentucky Employees Retirement System and the ceased employer prior to retiring pursuant to KRS 61.590 or taking a refund pursuant to KRS 61.625.

(3)(a) Employees of a ceased employer shall comply with KRS 61.637 and 105 KAR 1:390 after retirement.

(b) The ceased employer shall certify that the employee seeking to retire or take a refund is terminating employment or has terminated employment with no prearranged agreement to return to work for the ceased employer.

Section 9. (1) Employees shall receive service credit for sick leave accrued pursuant to KRS 61.546 as of June 30, 2021[2020].

(a) If the ceased employer participates in a sick leave program established in KRS 61.546 the employer shall report to the Systems the number of hours of each employee's accumulated sick leave as of June 30, 2021[2020].

(b) Systems shall credit the months of sick leave service reported pursuant to this section to the employee's total service credit to determine the ceased employer's actuarial cost.

(c) If the ceased employer elects that nonhazardous employees hired prior to June 30, 2021[2020], who began participating in the Systems prior to January 1, 2014, will continue participation pursuant to KRS 61.522(8)(d), then those employees shall continue to receive service credit for sick leave accrued pursuant to KRS 61.546 after June 30, 2021[2020], while participating through the ceased employer.

(2)(a) Systems shall credit the months of military service pursuant to KRS 61.555 prior to June 30, 2021[2020], and include the months in the calculation of the ceased employer's actuarial cost.

(b) If the ceased employer elects that nonhazardous employees hired prior to June 30, 2021[2020], who began participating in the Systems prior to January 1, 2014, will continue participation pursuant to KRS 61.522(8)(d), then those employees

shall continue to be able to obtain military service pursuant to KRS 61.555 if otherwise eligible.

Section 10. (1) The ceased employer shall pay or otherwise resolve all its invoices and correct all reporting in accordance with KRS 61.675 and 105 KAR 1:140 by July 25, 2021[2020].

(2)(a) Systems shall provide the ceased employer with the amount of the full actuarial cost by sending a notice of actuarial cost and the report of the actuary to the employer.

(b) Systems shall provide the ceased employer with the payment amounts required if the ceased employer elects to pay the actuarial cost in installment payments.

(3)(a) The ceased employer shall elect on the Form 7728, Payment Election for Quasi-Governmental Employer Cessation whether to pay the actuarial cost of cessation by lump-sum payment or in installment payments not to exceed thirty (30) years from June 30, 2021[2020].

(b) The Form 7728 shall be received in the retirement office on or before thirty (30) days after the date on which the Systems mailed the notice of actuarial cost and the report of the actuary to the ceased employer.

(c) A ceased employer intending to pay the full actuarial cost by lump-sum shall submit with the Form 7728 documentation of the source of the funds the employer intends to use to pay the full actuarial cost.

(d) A ceased employer intending to pay the actuarial cost by installment payment plan shall submit with the Form 7728 documentation of:

1. Source of funds to pay the installment payments;
2. List of real property owned by the ceased employer, including deeds of conveyance, title, all liens or encumbrances on the real property, and any current written contractual lease or rental agreement of the real property identified;
3. List of liabilities of the ceased employer; and
4. Inventory of all personal property owned by the ceased employer or in which the employer has an interest that may be used as collateral by the employer, including chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letters of credit rights, and money.

(4)(a) Ceased employers who elect to pay the full actuarial cost by lump-sum shall make the payment by June 30, 2022[2021], pursuant to KRS 61.522(3)(a)7.

(b) If the lump-sum payment is not received by the Systems at the retirement office on or before June 30, 2022[2021], then the ceased employer shall make installment payments and the payment amount shall be recalculated based upon this adjustment with interest added for fiscal year 2022-2023[2021-2022]. The ceased employer shall also remit all outstanding installments payments.

(c) Systems shall notify any ceased employer who has not submitted the lump-sum payment on June 21, 2022[2021], of the impending deadline and the consequences of failing to timely pay.

(5)(a) If the ceased employer elects to pay the actuarial cost of cessation in installment payments, the cost shall be financed by the Systems pursuant to KRS 61.522(8)(g).

(b) If the ceased employer elects for nonhazardous employees who began participating in the Systems prior to January 1, 2014, to continue participating in KERS, and the employer is not projected to pay the full actuarial cost in thirty (30) years, then the Systems shall adjust the payments so that the full actuarial costs are paid at the end of the thirty (30) year period.

(c) If the ceased employer elects for nonhazardous employees who began participating in the Systems prior to January 1, 2014 to cease participating in KERS, and the employer is not projected to pay the full actuarial cost in thirty (30) years, then the employer shall pay the amount financed through the Systems pursuant to KRS 61.522(8)(g)1. and no adjustments shall be made to the monthly payments nor shall additional amounts be charged after the thirty (30) year period.

(6)(a) Interest shall be assigned to the principal amount annually for both lump-sum and installment payment plans beginning on July 1, 2021[2020]. A ceased employer who elects to pay the actuarial cost by installments may at any time submit

payments towards the remaining balance.

(b) If the employer elects to pay the costs in installment payments, the annual payments beginning on or after July 1, 2021[2020], including interest will be calculated as a set dollar value and then divided into monthly installments.

(c) If the ceased employer submits more than the required payments for a fiscal year, the total cost will be reduced but the monthly installment amounts will remain unchanged because the monthly amounts are based upon the set dollar value of the annual payments. Pursuant to KRS 61.522(8)(g), interest amounts are separate from total cost and interest and interest attributable to the actuarial cost will not be calculated until the cost is finalized. However, any early or additional payments may reduce the number of payments required if the full actuarial cost is paid in less than thirty (30) years from June 30, 2021[2020].

(7) Payments made prior to the notice of full actuarial cost shall be credited to the amount and considered early or additional payments pursuant to [subsection] (6)(c) of this section.

Section 11. (1)(a) If a ceased employer elects to make installment payments, the Systems shall submit invoices to the employer for payments owed, which are not paid through the normal monthly reports.

(b) The employer shall remit payment to the Systems by the due date provided on the invoice.

(2)(a) If a ceased employer that elected to make installment payments is delinquent for ninety (90) days or more from the due date of an outstanding invoice, and the ceased employer elected for nonhazardous employees with participation dates prior to January 1, 2014, to continue participating, then the participation of those employees in KERS through the ceasing employer will be suspended until the ceased employer has remitted the required payments. The employees shall not earn service credit, including service credit purchased pursuant to KRS 61.552, or benefits in KERS through the ceased employer during the suspension period.

(b) Any employee contributions provided to the Systems will be held until the ceased employer remits the required payments.

(3) Systems shall notify the Finance and Administration Cabinet of any ceased employer that is delinquent for ninety (90) days or more in making installment payments pursuant to KRS 61.675(4)(c).

(4) Systems may file an action in Franklin Circuit Court to collect delinquent installment payments and attach general fund appropriations in order to satisfy the payments owed.

Section 12. (1)(a) Current and former employees of the ceased employer shall not be eligible to purchase service credit pursuant to KRS 61.552 after June 30, 2021[2020], unless the current employee has continued participation in KERS because of the employer election.

(b) A current employee of a ceased employer continuing participation in KERS because of the employer election may purchase service credit pursuant to KRS 61.552 even if that service is related to employment with the ceased employer.

(2) Former employees shall not be eligible to purchase service credit related to employment with a ceased employer, pursuant to KRS 61.552 after June 30, 2021[2020].

(3) A person eligible to purchase service credit pursuant to KRS 61.552 related to employment with the ceased employer, shall either complete the purchase or enter into a service purchase agreement with the Systems no later than June 30, 2021[2020] unless the individual is a current employee of the ceased employer who has continued participation in KERS because of the employer election.

(4) A person may purchase service credit pursuant to KRS 61.552(20) if the service is not related to employment with the ceased employer, unless the person is a current employee that has continued participation in KERS because of the employer election.

(5) A former employee of a ceased employer who becomes employed with a participating employer after terminating employment with the ceased employer may purchase service credit pursuant to KRS 61.552 that is not related to employment with a ceased employer.

Section 13. If any due date in this administrative regulation or if an installment payment falls on a Saturday, Sunday, or day that the Systems is closed due to state holiday, the due date or time period deadline shall extend to the close of business of the next business day.

Section 14. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) Form 7726, "Request for Estimated Cost of Voluntary Cessation from KERS under KRS 61.522(8)," August 2019;
  - (b) Form 7727, "Actuarial Study for Quasi-Governmental Employer Cessation", June 2020[November 2049];
  - (c) Form 1500, "KRS 61.522 60-Day Transfer Request", November 2019; and
  - (d) Form 7728, "Payment Election for Quasi-Governmental Employer Cessation", June 2020[November 2049].
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Retirement Systems, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Katherine Rupinen, Interim Executive Director Office of Legal Services, Kentucky Retirement Systems, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 8647, fax (502) 696-8615, email Legal.Non-Advocacy@kyret.ky.gov.

**BOARDS AND COMMISSIONS**  
**Board of Pharmacy**  
**(As Amended at ARRS, December 3, 2020)**

**201 KAR 2:105 Requirements for wholesalers, medical gas wholesalers, wholesale distributors, and virtual [Licensing and drug distribution requirements for] wholesale distributors.**

RELATES TO: KRS 315.010, 315.121, 315.350, 315.400, 315.402, 315.404, 315.406, 315.408, 315.410, 315.412

STATUTORY AUTHORITY: KRS 315.010, 315.191(1)(a), 315.350, 315.402, 315.406

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations to regulate and control all matters set forth in KRS Chapter 315. KRS 315.350, 315.402 and 315.406 require[authorizes] the board to promulgate administrative regulations to regulate wholesalers, medical gas wholesalers, wholesale distributors, and virtual wholesale distributors of prescription drugs and drug-related devices. This administrative regulation establishes the requirements for the regulation of wholesalers, medical gas wholesalers, wholesale distributors, and virtual wholesale distributors.

Section 1. Definitions[Definition].

(1) **"Component" means any raw material, ingredient, or article intended for use in the manufacture of a drug and drug-related device.**

(2) **"Distribution" or "distribute" is defined by[has the same meaning given in] KRS 315.400(5).**

(3)[(2)] **"Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.**

(4)[(3)] **"Illegitimate Product" is defined by KRS 315.400(11).**

(5) **"Medical gas wholesaler" is defined by[has the same meaning given in] KRS 315.400(13).**

(6) **"Product" means a prescription drug in a finished dosage form for administration to a patient without substantial further manufacturing, such as capsules, tablets, and lyophilized products before reconstitution.**

(7)[(4)] **"Suspect product" means a component, prescription drug, or drug-related device[product] for which there is reason to believe that such component, prescription drug, or drug-**

**related device[product].**

(a) Is potentially counterfeit, diverted, or stolen;

(b) Is potentially intentionally adulterated such that the **component, prescription drug, or drug-related device[product]** would result in serious adverse health consequences or death to humans or animals;

(c) Is potentially the subject of a fraudulent transaction; or

(d) Appears otherwise unfit for distribution such that the **component, prescription drug, or drug-related device[product]** would result in serious adverse health consequences or death to humans or animals.

**(8)[(5)] "Wholesale distribution" is defined by[has the same meaning given in] KRS 315.400(20).**

**(9)[(6)] "Wholesale distributor" is defined by[has the same meaning given in] KRS 315.400(21).**

**(10)[(7)] "Wholesaler" is defined by[has the same meaning given in] KRS 315.010(28), and includes medical gas wholesalers, wholesale distributors, and virtual wholesale distributors.**

**(11)[(8)] "Virtual wholesale distributor" has the same meaning given in KRS 315.400(21).**

Section 2. Requirements.

(1) A wholesaler[wholesale distributor] engaged in wholesale distribution in the Commonwealth shall apply for a license from the Board[board] of Pharmacy in accordance with KRS 315.350, 315.402, 315.406, and this administrative regulation.

(2) A surety bond **is required** of not less than \$25,000, or other equivalent means of security acceptable to the Board of Pharmacy or a third party recognized by the Board of Pharmacy such as insurance, an irrevocable letter of credit, or funds deposited in a trust account or financial institution. **This shall be used[,] to secure payment of any administrative penalties imposed by the Board of Pharmacy and any fees or costs incurred by the Board of Pharmacy regarding that licensee if[when] those penalties, fees, or costs are authorized under state law, and the licensee fails to pay thirty (30) days after the penalty, fee, or costs becomes final. A separate surety bond or other equivalent means of security is not required for each company's separate locations or for affiliated companies or[/]groups if[when such] separate locations or affiliated companies or[/]groups are required to apply for or renew their wholesaler license with the Board of Pharmacy. The Board of Pharmacy may make a claim against the[such] bond or other equivalent means of security until one (1) year after the wholesaler's license closes, lapses or expires, or until sixty (60) days after any administrative or legal proceeding before or on behalf of the Board of Pharmacy that involves the wholesaler is concluded, including any appeal, whichever occurs later. The Board of Pharmacy may waive the bond requirement, if the wholesaler:**

(a) Has previously obtained a comparable surety bond or other equivalent means of security for the purpose of licensure in another state, where the wholesaler possesses a valid license in good standing;

(b) Is a publicly held company;

(c) Is a medical gas wholesaler; or

(d) Has a license for the sole purpose of distribution within a health care entity under common ownership.

(3)[(2)] A separate license shall be required for each wholesaler's [wholesale distributor's] facility that engages in wholesale distribution [distributes] within the Commonwealth regardless of whether joint ownership or control exists.

(4)[(3)] An agent or employee of a licensee shall not be required to obtain a license under this section **if[when]** the agent or employee is acting in the usual course of business or employment.

(5)[(4)] A license shall not be issued or renewed unless the applicant demonstrates or continues to demonstrate acceptable operational procedures, including:

(a) Adequate operational, maintenance, and storage conditions to ensure proper lighting, ventilation, temperature and humidity control, sanitation, space, and security as per label requirements or official United States Pharmacopoeia (USP) compendium requirements, **USP Chapter 659, Packaging and Storage**

**Requirements.** Appropriate manual, electromechanical or electronic temperature and humidity recording equipment, devices, or logs shall be utilized to document proper storage of prescription drugs and drug-related devices;

(b) ~~Separation~~~~Physical separation~~ and quarantine of deteriorated, damaged, outdated, misbranded, adulterated or otherwise recalled prescription drugs and drug-related devices ~~[merchandise]~~ until they are destroyed or returned;

(c) Providing accurate and precise records of all prescription drugs and drug-related devices sold, purchased, traded, delivered, handled, stored, or received and any other information pertinent to the distribution or disposition ~~[goods shipped or received including source or recipient, date, quantity, itemized description, and any other information pertinent to the transaction];~~ and

(d) Providing proof of registration ~~[with the state controlled substance authority, and]~~ with the U.S. Drug Enforcement Administration (DEA) and shall comply with all DEA regulations, if applicable.

(6) Wholesale distributors and virtual wholesale distributors shall comply with all requirements outlined in the Drug Supply Chain Security Act (DSCSA), 21 U.S.C. 360eee-360eee-4.

(7) Wholesalers shall establish a system to:

(a)[a.] Quarantine and investigate suspect product to determine if it is illegitimate; and

(b)[b.] Notify U.S. Food and Drug Administration (FDA), if applicable, the Board of Pharmacy and recipient(s) of illegitimate product, if illegitimate product is found.

(8) A virtual wholesale distributor shall be exempt from the following, subsection~~Section~~ 2(5)(a) and (b) of this Section, and Section 5(1)(a) and (b), and (2)(a) and (b) of this administrative regulation.

**Section 3. Qualifications for License.** (1) ~~[The minimum qualifications shall include:~~

(a) The ~~[Kentucky]~~ Board of Pharmacy shall consider, at a minimum, the following factors in reviewing the qualifications of persons who engage in wholesale distribution of prescription drugs and drug-related devices within the Commonwealth:

(a)[1.] Any convictions of the applicant under any federal, state, or local laws relating to drugs, including~~to include~~ drug samples and ~~[wholesale or retail drug distribution of]~~ controlled substances;

(b)[2.] Any felony convictions of the applicant under federal, state, or local laws;

(c)[3.] The applicant's past experience in the ~~[wholesale]~~ distribution of prescription drugs and drug-related devices, including drug samples and controlled substances;

(d)[4.] The furnishing by the applicant of false or fraudulent material in any application made in connection with the distribution of prescription drugs and drug-related devices ~~[wholesale distribution];~~

(e)[5.] Suspension or revocation by federal, state, or local government of any license or permit currently or previously held by the applicant for ~~[wholesale]~~ distribution of any prescription drugs and drug-related devices, including drug samples and controlled substances;

(f)[6.] Compliance with the requirements under any previously granted license or permit, if any; and

(g)[7.] Compliance with requirements to maintain or make available to the ~~[Kentucky]~~ Board of Pharmacy or to federal, state, or local law enforcement officials those records required under this administrative regulation~~[section]~~.

(2)(b) The ~~[Kentucky]~~ Board of Pharmacy shall have the right to deny a license to an applicant if it determines that the granting of that license would not be in the public interest based on health and safety considerations.

(3)(2) A license shall not be issued pursuant to this administrative regulation unless the applicant has furnished proof satisfactory to the Board of Pharmacy:

(a) That the applicant is in compliance with all applicable federal, ~~[and]~~ state, and local laws and regulations relating to drugs; and

(b) That the applicant is equipped as to land, buildings, and security to properly carry on the business described in the ~~[his]~~

application.

(4) ~~[(3)]~~ A license issued pursuant to this administrative regulation ~~[may be suspended or revoked for failure]~~ failing to comply with the provisions of KRS 315.350, 315.400, 315.402, 315.404, 315.406, 315.408, 315.410, 315.412, or this administrative regulation may result in action under KRS 315.121.

Section 4. Application, Fees, Renewals.

(1) An application for a license shall be submitted to the Board of Pharmacy on the ~~[ ]~~ Application for a License to Operate as a Wholesaler ~~[Wholesale Distributor (KBP W-9-08)]~~~~[ ]~~.

(2) An application shall be accompanied by the annual fee set forth in 201 KAR 2:050.

(3) An application shall include:

(a) The name, full business address, and telephone number of the licensee;

(b) All trade or business names~~[name]~~ used by the licensee;

(c) Addresses, telephone numbers, and the names of contract persons for all facilities used by the licensee for the storage, handling, and distribution of prescription drugs and drug-related devices;

(d) The type of ownership or operation (i.e. partnership, corporation, or sole proprietorship);

(e) The name(s) of the owner and operator of the licensee, including:

1. If a person, the name and Social Security number of the person;

2. If a partnership, the name and Social Security number of each partner, and the name of the partnership;

3. If a corporation, the name, Social Security number and title of each corporate officer and director, the corporate names, and the name of the state of incorporation; and

4. If a sole proprietorship, the full name and Social Security number of the sole proprietor and the name of the business entity; ~~[and]~~

(f) A list of all licenses and permits issued to the applicant by any other state that authorizes the applicant to purchase or possess prescription drugs and drug-related devices; and~~[ ]~~

(g) Proof of surety bond or equivalent.

(4) All licenses shall:

(a) Expire on September 30 following date of issuance; and

(b) Be renewable annually thereafter upon submission of the Renewal Application to Operate as a Wholesaler accompanied by the renewal fee set forth in 201 KAR 2:050 and shall be nontransferable.

Section 5. Standards.

(1) Facilities.

(a) All facilities~~[buildings]~~ in which prescription~~[legend]~~ drugs and drug-related devices are held for wholesale distribution, ~~[repackaged,]~~ stored, ~~[held,]~~ sold, offered for sale, exposed for sale, or kept for sale shall be of suitable size, construction, and location to facilitate cleaning, maintenance, and proper operations.

(b) All facilities~~[Buildings]~~ shall meet all applicable federal, state, and local standards. The facility shall ~~[have a]~~ quarantine ~~[area for storage of]~~ prescription drugs and drug-related devices that are outdated, damaged, deteriorated, misbranded, recalled, or adulterated, or that are in immediate or sealed secondary containers that have been opened.

(c) A facility shall not be located in a residence.

(d) A facility shall be located apart and separate from a pharmacy permitted by the Board of Pharmacy, with the exception of a medical gas wholesaler.

(2) Security.

(a) A wholesaler~~[wholesale distributor]~~ shall be equipped with an alarm system to detect entry after hours.

(b) A wholesaler~~[wholesale distributor]~~ shall ensure that access from outside their premises is well controlled and reduced to a minimum. This includes the installation of adequate lighting at the outside perimeter of the premises.

(c) Internal security policies shall be developed to provide reasonable protection against theft and diversion by limiting access to areas where legend prescription drugs and drug-related devices

are held to authorized personnel. These policies shall provide protection against tampering with computers or electronic records.

(d) A licensee shall employ adequate personnel with the education and experience necessary to safely and lawfully engage in the wholesale distribution [or virtual-wholesale distribution] of prescription drugs and drug-related devices.

(3) Recordkeeping requirements for companies handling prescription drugs and drug-related devices exempt from the DSCSA.

(a) Inventories and other records [of transactions] regarding the receipt and distribution or [and] disposition of prescription[legend] drugs and drug-related devices shall be maintained and readily available for inspection or photocopying by the Board of Pharmacy and authorized law enforcement officials for a period of six (6) years[two (2) following disposition of the drugs]. These records shall include:

1. The source of the drugs, including the name and principal address of the seller or transferor, and the address of the location from which the drugs were shipped;

2. The identity and quantity of the drugs received and distributed or disposed of; and

3. The dates of receipt and distribution or other distribution of the drugs.]

1. The proprietary and established name of the prescription drug and [or] related device, if applicable;

2. The dosage, if applicable;

3. The size of the container, if applicable;

4. The number of containers;

5. The lot number or control number of the prescription drug and [or] related device, if applicable;

6. The business name and address of all parties involved in each receipt and distribution or disposition of the prescription drug and [or] related device, starting with the manufacturer; and

7. The date of each receipt and distribution or disposition of the prescription drug and [or] related device.

(b) Records described in this section that are kept at the inspection site or that can be readily retrievable within forty-eight (48) hours[immediately retrieved] by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two (2) working days of a request by the Board of Pharmacy or an authorized official of a federal, state, or local law enforcement agency.

(c) Wholesalers shall maintain an ongoing list of verified persons or businesses with whom they do business.

(d) A wholesaler may sell or distribute prescription drugs and drug-related devices only to the following, except as provided in KRS 315.0351(2) and [KRS] 315.404:

1. A currently licensed wholesaler;

2. A currently licensed third party logistics provider;

3. A currently permitted pharmacy;

4. A currently licensed outsourcing facility;

5. A currently licensed practitioner;

6. A currently permitted repackager;

7. A currently licensed hospital, but only for use by or in that hospital pursuant to KRS 217.182(1);

8. A person in charge of a laboratory, but only for use in that laboratory for scientific and medical research purposes pursuant to KRS 217.182(1); or

9. Any other appropriately licensed or permitted facility in the jurisdiction in which it is located.

(e) A wholesaler may acquire prescription drugs and drug-related devices only from the following, except as provided in KRS 315.404:

1. A currently permitted manufacturer;

2. A currently permitted repackager;

3. A currently licensed wholesaler; or

4. A currently licensed third-party logistics provider.

(f) Wholesalers shall maintain a system for the mandatory reporting of any theft, suspected theft, diversion, or other significant loss of any prescription drug and related device to the

Board of Pharmacy, and if[where] applicable, the FDA and DEA.

(4) Written policies and procedures, requirements for companies handling prescription drugs and drug-related devices exempt from the DSCSA.

(a) A wholesaler[Wholesaler-Distributor-distributors] shall establish, maintain, and adhere to written policies and procedures, which shall be followed for the receipt, security, storage, inventory, [and] distribution, and disposition of prescription drugs and drug-related devices[, including policies and procedures for identifying, recording, and reporting losses or thefts and to assure that the wholesaler distributor prepares for, protects against, and handles crisis situations that affect the security or operation of the facility. These crises shall include fires, floods, or other natural disasters, and situations of local, state, or national emergency.]

(b) There shall be written policies and procedures for identifying, recording, and reporting losses or thefts.

(c) There shall be written policies and procedures to assure that the wholesaler prepares for, protects against, and handles crisis situations that affect the security or operation of the facility. These crises shall include fires, floods, or other natural disasters, and situations of local, state, or national emergency.

(d)[(b)] There shall be written policies and procedures for managing and correcting all errors or inaccuracies in inventories.

(e)[(e)] There shall be written policies and procedures to assure that any outdated stock or any stock with an expiration date that, in the wholesaler's[wholesale distributor's] view, does not allow sufficient time for repacking or resale shall be segregated from other stock and shall be prepared for return to the manufacturer or otherwise destroyed, and this shall be documented.

(f)[(d)] There shall be written policies and procedures by which the wholesaler[wholesale distributor] exercises control over the shipping and receiving of all stock within the operation.

(g) There shall be written policies and procedures for investigating suspect product and reporting illegitimate product to the Board of Pharmacy and the FDA pursuant to the DSCSA, if[where] applicable.

(5) Returned, damaged, and outdated prescription drugs and drug-related devices. A wholesaler-[wholesale distributor] shall maintain and follow a written policy and procedure to assure the proper handling and disposal of returned goods. If conditions under which a prescription drug or related device has been returned cast doubt on the drug's safety, identity, strength, quality, or purity, then the drug or related device shall be destroyed, or returned, unless examination, testing, or other investigation proves that the drug or drug-related device meets appropriate standards of safety, identity, strength, quality, and purity. In determining whether the conditions under which a prescription drug or related device has been returned cast doubt on the drug's or related device's safety, identity, strength, quality, or purity, the wholesaler[wholesale distributor] shall consider, among other things, the conditions under which the drug or related device has been held, stored, or shipped before or during its return and the condition of the drug or related device and its container, carton, or labeling, as a result of storage or shipping.

(6) Handling recalls. A wholesaler[wholesale distributor] shall establish, maintain, and adhere to a[follow] written policy and procedure for handling recalls and withdrawals of [products] prescription drugs and drug-related devices. The policy and procedure shall cover all recalls and withdrawals of drugs[drug products] and drug-related devices due to:

(a) Any voluntary action on the part of the manufacturer;

(b) The direction of the FDA[Food and Drug Administration], or any other federal, state, or local government agency; and

(c) Replacement of existing [merchandise with an improved product or new package design prescription drug and related device].

(7) Procedures (a) A visual examination of all materials received or shipped shall be made to guarantee product identity and to reasonably guard against acceptance or delivery of damaged, contaminated, tampered, or otherwise unfit stock.

(b) Procedures for distribution of approved stock shall provide for a rotation whereby the expiration date is taken into

~~consideration when distributing inventory~~[the oldest inventory is distributed first].

(c) A ~~wholesaler~~[wholesale distributor] shall be subject to the provisions of any applicable federal, state, or local laws or regulations that relate to prescription drug and related device[product] salvaging or reprocessing. [

Section 6. Pedigree.

(1) ~~Effective July 1, 2009 and in accordance with KRS 315.406, each person or entity engaged in the wholesale distribution of prescription drugs that leave or that have ever left the normal distribution channel shall, prior to the distribution of the prescription drug, provide a pedigree to the person receiving the prescription drug.~~

(2) The pedigree shall include the following information concerning the prescription drug:

(a) The proprietary and established name of the prescription drug;

(b) The dosage;

(c) The size of the container;

(d) The number of containers;

(e) The lot number of control number of the prescription drug;

(f) The business name and address of all parties to each prior transaction involving the drug, starting with the manufacturer; and

(g) The date of each previous transaction.

(3) Pedigree records shall be maintained and readily be available for inspections or photocopying by authorized law enforcement officials for a period of two (2) years.]

Section 6.[7] Violations.

(1) A ~~wholesaler~~[wholesale distributor] shall not distribute ~~prescription~~[legend] drugs and drug-related devices directly to a consumer or a patient, except as provided in KRS 315.0351(2). [or operate in a manner that endangers the public health.]

(2) A wholesaler shall not operate in a manner that endangers the public health.

(3)[(2)] Violations of any of these provisions shall be grounds for action under KRS 315.121[the suspension or revocation of the license].

Section 7[8]. Incorporation by Reference. (1) **The following material is incorporated by reference:**

**(a)** Application for a License to Operate as a Wholesaler", May 2020;[f]

**(b)** [Wholesale Distributor (KBP W 9-08)] **[is incorporated by reference.**

**(2)** "Renewal Application to Operate as a Wholesaler", May 2020; **and**

**(c)** **"USP Chapter 659 Packaging and Storage Requirements", November 1, 2020,** **is incorporated by reference].**

**(2)[(3)]** This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601-8024,[Spindletop Administration Building Suite 302, 2624 Research Park Drive, Lexington, Kentucky 40514], Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Larry Hadley, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Larry.Hadley@ky.gov.

**BOARDS AND COMMISSIONS**

**Board of Pharmacy**

(As Amended at ARRS, December 3, 2020)

**201 KAR 2:106. Licensed or permitted facility closures [Pharmacy, manufacturer, or distributor closures].**

RELATES TO: KRS 315.035, 315.0351, 315.036, **315.121,** 315.340, 315.342, 315.350, 315.402, 315.4102

STATUTORY AUTHORITY: KRS [315.036]; 315.191(1)(a).  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(a) **authorizes**[requires] the board to promulgate administrative regulations relating to subject matters governed by KRS Chapter 315. This administrative regulation establishes requirements relating to closure of business by licensees and permit holders.

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

**(1) "Involuntary closure" means an interruption of formal business activity resulting from:**

**(a) Acute illness or incapacitation;**

**(b) Death;**

**(c) Fire, flood, or other natural disaster;**

**(d) Bankruptcy proceedings; or**

**(e) Court, government, or Board of Pharmacy action.**

**(2) "Non-use" means a failure to engage in formal business activity within one (1) year**

**of initial licensing or permitting, or renewal of license or permit.**

**(3) "Permanent voluntary closure" means a licensee or permit holder:**

**(a) Ceases to do business and permanently closes; and**

**(b) Does not file application for a license [pharmacy license] or permit for the same location.**

**(4) "Temporary closure" means a licensee or permit holder whose hours of operation have deviated over a period of five (5) consecutive working days from those of record at the Board of Pharmacy office for a reason other than permanent voluntary closure or involuntary closure.];**

**(2) "Voluntary closure" means a closing or abandonment of premises resulting from:**

**(a) Chronic mental or physical deterioration; or**

**(b) A deviation from the business hours listed on the current permit application or amendments filed thereto; or**

**(c) Cessation of the practice of pharmacy at the licensed location for a reason other than permanent or involuntary closure.];**

**(2)[(3)] "Involuntary closure" means an interruption of formal business activity resulting from:**

**(a) Acute illness or incapacitation;**

**(b) Death;**

**(c) Fire, flood, or other natural disaster;**

**(d) Bankruptcy proceedings; or**

**(e) Court, government, or Board of Pharmacy action.**

**(3) "Temporary closure" means a licensee or permit holder whose hours of operation have deviated over a period of five (5) consecutive working days from those of record at the Board of Pharmacy office for a reason other than permanent voluntary closure or involuntary closure.**

**(4) "Non-use" means a failure to engage in formal business activity within one (1) year of initial licensing or permitting or renewal of license or permit.]**

Section 2. Procedures for Closure Applicable to All Licensees and Permit Holders. (1) Permanent voluntary closure. [

(a) A licensee shall conspicuously place a sign notifying the public thirty (30) days in advance of the:

1. Termination date of business; and

2. Name and address of the licensee to which prescription files or other pertinent records will be transferred.

(b) Except when prevented by the exercise of another party's legal rights:

1. The sign shall remain in place for a period of thirty (30) days after the closure; and

2. All efforts shall be undertaken to assure a smooth transition of uninterrupted service to those affected by the closure.]

(a) [(e)] A licensee or permit holder shall inform the Board of Pharmacy, and if applicable, the Drug Enforcement Administration (DEA), and the Cabinet for Health and Family Services [Human Resources] by written notice fifteen (15) days prior to the anticipated [closing] closure and include the following information:

1. Date of business termination; and

2. Name, address, and DEA number of registrant to whom the prescription drugs and drug- related devices including ~~of~~ controlled substances ~~[drugs]~~ are to be transferred; and

3. Name, address, and DEA number of registrant to whom the records including inventories, acquisition records, purchase records, and disposition records are to be transferred.

(b) ~~[(e)]~~ In the absence of directives to the contrary from the DEA ~~[Drug Enforcement Administration]~~, the Board of Pharmacy, or the Cabinet for Health and Family Services ~~[Human Resources]~~, the transfer shall be effected on the assigned date.

(c) ~~[(e)]~~ The transferor and the transferee shall each maintain copies of the following records ~~[documents]~~ relating to transferred controlled substances for at least two (2) years following closure:

1. U.S. Official Order Forms, DEA-222 Schedule II; and

2. Schedules III, IV, and V Invoices ~~[(f)]~~; and ~~[for a period of at least two (2) years]~~

3. Controlled substances inventory.

(d) The transferee shall maintain copies of the following records relating to prescription drugs and drug-related devices for at least two (2) years following closure:

1. Inventories;

2. Acquisition records;

3. Purchase records; and

4. Disposition records.

(e) The records in paragraph[subsection] (d) of this subsection may be stored on a computer or by other electronic means and shall[must] be readily retrievable.

(f) Upon termination, a licensee or permit holder shall:

1. Remove all signs pertinent to pharmacy or drugs from the building and premises; and

2. Return the voided permits, the DEA ~~[Drug Enforcement Administration]~~ registration, and unused Schedule II Order Forms to their respective office of issue. ~~[(g)]~~

~~[(g)]~~ The posting of the sign required by paragraph (a) of this subsection shall not be required if:

1. An application for a pharmacy license for the same location is filed; or

2. During a sale of a pharmacy, prescription records are transferred to another permitted pharmacy that is within five (5) miles of the location of the pharmacy that is sold and owned by the purchasing entity. ~~[(2)]~~ Voluntary closure.

(a) A pharmacy or distributor licensed by the Kentucky Board of Pharmacy whose hours of operation have deviated over a period of five (5) consecutive working days from those of record at the Board of Pharmacy office shall immediately notify the board, verbally and in writing of the reason for the deviation and the anticipated period of continuance.

(b) Upon receipt of the notice, the Board of Pharmacy, with full cooperation of the licensee, shall make arrangements it deems necessary to provide adequate and continued security and control of all drugs, chemicals, poisons, and devices owned or controlled by the licensee.

(c) If normal operation cannot resume within sixty (60) days, or if satisfactory agreements cannot be reached between the Board of Pharmacy, the licensee, or his designated representative, the:

1. Permit shall be revoked; and

2. Board of Pharmacy shall notify the Cabinet for Human Resources to assume control and responsibility of any drug, chemical, poison, or device deemed necessary in any manner deemed appropriate.

(d) If the Board of Pharmacy or the Cabinet for Human Resources or its agents liquidate or arrange for the liquidation of items specified in paragraphs (b) and (c) of this subsection, the board or the Cabinet for Human Resources may retain a portion of the proceeds realized from the liquidation equal to the expenses incurred. ~~[(2)]~~ ~~[(3)]~~ Involuntary closure.

(a) Within five (5) days of involuntary closure, a licensee or permit holder, or person authorized to act on ~~[his]~~ behalf of the licensee or permit holder, shall:

1. Notify the Board ~~[board]~~ of Pharmacy in writing; and

2. Guarantee the security ~~[safety]~~ and control of the licensed or permitted premises in a manner that will allow continued storage of

prescription drugs and drug-related devices, including controlled substances, and records, including patient records, if applicable, [consented to the board permittees] for sixty (60) days after the effective date of the involuntary closure.

(b) Within sixty (60) days after the effective date of the involuntary closure, a licensee or permit holder shall make ~~[effect]~~ arrangements for the lawful transfer ~~[sale]~~ or other disposition of prescription drugs and drug-related devices, including controlled substances, and records ~~[requiring board licensure]~~.

(c) The Board ~~[board]~~ of Pharmacy may assume control and responsibility of prescription drugs and drug-related devices, including controlled substances, and records, including patient records, if applicable, it deems necessary for disposition, if after the expiration of the sixty (60) day period following the effective date of involuntary closure:

1. A lawful transfer ~~[sale]~~ or other disposition has not been made ~~[effected]~~; or

2. An agreement between the Board ~~[board]~~ of Pharmacy ~~[-]~~ and the licensee or permit holder or person authorized to act on behalf of the licensee or permit holder, has not been reached.

(3) Permanent voluntary closure of licensees and permit holders with patient records.

(a) A licensee or permit holder shall conspicuously place a sign notifying the public thirty (30) days in advance of the:

1. Termination date of business; and

2. Name and address of the licensee or permit holder to which prescription files or other patient records will be transferred.

(b) Except when prevented by the exercise of another party's legal rights:

1. The sign shall remain in place for a period of thirty (30) days after the closure; and

2. All efforts shall be undertaken to assure a smooth transition of uninterrupted service to those affected by the closure.

(c) The posting of the sign required by paragraph (a) of this subsection shall not be required if:

1. An application for a pharmacy permit or outsourcing facility license for the same location is filed; or

2. During a sale of a pharmacy or outsourcing facility, prescription records are transferred to another permitted pharmacy or licensed outsourcing facility that is within five (5) miles of the location of the pharmacy or outsourcing facility that is sold and owned by the purchasing entity.

(4) Temporary Closure.

(a) Licensees and permit holders whose hours of operations have deviated over a period of five (5) consecutive working days from those of record at the Board of Pharmacy office shall immediately notify the Board of Pharmacy in writing of the reason for the deviation and the anticipated period of continuance.

(b) The licensee or permit holder shall notify the Board of Pharmacy in writing of the arrangements necessary to provide adequate and continued security and control of all prescription drugs and drug-related devices and records maintained by the licensee or permit holder.

(c) If formal business activity cannot resume within sixty (60) days, or the security and control cannot be maintained, the:

1. License or permit shall be closed; and

2. Procedures for involuntary closure shall[would] be followed.

Section 3. Closure of License or Permit Due to Non-use.

(1) The Board of Pharmacy shall close a license or permit due to non-use if[when]:

(a) The licensee or permit holder fails to notify the Board of Pharmacy of initiation of formal business activity within the first year of issuance;

(b) Inspection reveals a failure to engage in formal business activity within the first year of issuance; or

(c) Inspection reveals a failure to engage[engaged] in formal business activity within one (1) year of renewal.

(2) A licensee or permit holder may request an extension from closure due to non-use. The request shall[must]:

(a) Be in writing;

(b) Include a legitimate reason for the lack of formal business

activity; and

(c) Provide a date by which formal business activity will commence or resume.

(3) Upon closure of a license or permit due to non-use, the Board of Pharmacy shall follow procedures for involuntary closure to secure and dispose of any prescription drugs and **drug-related** devices and records.

Section 4[3]. Duties and Responsibilities of Licensee and Permit Holder. A licensee, permit holder or person authorized to act on [his] behalf of the licensee or permit holder shall:

(1) Fully cooperate with the Board[board] of Pharmacy to promote the efficient administration of action required by the provisions of this administrative regulation; and

(2) Be financially liable to the Board[board] of Pharmacy for expenses incurred by the Board[board] of Pharmacy in its implementation of the provisions of this administrative regulation.

Section 5. Violation. Violations of any of these provisions shall be grounds for the discipline of the license or permit pursuant to KRS 315.121.

CONTACT PERSON: Larry Hadley, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Larry.Hadley@ky.gov.

# **BOARDS AND COMMISSIONS** **Board of Pharmacy** **(As Amended at ARRS, December 3, 2020)**

## **201 KAR 2:225. Special limited pharmacy permit – medical gas.**

RELATES TO: KRS 217.015(~~11~~)(~~5~~)(a)], 315.010(9), 315.020, 315.035, 315.191(1)(a)

STATUTORY AUTHORITY: KRS 315.020, 315.035, 315.191(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations to regulate and control all matters set forth in KRS Chapter 315 relating to pharmacists and pharmacies. This administrative regulation establishes, consistent with the requirements of KRS 315.191(1)(a), minimum requirements for the permitting of those entities that distribute medical gases.

### Section 1. Definitions.

(1) "Medical gases" means gases (including liquefied gases) classified by FDA as drugs or devices that are used for medical applications and which may be stored and administered through the use of medical gas related equipment, which may or may not be required under federal or state law for the immediate container to bear the label, "Rx only" or "Caution: Federal or State law prohibits dispensing without a prescription."

(2) "Special limited pharmacy permit" means a permit issued to a pharmacy that provides miscellaneous specialized pharmacy service and functions.

Section 2. General Requirements. (1)(a) An applicant for a special limited pharmacy permit for medical gases shall comply with the requirements of 201 KAR 2:180, except Section 5 and 201 KAR 2:205, except that the pharmacist-in-charge designated on the special permit shall be exempt from the requirements of 201 KAR 2:205, Section 2(2).

(b) The pharmacist-in-charge shall review the records and do an onsite visit of the special limited pharmacy permit applicant for medical gases not less than once each quarter.

(2) An applicant for a special limited pharmacy permit for medical gases shall prepare and adopt a policy and procedures manual that sets forth a detailed description of how the:

(a) Operation will comply with applicable federal, state, or local laws or administrative regulations; and

(b) Licensee will maintain the premises so that the medical gas remains secure and complies with applicable compendial monographs of official pharmacopoeias.

(3) An applicant for a special limited pharmacy permit for medical gases shall be inspected by the board prior to the issuance of the license.

Section 3. Qualifications for License. (1) The board shall consider the following in reviewing the qualifications of an applicant for a special limited pharmacy permit for medical gases:

(a) The applicant's experience in the sale or distribution of prescription drugs, including controlled substances;

(b) A felony conviction of the applicant under federal, state, or local laws;

(c) The furnishing by the applicant of false or fraudulent material in a previous application for:

1. A special limited pharmacy permit for medical gases; or

2. A federal or state medical assistance program;

(d) Suspension or revocation of an applicant's license or permit by federal, state, or local government; and

(e) Compliance with requirements under a previously granted license or permit.

(2) The board shall deny an application for a special limited pharmacy permit for medical gases, if an applicant has:

(a) Been convicted for a violation of federal, state, or local laws relating to:

1. The practice of pharmacy;

2. Drugs; or

3. Federal or state medical assistance programs.

(b) Furnished false or fraudulent material in the application for a special limited pharmacy permit for medical gases;

(c) Failed to maintain or make available required records to the:

1. Board; or

2. Federal, state, or local law enforcement officials;

(d) Failed to comply with applicable federal, state, and local laws and regulations relating to medical gas; or

(e) Failed to provide appropriate land, buildings, and security necessary to properly carry on the business described in his application.

### Section 4. License Fees; Renewals. An applicant shall submit:

(1) An initial or renewal application for a special limited pharmacy permit for medical gases on either the Application for Special Limited Pharmacy Permit- Medical Gas or the Application for Special Limited Pharmacy Permit – Medical Gas Renewal; and

(2) As appropriate, the:

(a) Initial application fee established by 201 KAR 2:050, Section 1(~~8~~)(~~9~~); or

(b) Renewal fee established by 201 KAR 2:050, Section 1(~~9~~)(~~10~~).

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

(a) "Application for Special Limited Pharmacy Permit – Medical Gas", [~~May 2019~~] May 2020; and

(b) "Application for Special Limited Pharmacy Permit – Medical Gas Renewal", [~~May 2019~~] May 2020.

(2) This ~~material~~form may be inspected, copied, or obtained, [~~inspected, or copied,~~] subject to applicable copyright law, at the Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, Frankfort, Kentucky 40601-8204, [~~8 a.m. to 4:30 p.m.~~] Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: Larry Hadley, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Larry.Hadley@ky.gov.



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BOARDS AND COMMISSIONS  
Board of Pharmacy  
(As Amended at ARRS, December 3, 2020)

201 KAR 2:240. Special limited pharmacy permit – Charitable.

RELATES TO: KRS 315.035

STATUTORY AUTHORITY: KRS 315.020, 315.030, 315.035, 315.191(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.020, 315.030, and 315.191(1)(a) ~~authorizes~~requires the board to promulgate administrative regulations to prescribe the criteria for obtaining a pharmacy permit to dispense legend drugs and the procedures for the safe dispensing of legend drugs to citizens of the Commonwealth. This administrative regulation identifies the manner and procedure by which a charitable organization ~~may~~can be permitted to obtain a pharmacy permit and dispense legend drugs in the Commonwealth.

Section 1. Definitions. (1) "Charitable organization" means an organization qualified as a charitable organization pursuant to Section 501(c)(3) of the Internal Revenue Code.

(2) "Legend drug sample" means an unopened package of a manufacturer's legend drug product that has been distributed to either a practitioner or the charitable pharmacy in accordance with the provisions of the Prescription Drug Marketing Act of 1987.

~~(3)~~(3) "Qualified indigent patient" means a patient of the charitable pharmacy that has been screened and approved by the charitable organization as meeting the organization's mission of providing pharmaceutical care to those who are without sufficient funds to obtain needed legend drugs.

~~(4)~~(3) "Special limited pharmacy permit" means a permit issued to a pharmacy that provides ~~miscellaneous~~ specialized pharmacy services, such as dispensing legend drugs, and counseling patients~~service and functions~~.

Section 2. (1) A charitable pharmacy: ~~(a)~~(a) Shall comply with all pharmacy permit requirements except those specifically exempted by the board pursuant to paragraph (b) of this subsection; and

~~(b)~~(a) May petition the board in writing to be exempted from those pharmacy permit requirements that do not pertain to the operation of that charitable pharmacy.

(2) The charitable pharmacy only shall dispense prescription legend drug samples or prescription legend drugs to qualified indigent patients of the pharmacy.

(3) The charitable pharmacy shall not charge any fee for the dispensing of prescription legend drug samples or prescription legend drugs to qualified indigent patients of the pharmacy.

(4) A charitable pharmacy may accept prescription legend drugs in their unbroken original packaging from pharmacies, wholesalers, or manufacturers, provided appropriate records of receipt and dispensing are maintained.

(5) A charitable pharmacy shall not:

(a) Accept controlled substances from pharmacies, wholesalers, or manufacturers; or

(b) Dispense controlled substances.

(6) A pharmacy that requests a special limited pharmacy permit - charitable shall submit to the board for prior approval, a plan describing the method by which the charitable pharmacy and the pharmacy ~~shall~~will maintain a separate and distinct prescription drug stock. The failure of either pharmacy to follow the plan shall result in revocation of the special limited pharmacy permit - charitable and the pharmacy permit.

Section ~~3.2~~3 License Fees; Renewals. An applicant shall submit:

(1) An initial or renewal application for a special limited pharmacy permit - charitable pharmacy on either the ~~1~~1 Application for Special Limited Pharmacy Permit – Charitable Pharmacy or the ~~2~~2 Application for Special Limited Pharmacy Permit – Charitable

Pharmacy Renewal~~2~~; and

(2) As appropriate, the:

(a) Initial application fee established by ~~Section 1(9)~~Section 1(8); 201 KAR 2:050, ~~Section 1(8)~~Section 1(9); or

(b) Renewal fee established by ~~Section 1(10-11)~~Section 1(9) and (10); 201 KAR 2:050, ~~Section 1(9) and (10)~~Section 1(10) and (11).

Section ~~4.3~~4 Incorporation By Reference. (1) The following material is incorporated by reference:

(a) ~~Effective January 1, 2020~~ "Application for Special Limited Pharmacy Permit – Charitable Pharmacy", ~~May 2020~~May 2019; and

(b) ~~Effective January 1, 2020~~ "Application for Special Limited Pharmacy Permit – Charitable Pharmacy Renewal", ~~May 2020~~May 2019.

(2) This ~~material~~form may be inspected, copied, or obtained, subject to applicable copyright law~~inspected, or copied~~ at the Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, Frankfort, Kentucky 40601, ~~8 a.m. to 4:30 p.m.~~Monday through Friday, 8 a.m. to 4:30 p.m.

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BOARDS AND COMMISSIONS  
Board of Pharmacy  
(As Amended at ARRS, December 3, 2020)

201 KAR 2:320. Requirements for [Permit] [or] manufacturers and virtual manufacturers.

RELATES TO: KRS 315.010, 315.020(2), 315.036, [and] 315.191(1)(a), 315.400, [and] 315.404

STATUTORY AUTHORITY: KRS 315.020(2), 315.036, 315.191(1), 315.400

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.020, 315.036 and 315.191(1)(a) authorizes the board to promulgate administrative regulations to regulate the manufacturers and virtual manufacturers of drugs and drug-related devices. ~~[KRS 315.036 authorizes the board to promulgate administrative regulations regarding manufacturer permits and the maintenance and reporting of accurate records of all drugs manufactured, received and sold. KRS 315.020(2) authorizes the Board to promulgate administrative regulations regarding the pharmacist-in-charge.]~~ This administrative regulation establishes the requirements for [a] the regulation of manufacturers and virtual manufacturers ~~[manufacturer permit and for functioning as a manufacturer]~~.

Section 1. Definitions [Requirements].

(1) "Component" means any raw material, ingredient, or article intended for use in the manufacture of a drug and drug-related device.

(2) "Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.

(3) "Illegitimate Product" is defined by KRS 315.400(11).

(4) "Manufacturer or virtual manufacturer" is defined by KRS 315.010(13) means, in addition to KRS 315.010(13), any person, except a pharmacist compounding in the normal course of professional practice, within the Commonwealth engaged in the commercial production, preparation, propagation, conversion, or processing of a drug either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical synthesis, or both and includes any packaging or repackaging of a drug or the labeling or relabeling of its container.

(5) "Product" means a prescription drug in a finished dosage form for administration to a patient without substantial

further manufacturing, such as capsules, tablets, and lyophilized products before reconstitution.

(6)(4) "Relabeler" means:

(a) Any person who owns or operates an establishment that changes the content of the labeling from that supplied from the original manufacturer for distribution under the establishment's own name; and

(b) [~~This~~] Does not include establishments that do not change the original labeling, but merely add their own name.

(7)(5) "Repackager" is defined by/has the same meaning as in] KRS 315.400(16).

(8)(6) "Suspect product" means a component, prescription drug, or drug-related device[product] for which there is reason to believe that such component, prescription drug, or drug-related device [product]:

(a) Is potentially counterfeit, diverted, or stolen;

(b) Is potentially intentionally adulterated such that the component, prescription drug, or drug-related device[product] would result in serious adverse health consequences or death to humans or animals;

(c) Is potentially the subject of a fraudulent transaction; or

(d) Appears otherwise unfit for distribution such that the component, prescription drug, or drug-related device[product] would result in serious adverse health consequences or death to humans or animals.

#### Section 2. Requirements.

(1) A manufacturer or virtual manufacturer engaging in manufacturing in the Commonwealth shall apply for a permit from the Board of Pharmacy in accordance with KRS 315.036 and this administrative regulation.

(2) A separate permit shall be required for each facility within the Commonwealth regardless of whether joint ownership or control exists.

(3) An agent or employee of a permit holder shall not be required to obtain a permit under this section when the agent or employee is acting in the usual course of business or employment.

(4) A permit shall not be issued or renewed unless the applicant [~~or its officers~~] demonstrates or continues to demonstrate acceptable operational procedures, including:

(a) Adequate operation, maintenance, and storage conditions to ensure proper lighting, ventilation, temperature and humidity control, sanitation, space, and security as per label requirements or official [~~current year~~] United States Pharmacopoeia (USP) compendium requirements, **USP Chapter 659, Packaging and Storage Requirements as incorporated by reference in 201 KAR 2:105.** Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, devices, or logs shall be utilized to document proper storage of components and [prescription] drugs and drug-related devices;

(b) Separation [Physical separation] and quarantine of deteriorated, damaged, outdated, misbranded, adulterated, or otherwise recalled components and drugs and drug-related devices [merchandise] until they are destroyed or returned;

(c) Providing accurate and precise records of all components and drugs and drug-related devices [goods] shipped or received including source or and recipient, date, quantity, itemized description, and any other information pertinent to the [transaction] receipt and distribution or disposition; and

(d) Providing proof of registration [with the state controlled substance authority, and] with the U.S. Food and Drug Administration (FDA), [and] the U.S. Drug Enforcement Administration (DEA), and compliance with all [DEA] federal, state, and local laws and regulations. [~~and~~]

(5) Manufacturers and virtual manufacturers shall[must] comply with all requirements as outlined in the Drug Supply Chain Security Act (DSCSA), **21 U.S.C. 360eee-360eee-4**, if applicable.

(6) Manufacturers and virtual manufacturers shall establish a system to:

(a) Quarantine and investigate suspect product to determine if it is illegitimate; and

(b) Notify FDA, the Board of Pharmacy, and recipient(s) of illegitimate product, if illegitimate product is found.

(7) All virtual manufacturers shall be exempt from the requirements of **subsection[Section] 2(4)(a) and (b) of this Section, and Section 5(1)(a) and (b) and (2)(a) and (b) of this administrative regulation.**

#### Section [2]3. Qualifications for Permit.

(1)(a) The [Kentucky] Board of Pharmacy shall consider, at a minimum, the following factors in reviewing the qualifications of persons who engage in manufacture or virtual manufacture[manufacturer] of [prescription] drugs and drug-related devices within the Commonwealth:

(a)[4-] Any convictions of the officers of the applicant under any federal, state, or local laws relating to drugs, **including[te include] drug samples and controlled substances;**

(b) Any felony convictions of the applicant or its officers under federal, state, or local laws;

(c)[2-] The **applicant's[applicant's]** and its officers' past experience in the manufacture or virtual manufacture of [prescription] drugs and drug-related devices, including drug samples and controlled substances;

(d)[3-] The furnishing by the applicant of false or fraudulent material in any application made in connection with drug manufacturing or virtual drug manufacturing;

(e)[4-][~~d~~] Suspension or revocation by federal, state, or local government of any license or permit currently or previously held by the applicant or its officers for the manufacture or virtual manufacture of any drugs and drug-related devices, including drug samples and controlled substances;

(f)(e)[5-] Compliance with the requirements under any previously granted license or permit, if any; and

(g)[6-][~~f~~] Compliance with requirements to maintain or make available to the [Kentucky] Board of Pharmacy or to federal, state, or local law enforcement officials those records required under this **administrative regulation [section].**

(2)(b) The [Kentucky] Board of Pharmacy shall have the right to deny a permit to an applicant or its officers if it determines that the granting of that permit would not be in the public interest based on health and safety considerations [~~for any reason established in KRS 315.121~~].

(2)(3) A permit shall not be issued pursuant to this administrative regulation unless the applicant [~~or its officers~~] has furnished proof satisfactory to the Board of Pharmacy:

(a) That the applicant is [~~and its officers are~~] in compliance with all applicable federal, [~~and~~] state, and local laws and regulations relating to drugs and drug-related devices; and

(b) That the applicant is [~~and its officers are~~] equipped as to land, buildings, and security to properly carry on the business described in the application. [

(3) A permitted manufacturer may sell or distribute federal legend drugs only to the following:

(a) A currently permitted manufacturer;

(b) A currently licensed wholesale distributor;

(c) A currently permitted pharmacy;

(d) A currently licensed practitioner;

(e) A currently licensed hospital, but only for use by or in that hospital; or

(f) A person in charge of a laboratory, but only for use in that laboratory for scientific and medical research purposes.]

(4) A permit issued pursuant to this administrative regulation [holder] may be disciplined, suspended, or revoked for failure to comply with the provisions of KRS 315.020, 315.036, 315.400 [pursuant to KRS 315.121], or this administrative regulation.

(5) No permit shall fail to designate a pharmacist-in-charge.

#### Section 4[3]. Application, Fees[;], Renewals.

(1) An application for a permit shall be submitted to the Board of Pharmacy on **the [Application for a Permit to Operate as a Manufacturer or Virtual Manufacturer (KBP-M-5-09)].**

(2) An application shall be accompanied by the annual fee set forth in 201 KAR 2:050.

(3) An application shall include:

(a) The name, full business address, and telephone number of the applicant;

(b) All trade or business names used by the applicant;  
(c) Addresses, telephone numbers, and the names of the ~~[contact]~~ persons for the facility used by the permit holder ~~[permittee]~~ for the storage, handling, and manufacturing or virtual manufacturing of drugs and drug-related devices ~~[prescription drugs]~~;

(d) The type of ownership or operation (i.e. partnership, corporation, or sole proprietorship);

(e) The name(s) of the owner and operator of the permit holder ~~[permittee]~~, including;

1. If a person, the name and Social Security number of the person;

2. If a partnership, the name and Social Security number of each partner, and the name of the partnership;

3. If a corporation, the name, Social Security number and title of each corporate officer and director, the corporate names, and the name of the state of incorporation; and

4. If a sole proprietorship, the full name and social security number of the sole proprietor and the name of the business entity; and

(f) A list of all licenses and permits issued to the applicant by any other state that authorizes the applicant to manufacture, virtual manufacture or possess ~~[prescription]~~ drugs and drug-related devices.

(4) All permits shall:

(a) Expire on September 30 following the date of issuance; and

(b) Be:

1. Renewable annually thereafter upon completion of the ~~[Renewal]~~ ~~[proper]~~ Application to Operate as a Manufacturer or Virtual Manufacturer that is accompanied by the renewal fee set forth in 201 KAR 2:050; and

2. Nontransferable.

#### Section [4]5. Standards.

(1) Facilities.

(a) All facilities ~~[buildings]~~ in which components and ~~[legend]~~ drugs and drug-related devices are labeled, relabeled, packaged, repackaged, stored, held, sold, offered for sale, exposed for sale, or kept for sale shall be of suitable size, construction, and location to facilitate cleaning, maintenance, and proper operations.

(b) All facilities [Buildings] shall meet all applicable federal, state, and local standards. The facility shall [have a] quarantine components and [area for storage of prescription] drugs and drug-related devices that are outdated, damaged, deteriorated, misbranded, recalled, or adulterated, [or that are in immediate or sealed secondary containers that have been opened].

(c) A facility shall not be located in a residence.

(2) Security.

(a) A manufacturer shall be equipped with an alarm system to detect entry after hours.

(b) A manufacturer shall ensure that access from outside their premises is well-controlled and reduced to a minimum. This includes the installation of adequate lighting at the outside perimeter of the premises.

(c) Internal security policies shall be developed to provide reasonable protection against theft and diversion by limiting access to areas where components [legend] and drugs and drug-related devices are held to authorized personnel. These policies shall provide protection against tampering with computers or electronic records.

(d) A permit holder shall employ adequate personnel with the education and experience necessary to safely and lawfully engage in the manufacture or virtual manufacture ~~[manufacturer]~~ of ~~[prescription]~~ drugs and drug-related devices.

(e) Lists of officers, directors, managers and other persons in charge of manufacture or virtual manufacture, distribution or disposition, storage, and handling of components and [prescription] drugs and drug-related devices, including a description of their duties and summary of their qualifications, shall be maintained for purpose of review.

(3) Recordkeeping requirements for companies handling prescription drugs and drug-related devices exempt from the

#### DSCSA.

(a) Inventories and other records ~~[of transactions]~~ regarding the receipt and distribution or disposition of components [legend] and drugs and drug-related devices shall be maintained and readily available for inspection or photocopying by the Board of Pharmacy and authorized law enforcement officials for a period six (6) ~~[of two (2)]~~ years ~~following disposition of the drugs~~. These records shall include:

1. The business name and address of the source of the components and drugs and drug-related devices including the ~~[name and principal address of the]~~ seller or transferor and the address of the location from which the components and drugs and drug-related devices were shipped;

2. The business name and address to whom components and drugs and drug-related devices were shipped including the purchaser and the address of the location where the components and drugs and drug-related devices were shipped;

3[2]. The identity and quantity of the components and drugs and drug-related devices received and distributed or disposed of; and

43[4]. The dates of receipt and distribution or disposition ~~[other distribution]~~ of the components and drugs and drug-related devices.

(b) The manufacturer or virtual manufacturer shall keep production and process control records for a period of six (6) years following completion of manufacturing.

(c)[b] Records described in this section that are kept at the inspection site or that can be readily retrievable within forty-eight (48) hours ~~[immediately retrieved]~~ by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two (2) working days of a request by the Board of Pharmacy or an authorized official of a federal, state, or local law enforcement agency.

(d) Manufacturers and virtual manufacturers shall maintain an ongoing list of verified persons and businesses with whom they do business.

(e) A permitted manufacturer and virtual manufacturer may sell or distribute drugs and drug-related devices only to the following:

1. A currently permitted manufacturer or virtual manufacturer;

2. A currently licensed third-party logistics provider;

3. A currently licensed wholesaler;

4. A currently permitted pharmacy;

5. A currently licensed outsourcing facility;

6. A currently licensed practitioner;

7. A currently permitted repackager or relabeler;

8. A currently licensed hospital, but only for use by or in that hospital pursuant to KRS 217.182(1); or]

9. A person in charge of a laboratory, but only for use in that laboratory for scientific and medical research purposes pursuant to KRS 217.182(1); or]

10. Any other appropriately licensed or permitted facility in the jurisdiction in which it is located.]

(d)[f] Manufacturers and virtual manufacturers shall maintain a system for the mandatory reporting of any theft, suspected theft, diversion, or other significant loss of any component or drug or drug-related device to the Board of Pharmacy and if[where] applicable the FDA and DEA.

(4) Written policies and procedures, requirements for companies handling prescription drugs and drug-related devices exempt from the DSCSA.

(a) A manufacturer or virtual manufacturer shall establish, maintain, and adhere to written policies and procedures for ~~[the]~~ all operations including production, process controls, receipt, security, storage, inventory, and distribution or disposition of components and [prescription] drugs and drug-related devices. ~~[including policies and procedures for identifying, recording, and reporting losses or thefts and to ensure that the manufacturer prepares for, protects against, and handles crisis situations that affect the security or operation of the facility. These crises shall include fires,~~

floods, or other natural disasters, and situations of local, state, or national emergency.]

(b) There shall be written policies and procedures for identifying, recording, and reporting losses or thefts.

(c) There shall be written policies and procedures to assure that the manufacturer and virtual manufacturer prepares for, protects against, and handles crisis situations that affect the security, or operation, and records of the facility permit holder. These crises shall include fires, floods, or other natural disasters, and situations of local, state, or national emergency.

(d) [(b)] There shall be written policies and procedures for managing and correcting all errors or inaccuracies in inventories.

(e) [(e)] There shall be written policies and procedures to assure that any outdated stock components or drugs or drug-related devices or any [stock] components or drugs or drug-related devices with an expiration date that, in the manufacturer's or virtual manufacturer's view, does not allow sufficient time for repacking or resale shall be segregated from other stock and shall be prepared for return or otherwise destroyed, and this shall be documented.

(f) [(d)] There shall be written policies and procedures by which the manufacturer or virtual manufacturer exercises control over the shipping and receiving of all [stock] components and drugs and drug-related devices within the operation.

(g) There shall be written policies and procedures for investigating suspect product and reporting illegitimate product to the Board of Pharmacy, FDA, and recipient(s) of illegitimate product.

(5) Returned, damaged, and outdated [prescription] drugs and drug-related devices. A manufacturer [manufacturer's] or virtual manufacturer [operation] shall maintain and follow a written procedure to assure the proper handling and disposal of returned components or drugs or drug-related devices [goods]. If conditions under which a [prescription] drug or drug-related device has been returned cast doubt on the drug's or drug-related device's safety, identity, strength, quality, or purity, then the drug or drug-related device shall be destroyed, or returned to the supplier, unless examination, testing, or other investigation proves that the drug or drug-related device meets appropriate standards of safety, identity, strength, quality, and purity. In determining whether the conditions under which a drug or drug-related device has been returned cast doubt on the drug [drug's] or drug-related device's safety, identity, strength, quality, or purity, the manufacturer or virtual manufacturer shall consider, among other things, the conditions under which the drug or drug-related device has been held, stored, or shipped before or during its return and the condition of the drug or drug-related device and its container, carton, or labeling, as a result of storage or shipping.

(6) Handling recalls. A manufacturer or virtual manufacturer shall adopt, maintain, and follow a written policy and procedure for handling recalls and withdrawals of [products] components or drugs or drug-related devices. The policy shall cover all recalls and withdrawals [of drug products] due to:

(a) Any voluntary action on the part of the manufacturer or virtual manufacturer;

(b) The direction of the FDA [Food and Drug Administration], or any other federal, state, or local government agency; and

(c) Replacement, relabeling, or repackaging of existing component or drug or drug-related devices [merchandise with an improved product or new package design].

(7) Procedures.

(a) A visual examination of all materials received or shipped shall be made to guarantee product identity and to reasonably guard against acceptance or delivery of damaged, contaminated, tampered, or otherwise unfit stock. [

(b) Procedures for distribution of approved stock shall provide for a rotation whereby the first expiration inventory is distributed first.]

(b) [(e)] A manufacturer or virtual manufacturer shall be subject to the provisions of any applicable federal, state, or local laws or regulations that relate to [prescription] drug product and drug-related devices salvaging or reprocessing.

Section 6[5]. Pharmacist-in-charge. A manufacturer or virtual

manufacturer shall designate a pharmacist-in-charge of the facility [who shall be responsible to the board for security and recordkeeping]. The pharmacist-in-charge shall review the security and records by conducting and documenting an on-site inspection not less than quarterly.

Section 7[6]. Violations.

(1) A drug manufacturer or virtual manufacturer shall not distribute [legend] prescription drugs and drug-related devices directly to a consumer or a patient [or operate in a manner that endangers the public health].

(2) A manufacturer or virtual manufacturer shall not operate in a manner that endangers the public health.

(3) [(2)] Violation of any of these provisions shall be grounds for the discipline, suspension, or revocation of the permit [pursuant to KRS 315.121].

Section 8[7]. Incorporation by Reference. (1) **The following material is incorporated by reference:**

(a) "Application for a Permit to Operate as a Manufacturer or Virtual Manufacturer", **May 2020; and**

(b) "**Renewal Application to Operate as a Manufacturer or Virtual Manufacturer**", **May 2020**[(6/09)], **is incorporated by reference**].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Pharmacy, State Office Building Annex, Suite 300, 125 Holmes Street, Frankfort, Kentucky 40601-8024, [Spindletop Administrative Building, Suite 302, 2624 Research Park Drive, Lexington, Kentucky 40511,] Monday through Friday, 8 a.m. through 4:30 p.m.

CONTACT PERSON: Larry Hadley, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Larry.Hadley@ky.gov.

**BOARD OF OPTOMETRIC EXAMINERS  
(As Amended at ARRS, December 3, 2020)**

**201 KAR 5:140. Dispensing.**

RELATES TO: KRS **217.015(35)**, 217.182(3), ~~KRS 217.015(35); KRS~~ 320.210(2)

STATUTORY AUTHORITY: KRS 320.240

NECESSITY, FUNCTION, and CONFORMITY: KRS 320.240(4) requires the Board of Optometric Examiners to promulgate administrative regulations for the reasonable regulation of the profession of optometry and the practice thereof by licensed optometrists. The Kentucky Food, Drug and Cosmetic Act (KRS 217.005 to 217.218) authorizes optometrists to administer, dispense, or prescribe a legend drug for a legitimate medical purpose and in the course of professional practice, as authorized in KRS 320.240(12) to (14). This administrative regulation establishes the requirements for licensed optometrists to dispense pharmaceutical agents.

Section 1. An optometrist may dispense pharmaceutical agents as authorized in KRS 320.240(12) to (14), other than controlled substances.

Section 2. Dispensing of pharmaceutical agents to a patient shall be:

(1) For a legitimate medical purpose;

(2) In the course of the optometrist's professional practice; and,

(3) Limited based upon the authority conferred upon the optometrist by the board consistent with the educational qualifications of the optometrist provided in KRS 320.240.

Section 3. An optometrist **shall[must]** be on the premises when a pharmaceutical agent is dispensed and the optometrist **shall[must]** be actively involved in the dispensing process.

Section 4. When a pharmaceutical agent is dispensed by an optometrist, he or she shall [an optometrist must]:

(1) Inform the patient on the appropriate use of the pharmaceutical agent; and

(2) Document in the patient's record the name, strength, quantity, and appropriate use of the pharmaceutical agent provided to the patient.

Section 5. An optometrist shall maintain a readily retrievable record system by manual or electronic means of all pharmaceutical agents purchased for administration or dispensing in the course of professional practice.

Section 6. The pharmaceutical agent shall [must] be purchased, possessed, labeled, and packaged in accordance with the Kentucky Food, Drug and Cosmetic Act and applicable federal law.

Section 7. Nothing in this section shall expand the administrative or prescriptive authority of an optometrist.

CONTACT PERSON: Carson Kerr, Executive Director, Board of Optometric Examiners, 2365 Harrodsburg Road, Suite A240, Lexington, Kentucky 40504, phone (859) 246-2744, fax (859) 246-2746, email Carson.Kerr@ky.gov.

**BOARDS AND COMMISSIONS**  
**Board of Barbering**  
**(As Amended at ARRS, December 3, 2020)**

**201 KAR 14:035. Public identification of and access to barber shops and schools.**

RELATES TO: KRS 317.410, 317.420[317.400], 317.450

STATUTORY AUTHORITY: KRS 317.410, 317.420, 317.430, 317.440

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317.440 requires the board to promulgate administrative regulations governing the location and housing of barber shops or schools. This administrative regulation establishes public identification for shops and schools and outside entrance.

Section 1. The main entrance to each barber shop, barber school, or barber college shall display a sign indicating that it is a barber shop, barber school or barber college, and ~~[the said]~~ each sign shall be clearly visible~~[at the main entrance of said place]~~.

Section 2. Any licensed barber shop located in a residence shall have an outside entrance separate from the residence entrance.

CONTACT PERSON: Christopher D. Hunt, Board Attorney, 500 Mero Street, 218 NC, phone +1 (502) 782-5245, fax +1 (502) 564-3969, email chrisd.hunt@ky.gov.

**BOARDS AND COMMISSIONS**  
**Board of Barbering**  
**(As Amended at ARRS, December 3, 2020)**

**201 KAR 14:070. Shop license applications.**

RELATES TO: KRS 317.450(3)

STATUTORY AUTHORITY: KRS 317.440

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317.440 requires the board to promulgate administrative regulations governing the location and housing of barber shops or schools. This administrative regulation establishes the requirements for the application for shop licenses.

Section 1. All new barber shops and all barber shops moving

to new locations shall comply with all city, county, and state health regulations and shall [must] include a signature from the state plumbing inspector on an application supplied by the barber board.

Section 2. Barber shop licenses are not transferable from one (1) location to another or one (1) person to another. A new license shall [must] be obtained [purchased]. ~~[at the time of transfer or relocation.]~~

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**BOARDS AND COMMISSIONS**  
**Board of Barbering**  
**(As Amended at ARRS, December 3, 2020)**

**201 KAR 14:095. Accredited school.**

RELATES TO: KRS 317.440

STATUTORY AUTHORITY: KRS 317.410, 317.430, 317.440, 317.450

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317.450 requires the board to issue a license to operate a school of barbering to any person, firm, or corporation who or which has complied with its statutory requirements. This administrative regulation establishes the requirements for an accredited barber school.

Section 1. Any school in Kentucky that complies with the rules and administrative regulations set forth herein, in addition to all ~~[the]~~ Kentucky laws, shall [will] upon the certification and approval of this board be deemed an accredited barber school.

Section 2. Barber school licenses are not transferrable from one (1) location to another or from one (1) person to another. A new license shall [must] be obtained.

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**BOARDS AND COMMISSIONS**  
**Board of Barbering**  
**(As Amended at ARRS, December 3, 2020)**

**201 KAR 14:100. School advertising.**

RELATES TO: KRS 317.410, 317.440, 317.450

STATUTORY AUTHORITY: KRS 317.420, 317.430, 317.440

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317.420 requires the board to promulgate administrative regulations to protect the public against misrepresentation, deceit, or fraud in the practice or teaching of barbering. This administrative regulation establishes the requirements for school advertising.

Section 1. Schools shall not advertise by any means that are knowingly false or [such as] by the use of deceptive statements or [and] false promises which act as inducements in an effort to get ~~[the]~~ students to enter the [said] schools.

Section 2. Student equipment and books may~~[, or may not,]~~ be supplied by the students, depending upon each individual school, but school advertisements shall [must] show what [is to] be furnished to the students.

Section 3. A school of barbering shall [must] display in the reception room, work room, and on the mirror of each work station, [reception room and in the work room] a sign to read "School of Barbering - Work Done Exclusively by Students." The letters on this sign shall [must] be large enough to be read from the opposite

end of the room.

Section 4. A school shall not~~[No school is permitted to]~~ advertise professional work or guarantee students' work.

Section 5. A school may~~[is allowed to]~~ advertise under the description of a school operating for teaching purposes only.

Section 6. Schools shall not~~[are forbidden to]~~ advertise positions or guarantee future employment to students.

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**BOARDS AND COMMISSIONS**  
**Board of Barbering**  
**(As Amended at ARRS, December 3, 2020)**

**201 KAR 14:105. Barbering school enrollment and postgraduate requirements.**

RELATES TO: KRS 317.410, 317.440, 317.450  
STATUTORY AUTHORITY: KRS 317.430~~[(1)]~~, 317.440~~[(1)]~~, 317.450~~[(1)(a)3, (2)(e)]~~  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 317.430(1) requires the Kentucky Board of Barbering to regulate barber schools and the teaching of barbering. KRS 317.440(1) requires the Kentucky Board of Barbering to promulgate administrative regulations governing applicants for barbering licenses. KRS 317.450(1)(b)~~[KRS 317.450(1)(a)3]~~ requires the Kentucky Board of Barbering to ensure that a license to practice barbering shall be issued only if an applicant has acted as a licensed apprentice to a barber for at least six (6), but not more than~~[7]~~ nine (9) months, ~~[, and]~~ KRS 317.450~~(1)(a)(3)(2)(e)]~~ requires the Kentucky Board of Barbering to ensure that a licensed apprentice to a barber has graduated high school or possesses a General Educational Development (GED) certificate or ~~[it's]~~ equivalent. This administrative regulation establishes requirements for barbering school enrollment and postgraduate coursework.

Section 1. Enrollment Application. (1) Each student applicant shall complete and submit to the barbering school an Enrollment Application for Barber School.

(2) Each student applicant shall also submit to the barbering school:

- (a) A copy of the applicant's high school:
  1. Certificate;
  2. Diploma; or
  3. Transcript; or

(b) A copy of the applicant's General Educational Development (GED) certificate.

(3) A prospective student shall not attend a barber school until the student has complied with subsections (1) and (2) of this section and the board has notified the school, pursuant to subsection (4)(c)2a of this section, that the board is in receipt of the completed and correct enrollment form and documentation.

(4)(a) The barbering school shall submit to the board the:

1. Student's enrollment application; and
2. Documentation required by subsection (2) of this section.

(b) The barbering school shall submit the material required by paragraph (a) of this subsection to the board by:

1. Scanning the application into an electronic format and emailing the application to the board;
2. Fax;
3. Post; or
4. Hand delivery.

(c)1. Upon the first business day that the board receives from the barbering school the material required by paragraph (a) of this subsection and the required permit fee, the board shall print, if the submission was in electronic format, and shall date stamp the material.

2.a. Within two (2) business days of receiving the documentation from the barbering school, the board shall contact the barbering school by phone, fax, or email to alert the school that the student is enrolled and may begin attending.

b. The board shall follow up with an official letter, sent to the barbering school and the student applicant, which shall state the student's official enrollment eligibility date.

Section 2. Postgraduate Requirements. (1) A barbering school shall enroll a student who requests postgraduate coursework if the student has complied with:

- (a) Section 1 of this administrative regulation;
- (b) 201 KAR Chapter 14; and
- (c) KRS Chapter 317.

(2) A barbering school shall not approve postgraduate course credits for less than 150 hours, except in accordance with 201 KAR 14:015 if the applicant has failed the licensing examination twice consecutively.

Section 3. A person who is an owner of a barber school or a person who can make policy for the school shall not be enrolled in that barber school as a student.

Section 4. Incorporation by Reference. (1) "Enrollment Application for Barber School," ~~[August 2009]~~ is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Barbering, 312 Whittington Parkway, Suite 110, ~~[9114 Leesgate Road, Suite 6,]~~ Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30p.m.

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**BOARDS AND COMMISSIONS**  
**Board of Barbering**  
**(As Amended at ARRS, December 3, 2020)**

**201 KAR 14:130. School fees for services.**

RELATES TO: KRS 317.410, 317.440

STATUTORY AUTHORITY: KRS 317.430, 317.440

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317.440 requires the board to promulgate administrative regulations to protect the public against misrepresentation, deceit, or fraud in the practice or teaching of barbering and to establish fees by administrative regulation. This administrative regulation establishes school fees and services.

Section 1. A copy of the[such] prices shall[must] be posted on a card in each room of the barber school where work is done on the public. Price lists shall[must] be printed in type large enough to be read at a distance of ten (10) feet.

Section 2. Barber schools shall not be permitted to charge students any additional fees for any demonstrations, nor shall any supply house or manufacturer be permitted to charge students fees for [such] demonstrations. Barber schools shall[must] not charge students any fees on behalf of any individual, supply house, or manufacturer for the purpose of demonstration.

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**BOARDS AND COMMISSIONS**  
**Board of Barbering**  
**(As Amended at ARRS, December 3, 2020)**

**201 KAR 14:135. School attendance hours.**

RELATES TO: KRS 317.440, 317.450, 317.540  
STATUTORY AUTHORITY: KRS 317.440, 317.450, 317.540  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 317.440 requires the board to promulgate administrative regulations governing the hours and courses of instruction at barber schools. This administrative regulation establishes the hours of attendance for schools of barbering.

Section 1. ~~A[No]~~ school of barbering shall not permit or require students to be in attendance at school more than forty-eight (48)~~(40)~~ hours in any one (1) week.

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**BOARDS AND COMMISSIONS**  
**Board of Barbering**  
**(As Amended at ARRS, December 3, 2020)**

**201 KAR 14:140. School license.**

RELATES TO: KRS 317.440, 317.450, 317.540  
STATUTORY AUTHORITY: KRS 317.410, 317.430, 317.440, 317.540  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 317.440 and 317.540 require the board to promulgate administrative regulations governing barber school licensing. This administrative regulation sets forth rules for licensing a barber school.

Section 1. Each person making application for a license to operate a barber school ~~shall[is required to]~~ submit to the board satisfactory evidence as to the financial responsibility and character of the persons interested in operating ~~the[such a]~~ school; literature and advertising material pertaining to the school; samples of each form of record used to conduct the business of the school, including progress reports, hour sheets, and "sign-in" sheets; and a copy of the contract with the student and term or lease.

Section 2. Application for license to operate a school of barbering shall[must] be accompanied by a floor plan of proposed premises, showing the arrangements of the classroom, the placing of equipment, the location of gas and electric outlets, and the entrance and exits.

Section 3. A license to operate a barber school shall be[is] valid only for the person and location named in the license and is not transferable.

Section 4. Any person, establishment, firm, or corporation which accepts, directly or indirectly, compensation for teaching persons as defined in KRS 317.410 shall be classified as a barber school and shall[will] be required to comply with all the provisions of the laws and the rules and administrative regulations of the board.

Section 5. A copy of the laws and administrative regulations concerning the licensing of barbers shall[must] be available to all students, either in hardcopy (paper) or electronic format.

Section 6. Any barber school owner or manager found guilty by the board of willfully or fraudulently misrepresenting facts to the board concerning any information regarding his or her school, shall[will] have their license to operate a barber school revoked as

provided in KRS Chapter 317.

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**BOARDS AND COMMISSIONS**  
**Board of Nursing**  
**(As Amended at ARRS, December 3, 2020)**

**201 KAR 20:390. Nursing Incentive Scholarship Fund.**

RELATES TO: KRS 314.011, 314.025, 314.026, 314.027  
STATUTORY AUTHORITY: KRS 314.026(1), 314.131(1)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.025 through 314.027 authorize the Kentucky Nursing Incentive Scholarship Fund for Kentucky residents. KRS 314.026(1) requires the Board of Nursing to promulgate administrative regulations to implement and administer the scholarship fund. This administrative regulation implements the Kentucky Nursing Incentive Scholarship Fund Program and establishes the requirements relating to the program.

Section 1. Definitions. (1) "Academic year" means:  
(a) For a registered nursing or graduate nursing program, a twelve (12) month period beginning with a fall session; and  
(b) For a practical nursing program, the completion of the required program.  
(2) "Board" is defined by KRS 314.011(1).  
(3) "Graduate nursing education" means the pursuit of a master's degree, post-master's certificate, or doctoral degree.  
(4) "Kentucky resident" is defined by 13 KAR 2:045, Section 1(10).  
(5) ~~[(4)]~~ "Program of nursing" means a prelicensure, BSN completion, or graduate nursing program.  
(6) ~~[(5)]~~ "Successful academic progression" means, except during the last academic year preceding graduation:  
(a) For a prelicensure or BSN completion nursing program, the completion of a minimum of twelve (12) ~~[fifteen (15)]~~ credit hours per academic year of published requirements for the program of nursing and maintenance of a minimum grade point average which would allow continuation in a program of nursing; or  
(b) For a graduate nursing program, the completion of a minimum of nine (9) credit hours per academic year of published requirements for the program of nursing and maintenance of a minimum grade point average which would allow continuation in the graduate program.

Section 2. Application. (1) To be eligible for a nursing incentive scholarship, an applicant shall:

(a) Be a Kentucky resident; and  
(b) Have been accepted for admission to a program of nursing.  
(2) An applicant shall submit:  
(a) A completed Nursing Incentive Scholarship Fund Application form for agency receipt on or before[by] June 8;~~[4 to apply for a scholarship for the following academic year.]~~  
(b) A copy of the Student Aid Report from the Free Application for Federal Student Aid (FAFSA) for the current year, if requesting preference for financial need;  
(c) A copy of the program of nursing acceptance letter verifying initial enrollment;  
(d) For newly enrolled nursing applicants an official transcript from the last academic institution in which the applicant was enrolled for verification of GPA or copy of a GED; and  
(e) For applicants enrolled in a program of nursing, a copy of an official transcript to verify continued enrollment.]  
(3) ~~An applicant shall attach to the Nursing Incentive Scholarship Application a copy of the Student Aid Report from the Free Application for Federal Student Aid (FAFSA) for the current year, if requesting preference for financial need.]~~

Section 3. Criteria for Awards. The board shall consider the

following criteria in evaluating an application and shall award points as follows:

- (1) Preference categories as specified in KRS 314.025(2):
  - (a) Licensed practical nurses, twenty (20) [~~twenty-five (25)~~] points;
  - (b) Registered nurses pursuing graduate nursing education, twenty (20) [~~twenty-five (25)~~] points; and
  - (c) Financially-needy Kentucky residents, up to thirty-five (35) [~~twenty-five (25)~~] points. Financial need shall be determined by the estimated Federal Expected Family Contribution (EFC) as calculated by the annual FAFSA and points will be awarded based on need-based aid eligibility as follows: [~~Pell Grant Indicator of Eligibility for Financial Aid;~~]
    1. EFC of \$0 to \$5000, thirty-five (35) points;
    2. EFC of \$5001 to \$10,000, thirty (30) points; and
    3. EFC of \$10,001 to \$20,000, twenty-five (25) points.
- (2) Potential for academic success, as follows: high school, vocational school, college, or university grade point average for whichever institution the applicant most recently attended:
  - (a) Three and five-tenths (3.5) to four (4.0), twenty-five (25) points;
  - (b) Three (3) to three and four-tenths (3.4), twenty (20) points; and
  - (c) Two and five-tenths (2.5) to two and nine-tenths (2.9), fifteen (15) points;
- (3) Potential for academic success when GED is earned in place of a high school diploma:
  - (a) A GED score of 601 to 800, twenty-five (25) points;
  - (b) A GED score of 501 to 600, twenty (20) points; and
  - (c) A GED score of 401 to 500, fifteen (15) points.[(3) ~~Previous health care experience, either paid or volunteer, shall be equal to five (5) points for each year in which service is validated, to a maximum of twenty-five (25) points.]~~

Section 4. Amount of Award. (1) The board shall be notified by the board's fiscal officer as to the current fund balance prior to making an award.

- (2)(a) The board shall first make awards to those recipients who:
  1. Received an award in the previous year; and
  2. Remain eligible to receive an award pursuant to Section 6 of this administrative regulation in the current year.
- (b) If funds remain available after the awards are made pursuant to paragraph (a) of this subsection, the board shall make an award to other eligible applicants.

Section 5. Procedure for Disbursement of Awards. (1) Disbursement of funds shall be made directly to the recipient.

- (2) Disbursement shall be made annually.
- (3) Each educational institution in which a student receiving a nursing incentive scholarship award is enrolled shall certify to the board no later than thirty (30) days from the beginning of each semester, that the recipient:
  - (a) Has enrolled; and
  - (b) Is in good standing in the nursing program.

Section 6. Continuing Eligibility Criteria. (1) A recipient of a nursing incentive scholarship shall be eligible to continue to receive an award if the recipient:

- (a) Maintains successful academic progression through the program; and
- (b) Submits to the board a completed Nursing Incentive Scholarship Fund Application form for agency receipt on or before/by June 8[1].
- (2) The educational institution shall immediately notify the board of a change in a recipient's enrollment status.
- (3) An award recipient in a practical nursing program shall not be eligible for further awards from the Nursing Incentive Scholarship Fund while enrolled in that program.

Section 7. Disbursement Contract. (1) Prior to disbursement of initial funds, the recipient shall sign a Nursing Incentive Scholarship Fund Contract.

- (2) The recipient shall sign a Nursing Incentive Scholarship Fund Promissory Note for each year in which funds are disbursed.

Section 8. Repayment and Deferral. (1) A recipient shall immediately become liable to the board to pay the sum of all scholarships received and the accrued interest on the scholarships if the recipient fails to complete the:

- (a) Nursing program in which he or she is enrolled within the time specified by the program of nursing; or
- (b) Required employment as specified in the contract.
- (2) Written notification of demand for repayment shall be sent by the board to the scholarship recipient's last known address and shall be effective upon mailing.
- (a) The board may agree to accept repayment in installments in accordance with a schedule established by the board.
- (b) Payments shall first be applied to interest and then to principal on the earliest unpaid contracts.
- (3) Repayment may be deferred in the case of disability, major illness, or accident that prevents a recipient from completing a program of nursing or being employed as a nurse in Kentucky.
- (4) A student enrolled in a program of nursing may defer repayment if the student fails to achieve successful academic progression.

- (a) This deferment shall apply for one (1) academic year.
- (b) If the student fails to achieve successful academic progression after that time, repayment shall be due.
- (c) If the student achieves successful academic progression within the allotted time, he or she may apply for a continuation award pursuant to Section 6 of this administrative regulation.

(5)(a) If a deferment is requested, the recipient shall submit the request to the board on a Nursing Incentive Scholarship Fund Request for Deferral form.

- (b) If the request for deferment is submitted pursuant to subsection (3) of this section, the Nursing Incentive Scholarship Fund Request for Deferral form shall be accompanied by a [physician's] statement by a physician, advanced practice registered nurse, or physician's assistant.

(6) If a recipient fails to pass the licensure examination within two (2) years of graduation, the sum of all nursing incentive scholarships received by the recipient, and the accrued interest, shall become due and payable.

(7) If a court of competent jurisdiction determines that the recipient has defaulted and the funds are due and owing to the board, then the provisions of 201 KAR 20:370, Section 1(5), shall apply.

(8) An individual who has defaulted on a scholarship shall not be eligible to receive another scholarship until the defaulted scholarship has been repaid.

(9) The board may utilize the services of a third party for collection of sums owed pursuant to a Nursing Incentive Scholarship Fund Contract and **Nursing Incentive Scholarship Fund** Promissory Note, including reasonable attorney fees.

(10) After the board refers a debt to a third party for collection, a recipient shall not be eligible for deferment or to otherwise cure the recipient's breach, other than through payment of all sums owed to the board.

Section 9. Verification. (1) Verification of employment as a nurse in Kentucky pursuant to the contract shall be submitted to the board when the recipient's employment commitment begins and when it is completed. A termination of employment prior to completion shall be reported to the board within thirty (30) days by the employer and the recipient.

- (2) A recipient shall notify the board immediately of a change of name or address or enrollment status in school.

Section 10. Incorporation by Reference. (1) The following forms are incorporated by reference:

- (a) "Nursing Incentive Scholarship Fund Application", 12/01;
- (b) "Nursing Incentive Scholarship Fund Request for Deferral", 10/96;
- (c) "Nursing Incentive Scholarship Fund Contract", 10/13; and
- (d) "Nursing Incentive Scholarship Fund Promissory Note",



10/13.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday 8:30 a.m. to 4:30 p.m.

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**BOARDS AND COMMISSIONS**  
**Board of Chiropractic Examiners**  
**(As Amended at ARRS, December 3, 2020)**

**201 KAR 21:001. Definitions for 201 KAR Chapter 21.**

RELATES TO: KRS 312.015, 312.200

STATUTORY AUTHORITY: KRS 312.019(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.019(9) authorizes the Kentucky Board of Chiropractic Examiners to promulgate administrative regulations consistent with KRS Chapter 312, regulating the practice of chiropractic. This administrative regulation establishes[sets forth] the definitions for 201 KAR Chapter 21.

Section 1. Definitions. (1) "Accepted standards" means those standards of review, care, skill, and treatment that are recognized by a reasonably prudent chiropractor as being acceptable under similar conditions and circumstances.

(2) "Accredited chiropractic college or university" means a chiropractic college or university fully accredited by the Council on Chiropractic Education or its successor and that:

(a) Maintains a standard and reputability approved by the board pursuant to 201 KAR 21:055; and

(b) Meets all educational standards for preceptorship programs as established by the Council on Chiropractic Education.

(3) "Adjacent tissues" means all structures and joints contained within the upper and lower extremity.

(4) "Advertisement of free or discounted services" means any advertisement or solicitation, by any medium, offering free or discounted examinations, consultation, treatment, goods, or other services.

(5)(4) "Appropriate chiropractic treatment" means a determination made of treatment and other services performed which, by virtue of a substantiated and properly diagnosed condition, appear to be of a type consistent with that diagnosis.

(6)(5) "Bill for treatment" means all services provided to a patient, regardless of the monetary consideration paid to the chiropractor.

(7)(6) "Board" is defined by KRS 312.015(1).

(8)(7) "Committee" means the peer review committee established by KRS 312.200.

(9)(8) "Complaint" means an allegation alleging misconduct that might constitute a violation of KRS Chapter 312 or 201 KAR Chapter 21.

(10)(9) "Complete notice of right of rescission" means a conspicuous statement, of not less than ten (10) point font in any advertisement of free or discounted services that reads substantially as follows: "You have the right to rescind, within seventy-two (72) hours, any obligation to pay for services performed in addition to this free or discounted service."

(11)(10) "Conviction" means a finding of guilt resulting from a plea of guilty or nolo contendere, the decision of a court, or the finding of a jury, irrespective of a pronouncement of judgment, or the sentence being deferred or suspended.

(12)(11) "Hearing officer" is defined by KRS 13B.010(7).

(13)(12) "Licensee" means a person who performs chiropractic and who is licensed under KRS 312.015 through[to] 312.991~~[,]~~ and 201 KAR Chapter 21, as a chiropractor.

(14)(13) "Notice of rescission" means notice by the consumer rescinding any agreement to pay for unadvertised additional

services performed or to be performed in addition to the free or discounted service.

(15) "Ownership or operation of a chiropractic facility" as established[set forth] in KRS 312.145(3), means continued, ongoing ownership by a licensee, or in the event of the death or permanent disability of the licensee, ownership or operation of the facility by the licensee's spouse, heirs, successors, or assigns as can[may] be designated by or in the licensee's estate, for up to twelve (12) months.

(16)(15) "Patient" means an individual who receives treatment from a chiropractor.

(17)(16) "Peer review" is defined by KRS 312.015(4).

(18)(17) "Preceptor" means a licensed doctor of chiropractic, who, after approval of the board, pursuant to 201 KAR 21:085, and an accredited chiropractic college or university, provides an opportunity for an undergraduate intern to work in the doctor's office.

(19)(18) "Promotional items" means small tangible items such as pens, magnets, pads, cups, and similar[the like given to existing or potential customers;] These are not considered advertising unless the item contains an offer for free or discounted services.

(20)(19) "Properly utilized services" means appropriate treatment services rendered, including the frequency and duration of those services and that are substantiated as being necessary and reasonable by clinical records and reports prepared by the treating chiropractor.

(21)(20) "Seventy-two (72) hour right of rescission" means the right of a consumer to rescind within seventy-two (72) hours any agreement to pay for services if performed the same day in addition to the advertised free or discounted service at an additional unadvertised cost, or any agreement entered into on the same date to submit to a series, or course of treatments at an additional unadvertised cost.

(22)(21) "Unconscionable fees" means charges or bills for treatment submitted for services performed that are unreasonable charges for those services as compared to the usual and customary charges by a chiropractor or by a health care provider other than a chiropractor for the same or similar services in the locality where the services were performed.

(23)(22) "Undergraduate intern" means an individual studying at an accredited chiropractic college or university and who is in the final academic year prior to receiving a degree in chiropractic.

(24)(23) "Unlawful solicitation" means offering money or something of value to a potential patient or patient in exchange to seek treatment from the licensee.

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**BOARDS AND COMMISSIONS**  
**Board of Chiropractic Examiners**  
**(As Amended at ARRS, December 3, 2020)**

**201 KAR 21:015. Code of ethical conduct and standards of practice.**

RELATES TO: KRS 312.019(9)(a)

STATUTORY AUTHORITY: KRS 312.019(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.019(9)(a) authorizes the board to promulgate and amend administrative regulations for the practice of chiropractic, including adopting a code of ethical conduct. This administrative regulation establishes the minimum standards of professional and ethical conduct and practice that a licensee shall maintain.

Section 1. Each licensee shall comply with the minimum standards of professional and ethical conduct established in subsections (1) through (10)(9) of this section.

(1) A licensee shall not advertise the licensee's services except as provided by 201 KAR 21:065.

(2) A licensee shall not commit an act of sexual misconduct, sexual harassment, or any act punishable as a sexual offense.

(3) A licensee shall refrain from chemical or substance abuse. The chemical or substance abuse shall not have to take place in a chiropractic office for the board to take action against a licensee.

(4)(a) Division of a professional fee shall not be made, except upon the basis of actual services rendered.

(b) Unless prohibited by law, each licensed chiropractor of a business entity shall be allowed to pool or apportion fees received in accordance with a business agreement.

(5)(a) A licensee shall not pay or receive compensation for the referral or unlawful solicitation of patients.

(b) A licensee, employee of a licensee, agent of a licensee, contractor of a licensee, or anyone acting in concert with the licensee shall not provide monetary compensation or other consideration of value to an individual in order to induce or entice the individual to commence a chiropractor-patient relationship or continue as a patient of the licensee.

(6)(a) Telemarketing shall be permitted only if the telemarketing is nontargeted, taken from a general list of phone numbers, and if not violating the state's no-call provisions.

(b) The licensee shall be held responsible for the content of any contact made by a telemarketer, agent, employee, or contractor representing the chiropractor.

(7) A licensee shall report to the board any reasonably suspected violation of KRS Chapter 312 or 201 KAR Chapter 21 by another licensee or applicant within thirty (30) days.

(8) A licensee shall report to the board any guilty plea, criminal conviction other than minor traffic violations, civil judgment, settlement, or civil claim made against the licensee within thirty (30) days.

(9) A licensee shall report to the board any discipline from another state licensing board within thirty (30) days of receiving notice of final disciplinary action.

(10) A licensee shall report to the board any malpractice settlement over \$10,000 within thirty (30) days of the settlement of the claim.

Section 2. Each licensee shall comply with the minimum standards of practice established in subsections (1) through (6) of this section. (1) A licensee shall keep in confidence whatever the licensee may learn about a patient in the discharge of professional duties. Information shall be divulged by the licensee only if required by law or authorized by the patient.

(2) A licensee shall render care to each patient that is consistent with treatment and care that would be rendered by a reasonably prudent chiropractor licensed in the Commonwealth of Kentucky and shall give a candid account of a patient's condition to the patient, or to those responsible for the patient's care.

(3) A licensee shall inform the patient of the licensee's clinical diagnosis, treatment plan, and expected outcome of treatment prior to the onset of care.

(4) A licensee shall give timely notice to the licensee's patient or to those responsible for a patient's care if the licensee withdraws from a case so that the patient may obtain another chiropractor.

(5) A licensee shall not abandon a patient.

(6) A licensee shall practice the licensee's profession in accordance with the provisions of KRS Chapter 312 and 201 KAR Chapter 21.

Section 3. (1) Each licensee shall cooperate with the board by:

(a) Submitting[Furnishing] germane documents requested by the board;

(b) Submitting[Furnishing] in writing a complete explanation covering the matter contained in the complaint filed with the board;

(c) Appearing before the board at the time and place designated; and

(d) Properly responding to a subpoena issued by the board; and

(e) The board shall[will] in each renewal cycle, audit a minimum of fifteen (15) percent of renewals to assure compliance with continuing education requirements. Licensees, if selected for audit, shall cooperate and provide requested information so the

audit may be conducted.

(2) A licensee shall comply with an order issued by the board.

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**BOARDS AND COMMISSIONS**  
**Board of Chiropractic Examiners**  
**(As Amended at ARRS, December 3, 2020)**

**201 KAR 21:025. Board; officers, duties, and compensation.**

RELATES TO: KRS 312.019, 312.055

STATUTORY AUTHORITY: KRS 312.019

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.055 requires the election of certain officers by the board. KRS 312.019(6) authorizes the board to employ personnel and incur expenses necessary for the performance of its duties. This administrative regulation establishes the duties of the officers, field personnel, and administrative staff, establishes the terms and procedure for election of officers, and establishes compensation.

Section 1. The officers of the board shall perform the duties established in this section.

(1) The president shall be the chief executive of the board. The president shall preside over all meetings of the board.

(2) The vice president shall perform the duties of the president during the president's absence or inability to serve. The vice president shall perform other reasonable duties delegated to him by the president or by the board.

(3) The executive secretary shall, if necessary or upon the discretion of the board, ~~perform the following duties:~~

(a) Record and present the minutes of a meeting to the board at the next scheduled meeting;

(b) Supervise[Oversee] the administrative functions of the board; and

(c) Perform other reasonable duties delegated to the ~~secretary or~~ executive secretary by the ~~president or the~~ board.

Section 2. The board may employ a field coordinator as a part of the regular staff of the board. The field coordinator shall be paid a salary as the board may determine.

(1) The field coordinator may be a member of the board, except that the president or executive secretary, as referenced in KRS 312.055(1), shall not serve as field coordinator.

(2) The field coordinator shall:

(a) Investigate complaints against licensees referred ~~to him~~ by the board for investigation and report ~~his~~ findings to the board;

(b) Not vote on any matter relative to formal or informal complaints against any licensee if:

1. Any of the charges were investigated by him in the capacity of field coordinator; and

2. The field coordinator is a board member; and

(c) Perform other reasonable duties as are delegated ~~to him~~ by the ~~president or by the~~ board.

(3)(a) If the field coordinator is a member of the board, following ~~the~~ ~~his~~ appointment as field coordinator, he ~~or she~~ shall serve until the conclusion of his term of appointment as a member of the board.

(b) A member who has been appointed to the position of field coordinator, who is reappointed to the board following the expiration of ~~the~~ ~~his~~ original term, shall continue in the position of field coordinator until a successor is appointed, and accepts and assumes the duties of the position.

(c) A person appointed as field coordinator may be reappointed by the board to the position.

(4) The administrative staff shall assist the board in the performance of its duties and shall:

(a) Keep an accurate and up-to-date file of all licensees of the

board, including:

1. Addresses, e-mail addresses, and telephone numbers;
  2. Status as to whether or not they are in active practice or are inactive;
  3. Whether a licensee is in practice in this state or out of it;
  4. Documents establishing attendance at educational programs if ~~these/same~~ have been requested by the board;
  5. All fees paid by licensees; and
  6. Providing to the board, at least once each year, the names of licensees who are delinquent in the payment of fees or attendance of educational programs;
- (b) Transmit notices for renewal of licenses as provided by KRS 312.175(2);
- (c) Transmit notices of special meetings of the board; and
- (d) Attend to the correspondence and communications of the board.

Section 3. A member elected as president, vice president, ~~[secretary,]~~ or executive secretary shall serve in office for one (1) year. An officer may be reelected by the board. Officer elections shall take place at the last meeting of the calendar year and shall take effect the first meeting of the following calendar year.

Section 4. Salary and Per Diem Compensation. (1) ~~The executive secretary, if elected, shall receive a salary of \$1,100 per month.~~

(2) Board members shall receive \$100 per day for each day of actual service to the board.

Section 5. Financial Audit of Board Accounts. (1) The board shall cause, on a biennial basis, an independent financial audit of board accounts to be conducted and a report made to the board of the results~~[of same].~~

(2) The annual financial audit shall be conducted by the Kentucky Auditor of Public Accounts, or by an independent auditor qualified and licensed as a certified public accountant, and retained by the board,~~[to perform the audit,]~~ If the Auditor of Public Accounts declines to perform the audit, the board shall perform the audit.

(3) The audit shall be of the previous year's accounts, unless the board finds ~~[in its judgment]~~ that a broader audit is necessary~~[should be conducted],~~ and votes to conduct a broader audit by a majority of the board. The board vote shall define the scope of the audit sought.

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**BOARDS AND COMMISSIONS**  
**Board of Chiropractic Examiners**  
**(As Amended at ARRS, December 3, 2020)**

**201 KAR 21:045. Specialties.**

RELATES TO: KRS 312.015, 312.017, 312.019, 312.021

STATUTORY AUTHORITY: KRS 312.019, 312.021

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.021 requires the board to identify by administrative regulation those specialties of chiropractic for which certification may be granted and to establish by administrative regulation the procedure for obtaining and maintaining certification and the fees therefor. This administrative regulation establishes requirements for obtaining specialty certification~~[implements KRS 312.021].~~

Section 1. (1) A licensee in active practice and in good standing with the board who makes a written request to the board, provides proof of education, and pays the fee established in Section 3 of this administrative regulation shall be certified as a specialist in the licensee's field of certification, if the licensee holds certified or diplomate status with a certification granting entity.

(2) The certification or diplomate program shall be:

(a) Recognized by the American Chiropractic Board of Specialties or comparable authority with a comparable education level; and

(b) Within the scope of practice as established~~[defined]~~ by KRS 312.015 and 312.017.

(3) Specialties certified shall include those such as radiology, nutrition, orthopedics, neurology, and pediatrics as approved by the American Board of Chiropractic Specialties.

(4) The complete list of approved and certified specialties is available on the board's current Web site [at www.kbce.ky.gov].

Section 2. The applicant for certified status under Section 1 of this administrative regulation shall submit with the applicant's written request proof of current status with the specialty certificate issuing board. Certification by the board shall be for a stated period of time not exceeding one (1) year.

Section 3. ~~[The board may charge a reasonable fee for certification of specialties.]~~ The fees currently charged by the board are \$100 for certification of each specialty and thirty (30) dollars for annual renewal.

Section 4. Advertisement of Designation of Chiropractic Certifications. (1) Advertisement of chiropractic specialties shall include the word "chiropractic" with any specialty designation and conform to the standards established in 201 KAR Chapter 21~~[these administrative regulations].~~

(2) Any designation or certification not recognized by the board may only be advertised if:

(a) The designation or certification is not abbreviated, but is written out;

(b) The certifying or conferring college, university, or organization is named; and

(c) Proof of attainment of the advertised designation or certification is on file at the board office.

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**BOARDS AND COMMISSIONS**  
**Board of Chiropractic Examiners**  
**(As Amended at ARRS, December 3, 2020)**

**201 KAR 21:051. Board hearings.**

RELATES TO: KRS 312.150, 312.160, 312.163

STATUTORY AUTHORITY: KRS 312.019(5), (9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.109(5) authorizes the board to enforce and investigate violations. KRS 312.019(9) authorizes the board to promulgate administrative regulations consistent with KRS Chapter 312, governing the practice of chiropractic. KRS 312.150 authorizes disciplinary action to be taken against a licensee. KRS 312.160 requires a right to an appeal for a licensed person disciplined after a hearing. This administrative regulation establishes procedural guidelines for board hearings and the processing of complaints against a licensee.

Section 1. Complaints and Investigations. (1) A complaint may be made by any person, organization, or entity. A complaint made by a person, organization, or entity shall be in writing and shall be signed by the person offering the complaint. The complaint shall contain:

(a) The name, phone number, and address of the person making the charge and the name and address of the place of business of the person or persons against whom charges are made; and

(b) A clear and concise description of the issues of fact.

(2) Upon receipt of a complaint against a licensee, the board shall send a copy of the complaint to the licensee for a response.

(a) The complaint shall be sent to the last known address of

the licensee that the board has on file. Proof of mailing of the complaint to the licensee's last address on file shall constitute proof of service of the complaint.

(b) The licensee shall file a response within twenty (20) days from the date of the board's letter.

(c) The board shall review the complaint and the licensee's response before it determines if the nature and quality of the charges warrant dismissal, further investigation, or the initiation of a hearing.

(d) In making its determination, the board shall consider if the charges if proven would warrant sanction by the board.

(e) If the licensee fails to file a response within twenty (20) days of service of the complaint, the board may, **based on lack of good cause** in its discretion, treat such failure as a default by the licensee, which in this case shall be equivalent to a finding that the factual allegations of the complaint may be taken as true. The board shall also have the authority to grant extensions of time for filing of a response **based on the reason.**

(3) The board may proceed against a licensee on its own initiative either on the basis of information contained in its own records or on the basis of information obtained through its own investigation.

(4) The filing of formal charges shall require the affirmative vote of a majority of the board.

(5)(a) If the board finds that allegations against a licensee are insufficient for initiation of a formal disciplinary procedure, it shall dismiss the matter and notify all interested parties.

(b) If the board determines that disciplinary proceedings are appropriate, the board shall issue a notice of disciplinary action and inform the licensee of the specific reason for the board's action, including the:

1. Statutory or regulatory violation;
2. Factual basis on which the disciplinary action is based; and
3. Penalty to be imposed.

(c) The licensee, or the complainant may appeal the disciplinary action established/set forth in the notice of disciplinary action to the board. An appeal shall be made within twenty (20) days of the date of the board's notice.

1. A written request for an administrative hearing shall be filed with the board within twenty (20) calendar days of the date of the board's notice. This request shall be sent to the Board of Chiropractic Examiners by mail or delivery to [P.O. Box 183, Glasgow, Kentucky 42142 or by delivery to 905 South Green Street, Glasgow, Kentucky 42141.] the board's address as shown on the board's notice of disciplinary action.

2. If the request for a hearing is not timely filed, the notice of disciplinary action shall be effective upon the expiration of the time for the licensee to request a hearing.

(d) The board may resolve the matter informally through mediation or negotiation. Any agreed order reached through mediation or negotiation shall be approved by the board and signed by the individual who is the subject of the complaint, the individual's attorney, and the chair of the board.

Section 2. (1) The hearing shall be held in accordance with KRS Chapter 13B.

(2) The respondent shall ~~may~~ be entitled to a reasonable continuance of the hearing date, for good cause, as recommended to the board by the hearing officer.

(3) The board shall keep a record of the hearing at least for as long as the matter is pending for a decision or appeal, and for the duration of the disciplinary action.

(4) It shall take a majority of the board to sustain the charges against the respondent licensee. The hearing officer shall issue a recommended order pursuant to KRS Chapter 13B, which the board shall consider, along with any exceptions filed by the parties, before issuing a final order.

(5) If the board sustains some or all of the charges, the board shall by majority vote establish the sanction under law that/which it finds warranted. The order of the board shall be mailed to the parties [respondent] by certified mail, return receipt requested.

Section 3. Pursuant to KRS 312.160, the respondent may,

within thirty (30) days of receipt of the order, appeal to the Franklin Circuit Court. In the absence of an appeal, the order of the board shall be final at the expiration of the thirty (30) day period.

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## BOARDS AND COMMISSIONS

### Board of Chiropractic Examiners

(As Amended at ARRS, December 3, 2020)

201 KAR 21:055. Colleges and universities; accreditation, approval.

RELATES TO: KRS 312.019(2), (9)(b), 312.085

STATUTORY AUTHORITY: KRS 312.019(9)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.019 ~~requires/provides that~~ the board to/shall pass upon the qualifications of applicants for a license. KRS 312.085 ~~requires/provides that~~ each applicant to/shall be a graduate of a chiropractic college or university that/which maintains a standard and reputability approved by the board. This administrative regulation establishes the requirements for board approval of educational institutions. ~~The purpose of this administrative regulation is to delineate the characteristics of institutions which are approved by the board.~~

Section 1. A person who makes application to the board to practice chiropractic shall be a graduate of a chiropractic college or university that shall be/which is accredited as required by KRS 312.085. In addition to accreditation, the chiropractic college or university shall offer a course of study, provide a faculty, and have a physical plant and facility which are approved by the board. The following minimum standards shall apply:

(1)(a) The chiropractic college or university shall have well-stated/well-stated goals and purposes to prepare the doctor of chiropractic as a competent health care provider, well-educated to diagnose and treat his patients and to render the augmentative treatment provided for by KRS 312.015.

(b) It shall have a course of study, an administration, teaching staff, a physical plant and facility capable of achieving these objectives.

(2)(a) The chiropractic college or university shall offer courses of instruction to teach and train its graduates, as established/set forth by the Council on Chiropractic Education, as doctors of chiropractic to diagnose and treat their patients and to render augmentative care.

(b) Courses offered shall include:

1. Anatomy;
2. Physiology;
3. Pathology;
4. Neurology;
5. Histology;
6. Hygiene;
7. Bacteriology;
8. Chemistry;
9. Chiropractic orthopedics;
10. Diagnoses;
11. Argumentative procedures, and use and effects of x-rays;

and

12. Chiropractic principles and practices.

(c) It shall require for graduation and completion the amount and quality of classroom instruction and ~~the~~ laboratory and clinical experience required of chiropractic colleges or universities by the Council on Chiropractic Education.

(d) The college or university shall also offer courses of continuing education on a postgraduate level.

(3)(a) ~~Seventy-five (75) percent of the members of the full-time faculty of the chiropractic college or university shall hold graduate degrees in the field of chiropractic or graduate degrees in the allied field in which they teach.~~

(b) A course for which credit is given shall be taught by a person who holds a degree in chiropractic or in the allied field in which he teaches.

(4)(a) The chiropractic college or university shall have exclusive possession of buildings adequate to accommodate the student body, faculty and administration, with classrooms, laboratories, clinic, library, research facilities and offices.

(b) The plant, grounds, equipment and facilities shall be maintained in a safe, sanitary, efficient and attractive condition.

(c) The chiropractic college or university shall fully comply with all applicable statutes, administrative regulations, ordinances and codes pertaining to health and safety.

Section 2. (1) Each chiropractic college or university shall engage in a comprehensive, active and ongoing self-evaluation program conducted by representatives from its administration, faculty and student body.

(2) A report of that evaluation shall be submitted to the board from the college or university upon written request of the board.

(3) The college or university shall also submit, upon written request by the board;

(a) Its catalog and supplemental materials and information sufficient to advise the board of the courses offered and the instructors thereof;

(b) The faculty and staff of the college or university, the courses they teach and the duties they perform, their educational attainment, professional memberships and professional positions held by them;

(c) The physical plant of the college or university, including the number and size of buildings, classrooms, libraries, laboratories, offices and clinic; the extent of laboratory training and clinical experience available to its students; the books and materials available in its library;

(d) The number of students at each level of educational attainment;

(e) The calendar of the college or university showing the beginning and ending dates of its terms, the vacation periods, the holidays observed, and the examination periods; and

(f) Any other information as may be requested by the board to assist it in evaluating the college or university and its ability to produce graduates qualified to diagnose and treat patients as doctors of chiropractic.

Section 3. (1) The board and any designees of the board shall have the right to inspect and observe any aspect of the educational program, plant and facilities of any chiropractic college or university which has a graduate or graduates to apply to be licensed by the board.

(2) Upon request of a college or university, the board shall designate an inspection team consisting of not more than five (5) members to inspect the college or university and to observe operations and to report its observations to the board with respect to the manner in which the college or university is complying with the standards set forth or alluded to in this administrative regulation.

(3) The expenses of the inspection team and reasonable compensation for members of the inspection team who are not members of the board shall be paid by the requesting college or university.]

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**BOARDS AND COMMISSIONS**  
**Board of Chiropractic Examiners**  
**(As Amended at ARRS, December 3, 2020)**

**201 KAR 21:065. Professional advertising; seventy-two (72) hour right of rescission.**

RELATES TO: KRS 312.019(9)(g), 312.021, 312.991

STATUTORY AUTHORITY: KRS 312.019(9), 312.021(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.021(1) requires that[prohibits] advertising shall not be[that is] false, deceptive, or misleading. KRS 312.019(9)(g) authorizes the board to promulgate administrative regulations to regulate forms of advertising and authorizes the board to establish a seventy-two (72) hour rescission period for a consumer responding to certain forms of solicitation or advertising. This administrative regulation establishes limits of permissible professional advertising to safeguard the public from false or misleading statements and nuisance type advertising. This administrative regulation also establishes[defines] the forms of solicitation or advertising in which[wherein] the responding consumer shall be granted a seventy-two (72) hour rescission period.

Section 1. [Interpretation, application, and any disciplinary action taken pursuant to this regulation shall be at the sole discretion of the board as part of its statutory function of regulating the profession of chiropractic.]

Section 2.] A licensee may advertise chiropractic services through any medium if the advertisement is not false, deceptive, or misleading. (1) An advertisement shall include:

(a) If the business name used in the advertisement has the word "chiropractic" in it, then [no]additional information shall not be[is] required; or,.]Business name and address;

(b) Chiropractor's name;

(c) Telephone number;

(d) Expiration date of the advertisement, if any; and]

[b)](e) If the word "chiropractic" is not included in the name of the business, then the advertisement shall[must] contain the name of at least one (1) doctor in the office and clearly identify them as a doctor of chiropractic, or clearly state in some manner that the office is a chiropractic office. Words or letters designating the particular doctor degree held by the chiropractor. "D.C." shall designate a doctor of chiropractic.

(2) Deviation from these requirements shall first be approved by the board.[]

(3) An advertisement offering a free or discounted service shall include complete a notice of the right of rescission, which notice shall not be smaller than ten (10) point font.[]

Section 2. Consumer Rights, Notice. (1) The board may choose, in accordance with this administrative regulation[in its sole discretion], to require a licensee to place a consumer notice of a seventy-two (72) hour right of rescission on any advertisement offering a free or discounted service.

[a] A chiropractor advertising free or discounted services shall in any advertisement or solicitation provide the consumer with notice, in print of no less than ten (10) point font, of the seventy-two (72) hour right of rescission. The[Such] notice shall include information on the form and manner in which the patient shall[must] exercise the right of rescission.

(2)(a) Within ten (10) days of a notice of rescission, the chiropractor shall tender to the consumer any payment made by the consumer prior to the rescission for an unadvertised service performed.

(b) If payment had not yet been made by the consumer for an unadvertised service, the consumer's account shall not be billed for that service.

(3)(a) In order to be effective, the notice of rescission shall be given by the consumer to the chiropractor within seventy-two (72) hours of the completion of the advertised free or discounted service or agreement to submit to a series or course of treatments.

(b) The notice shall be:

1. In writing; and
2. Express the intention of the consumer to rescind his or her obligation.
- (c) If notice of rescission is given by mail, it shall be effective if it:
  1. Is properly addressed;
  2. Has sufficient postage affixed; and
  3. Is postmarked.

Section 3. (1) A written advertisement may be sent or delivered to an individual addressee only if ~~[(a) That addressee is one (1) of a class of persons, other than a family, to whom it is also sent or delivered at or about the same time; and (b)]~~ it is not prompted or precipitated by a specific event or occurrence involving or relating to the addressee or addressees as distinct from the general public.

(2) A licensee who advertises a fee for routine services and accepts the employment shall perform the services for the amount advertised, and a statement to that effect shall be included in every advertisement in which a fee is listed.

Section 4. If a complaint is filed with the board regarding an advertisement of a licensee, the board shall request, and the licensee shall submit[furnish], a copy of the advertisement, including audio or video if the advertisement is in audio or video[such] medium.[

~~Section 5. Advertisement of Designation of Chiropractic Certifications.~~

~~(1) Advertisement of chiropractic specialties as established in 201 KAR 21:045 shall include the word "chiropractic" with any specialty designation and conform to the standards established in this administrative regulation.~~

~~(2) Any designation or certification not recognized by the board may only be advertised if:~~

~~(a) The designation or certification is not abbreviated, but is written out;~~

~~(b) The certifying or conferring college, university, or organization is named; and~~

~~(c) Proof of attainment of the advertised designation or certification is on file at the board office.]~~

Section 5[6]. A licensee shall post his or her name on the premises where a chiropractic service is being offered, and the name(s) of all associate licensees who practice chiropractic on the premises. ~~[and the posted name]~~ The posted names shall be clearly visible to the public at the entrance to the premises, or on a sign visible outside of the premises, that offers the delivery of chiropractic services

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**BOARDS AND COMMISSIONS**  
**Board of Chiropractic Examiners**  
**(As Amended at ARRS, December 3, 2020)**

**201 KAR 21:075. Peer review committee procedures and fees.**

RELATES TO: KRS 312.200

STATUTORY AUTHORITY: KRS 312.015, 312.019, 312.200

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.200 requires the board to appoint a peer review committee and establish procedures and fees for the review of submitted claims. This administrative regulation establishes fees and procedures pertaining to the peer review committee.

Section 1. Peer Review Committee. (1) The board shall appoint a Peer Review committee of up to four (4) members. [Subject to the below regulation,] All members of the peer review committee may[shall] serve a three (3) year term.

(a) Each member of the Peer Review committee shall serve until their successor is appointed and qualified.

(b) Appointments to fill vacancies shall be for the unexpired term.

(c) Applicants for appointment to the Peer Review committee shall make application on the same form utilized by applicants for appointment to the board, except filed with the board and not the Governor's office, and shall include a cover letter stating that the application is for the Peer Review Committee.

(2) Members of the Peer Review committee shall be doctors of chiropractic of integrity and ability who at the time of their appointment have been actual residents of the Commonwealth of Kentucky for at least two (2) years next preceding their appointment, and have been engaged in the actual practice of chiropractic for at least five (5) years next preceding their appointment.

(3) Any member of the peer review committee shall not hold an elected position in any state organization or association relating to or consisting of licensees of this board[,], or the practice of chiropractic.

(4)(a) Beginning on March 1,[in] 2021, the longest-serving member on the Peer Review committee shall be replaced by a member with a three (3) year appointment.

(b)[,] In 2022, the next longest-serving member of the Peer Review committee shall be replaced by a member with a three (3) year appointment.

(c)[,] In 2023, the next longest-serving member on the Peer Review committee shall be replaced by a member with a three (3) year appointment.

(d)[, and] In 2024, the next longest-serving member shall be replaced by a member with a three-year appointment.

(e) Thereafter, each appointee to the Peer Review committee shall be appointed to a three (3) year term.

(f) This subsection shall[provision does] not prohibit any member of the peer review committee from serving consecutive terms.

Section 2. Procedures and Fees of Peer Review Committee.

(1) Peer review shall not take place until the patient has submitted a release permitting photocopies of the applicable treatment or billing records prepared by the chiropractor in the regular course of business.

(a) Treatment records shall not be released for peer review without the patient's authorization.

(b) The acceptance of, or the request for, payment by a chiropractor shall constitute the consent of the chiropractor to the submission of all necessary records and other information concerning the treatment or the cost to the peer review committee.[

~~(c) Six (6) copies of all records or other data shall be submitted to the committee.]~~

(2)(a) Each claim shall be assigned to an individual member of the committee who shall review the submitted records and response from the charged party and report his findings to the full committee, which shall review the findings and either adopt those findings or modify them as determined by majority vote.

(b) A copy of the findings shall be forwarded to the board, the patient, the chiropractor, and insurer or other third party payor.

(3)(a) The peer review committee shall elect a chair.

(b) The committee may recommend for the board's approval a contract with or employment of third parties to perform administrative functions or to aid in obtaining records necessary for appropriate review of claims.

(c)1. The peer review committee shall recommend to the board that a complaint be filed against a chiropractor if it appears from the review of a claim that reasonable cause exists to believe that the chiropractor has violated any portion of KRS Chapter 312 or 201 KAR Chapter 21 for which a chiropractor may be disciplined.

2. The peer review committee shall transmit all complaint information the committee possesses to the board.

(4)(a) A chiropractor, insurer, or other third party payor requesting review shall submit with the request a service fee of fifty (50) dollars payable to "B.C.E. Peer Review."

(b) An additional fee shall be charged for claims requiring more

than one (1) hour of review by the committee calculated at fifty (50) dollars per hour, which sum shall be due prior to the delivery of committee findings to all parties.

(c) All fees shall be paid by the chiropractor, insurer, or other third party payor requesting the review.

(5) Each member of the peer review committee shall comply with the requirements and standards established in 201 KAR 21:095.

Section 3. [2.] Annual Report. (1) An annual summary of the findings of the peer review committee shall be prepared by the committee and submitted to the board.

(2) The report shall be made available to interested persons upon request and upon payment of the cost of reproduction.

(3) A report or summary submitted to the public by the board shall not disclose the name or identity of any patient without the patient's consent.

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**BOARDS AND COMMISSIONS**  
**Board of Chiropractic Examiners**  
**(As Amended at ARRS, December 3, 2020)**

**201 KAR 21:085. Preceptorship Program.**

RELATES TO: KRS 312.019(9)(h), 312.085(2)

STATUTORY AUTHORITY: KRS 312.019(9), 312.085(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 312.019(9)(h) and 312.085(2) authorize the board to establish a preceptorship program through which students at accredited colleges and universities may work at the direction and under the supervision of a licensed doctor of chiropractic prior to graduation. This administrative regulation establishes the preceptorship program.

Section 1. Requirements of Preceptor. A preceptor shall:

(1) Be approved by the Kentucky State Board of Chiropractic Examiners for participation;

(2) Have a current Kentucky license that is active and in good standing;

(3) Have been in practice for five (5) years or more in Kentucky;

(4) Provide evidence of malpractice insurance;

(5) Be of good moral character, proof of which shall be evidenced by at least three (3) letters of reference from persons outside the licensee's family;

(6) Not practice while impaired by alcohol or narcotics;

(7) Have not been found in violation of a requirement of 201 KAR Chapter 21, other than for a minor advertising violation, for the preceding two (2) years and have no present investigations (including during a term as preceptor) for possible violations; and

(8) Comply and be qualified as applicable. The board shall encourage development of ex-tension faculty designation for all preceptors approved by the colleges or university.

Section 2. Preceptor Relationship with College or University and Intern. (1) The preceptor shall make a joint application to the board and the college or university.

(2) The preceptor shall arrange or confer with the college or university representative prior to the beginning date of each session to plan the program duration, organization, and substance.

(3) ~~The preceptor shall~~is required to maintain any records and reports related to the student's performance in compliance with the standards established/set forth by the Council on Chiropractic Education and the college or university the student attends. ~~[Upon assignment, the preceptor shall maintain complete records and reports of each student's performance and provide an evaluation to the college or university on forms provided by the college or university.]~~

(a) ~~Any incident reports related to the operation of the~~

~~practicum education experience shall be maintained by the preceptor and shall be the sole property of the preceptor.~~

~~(b) Upon receipt of written consent by the college or university, board, or student, the preceptor shall provide a copy of the report.]~~

(4)(a) The preceptor may request the college or university to withdraw any student whose performance is unsatisfactory or whose health status prevents the student's successful completion of the practicum education assignment.

(b) A statement, in writing, of the reason for that action shall be provided by the preceptor to the college, university, or student upon request.

(5) The preceptor shall not be liable for the payment of any wage, salary, or compensation of any kind for services properly required of and performed by an intern.

(6) The preceptor shall provide the college or university with a written code of ethics that applies to the preceptor's office.

(7)(a) The preceptor shall ensure that interns shall be~~are~~ allowed to perform only those duties that are lawful and ethical in the practice of chiropractic.

~~(b) An intern shall not make a final diagnosis or perform an adjustment.]~~

(8)(a) The preceptor shall assume the risk of any accident or injury to any intern while on preceptor's premises, which shall include working areas.

(b) The preceptor shall maintain premises liability insurance.

Section 3. Requirements of Intern. (1) The intern shall submit a fee of \$200 to the board for each semester he or she is participating in the preceptorship program.

(2) The intern shall remain in good standing academically and demonstrate an acceptable level of performance, both quantitatively and qualitatively, in the college or university outpatient clinic.

(3) The intern shall complete, sign, and submit all application materials from the internship program to the college or university clinic director for verification and approval.

(4) The intern shall serve in the preceptorship program for a term established by the college or university for the purpose of augmenting his competence in all areas of chiropractic practice.

(5) The intern shall provide both the college or university and the preceptor with a current telephone number and address.

(6) The intern shall be responsible for following all reasonable and lawful policies and procedures of the preceptor's office.

(7) The intern shall be responsible for providing and wearing professional attire.

(8) The intern shall be responsible for his own transportation and living arrangements.

(9) The intern shall report to the preceptor on time.

(10) The intern shall not submit for publication any material relating to his preceptorship without prior written approval of the preceptor and the college or university.

(11) The intern shall make such~~reports~~ as required by the Council on Chiropractic Education and the college or university under which the preceptorship is conducted. ~~[ensure that biweekly reports shall be submitted by the preceptor to the college or university on his or her activities and progress.]~~

~~(12) At the completion of the preceptorship, the intern shall present to the college or university clinic director a paper describing his or her experiences and summarizing the acquisition of knowledge during the preceptorship.]~~

~~(12)(13)~~ The intern shall provide evidence of professional liability insurance from the college or university.

~~(13)(14)~~ The intern shall respond to any inquiry by the board within twenty (20) days.

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**PUBLIC PROTECTION CABINET**  
**Office of the Secretary**  
**(As Amended at ARRS, December 3, 2020)**

**802 KAR 1:010. Tax appeal procedures.**

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

STATUTORY AUTHORITY: KRS 49.020, 49.220(1)

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

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

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

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

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

(a) An untimely appeal shall be dismissed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) By mail to the address listed above; or

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

(2) Service.

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

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

2. The method of service used.

(b) Service upon a party shall be made by delivering a copy to the attorney or party, by electronic mail, or by mailing it to the attorney or party at the last known address. Service is complete upon mailing, unless the serving party learns or has reason to know that it did not reach the person to be served. Service by electronic mail shall be considered complete when sent if properly addressed. Documents filed by electronic mail shall be considered received when sent if properly addressed. [Rules Applicable to All Filings. (1) Filings. All documents shall be filed by mail, electronic mail to taxappeals@ky.gov, or in person. Documents filed by electronic mail shall be considered received when sent if properly addressed.

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

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

(2) Timing. The initial petition of appeal shall be received by the commission within thirty (30) days of the date of mailing of the final ruling, order, or determination of the agency of state or county government that is the subject of the appeal.

(a) An untimely appeal shall be dismissed.

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) An individual who is not an attorney shall not be permitted



to represent any other individual or legal entity who is a party to an appeal.

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

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

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

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

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

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

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

(4)[(3)] If a party fails to comply with an order regarding discovery, the board [commission] or hearing officer may order that the:

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

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

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

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

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

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

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

(2) A prehearing or status conference may be used to set a hearing date, discuss jurisdictional matters, settlement possibilities, discovery, preparation of stipulations, clarification of issues, rulings

on witnesses, taking of evidence, issuance of subpoenas, mediation, and other matters that will promote the orderly and prompt conduct of the hearing.

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

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

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

(a) [(1)] Prehearing summary that contains a:

1. [(a)] Summary of the party's position on any issue of fact in dispute;

2. [(b)] Summary of the party's position on any issue of law raised by the appeal; and

3. [(c)] Written statement of facts to which the party agrees and any facts which [that] a party does not dispute;

(b) [(2)] List of the names, addresses, and phone numbers (if known) of all witnesses the party expects to call to testify as a witness at the hearing; [and]

(c) [(3)] Copy of all exhibits that the party intends to introduce at the hearing;

(d) Proposed findings of fact and conclusions of law; and

(e) Proposed final order if the appeal is heard by the board, or a proposed recommended order if the appeal is heard by a hearing officer.

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

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

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

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

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

(4) The moving party shall file a motion that:

(a) Asserts that there are no disputed material facts as to one (1) or more of the issues before the board [commission] or hearing officer;

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

responses, or deposition testimony;]

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

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

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

1. Submit an acknowledgment that there are no disputed material facts;

2. Submit a response stating that a material fact is in dispute, along with any affidavit, discovery response, or deposition testimony that shows the material fact in dispute. Facts stated in the petition of appeal and any document or exhibit attached thereto may be relied upon as undisputed material facts by the appellee; and

3. Attach all legal authorities that support the opposing party's position on any legal issue.]

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

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

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

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

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**PUBLIC PROTECTION CABINET**  
**Office of the Secretary**  
**(As Amended at ARRS, December 3, 2020)**

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

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

STATUTORY AUTHORITY: KRS 49.020(5)

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 2020-708 ("Order") requires that the Kentucky Claims Commission be abolished and that the Board of Claims, and the Office of Claims and Appeals be established. The Order also sets forth the powers and duties of the Board of Claims and the Office of Claims and Appeals and authorizes the board to promulgate emergency regulations necessary to carry out the provisions and purposes of the Order and the board's statutory authority. KRS 49.020(5) authorizes the board [commission] to promulgate administrative regulations that are necessary to carry out the provisions and purposes of the board's statutory authority. KRS 49.220(1) authorizes the board [commission], with exclusive jurisdiction, to investigate, hear proof, and to compensate persons for damages sustained to either person or property as a proximate

result of negligence on the part of the Commonwealth, any of its cabinets, departments, bureaus, or agencies, or any of its officers, agents, or employees while acting within the scope of their employment by the Commonwealth or any of its cabinets, departments, bureaus, or agencies. This administrative regulation establishes the [requirements and] procedures [for filing and adjudicating negligence] governing these claims[under the jurisdiction of the commission and the method of pleading and practice before the commission].

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

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

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

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

(2) The amount of the claim; and

(3) A statement of the facts that:

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

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

(4) The signature of [its signed by] the claimant and counsel for claimant, if any. [

(1) A claim shall:

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

(b) Contain:

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

2. The amount of the claim; and

3. A statement of the facts that:

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

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

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

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

(b) By mail to the address listed above; or

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

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

(2) Service.

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

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

2. The method of service used.

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

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

(a) On agreement of the parties; or

(b) Upon a showing of good cause.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Agreement of the parties; or

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

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

(a) Enter a show cause order;

(b) Recommend an [A-recommended] order of dismissal;[;]

or

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

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

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

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

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

(2) If the response filed by the agency denies negligence in a claim requiring a hearing pursuant to KRS 49.090(3), a hearing

officer shall be assigned, and notice of the [such] assignment shall be provided to the parties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) ~~[The]~~ Claim be dismissed or relief be granted as requested by the opposing party;

(d) ~~[The]~~ Claim be stayed until the order is obeyed; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) No judicial appeal has been filed.

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

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## **PUBLIC PROTECTION CABINET**

### **Office of the Secretary**

**(As Amended at ARRS, December 3, 2020)**

#### **802 KAR 3:010. Crime victims compensation.**

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

STATUTORY AUTHORITY: KRS 49.020, 49.300(1)

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

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

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

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

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

(2) A claim shall be filed ~~[by]~~:

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

(b) ~~By~~ mail to the address listed above; or

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

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

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

- (a) A notarized Employment Verification form; and
- (b) If requested by [the] board [commission] staff:
  - 1. A Physician Statement form; or
  - 2. A Mental Health Counselor's Report form.

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

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

- (a) All itemized medical charges for which the [that] victim seeks compensation; and
- (b) The victim's services covered by medical assistance as reported in KMAP.

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

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

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

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

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

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

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

**PUBLIC PROTECTION CABINET**  
**Department of Alcoholic Beverage Control**  
**(As Amended at Interim Joint Committee on Licensing,**  
**Occupations, and Administrative Regulations, December 14,**  
**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 [a] manufacturer [a] 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.

**Section 9. Incorporation by Reference. (1) "Online Direct Shipper License Application". December 2020, is incorporated by reference.**

**(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Department of Alcoholic Beverage Control, 500 Mero Street, 2 NE 33, Frankfort, KY 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.**

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 Insurance  
Agent Licensing Division  
(As Amended at ARRS, December 3, 2020)**

**806 KAR 9:030. Adjuster licensing restrictions.**

RELATES TO: KRS 304.9-020, 304.9-430, 304.9-432(2)(d), 304.9-440

STATUTORY AUTHORITY: KRS 304.2-110(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner of the Department of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation restricts the persons whom an adjuster may represent to prevent conflicts of interest, and clarifies the circumstances under which the restriction for holding only one (1) apprentice adjuster license applies.

Section 1. (1) An independent, staff, or public adjuster licensed pursuant to KRS 304.9-430 [the Kentucky Insurance Code] shall not represent the interest of both insurer and the insured or claimant.

(2) When applying for an adjuster license, an applicant shall elect to act solely on behalf of either:

(a) Insurers; or

(b) Persons claiming benefits under insurance or annuity contracts.

(3) A licensed adjuster shall act in a fiduciary capacity on behalf of his or her principal.

Section 2. An individual may hold only one (1) apprentice adjuster license until the individual is issued an adjuster license in accordance with KRS 304.9-430. Once an individual has held an adjuster license in accordance with KRS 304.9-430, the individual may again be eligible to hold one (1) apprentice adjuster license.

Section 3. Temporary Adjuster Registration for Catastrophe. Insurers seeking to temporarily register emergency independent or staff adjusters if there is a catastrophe under KRS 304.9-430(14) shall submit to the commissioner [the] Form 8307, Request for Unlicensed Adjuster Representing an Insurer to Adjust Losses Resulting from a Catastrophe.

Section 4. Incorporation by Reference. (1) "Request for Unlicensed Adjuster Representing an Insurer to Adjust Losses Resulting from a Catastrophe, Form #8307", (05/2019)[07/2020][05/2019], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law at the Kentucky Department of Insurance, Mayo-Underwood Building, 500 Mero Street [215 W. Main St.], Frankfort, Kentucky, Monday through Friday, 8:00 a.m. to 4:30 p.m.

CONTACT PERSON: DJ Wasson, Deputy Commissioner, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email dj.wasson@ky.gov.

**PUBLIC PROTECTION CABINET  
Department of Insurance  
Agent Licensing Division  
(As Amended at ARRS, December 3, 2020)**

**806 KAR 9:190. Disclosure requirements for financial institutions authorized to engage in insurance agency activities.**

RELATES TO: KRS 286.3-030(4), 304.9-135

STATUTORY AUTHORITY: KRS 304.9-135(2)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.9-135(2)(g) requires the Commissioner to promulgate administrative regulations to specify the disclosure forms required by KRS 304.9-

135(2)(b), (c), and (f). This administrative regulation specifies the disclosure forms for use by financial institutions authorized to engage in insurance agency activities.

Section 1. A financial institution authorized by law to engage in insurance agency activities shall provide to an insurance consumer the disclosure forms:

- (1) Notice of Free Choice of Agent and Insurer; and
- (2) Financial Institution Disclosures.

Section 2. **The disclosure form, Model Privacy Forms and General Instructions as incorporated by reference in 806 KAR 3:210, may be used to provide the disclosure required under KRS 304.9-135(2)(c).**

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

- (a) FI-02, "Notice of Free Choice of Agent and Insurer", (12/8/2020 edition) [(7/2002-edition)]; and
- (b) FI-03, "Financial Institution Disclosures", (7/2002/8/2020 edition) [(7/2002-edition)].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, Mayo-Underwood Building, 500 Mero Street [245 West Main Street], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: DJ Wasson, Deputy Commissioner, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email dj.wasson@ky.gov.

**PUBLIC PROTECTION CABINET  
Department of Insurance  
Agent Licensing Division  
(As Amended at ARRS, December 3, 2020)**

**806 KAR 9:370. Preneed funeral agent license.**

RELATES TO: KRS 304.1-050/204.1-050(2), 304.4-010, 304.9-020(1), 304.9-080, 304.9-150, 304.9-230, 304.9-260 304.12-240(1)(a) [1]

STATUTORY AUTHORITY: KRS 304.2-110, 304.9-230 [1]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.9-230 authorizes the commissioner to issue an agent's license with the limited line of authority for other limited lines of authority, and requires the commissioner to promulgate administrative regulations to establish the requirements, if any, for pre-licensing courses of instruction and examination for each limited line of authority. This administrative regulation establishes the preneed funeral limited line of authority and the requirements for licensure.

Section 1. Definitions.

- (1) "Agent" is defined by/in KRS 304.9-020(1).
- (2) "Department" is defined by/in KRS 304.1-050(2).
- (3) "Preneed funeral contract or prearrangement" is defined by/in KRS 304.12-240(1)(a).
- (4) "Preneed funeral insurance" means a life insurance or annuity contract used solely to fund a preneed funeral contract or prearrangement.

Section 2. An agent license with a limited line of authority for preneed funeral insurance shall only sell, solicit, or negotiate preneed funeral insurance with a face amount that does not exceed \$25,000.

Section 3. License Application. To apply for an agent license with a preneed funeral [insurance] limited line of authority, an applicant shall submit to the department the following information:

- (1) (a) For individual applicants, Form 8301, incorporated by

reference in 806 KAR 9:025, including all applicable attachments; and

(b) For business entity applicants, Form 8301-BE, incorporated by reference in 806 KAR 9:025, including all applicable attachments; [and]

(2) **A completed background check through the Kentucky Administrative Office of the Courts; and**

**(3) The corresponding fees established by 806 KAR 4:010.**

Section 4. Pre-licensing training. An applicant for an agent license with a preneed funeral [insurance] limited line of authority shall not be required to complete pre-licensing training.

Section 5. Examination. An applicant for an agent license with a preneed funeral [insurance] limited line of authority shall not be required to complete an examination.

Section 6. License renewal. An agent with a preneed funeral [insurance] limited line of authority shall renew in accordance with KRS 304.9-260.

CONTACT PERSON: DJ Wasson, Deputy Commissioner, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email dj.wasson@ky.gov.

**PUBLIC PROTECTION CABINET  
Department of Insurance  
Health and Life Division  
(As Amended at ARRS, December 3, 2020)**

**806 KAR 12:170. Life insurance disclosures.**

RELATES TO: KRS 304.12-010, 304.12-020, 304.12-230

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. This administrative regulation establishes requirements for insurers to deliver information to purchasers of life insurance that is designed to improve the buyer's ability to select the most appropriate plan of life insurance for the buyer's needs and improve the buyer's understanding of the basic features of the policy that has been purchased or is under consideration.

Section 1. Definitions. (1) "Buyer's Guide" means the current Life Insurance Buyer's Guide published by the National Association of Insurance Commissioners [~~Commonwealth of Kentucky Department of Insurance~~].

(2) "Current scale of nonguaranteed elements" means a formula or other mechanism that produces values for an illustration as if there is no change in the basis of those values after the time of illustration.

(3) [(2)] "Generic name" means a short title that is descriptive of the premium and benefit patterns of a policy or a rider.

(3) "In force illustration" means an illustration furnished after the policy has been in force for one (1) year or more.

(4) "Nonguaranteed elements" means the premiums, credited interest rates, including any bonus, benefits, values, non-interest based credits, charges, or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue. An element is considered nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.

(5) "Policy data" means a display or schedule of numerical values, both guaranteed and nonguaranteed, for each policy year or a series of designated policy years of the following information:

- (a) Illustrated annual, other periodic, and terminal dividends;
- (b) Premiums;
- (c) Death benefits; and
- (d) Cash surrender values, outstanding policy loans, current policy loan interest rate, and endowment benefits.

(6) "Policy summary" means a separate document describing the elements of the policy and complying with the requirements established in Section 3 of this administrative regulation.

Section 2. Application. (1) Except as provided in subsection (2) of this section ~~[of this administrative regulation]~~, this administrative regulation shall apply to:

(a) A solicitation, negotiation, or procurement of life insurance occurring within this state; and

(b) An issuer of life insurance contracts including fraternal benefit societies.

(2) This administrative regulation shall not apply to:

(a) Individual and group annuity contracts;

(b) Credit life insurance;

(c) Group life insurance;

(d) Life insurance policies issued in connection with pension and welfare plans that[which] are subject to the federal Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. Section 1001 et seq. as amended; or

(e) Variable life insurance under which the amount or duration of the life insurance varies according to the investment experience of a separate account.

Section 3. Policy Summary. A policy summary shall describe the elements of the policy including the following:

(1) A permanently placed title stating: "STATEMENT OF POLICY COST AND BENEFIT INFORMATION";

(2) The name and address of the insurance agent or, if an agent is not involved, a statement of procedure to be followed in order to receive responses to inquiries regarding the policy summary;

(3) The full name and home office or administrative office address of the life insurance company issuing the policy;

(4) The generic name of the basic policy and each rider;

(5) The following amounts shall be listed in total, not on a per thousand or per unit basis and, if applicable for the first ten (10) policy years and representative policy years thereafter, the amounts shall be listed sufficiently to clearly illustrate the premium and benefit patterns, including at least an age from sixty (60) through sixty-five (65) and policy maturity:

(a) The annual premium of the basic policy;

(b) The annual premium for each optional rider;

(c) 1. The amount payable upon death at the beginning of the policy year pursuant to the basic policy with additional benefits for each rider shown separately.

2. If more than one (1) insured is covered pursuant to one (1) policy or rider, death benefits shall be displayed separately for each insured or for each class of insured's if death benefits do not differ within the class;

(d) The total guaranteed cash surrender values at the end of the year with values shown separately for the basic policy and each rider; and

(e) Endowment amounts payable pursuant to the policy that are not included pursuant to the cash surrender values described in this subsection;

(6)(a) The effective policy loan annual percentage interest rate, if the policy contains this provision, specifying whether the rate is applied in advance or in arrears.

(b) If the policy loan interest rate is adjustable, the policy summary shall state that the annual percentage rate shall be determined in accordance with the provisions of the policy and the applicable law; and

(7) The date on which the policy summary was prepared.

Section 4. Duties of Insurers. (1) Requirements for new issues.

(a) 1. Except as provided in subparagraph 2, of this paragraph, the insurer shall provide the Buyer's Guide to each prospective purchaser prior to accepting the applicant's initial premium or premium deposit.

2. If the policy for which application is made contains an unconditional refund provision of at least ten (10) days, the Buyer's Guide may be delivered with the policy or prior to delivery of the policy.

(b) The insurer shall provide a policy summary to prospective purchasers in which the insurer shall identify the policy form as not marketed with an illustration.

1. The policy summary shall show guarantees only.

2. The policy summary shall consist of a separate document with all required information set out in a manner that does not minimize or render any portion of the summary obscure.

3. Amounts that remain level for two (2) or more years of the policy may be represented by a single number if it is clearly indicated what amounts are applicable for each policy year.

4. Amounts in Section 3(5) of this administrative regulation shall be listed in total, not on a per thousand or per unit basis.

5. If more than one (1) insured is covered under one (1) policy or rider, death benefits shall be displayed separately for each insured or for each class of insured if death benefits do not differ within the class.

6. Zero amounts shall be displayed as a blank space.

7. Delivery of the policy summary shall be consistent with the time for delivery of the Buyer's Guide as specified in paragraph (a) of this subsection.

(2) Requirements applicable to existing policies.

(a) Upon request by the policy owner, the insurer shall furnish the policy data or an in force illustration as follows:

1. For policies issued prior to January 1, 2008, the insurer shall furnish policy data, or, at its option, an in force illustration meeting the requirements of 806 KAR 12:140.

2. For policies issued on or[and] after January 1, 2008 and declared not to be used with an illustration, the insurer shall furnish policy data, limited to guaranteed values, if it has chosen not to furnish an in force illustration meeting the requirements of 806 KAR 12:140.

3. If the policy was issued on or[and] after January 1, 2008 and declared to be used with an illustration, an in force illustration shall be provided.

4. Unless otherwise requested, the policy data shall be provided for twenty (20) consecutive years beginning with the previous policy anniversary. [

**5. The insurer may charge a reasonable fee for the policy data, not to exceed ten (10) dollars.]**

(b) 1. If a life insurance company changes its method of determining scales of nonguaranteed elements on existing policies, it shall notify each affected policy owner of the change and its effect on the policy no later than the date of the first payment on the new basis.

2. The requirement established in subparagraph 1. of this paragraph shall not apply to policies for which the death benefit pursuant to the basic policy on the date of notice does not exceed \$5,000.

(c) If the insurer makes a material revision in the terms and conditions which will limit its right to change any nonguaranteed factor, it shall notify each affected policy owner of the change no later than the first policy anniversary following the revision.

Section 5. General Rules. (1)(a) Prior to commencing a life insurance sales presentation, an agent shall inform the prospective purchaser that the agent is acting as a life insurance agent.

(b) The agent shall inform the prospective purchaser, in writing, of the full name of the insurance company which the agent represents.

(c) In sales situations in which an agent is not involved, the insurer shall identify the insurer's full name.

(2)(a) An insurance producer marketing insurance products shall not use a title or designation, including "financial planner," "investment advisor," "financial consultant," or "financial counseling" to imply that the insurance producer is engaged in an advisory or consulting business in which compensation is unrelated to sales.

(b) This subsection shall not preclude:

1. A person recognized as having a financial planning or consultant designation from using the designation even if only selling insurance; or

2. Members of a recognized trade or professional association from having these terms as part of the organization's name from



citing membership. If authorized only to sell insurance products, a person citing membership shall disclose that fact.

(c) A person shall not charge an additional fee for services customarily associated with the solicitation, negotiation, or servicing of policies.

(3)(a) A reference to nonguaranteed elements shall include a statement that the item is not guaranteed and is based on the company's current scale of nonguaranteed elements.

(b) If a nonguaranteed element would be reduced by the existence of a policy loan, a statement to that effect shall be included in each reference to nonguaranteed elements.

Section 6. Failure to Comply. Failure of an insurer to provide or deliver the Buyer's Guide, an in force illustration, a policy summary, or policy data shall constitute an omission that misrepresents the benefits, advantages, conditions, or terms of an insurance policy.

Section 7. Effective Date. The requirements of this administrative regulation shall not be implemented or enforced prior to the effective date, determined pursuant to KRS 13A.330, or January 1, 2012, whichever is later.

Section 8. Incorporation by Reference. (1) "[The] Life Insurance Buyer's Guide, "National Association of Insurance Commissioners", 2018[Common-wealth of Kentucky", July 2011,] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Insurance, Mayo-Underwood Building, 500 Mero Street[245 West Main Street], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department's Web site at: <http://insurance.ky.gov/>.

CONTACT PERSON: DJ Wasson, Deputy Commissioner, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email [dj.wasson@ky.gov](mailto:dj.wasson@ky.gov).

**PUBLIC PROTECTION CABINET**  
Department of Insurance  
Financial Standards Division  
(As Amended at ARRS, December 3, 2020)

**806 KAR 30:010. [Application— for] License procedures[procedure].**

RELATES TO: KRS 304.3-230, 304.30-030  
STATUTORY AUTHORITY: KRS 304.30-070, 304.4-010  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.30-070 authorizes the commissioner[executive director] to make reasonable administrative regulations to effectuate subtitle 30 of the Kentucky Insurance Code and to regulate the manner in which licensed insurance premium finance companies conduct their business. This administrative regulation sets forth [application for] license procedures.

Section 1. Application for Original or Renewal License. Each application for an original or renewal license as an insurance premium finance company shall be made on the Application for License as an Insurance Premium Finance Company form[forms prescribed by the commissioner[executive director]]. It shall be accompanied by all required documents and the license fee provided by 806 KAR 4:010[KRS 304.4-010] which shall not be prorated. Each application for renewal of a license as an insurance premium finance company shall be made on or before May 1 of each year and shall be accompanied by the renewal fee provided by 806 KAR 4:010[KRS 304.4-010].

Section 2. Biographical Questionnaire. (1) Each application for an original license as an insurance premium finance company shall be accompanied by biographical information for the persons specified in this section on the Biographical Questionnaire for

Premium Finance Companies form[forms prescribed by the commissioner[executive director]]. A separate form shall be completed and executed:

(a)[(1)] In the case of a sole proprietor, by the sole proprietor;  
(b)[(2)] In the case of a partnership or limited partnership, by each partner or limited partner;

(c) In the case of a corporation, by each officer, director, and owner of more than ten (10) percent, directly or indirectly, of the outstanding shares of stock; and

(d)[(3)] In the case of any other business organization[a firm], by each member or holder of record or beneficial interest therein; and

(4) In the case of a corporation, by each officer, director, and owner of more than ten (10) percent, directly or indirectly, of the outstanding shares of stock].

(2)[(5)] Biographical questionnaires shall[need not] be filed with an application for renewal of a license if[unless] changes have taken place in the business organization involving individuals who have not previously filed the[such] questionnaire.

Section 3. Consent to Jurisdiction and Service of Process. Each applicant for a license and each person required to file the biographical questionnaire shall be deemed to have appointed the Secretary of State as its attorney to receive service of all legal process issued against it in this state upon causes of action arising within this state. Nothing contained herein shall preclude service by any other authorized method. Service upon the Secretary of State shall be made in the same manner as is provided under KRS 304.3-230 for service of process upon authorized foreign or alien insurers.

Section 4. Changes in Condition of Licensee. (1) If any licensee or any person who is a partner, member, supervisory employee, officer, director, or ten (10) percent stockholder of a licensee is convicted, by final judgment of a court, of a felony involving moral turpitude, the licensee[commissioner[executive director]] shall, within ten (10) days after such conviction, notify the commissioner[be advised] of the facts in detail by letter.

(2) The licensee shall notify the commissioner[executive director] immediately upon its discovery that it no longer meets the requirements of 806 KAR 30:080.

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

(a) Form 106, "Application for License as an Insurance Premium Finance Company", (10/2020); and

(b) Form 503, "Biographical Questionnaire for Premium Finance Companies", (10/2020).

(2) This material may be inspected, copied, or obtained subject to applicable copyright law, at the Kentucky Department of Insurance, Mayo-Underwood Building, 500 Mero Street, Frankfort, KY 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CONTACT PERSON: DJ Wasson, Deputy Commissioner, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email [dj.wasson@ky.gov](mailto:dj.wasson@ky.gov).

**PUBLIC PROTECTION CABINET**  
Department of Insurance  
Financial Standards and Examination Division  
(As Amended at ARRS, December 3, 2020)

**806 KAR 30:070. Books and records subject to inspection.**

RELATES TO: KRS 304.30-030, 304.30-060  
STATUTORY AUTHORITY: KRS 304.30-070  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.30-070 authorizes the commissioner [executive director] to make reasonable administrative regulations to effectuate Subtitle 30 of the Kentucky Insurance Code and to regulate the manner in which licensed insurance premium finance companies conduct their

business. This administrative regulation sets forth the records and recorded information subject to inspection by the commissioner [Executive Director].

Section 1. Books and Records. (1) Records shall be preserved for the time period set forth in KRS 304.30-060(2). [Until payment under the agreement is made in full.] Every licensee shall maintain [file] each premium finance agreement or duplicate originals [thereof,] and all original documents relating to the premium finance agreement. [thereto] [except those papers returned to the insured. The premium finance agreement and all original documents relating to the premium finance agreement shall:

(a) Include a common identifying number; and  
(b) Be available for inspection by the department at any time. [} so as to be readily available for inspection at any time. All such papers and instruments shall bear a common identifying number.]

(2) Every licensee shall maintain a register, ledger, or combination of records containing a summary of premium finance agreements acquired, other than pursuant to a pledge, which can readily show:

(a) The date of acquisition;  
(b) The name of the insured;  
(c) The identifying number;  
(d) The principal balance;  
(e) The amount of service charge;  
(f) The balance payable by the insured;  
(g) A distribution of proceeds showing the dates, amounts, purposes, and names of the person to whom any part of the proceeds is distributed; and

(h) The application of any part of the proceeds to an unpaid balance due on an existing premium finance agreement which is terminated by refinancing agreement.

(3) Every licensee shall maintain a record which will readily disclose at any time the aggregate number and outstanding time balances of all premium finance agreements held by it, other than pursuant to a pledge.

(4) Every licensee shall maintain an individual ledger card or appropriate combination of records with respect to each premium finance agreement showing:

(a) The name and address of the insured;  
(b) The identifying account number;  
(c) The name of the agent or broker;  
(d) The amount of the principal balance;  
(e) The date of acquisition;  
(f) The name or names of the insurers and the policy number of the related insurance contracts;

(g) The date from which the service charge is payable and whether the [such] date is the effective date of the insurance coverage or some other later date;

(h) The service charge;  
(i) The balance payable by the insured; and  
(j) Schedule of required payments.

(5) The ledger card shall also show all receipts setting forth their application to outstanding balances, delinquency, and other charges, if any, with the type of the [such] charge clearly specified.

(6) With respect to cancellation of insurance, the licensee shall record:

(a) The [the] effective date of the [such] cancellation;  
(b) The [the] date of notice to the insured; [and]  
(c) The [the] date of notice to the insurer;  
(d) The [There shall also be recorded the] amount of return premium received, if any; [; and]  
(e) The [the] disposition of any return premium received [thereof].

(7) In connection with the prepayment of a premium finance agreement, the ledger card shall show the amount of service charge refund required to be made and the date such refund is made.

(8) With respect to any premium finance agreement, whether charged off or not, upon which legal proceedings have been taken, every licensee shall clearly indicate in permanent form on the insured's ledger card or on a separate sheet or card or file bearing

the identifying account number, the following:

(a) The date of referral to an outside counsel for collection;  
(b) The date and terms of any settlement agreed upon or the results of any legal or summary action taken for or against the licensee; and

(c) The nature or any collection expense incurred by the licensee in connection with litigation and charged to or paid by the insured or other obligor.

(9)(a) Except as noted in paragraph (b) of this subsection, records [Records] bearing any notation made in conformity with subsection (8) of this section shall be kept in a binder or file separate from other records.

(b) The [; provided, however, that the] record of [as to] a premium finance agreement which has been paid in full, [or] which is current as to payments, or concerning which a decision has been officially made to abandon collection efforts of every kind, may be placed elsewhere.

(c) If the licensee engages in any other business, the records relating to the insurance premium finance business shall be kept separate from the records of any other business.

Section 2. Annual Report. Prior to May 1 of each year, each licensee shall furnish to the commissioner [Executive Director] a completed [form, entitled "Annual Report of [Insurance] Premium Finance Companies[Company],"] filed herein by reference. Copies may be obtained from the Office of Insurance, 451 Elkhorn Court, P.O. Box 517, Frankfort, Kentucky 40602.]

Section 3. Incorporation by Reference. (1) "Annual Report of [Insurance] Premium Finance Companies[Company]" (07/2020) is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Insurance, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30 p.m.

CONTACT PERSON: DJ Wasson, Deputy Commissioner, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email dj.wasson@ky.gov.

**PUBLIC PROTECTION CABINET**  
**Department of Insurance**  
**Financial Standards and Examination Division**  
**(As Amended at ARRS, December 3, 2020)**

**806 KAR 52:010. Forms for application, security deposits and financial statements.**

RELATES TO: KRS 304.50  
STATUTORY AUTHORITY: KRS 304.50-010(2), 304.50-030(1), 304.50-050(1), (2), 304.50-060(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.50-010(2) requires the commissioner [executive director] to promulgate administrative regulations as necessary to govern admission, certification, and regulation of workers' compensation self-insured groups. KRS 304.50-030(1) requires a workers' compensation self-insured group seeking initial certification to file an application on a form approved by the commissioner [Executive Director]. KRS 304.50-050(1) requires a workers' compensation self-insured group to provide a security deposit to the commissioner [Executive Director] on a form prescribed by the commissioner [Executive Director]. KRS 304.50-050(2) authorizes[allows] trustees to file cash, cash equivalents, United States Treasuries or a bank letter of credit in satisfaction of the security deposit requirement, on a form prescribed by the commissioner [Executive Director]. KRS 304.50-060(4) requires workers' compensation self-insured groups to file statements of financial condition on a form prescribed by the commissioner [Executive Director]. This administrative regulation prescribes the required forms for application, security deposits, and financial statements.

Section 1. Definitions. (1) Commissioner is defined by/in] KRS 304.1-050(1) ["Executive Director" means the Executive Director of the Office of Insurance].

(2) Department is defined by/in] KRS 304.1-050(2) ["Office" means the Office of Insurance].

(3) "Self-Insured group" is defined by/in] KRS 304.50-015(29).

Section 2. (1) Pursuant to KRS 304.50-030(1), Form 100, Initial Application for Certificate of Filing As a Workers' Compensation Self-Insured Group, shall be completed and submitted to the commissioner [Executive Director] to apply for initial certification as a workers' compensation self-insured group.

(2) Pursuant to KRS 304.50-050(5), Form 141, Election Form for Designation of Custodian Bank for Safekeeping of Securities, shall be completed and submitted to the commissioner [Executive Director] to propose designation of a bank or trust company for the safekeeping of securities.

(3) Pursuant to KRS 304.50-050(2), Form 142, Letter of Credit, shall be completed and submitted to the commissioner [Executive Director] when issuing a letter of credit in satisfaction of the security deposit requirement for a workers' compensation self-insured group.

(4) Pursuant to KRS 304.50-050(2)[304.50(2)], Form 145, Transaction Sheet for Securities Held Under Safekeeping with Designated Custodian Banks, shall be completed and submitted to the commissioner [Executive Director] when transferring funds in or out of the Safekeeping Account and shall be approved by the commissioner [Executive Director] before the bank can complete the transfer.

(5) Pursuant to KRS 304.50-050(2)[304.50(2)], Form 826, Safekeeping Agreement for Workers' Compensation Self-Insured Groups, shall be completed and submitted to the commissioner [Executive Director] when the self-insured group initially sets up the security account or when a group transfers the security deposit to another bank.

(6) Pursuant to KRS 304.50-060(4), the Workers' Compensation Self-Insured Group Quarterly Statement (Blank), shall be completed and submitted to the commissioner [Executive Director] to file a quarterly statement of financial condition. Form 102, Trustee Confirmation of Receipt, shall be completed by each trustee of the workers' compensation self-insured group, acknowledging receipt of a copy of the quarterly statement of financial condition, and submitted to the Department [Office] of Insurance within forty-five (45)[seventy-five (75)] calendar days after the close of each quarterly reporting period.

(7) Pursuant to KRS 304.50-060(4), the Workers' Compensation Self-Insured Group Annual Statement (Blank), shall be completed and submitted to the commissioner [Executive Director] to file an annual statement of financial condition.

(8) Pursuant to KRS 304.50-050(1), Form 147, Deposit Calculation for Workers' Compensation Self-Insured Groups, shall be completed and submitted annually to the commissioner [Executive Director] to calculate the correct amount to be placed in the Safekeeping Account.

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

(a) "Form 100 - Initial Application for Certificate of Filing As a Workers' Compensation Self-Insured Group 7/2020[(2005)]";

(b) "Form 141 - Election Form for Designation of Custodian Bank for Safekeeping of Securities 7/2020[(2005)]";

(c) "Form 142 - Letter of Credit 7/2020[(2005)]";

(d) "Form 145 - Transaction Sheet for Securities Held Under Safekeeping with Designated Custodian Banks 7/2020[(2005)]";

(e) "Form 826 - Safekeeping Agreement for Workers' Compensation Self-Insured Groups 7/2020[(2005)]";

(f) "Workers' Compensation Self-Insured Group Quarterly Statement (Blank) 7/2020[(July 15, 2005)]";

(g) "Form 102 - Trustee Confirmation of Receipt 7/2020[(4/2005)]";

(h) "Workers' Compensation Self-Insured Group Annual Statement (Blank) 7/2020[(July 15, 2005)]"; and

(i) "Form 147 - Deposit Calculation for Workers' Compensation

Self-Insured Groups 6/2020 [(2005)]".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department [Office] of Insurance, Mayo-Underwood Building, 500 Mero Street, [215 West Main Street], Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. This material is also available on the Department[Office] of Insurance Internet Web site at https://insurance.ky.gov [http://doi.ppr.ky.gov/kentucky/].

CONTACT PERSON: DJ Wasson, Deputy Commissioner, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email dj.wasson@ky.gov.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Public Health**  
**Division of Epidemiology and Health Planning**  
**(As Amended at ARRS, December 3, 2020)**

**901 KAR 5:120. Abortion[Induced termination of pregnancy] reporting.**

RELATES TO: KRS 213.101, 213.106[61.870-61.884, Chapter 243], 311.595, 311.720, 311.774, 311.781, 311.782, 311.783[311.740-311.830]

STATUTORY AUTHORITY: KRS 194A.050(1), 213.021, 213.101(1), (7)[, (6)]

NECESSITY, FUNCTION AND CONFORMITY: KRS 194A.050(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of Kentucky citizens and to operate programs and fulfill the responsibilities vested in the cabinet. KRS 213.101(1) requires each abortion[induced termination of pregnancy] that occurs in the commonwealth to be reported to the Office of Vital Statistics. KRS 213.101(7)(6) requires the Office of Vital Statistics to promulgate administrative regulations to assist in compliance with that statute. This administrative regulation establishes the reporting criteria for abortions[induced termination of pregnancy].

Section 1. Definitions. (1) "Abortion" is defined by KRS 311.720(1).

(2) "Probable post-fertilization age" is defined by KRS 311.781(6).

(3) [means, in reasonable medical judgment and with reasonable probability, the age of the unborn child, as calculated from fertilization, at the time the abortion is performed or induced or attempted to be performed or induced.

(2) "Reasonable medical judgment" is defined by KRS 311.781(7).

(4) [means a medical judgement that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

(3) "Serious risk of the substantial and irreversible impairment of a major bodily function" is defined by KRS 311.781(8)[means any medically diagnosed condition that so complicates the pregnancy of the woman as to directly or indirectly cause the substantial and irreversible impairment of a major bodily function].

Section 2. Reporting. (1) A person or institution shall comply with the reporting requirements of KRS 213.101(1) and (2).

(2) The report shall be filed irrelevant of the gestational age or probable post-fertilization age of the fetus at the time of the abortion[induced termination].

(3) The report shall be made through the cabinet's electronic database or on VS-913, Report of Abortion[Induced Termination of Pregnancy].

(4) The report shall:

(a) Contain the information required to be certified in writing including the following[or determined by KRS 311.740-830][as follows]:

1. The probable post-fertilization age of the unborn child;
  2. Whether the abortion[termination] was necessary to prevent the death of the pregnant woman or to avoid a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman; and]
  3. The available methods or techniques considered and the reasons for choosing the method or technique employed;
  4. Whether the physician determined in his or her reasonable medical judgment that termination of the pregnancy in the manner selected provides the best opportunity for the unborn child to survive;
  5. If the physician did not choose the method of abortion that provides the best chance of survival for the unborn child, whether the pregnancy termination in that manner would have posed a greater risk of death of the pregnant woman or a greater risk of substantial and irreversible impairment of a major bodily function of the pregnant woman than other available methods of abortion; and
  6. Any complications known to the provider as a result of the abortion, as set forth in KRS 311.774(3)[method or technique utilized]; and
- (b) Not contain information that identifies the[which could identify a] physician, woman, or man involved.
- (5) Pursuant to KRS 213.106, a report shall be used in accordance with the provisions of KRS 213.101.

Section 3. Prescription Reporting. (1) In accordance with KRS 213.101(2), each prescription for a drug or combination of drugs for which the primary indication is the induction of abortion shall be reported within fifteen (15) days after the end of the month in which the prescription was issued.

(2) The report shall be made through the cabinet's electronic database or on VS-913P, Abortion Prescription Reporting Form.

(3) The report shall:

- (a) Contain the drug or combination of drugs prescribed; and
- (b) Not contain information that identifies the physician, woman, or man involved.

Section 4. Penalties. Failure to comply with the provisions of KRS 213.101(1) shall subject the reporting person or institution to the penalties provided in KRS 213.101[(4) and](5) and (6).

Section 5[4]. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form VS-913P, "Abortion Prescription Reporting Form", 4/2020; and

(b) Form VS-913, "Report of Abortion", 10/4/2020[Induced Termination of Pregnancy", 5/2017, is incorporated by reference].

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

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

## CABINET FOR HEALTH AND FAMILY SERVICES

### Department for Public Health

#### Division of Administration and Financial Management (As Amended at ARRS, December 3, 2020)

#### 902 KAR 8:170. Local health department financial management requirements.

RELATES TO: KRS 41.240(4), 45A.690, 211.180(1), 211.185, 211.186, 211.187, 212.025, 212.120, 212.245(3), (4), 212.890, 424.110-424.150, [Ky. Acts Ch. 21] 2 C.F.R. Part 200

STATUTORY AUTHORITY: KRS 194A.050(1), 211.170(1), (2), (3), (6)

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; or to comply with federal law. KRS 211.170(1), (2), (3), and (6) require the cabinet to establish policies and standards of operation; supervise financial, personnel, program, administrative and other functions; and allocate, modify, or cancel allotments of state funds for Kentucky's local health departments. This administrative regulation establishes minimum fiscal and financial management requirements for Kentucky's county and district local health departments and for all other classes of local health departments, except if a specific Kentucky revised statute requires a more stringent minimum requirement.

Section 1. Definitions. (1) "Core public health program" is defined by KRS 211.185(4). ["Agency" is defined by 2020 Ky. Acts ch. 21, sec. 1(1).]

(2) ["Core public health program" is defined by 2020 Ky. Acts ch. 21, sec. 1(4).]

(3) "Department" is defined by 2020 Ky. Acts ch. 21, sec. 1(5).

(4) "Fee-for-service program" means a program in which service fees, excluding program administration fees, are greater than fifty (50) percent of funding.

(5) "Foundational public health program" is defined by KRS 211.186(6) [2020 Ky. Acts ch. 21, sec. 1(6)].

(3) [(6)] "Local public health priorities" is defined by KRS 211.185(9) [2020 Ky. Acts ch. 21, sec. 1(9)].

(4) [(7)] [(2)] "Local support" means local health department financial support:

- (a) Including:
  1. Unrestricted receipts from a local government agency or special district;
  2. Receipts from the public health taxing district;
  3. Nonfederal receipts from a contract with a board of education; and
  4. An unrestricted donation from another source; and
- (b) Excluding funds from the Unrestricted and Restricted fund balances.

(5) [(8)] "Personal service contract" is defined by KRS 45A.690(1)(h) [(g)].

(6) [(9)] [(3)] "Public health department director" means:

- (a) The administrative or health officer of a county or district health department;
- (b) The administrative assistant of a county health department that does not have a health officer;
- (c) The director of a district health department that does not have a health officer;
- (d) The district director of health of an independent district department of health; or
- (e) The commissioner of an urban-county department of health or of a health department serving a county with a city of the first class.

(7) [(10)] [(4)] "Restricted fund" means the portion of a local health department's total fund balance that is limited by the Department for Public Health for a specific program's expenses or other items of expense.

(8) [(11)] [(5)] "Unrestricted fund balance" means the portion of a local health department's total fund balance that is not limited by the Department for Public Health for a specific program's expenses or other items of expense.

Section 2. Budgeting Requirements. (1) Each local health department shall prepare a fiscal year budget in accordance with annual budgeting guidance provided by the Department for Public Health.

(2) The local health department budget narrative shall include an attestation that core and foundational public health programs will be implemented, maintained, or assured in accordance with KRS 211.186 [2020 Ky. Acts ch. 21].

(3) A description of the local public health priorities, supported by a local needs assessment in accordance with KRS 211.187 [2020 Ky. Acts ch. 21, sec. 3], to be funded by local tax or

unrestricted funds shall be submitted to the Department for Public Health, Office of the Commissioner, for review and approval.

(4) Each local health department shall have a balanced budget in which receipts at least equal expenditures and shall operate within its approved budgets.

(5)(3) Each local health department annual budget shall be approved by both the governing local board of health and the Department for Public Health.

(6)(4)(a) Each local health department shall be responsible for making budget changes necessitated by:

1. Changes in financial status;
2. Changes in project status; or
3. The addition or deletion of a new project.

(b) Changes shall:

1. Be subject to review and approval by the Department for Public Health; and
2. Require a corresponding change in plans if required by the Department for Public Health.

(7)(5) Actual capital expenditures of local health departments for furniture and equipment, data processing equipment, land, buildings, and vehicles shall not exceed the approved budgeted amount without prior approval by the appropriate governing board of health.

(8)(6) Actual use of a local health department's unrestricted fund balance in excess of the amount included in the approved budget shall be approved by the governing board of health and shall be used solely for the operation and maintenance of local health departments.

(9)(7) An actual deficit in a local health department's financial operations for the fiscal year wherein cash expenditures and payroll related liabilities exceed available cash receipts, including approved use of the unrestricted fund balance, shall not be allowable.

(10)(8)(a) The Department for Public Health shall notify the local health department in writing if it determines that:

1. A local health department is receiving fewer receipts than are budgeted;
2. A local health department is making expenditures in excess of the approved budget; or,
3. A deficit condition is probable at the end of the fiscal year.

(b) Within fifteen (15) working days of receipt of the notification, the local health department shall inform the Department for Public Health in writing of the reasons that the determination may be in error.

(c) If the reasons and corrective actions listed by the local health department are not sufficient to prevent a deficit condition from occurring at the end of the fiscal year, the Department for Public Health shall direct the local health department to:

1. Institute a hiring freeze on employees;
2. Institute a freeze on meritorious, promotional, or other salary increments;
3. Institute a reduction in contractual and other expenditure categories; or
4. Take other action necessary to correct the deficit situation.

Section 3. Use of Receipts. (1) A local health department may, with the approval of the Department for Public Health, transfer funds from a restricted to an unrestricted account.

(2) Receipts from any source shall be used:

(a) In accordance with laws, policies, administrative regulations, and contracts governing the use of the receipts; and

(b) ~~Receipts shall be used~~ Only for the operation and maintenance of the health department for necessary, reasonable, and proper purposes that protect and improve the health of the people of the Commonwealth.

(3) The minimum acceptable level of local support shall be determined annually by the Commissioner of the Department for Public Health.

(4) The state allotment to a local health department shall be adjusted in the following circumstances:

(a) The local health department decreases its budgeted amount of local support below the minimum acceptable level. The state allotment shall be decreased by the same percentage in the

year of the decrease.

(b) The local health department receives less local financial support than the required level. The state allotment shall be decreased by the percentage that the actual local support was deficient. The decrease shall apply to the fiscal year following the shortage.

(c) The local health department accumulates an unrestricted fund balance, as of June 30 of a fiscal year, in excess of ~~thirty (30) percent of that year's expenditures for non-fee programs plus~~ forty (40) percent of that year's expenditures ~~for fee-for-service programs~~, or \$100,000, whichever is greater. The local health department shall submit, to the Department for Public Health, a written plan of use for the amount of the excess. If approved, the funds shall be placed into a local restricted fund to be used solely as approved.

(5) Fees.

(a)1. A request from a local health department to change patient fees to either a sliding or nominal fee basis shall be sent to the Department for Public Health for approval.

2. A request shall include documentation of the proposed full amount of the fee, the estimated annual cost of the service, and the estimated net fee income for the service.

3. Charges for medical supplies and equipment may be requested as a percentage of the acquisition cost of the supply or equipment item or may be requested as charges for individual items.

(b) Patient fees charged to self-pay patients shall be on a sliding fee basis approved by the Department for Public Health and be based on the level of income matched with the level of poverty, utilizing the federal poverty guidelines as published annually by the U.S. [Federal] Department of Health and Human Services, according to the following scale:

1. Above 250 percent of poverty, fee shall be assessed at full charge of service;
2. From 101 to 250 percent of poverty, fee shall be based on a schedule of discounts; and
3. Below 101 percent of poverty, there shall be no fee except as specified in paragraph (c) of this subsection.

(c) A ~~nominal~~ fee up to five (5) dollars ~~may~~shall be charged for communicable disease services specified by the Department for Public Health.

(d) The inability to pay the assessed fee shall not be a barrier to services.

(e) A charge shall not be made to school age children at a school-based clinic if requested by the local health department and authorized by the Department for Public Health.

(f) A policy of a local health department that may result in referral of services due to non-payment of fees shall be approved by the Department for Public Health.

(g)1. A local health department shall bill third-party payors for covered services provided to individuals.

2. If a third-party governmental payor is billed for services rendered to an eligible patient, the regulations of the third-party payor shall be followed for the part of the fee charged directly to the patient.

3. A patient's health insurance carrier shall be billed at 100 percent of charges. A balance not covered by the health insurance carrier shall be charged to the patient, except that the amount charged shall not exceed the amount that a patient without health insurance coverage would be charged, using standard discounts as applied to total charges for services rendered.

(h) A fee, regardless of the source of the fee or the funding of the project, shall be applied to the project that generates the fee, in accordance with income procedures of 2 C.F.R. 200.307(e). A third-party cost reimbursement payment and an interim payment shall be recorded in the same project where the costs were recorded, in proportion to the expenditures of each project that were reimbursed by the third party.

(6) A matching requirement for any source of receipts shall be the sole responsibility of each local health department.

(7) The following policies shall be applied in closing receipt accounts for the local health department fiscal year, July 1 to June 30:

(a) Receipts earned and received during a fiscal year shall be recorded as a receipt of that fiscal year; and

(b) Receipts earned in one (1) fiscal year and received after June 30 of that fiscal year shall be recorded as new fiscal year receipts.

Section 4. Expenditure Policies. Policies and procedures required by 2 C.F.R. 200 Subpart E shall be followed by local health departments for expenditures in projects, regardless of the source of funds for the project. The following policies concerning allowable expenditures and their proper documentation shall be followed by local health departments:

(1) Salaries, wages, benefits, and personnel payments.

(a) Salaries and wages for only those positions specified in administrative regulations for local health departments, 902 KAR 8:060 through 902 KAR 8:090, and 902 KAR 8:140, shall be allowable. The positions and related expenditures shall be included in the approved budget or approved budget revisions of the local health department. Other salary, wage, or bonus payments shall not be allowable, unless specifically approved by the Department for Public Health. Uniform pay dates shall be determined annually by the Department for Public Health.

(b) Expenditures shall be authorized for payment of employer paid fringe benefits required or allowed by policies of the Department for Public Health.

1. Required benefits shall be payments of the single-coverage amount for health insurance and life insurance that are part of the state-negotiated plans.

2. Additional allowed benefits shall be determined by the public health department director and approved by the governing board of health.

3. A part-time employee or a personal services contract employee working less than 100 hours per month shall not be eligible for employer-paid fringe benefits.

4. A payment to or on behalf of an employee for another direct or fringe benefit or other reason shall not be made unless:

a. Specifically allowed by this administrative regulation;

b. Approved by the Department for Public Health; and

c. A disbursement for services of a contract employee or independent contractor shall be made in accordance with the terms of the written contract. A contract payment shall not be made without proper written documentation demonstrating that services have been rendered.

(2) Capital expenditures.

(a) Capital expenditures are allowable for necessary capital equipment, land, and buildings.

1. The equipment in this category shall cost more than \$5,000 and have an expected useful life of one (1) year or more.

2. The same purchasing policies apply to capital items as apply to noncapital purchases.

3. Before purchasing land or buildings or contracting for the construction or remodeling of a building, the local health department shall notify~~contact~~ the Department for Public Health ~~for approval~~.

(b) A local health department shall pay a vendor within thirty (30) working days of the receipt of the service or goods, or within thirty (30) working days of the receipt of the invoice or bill from the vendor, whichever is later, unless the local health department and the vendor have agreed in writing to a longer period of time.

(c) A local health department shall not donate anything of value to any individual or entity, unless approved by the Department for Public Health.

Section 5. Travel Policies. (1) The public health department director shall insure that travel expenses are economical.

(2) A person who travels on official local health department business shall state on the expense voucher the purpose of each trip and shall maintain records to support claims.

(a) A local health department may provide an employee with a credit card to cover travel expenses.

(b) Due care shall be taken to assure that use of a local health department credit card is not abused.

(c) A local health department shall not provide an employee

with cash to pay travel expenses. The public health department director responsible for insuring that travel reimbursement conforms to this policy shall disallow, reduce, or strike from an expense voucher any claim contrary to this administrative regulation, and may require written justification for an amount claimed.

(3) With the exceptions cited in this policy, reimbursement shall not be claimed for expenses of a person other than an employee, or other person in the official service of the local health department. Only necessary expenses of official travel shall be reimbursed.

(4) Each day's vicinity travel shall be listed on a separate line on the expense voucher. The employee's supervisor or the public health department director shall monitor vicinity mileage claimed by an employee on travel status.

(5) A travel voucher shall be signed and dated by the employee submitting the claim and by an employee designated in accordance with the local health department's internal control procedures. The public health department director's travel voucher shall be signed by one (1) or more board of health members designated at a board of health meeting to perform the function.

(6) The official work station of an employee shall be:

(a) The street address of the local health department facility;

(b) For a local health department with more than one (1) facility, the facility in which the employee most often works;

(c) Established not for an employee's purposes, but in the best interest of the local health department; and

(d) Designated for a valid purpose.

(7) A standard travel expense voucher or another voucher approved by the Department for Public Health shall be used to claim reimbursement for travel expenses.

(a) Each travel expense voucher shall show the claimant's identifying number, name, address, and official workstation. The travel voucher may be typed, prepared by computer, or legibly prepared in ink.

(b) Receipts shall be submitted with~~[stapled to]~~ the travel voucher.

(c) If leave interrupts official travel, the travel voucher shall show the dates of leave.

(8) A travel expense shall not be reimbursed unless the travel was authorized in advance by the public health department director or designee.

(9) A local health department employee traveling on local health department business shall use the most economical, standard transportation available and the most direct and usually traveled routes. Expenses added by use of other transportation or routes shall be assumed by the employee.

(10) Local health department-owned vehicles and gasoline credit cards shall be used for local health department business travel if available and feasible.

(a) Mileage payment shall not be claimed by an individual when local health department vehicles are used.

(b) Routine personal use of a local health department vehicle, including commuting use, shall not be an allowable public expenditure.

(c) An assignment of a vehicle to an employee who takes the vehicle home shall be minimal and limited to direct service personnel providing:

1. On-call direct services, or a majority of services in the field; or

2. Substantial direct services on the way to or from the employee's workstation.

(d) If a vehicle is assigned under paragraph (c) of this subsection, some personal commuting mileage may be unavoidable. A local health department shall develop a written policy to address the unavoidable personal mileage. The policy shall conform to current federal and state tax requirements for income and travel and shall be forwarded to the Department for Public Health for review and approval.

(11) Mileage claims for use of privately-owned vehicles shall be disallowed if a local health department vehicle was available and feasible.

(12) An employee on official travel status whose private or

agency automobile breaks down may continue in travel status as approved by the public health department director.

(13) An employee on official travel status may be continued on travel status, as approved by the public health department director, if the employee becomes incapacitated due to illness or injury that qualifies as official sick leave. Medical expenses shall not be reimbursable travel costs.

(14) On nonworking days, an employee on official travel status shall forfeit official travel status once the employee returns to his official work station or domicile.

(15) Reimbursement shall not be paid for travel between the employee's residence and official workstation, unless requested to report to work while off duty.

(16) Commercial airline travel shall be coach or tourist class. Additional expense for first-class travel shall not be reimbursed.

(17) Mileage for each in-state trip shall be based on the Department of Transportation's official mileage map or on the Finance and Administration Cabinet's mileage chart if available. Out-of-state mileage shall be based on mileage maps. If point of origin is the claimant's residence, mileage and time shall be paid between the residence and travel destination, or between the work station and travel destination, whichever is shorter.

(18) The cost of renting a car or other special conveyance in lieu of ordinary transportation shall be allowed only with acceptable written justification to the public health department director. Privately-owned aircraft may be used only when it is to the advantage of the local health department as evidenced by a reduction in both travel costs and travel time.

(19) Lodging costs shall be the most economical available.

(a) Facilities providing special government rates or commercial rates shall be used where feasible.

(b) State-owned facilities or local health departments shall be used for meeting rooms and lodging if available, practical, and economical.

(20) A claimant who attaches the hotel's or motel's preprinted, receipted bill shall be reimbursed for the claimant's actual cost of lodging, subject to the following provisions:

(a) Reimbursement at a Kentucky state park shall be at the park's actual rate.

(b) The local health department shall not pay for lodging located within forty (40) miles of a claimant's residence or work station without approval of the public health department director.

(c) Lodging accommodations shared with another person or persons, not a local health department employee, shall be reimbursed at the rate for a single room. Lodging accommodations shared with other local health department employees shall be reimbursed on a pro rata basis.

(21) Mileage reimbursement for official use of privately-owned vehicles shall be at the mileage reimbursement rate determined by the Department for Public Health.

(22) With receipts, actual commercial transportation costs shall be reimbursed.

(23) Reimbursement for use of privately-owned aircraft shall not exceed the cost of air coach fare or the privately-owned vehicle rate, whichever is less.

(24) A claimant using camping vehicles for lodging shall be reimbursed for actual expense plus parking or camping charges. A receipt for parking or camping charges shall be submitted.

(25) Actual parking, bridge, and toll charges shall be reimbursable. Toll receipts shall not be required for in-state travel by a two (2) axle vehicle.

(26) Reasonable expenses shall be allowed for baggage handling, for delivery to or from a common carrier or lodging, and for storage. Charges for overweight baggage shall be allowed if the excess was for official business.

(27) Registration fees required for admittance to meetings shall be allowed. An employee shall not claim meal expenses for meals included in the registration fee. A notation shall be made on the travel voucher that the registration fee included the cost of meals. Reimbursement for registration fees and other job-related training may be claimed as "other expenses" on the travel voucher and charged to the appropriate expenditure accounts. Receipts for job-related fees shall be attached to the travel voucher.

(28) Telephone and fax costs for necessary official business shall be reimbursable.

(29) If justified, other necessary miscellaneous expenses associated with official travel may be allowed by the public health department director. Receipts shall be attached to the travel voucher.

(30) Receipts shall be required for travel expenses over ten (10) dollars except for subsistence expense items.

(31) Subsistence shall include amounts determined to have been spent for meals, taxes, and tips. To be eligible for subsistence for breakfast or lunch while traveling in Kentucky, a claimant's authorized work shall require overnight accommodations at a destination more than forty (40) miles from both work station and home and shall also require absence from the work station and home during mealtime. The claimant shall attach to the[his] travel voucher, either [his] lodging receipts or other credible documentation sufficient for audit.

(32) Local health department employees assigned to attend a function of an organization not under their control may be reimbursed for actual meal costs charged or arranged for by the organization. Receipts for meals shall be attached to the travel voucher.

(33) The local health department may pay for subsistence and related expenses at staff meetings not to exceed four (4) meals per year for an employee. The subsistence expense shall not exceed the department's standard meal reimbursement amount. Travel status shall not be required for staff meeting meals.

(34) Other allowable travel expense reimbursements shall consist of the following:

(a) Expenditures for the actual and reasonable cost of meals provided for district and county board of health members for official board functions, and for meals of guests invited to participate in the official business conducted at these functions;

(b) Travel expenditures of board of health members attending official board of health functions, in accordance with travel policy provisions;

(c) Travel expenditures incurred by board members other than the chairperson if approved by the chairperson or the full board;

(d) Travel expenditures incurred by the chairperson if approved by the vice-chairperson or the full board;

(e) Expenditures for meals and transportation expenses of local health department advisory committee members attending official local health department functions; and

(f) Travel expenses of a person applying for a position that will designate the applicant as the public health department director for the department, or as the medical director subject to the limits applicable to local health department employees, but no more than one (1) round trip for each applicant.

(35) Expenditures shall be authorized for employee morale and welfare items, as defined in 2 C.F.R. 200.437, in an amount not to exceed twenty-five (25) dollars per employee per fiscal year. Receipts shall be kept for all expenditures.

(36) Expenditures shall be allowed for other items necessary for the maintenance and operation of the local health department, if the expenditure is made in accordance with statutes and administrative policies.

(a) The Department for Public Health may require a local health department to provide adequate justification for any expenditure made by the local health department.

(b) If the justification is determined to be inadequate, appropriate corrective action shall be taken by the Department for Public Health.

Section 6. Purchasing Policies. (1) Each local health department shall develop and follow formal procedures for authorizing purchases made on behalf of the local health department.

(a) These procedures shall be outlined in the local health department's written internal control procedures.

(b) Written purchase orders (service authorizations for independent contractors) and receiving reports or service verifications shall be used except for utility bills and purchase orders not in conformance with standard business practice.

(2) A local health department shall use the following minimum procedures in accordance with 2 C.F.R. 200.322 for purchasing and advertisement for bids:

(a) If an expenditure for a single type of good or service not covered by contract policies is more than \$40,000 in a fiscal year, advertisements for bids shall be made in accordance with KRS 424.110-424.150. The Department for Public Health may be contacted for assistance in determining whether an expenditure is for a single type of good or service. The local health department shall:

1. Record, in writing, and maintain for department review:
  - a. Price quotations received; and
  - b. Reasons and basis for selecting and placing the order, if the lowest price was not selected; and
2. Select the lowest or best bid.

(b) If the expenditure for a single type of good or service is \$3,000 but not greater than \$40,000 in a fiscal year, the local health department shall:

1. Obtain three (3) or more price quotations from qualified sources of supply, if available, in the department's normal trade area; and
2. Record, in writing, and maintain for department review:
  - a. Price quotations received; and
  - b. Reason and basis for selecting and placing.

(c) If a single type of good or service purchased is less than \$3,000, to the extent practicable, the local health department shall distribute purchases equitably among qualified suppliers. Purchases may be awarded without soliciting competitive quotations.

(d) The requirements for competitive bidding shall not apply to a purchase made under the provisions of a state price contract.

(e) A physician who is the health officer for more than one (1) local health department may purchase supplies and services or technical services on a cooperative purchasing basis, in accordance with the purchasing administrative regulations for local health departments.

(f) A local health department shall not enter into a lease or purchase agreement for nonprofessional services with a local health department employee or a business entity in which a local health department employee owns or controls more than five (5) percent interest, except if determined to be in the best interest of the public and approved in writing by the Department for Public Health.

Section 7. Contracting for Services. (1) A local health department may contract for a core public health program.

(2) A local health department contracting for a core public health program shall evaluate the ability of the contracting agency to provide the program in accordance with applicable state statutes and administrative regulations.

(3) The contract for a core public health program shall include:

(a) A method for ongoing, comprehensive performance evaluation of the contracted vendor;

(b) Established performance criteria and standards to evaluate the contracted vendor; and

(c) An assurance the local health department will continue core public health programs in accordance with KRS 211.186, if [2020 Ky. Acts ch. 21, sec. 2, should] the contracted vendor is no longer [be] able to operate the program, as funds allow.

Section 8. Personal Service Contracts. (1) A local health department shall not contract with a provider who is disbarred or suspended by a federal funding agency or by a Kentucky licensure board.

(2) This policy applies to personal service[services] contracts for services of a professional or technical nature not available through the local health department merit system.

(3) Services of a professional or technical nature shall be contracted for in writing in accordance with this policy except:

(a) Nonprofessional emergency repair services of skilled tradesmen shall not require written contracts. Nonemergency services of skilled tradesmen shall be procured in accordance with purchasing policies.

(b) Administrative or management services, financial management services, data processing services, or consulting services, or studies shall not be contracted for if these services can be provided to the local health department by the Department for Public Health.

(4) Allowable services.

(a) The service [desired] to be contracted for shall be an essential service that is necessary for carrying out public health services.

(b) A local health department may[shall not] use a personal service[services] contract to substitute for establishing a position in the local health department, with Department for Public Health approval.[

(c) A local health department shall not contract for personal services with an individual who works 1,200 hours or more in a year, except with Department for Public Health approval.]

(5) A provider shall not be paid more than the standard hourly rate determined by the Personnel Cabinet. In determining acceptable rates of reimbursement, consideration shall be given to:

- (a) The type of service to be provided;
- (b) The availability of providers;
- (c) The duration of services to be performed;
- (d) Rates being paid to regular employees for similar services; and

(e) Comparable rates being paid in the area and other parts of the state for similar services.

(6) A personal service contract shall not be entered into with a provider when a conflict of interest, real or apparent, exists.

(a) Conflicts of interest fall into the following categories:

1. Constitutional;
2. Statutory;
3. Common-law; and
4. Department for Public Health policies.

(b) A personal service contract shall not be entered into with a local health department employee or local board of health member, unless authorized in writing by the Department for Public Health, and except for medical or professional services under \$10,000.

(c) A county board of health member who is not a member of the district board of health shall not incur a conflict of interest if the district health department contracts for the county board of health member's services.

(d) A contract exceeding \$5,000 in a fiscal year shall not be entered into with a professional service corporation that has employees or governing board members as constituents, unless authorized in writing by Department for Public Health.

(7) In drafting a personal service contract, a determination shall be made concerning whether the provider of the service is an "independent contractor".

(a) If it is determined that the individual is not an independent contractor, the local health department shall withhold applicable federal, state, and local taxes and Social Security (FICA), and shall use a standard local health department personal service[services] contract.

(b) If it is determined that the provider is an independent contractor, a standard local health department independent contract shall be used.

(8) A personal service contract:

(a) Shall not exceed one (1) year in duration and shall not contain a clause that indicates the contract is automatically renewable at the end of the fiscal year;

(b) Shall expire on or before June 30 of each fiscal year unless approved by the Department for Public Health; and

(c) May be extended into the new fiscal year by filing a formal contract extension, approved by the Department for Public Health.

(9) Either party shall have the right to terminate a personal service contract at any time upon notice to the other party.

(a) A local health department may add a clause to a contract requiring up to a ninety (90) day notice prior to termination.

(b) Confirmation of termination shall be in writing and a copy of the notice of termination shall be provided to the Department for Public Health.

(10) All local health department personal service contracts and amendments are subject to review by the Department for Public



Health.

(a) If the Department for Public Health questions the legality, propriety, necessity, rate of compensation, or description of services, in a personal service contract, the department shall notify the local health department of its concerns.

(b) A personal service contract for which clarification is requested by the Department for Public Health shall be put on hold until a review has been completed.

(11) A personal service contract may be modified at any time, and a proposed change shall be accomplished by formal contract amendment.

Section 9[8]. Disposition of Assets, Surplus, or Excess Property. (1) If a county withdraws [one (1) or more counties withdraw] from a district health department, the following policies shall apply to the disposition of surplus receipts, assets, and liabilities:

(a) Program restricted surplus receipts or supplies, inventories, or equipment shall be retained by the district health department except in the case of complete dissolution of the district. If the district is dissolved, program restricted surplus receipts and items shall be equitably distributed to the county or counties proportionate to their taxing district or fiscal court participation in the district;

(b) Unrestricted receipts, supplies, and inventories shall be divided among district and withdrawing county boards of health proportionate to the ratio of local taxing district support provided by each county in the year preceding the withdrawal;

(c) Deficits shall be charged to the district and withdrawing county boards of health according to the ratio of local taxing district or fiscal court support provided by each party in the year preceding the withdrawal;

(d) Equipment purchased by withdrawing county boards of health prior to the organization of the district shall be returned to the board that[which] originally purchased the equipment;

(e) Equipment purchased during the operation of the district shall be divided among the district and the withdrawing boards of health according to the ratio of local taxing district or fiscal court support provided by the withdrawing county boards of health to the total local taxing district or fiscal court support of the district in the year preceding the withdrawal:

1. The net inventoried book value of the equipment shall be used in determining the distribution.

2. The Department for Public Health shall approve the final disposition of equipment.

(f) Buildings owned by the district board of health shall remain the property of the district health department. If total dissolution of a district health department occurs, buildings owned by the district shall be sold according to the policies of the Department for Public Health and the proceeds shall be added to the surplus receipts of the district to be divided according to the procedures listed in this subsection; and

(g) The Department for Public Health shall approve the disposition of assets and liabilities.

(2) A local health department may sell or dispose of any real or personal property including intangible property that[which] is not needed or has become unsuitable for use.

(3) The funding source shall be contacted for the exact requirements. Property purchased with restricted funds may have disposal requirements in addition to or instead of the following requirements:

(a) A written determination as to need or suitability of any property of the local health department shall be made, and shall fully describe the property, its intended use at the time of acquisition, and the reasons why it is in the public interest to dispose of the item;

(b) Surplus or excess property may be transferred, with or without compensation, to another governmental agency, or it may be sold at public auction or by sealed bids. The highest bid shall be accepted. Other methods of disposition of surplus or excess property shall not be allowable;

(c) If a local health department receives no bids for surplus or excess property, either at public auction or by sealed bid, or

reasonably determines that the aggregate value of the item is less than \$500, the property may be disposed of, consistent with the public interest, in any manner determined appropriate by the local health department. A written description of the property, the method of disposal, and the amount of compensation, if any, shall be made; and

(d) Any compensation resulting from the disposal of surplus or excess property shall be deposited in the local health department's bank account. If the property was purchased with restricted funds, appropriate accounting of the compensation received shall be made as required by 2 C.F.R. Part 200 Subpart E.

Section 10[9]. Bank Accounts and Investments. (1) Fidelity bonding shall be obtained on local health department employees and board of health members who handle funds of the local health department.

(a) An individual who makes deposits or signs checks or other instruments on local health department checking or investment accounts or certificates shall be bonded.

(b) Employees or board members shall be bonded in an amount sufficient to cover the total amount of funds to which they have access at any one (1) time.

(2) Local health departments may invest and reinvest money subject to their control and jurisdiction in the following investments:

(a) Obligations of the United States and of its agencies and instrumentalities. These investments may be accomplished through repurchase agreements reached with national or state banks chartered in Kentucky, and bonds or certificates of indebtedness of the state of Kentucky and of its agencies and instrumentalities;

(b) A savings and loan association insured by an agency of the government of the United States up to the amount so insured; and

(c) Interest-bearing deposits, or other authorized insurance instruments, in national or state banks chartered in Kentucky and insured by an agency of the government of the United States up to the amount so insured, and in larger amounts if the bank shall pledge as security, obligations as permitted by KRS 41.240(4), having a current quoted market value at least equal to uninsured deposits.

(3) A local health department may hold funds in its local bank account in a federally-insured bank at the minimum level necessary for efficient operations.

(4) Local health department funds shall not be transferred to a public health taxing district account or to an account not reported in the local health department financial statements.

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](mailto:chfsregs@ky.gov).

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Public Health**  
**Division of Public Health Protection and Safety**  
**(As Amended at ARRS, December 3, 2020)**

**902 KAR 10:030. Registered environmental health specialists and sanitarians.**

RELATES TO: KRS Chapter 13B, 194A.050(1), 211.090, 223.010, 223.020, 223.030, 223.040, 223.050, 223.060, 223.070, [223.080, 223.990]

STATUTORY AUTHORITY: KRS 223.040, 223.050, 223.055, 223.070[Chapter 13B, 194.050, 211.090, HB 799, Part I, G., 56., d. (1990 Acts, Chapter 514, pp. 1734-1735, 1736) "Budget Modification Report, Human Resources": Final Budget Memorandum, Volume II, Page 288 (April 13, 1990), EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 223.040, 223.050, 223.055 and 223.070[223.040 to 223.080, and 223.990] authorize the Cabinet for Health and Family Services to establish minimum standards and qualifications for registered environmental health specialists and sanitarians. This administrative regulation

provides uniform standards for registered environmental health specialists and sanitarians, [and] procedures for processing applications, continuing education requirements, inactive status registration, and establishes [to establish] fees for examination and registration. [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. (1) "Cabinet" is defined by KRS 223.010(1).

(2) "Cabinet representative" means the secretary's designee.

(3) "Committee" means the registered environmental health specialists or sanitarian examining committee established in accordance with KRS 223.020.

(4) "Continuing education unit" or "CEU" means the completion of ten (10) hours of educational courses approved by the committee.

(5) "Secretary" is defined by KRS 223.010(3)[As used in this administrative regulation: "Contact hour" means a unit of measure for approved instruction by Registered Sanitarian Examining Committee. This unit is determined to equal actual classroom hours. Units of measure may be in half hour increments].

Section 2. Applications for Registration. (1) An applicant for registration as a registered environmental health specialist or sanitarian shall meet the qualifications listed in KRS 223.030(1).

(2) [Minimum Standards and Qualifications. In addition to the specific requirements provided by KRS 223.030, an applicant for registration as a sanitarian shall have graduated from an accredited college or university with a baccalaureate or higher degree, which shall include satisfactory completion of at least twenty-seven (27) quarter hours, or eighteen (18) semester hours, of academic training in the basic physical, chemical, biological, or sanitary sciences.

Section 3. Applications for Registration. Applications [for registration as a registered sanitarian] shall be submitted to the committee for approval on the "Application for Registration", 05/2020, incorporated by reference or available online at <https://chfs.ky.gov/agencies/dph/dphps/emb/Pages/sanitarians.aspx>.

(3) An application fee of fifty (50) dollars by money order, bank draft, or check made payable to the Kentucky State Treasurer shall accompany each application.

(4) After the committee has approved an application, and all the requirements provided by law are fulfilled, the applicant can be scheduled to take the examination [application forms for registration as a registered sanitarian as provided by KRS Chapter 223 revised 7/90. This form is incorporated by reference and may be viewed or obtained at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday between the hours of 8 a.m. and 4:30 p.m. Each application fee shall be remitted by a Post Office or express money order, bank draft, or check payable to the order of the Kentucky State Treasurer. The committee may correspond with any references given on the applicant's application and may also contact any former employer of the applicant concerning his prior service in the field of public health sanitation].

Section 3[4]. Examinations. (1) The committee shall:

(a) Conduct examinations at least four (4) times [one] a year; and

(b) Determine the[at such] time and place for the examination[as it may deem expedient].

(2) A [passing] score of at least seventy (70) percent shall be a passing score for the examination[must be achieved on the exam].

(3) Applicants failing to achieve a passing score may apply to retake the exam by submitting another application and fee [The examination may be either oral, written, or both. A fee of thirty (30) dollars shall accompany the application for examination. All registration certificates issued under the provisions of this administrative regulation shall expire June 30 following date of issue,

unless renewed by the payment of a twelve (12) dollar registration fee].

Section 4[5]. Issuance and Expiration of Certificates of Registration. (1) Upon successful passing of the examination as outlined in Section 3 of this administrative regulation [After the committee has approved an application and all the requirements provided by law are fulfilled], the committee shall certify the passing score[such fact] to the secretary.

(2) The applicant shall be issued a registration card[, who in turn shall issue a small card to the approved applicant] certifying that he or she holds a certificate of registration.

(3) Pursuant to KRS 223.040, an individual who receives an initial certificate of registration shall[must] be under the direct supervision of a qualified registered environmental health specialist or sanitarian until the individual successfully completes an initial public health training program provided by the cabinet. This [Such] training shall be offered at least two (2) times [twice] per year at no cost to the trainee.

(4) The committee shall assign serial numbers to each certificate of registration.

(5) All registration certificates issued under the provisions of this administrative regulation shall expire on June 30 following the date of issue, unless renewed by payment of a twenty (20) dollar registration fee.

(6) The certification renewal fee shall be paid by money order, bank draft, or check made payable to the Kentucky State Treasurer, or online at the Registered Sanitarian ePayment Web site at [https://prd.webapps.chfs.ky.gov/KYRegSan\\_ePay](https://prd.webapps.chfs.ky.gov/KYRegSan_ePay) [[https://prdweb.chfs.ky.gov/KYRegSan\\_ePay/](https://prdweb.chfs.ky.gov/KYRegSan_ePay/)].

(7) A late renewal fee of twenty (20) dollars will be assessed for all payments not received by July 1.

Section 5[6]. Renewals and CEUs. (1) All registered environmental health specialists and sanitarians shall receive a written notice of certification renewal [It shall be the duty of the secretary-treasurer of the committee to notify all registered sanitarians] at least thirty (30) days prior to the expiration date of their certificate.

(2) Before[that they renew their certificate of registration as provided by law. Effective July 1, 1992 before] the renewal of registration can be issued, the registrant shall [must] submit evidence of having completed the required CEUs.

(3) In addition to the public health training required by Section 4(3) of this administrative regulation, individuals achieving initial registered environmental health specialist or sanitarian status in any given fiscal year shall be required to submit evidence of having completed CEUs based on the quarter of the fiscal year in which certification was attained:

(a) July 1 to September 30 – ten (10) CEUs required;

(b) October 1 to December 31 – seven (7) CEUs required;

(c) January 1 to March 31 – five (5) CEUs required; or

(d) April 1 to June 30 – no CEUs required.

(4) An application for CEU approval by the committee shall include the following:

(a) An outline or summary of the course content;

(b) Identity of the instructor or sponsor of the course; and

(c) A letter or certificate of completion from the instructor or sponsor certifying the applicant satisfactorily completed the course; or

(d) Proof of attendance in the form of a copy of the course sign-in sheet or attendee roster.

(5) In-service educational conferences, courses, and seminars sponsored by professional and industrial organizations, or governmental agencies which registrants attend, or where they present, may qualify for CEUs.

(6) CEUs shall not be awarded for classes taught by the registrant or for mandatory employee trainings provided by the registrant's employer that are not related to the fields of environmental or public health, or specifically related to the duties, roles, and responsibilities of a registered environmental health specialist or sanitarian as determined by the committee.

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Section 6. Extension for submitting CEUs. (1) A registrant may submit a written request to the committee for an extension to acquire CEUs until September 30. This written request ~~shall~~**[must]**.

(a) Be received by the committee on or before June 30; and

(b) Provide justification for the request.

(2) The committee may grant an extension beyond the September 30 deadline based on extenuating circumstances beyond the control of the registrant.

(3) Registrants shall be notified in writing by the cabinet representative of the committee's decision to grant or deny the September 30 extension.

(4) Failure to submit evidence of completion of the CEUs required in Section 5(3) of this administrative regulation by the September 30 extension deadline ~~shall~~**[will]** result in suspension of the certificate of registration in accordance with Section 8 of this administrative regulation~~ten (10) contact hours approved by the committee~~.

Section 7. Inactivation of Certificates of Registration. (1) Persons requesting to have their certificates of registration placed in inactive status shall submit a written request to the committee on or before June 30.

(2) A registered environmental health specialist or sanitarian granted inactive status by the committee shall be notified in writing.

(3) A registered environmental health specialist or sanitarian on inactive status shall be exempt from the CEU requirements specified in Section 5 of this administrative regulation but ~~shall not be~~ exempt from the twenty (20) dollar renewal fee required under Section 4(5) of this administrative regulation.

Section 8. Suspension and Revocation of Certificates of Registration. (1) Certificates of registration shall be suspended by the committee on July 1 for:

(a) Failure to remit payment for renewal by June 30 in accordance with Section 4 of this administrative regulation;

(b) Failure to submit evidence of completion of CEUs by June 30 in accordance with Section 5 of this administrative regulation; or

(c) Failure to request an extension for CEUs by June 30.

(2) Certificates of registration shall be suspended the next business day following the receipt of the request for an extension in accordance with Section 6 of this administrative regulation.

(3) Persons whose certificates of registration have been suspended shall be sent a notice of suspension by the committee.

(4) If employed by the cabinet, a local health department, or a district health department, a copy of the notice of suspension shall be provided to the employer.

(5) A registered environmental health specialist or sanitarian with a suspended certificate of registration shall receive a written notice to appear before the committee at the next regularly scheduled committee meeting to provide justification for:

(a) Failing to remit payment by June 30; or

(b) Failing to submit evidence of completed CEUs by June 30 or by the extension granted by the committee in accordance with Section 6 of this administrative regulation.

(6) Failure to appear before the committee at the next regularly scheduled meeting shall be grounds for the committee to recommend revocation of a certificate of registration to the secretary.

(7) A registered environmental health specialist or sanitarian suspended for failure to remit payment in accordance with Section 4, or CEUs in accordance with Section 5, by June 30, may, at any time before the next regularly scheduled committee meeting, submit payment or evidence of completed CEUs and be returned to active status without having to appear before the committee.

(8) In any action involving the revocation of a certificate of registration, the committee shall refer the matter to the secretary.

(a) Prior to revocation, the committee shall send a notice of revocation to the last known address available to the committee.~~;~~**and**

(b) The notice of revocation shall include the option for the certificate holder to submit a request for an administrative hearing within ten (10) days of the notice to show cause as to why their certificate should not be revoked.

(9)~~The committee is authorized to set the time and place of a~~

hearing.] All administrative hearings shall be conducted in accordance with KRS Chapter 13B~~[902 KAR 1:400]~~

(10) Persons who have their certificate of registration revoked solely for failure to remit renewal payment or submit required CEUs may reapply for registration by submitting an application and fee in accordance with Section 3 of this administrative regulation and by successfully completing the examination.

(11) Upon revocation of a registered environmental health specialist or sanitarian certification by the secretary for causes established in KRS 223.070, the person shall:

(a) ~~Not~~**[No longer]** be eligible to serve as a registered environmental health specialist or sanitarian in the Commonwealth; and

(b) Cease and desist practice.

(12) If employed by the cabinet, a local health department, or a district health department, a copy of the notice of revocation shall be provided to the employer.

Section 9[8]. Expenditure of Funds. Expenditures for examinations, clerical expenses, training and reference materials, including approved home study courses, and for affiliation with any national sanitarian registration organization, may be made out of the trust and agency fund created by KRS 223.050.

Section 10. Material Incorporated by Reference. (1) "Application for Registration", 05/2020, 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, 8:00 a.m. to 4:30 p.m.

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

**CABINET FOR HEALTH AND FAMILY SERVICES  
Department for Public Health  
Division of Public Health Protection and Safety  
(As Amended at ARRS, December 3, 2020)**

**902 KAR 50:040. Hauler requirements.**

RELATES TO: KRS Chapter 13B, **Chapter 217**, 217C.010-217C.990

STATUTORY AUTHORITY: KRS **194A.050**~~[194.050]~~(1), 211.090, 217C.040

NECESSITY, FUNCTION, AND CONFORMITY: KRS **194A.050**~~[194.050]~~(1) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations necessary to protect, develop, and maintain the health of citizens of the Commonwealth, and necessary to operate the programs and fulfill the responsibilities vested in the cabinet. KRS 217C.040 authorizes the cabinet to promulgate administrative regulations for the production, transportation, processing, handling, sampling, examination, grading, and sale of milk and milk products; and the issuing and revocation of permits to milk producers, haulers, transfer stations, and processing plants.~~The Cabinet for Human Resources is directed by KRS Chapter 217C to regulate milk haulers. The function of] This administrative regulation provides[is to provide] uniform standards for the transportation, handling, sampling, examination, and grading of raw milk and the issuance and revocation of milk hauler permits.~~

Section 1. Milk Hauler Permit Requirements. (1) ~~A~~**[No]** person shall ~~not~~ haul raw milk in this state without a permit from the cabinet.

(2) Individual producer delivery or transport delivery between plants or receiving and transfer stations shall not be required to have a permit.

(3) ~~An owner of a~~**[Owners of]** bulk tank route ~~truck~~**[trucks]** shall immediately notify the cabinet of ~~each new hauler~~**[new**

*haulers].*

(a) *Each new hauler shall [New haulers shall be required to] submit an [Application for Permit to Haul Milk and Collect Samples of Raw Milk] to the department to obtain a permit before hauling milk.*

(b) A new hauler that has been inspected and certified by the cabinet ~~it~~ shall be issued a temporary permit ~~that~~ which is valid until the next hauler training session.

(c) Upon successful completion of the training course, the hauler shall be issued a permit.

(4) *A permit[Permits] shall not be transferable with respect to the person or location[persons or locations].*

(5) *A permit[Permits] shall continue in force unless suspended or revoked for cause.*

(6) *Each hauler[All haulers] collecting raw milk samples for regulatory purposes shall be permitted by the cabinet as an "Official Sample Collector," according to this administrative regulation.*

(7) *Each hauler[All haulers] shall be inspected and recertified each twelve (12) months.*

Section 2. Bulk Milk Hauler Standards. (1) Each bulk milk hauler shall ~~only use~~ ~~be equipped with~~ an accurate thermometer approved by the cabinet ~~when~~ ~~if~~ collecting milk from dairy farms.

(2) ~~and shall observe the following sanitary practices in the milk collection procedure:~~

(4) Hands and outer clothing shall be clean during all pickup operations.

(3) ~~(2)~~ *A milk hauler[Milk haulers] shall smell milk for off-odors.*

(4) ~~(3)~~ A visual examination shall be made of the raw milk in the bulk tank.

(5) Milk visibly unfit for human consumption pursuant to KRS Chapter 217 ~~it~~ shall be rejected and not collected.

(6) The bulk tank lid shall be closed immediately after making the visual examination if possible.

(7) ~~(4)~~ The milk transfer hose used to withdraw raw milk from the farm bulk tank shall enter the milkhouse only through the hoseport provided for that purpose.

(8) ~~(5)~~ If milk has leaked past the core of the outlet valve of the farm bulk tank, the outlet port of the valve shall be washed and sanitized prior to withdrawing the milk.

(9) ~~(6)~~ The cap from the end of the transfer hose shall be handled in a sanitary manner and stored to prevent contamination while milk is being pumped from the farm bulk tank into the bulk milk tank truck.

(10) ~~(7)~~ After the milk has been removed from the farm bulk tank, the bottom of the tank shall be observed for sediment and other foreign material.

(11) ~~(8)~~ Sediment and other foreign material conditions observed shall be noted on the plant and producer's copy of the ticket.

(12) ~~(9)~~ The following information concerning the collection of milk shall be recorded on the weight ticket and the *producer's[producers] chart at the milkhouse:*

- (a) Date;
- (b) Time;
- (c) Temperature;
- (d) Hauler identification; and
- (e) Weight of the milk.

(13) ~~(10)~~ After the milk has been removed from the farm bulk tank, the transfer hose shall be removed and recapped before the farm bulk tank is rinsed with water. After recapping, the transfer hose shall be rinsed free of exterior soil.

(14) ~~(11)~~ A bulk milk hauler shall not collect milk from a dairy farm for delivery to a milk plant, receiving station, or transfer station unless the farm holds a valid permit or authorization for sale from the cabinet.

(15) ~~(12)~~ At the time of collection of milk from each dairy farm, the bulk milk hauler shall collect the entire volume of acceptable milk being stored in the bulk tanks. Only milk in properly constructed and operated equipment shall be collected.

(16) ~~(13)~~ All precautions shall be taken to prevent the entrance of flies into the milkhouse.

(17) ~~(a)~~ ~~(14)~~ At least one (1) time each three (3) months, the bulk milk hauler shall check the accuracy of the thermometer of each [of his] milk producer's bulk milk tanks against *the hauler's[haulers] thermometer.*

(b) The *hauler's[haulers] thermometer* [which] shall be compared to a certified thermometer and corrections *shall be* made each six (6) months.

(c) The temperatures obtained from both thermometers shall be entered on the weigh ticket.

(d) If there is a difference between the readings on the two (2) thermometers, the reading of the bulk milk hauler's thermometer shall be reported as the official temperature on that day and each succeeding day until the thermometer on the bulk milk tank is adjusted or repaired to be accurate.

(18) ~~(15)~~ If milk in a bulk tank is rejected, the reason for rejection shall be noted by the hauler and the tank *shall be* tagged with appropriate tags ~~prepared or~~ approved by the cabinet.

Section 3. Sampling Appurtenances for Bulk Milk Trucks. Every bulk milk tank truck used to collect raw milk on a bulk milk route shall be equipped with:

(1) A sample dipper or other sampling device of sanitary construction approved by the cabinet ~~it~~;

(2) A container suitable for the storage of the sample dipper in a sanitizing solution en route between the farms. If other sampling devices are used, they shall be protected from contamination ~~it~~;

(3) A sample carrying case ~~shall be~~ constructed of approved material *and capable of maintaining[shall maintain] producer raw milk samples at temperatures of thirty-two (32) to forty (40) degrees Fahrenheit from the time the samples are collected until they are delivered to the milk plant, receiving station, or transfer station; and*

(4) Sample racks, approved by the cabinet, ~~of~~ ~~shall be a size~~ sufficient *size* to hold all samples of raw milk in an upright position. ~~[A sample shall be taken from the bulk milk tank of each milk producer represented on the load of raw milk being transported to a milk plant, receiving station, or transfer station. A sample shall be taken from the bulk tank truck after the last producer pickup.]~~

Section 4. Sample Collection from Bulk Tanks. (1) *A sample shall be taken from the:*

(a) *Bulk milk tank of each milk producer represented on the load of raw milk being transported to a milk plant, receiving station, or transfer station; and*

(b) *Bulk tank truck after the last producer pickup.*

(2) ~~[The milk hauler shall collect]~~ A sample of milk from each farm bulk tank *shall be collected* after the milk has been thoroughly agitated ~~[a minimum of five (5) minutes for bulk tanks less than 1,000 gallons, or ten (10) minutes for bulk tanks 1,000 gallons or more,~~] before opening the outlet valve.

(3) *A sample[Samples] shall be collected in the [following] manner established in this subsection.:*

(a) ~~(1)~~ If a sample dipper is used, it shall be *cleaned[clean]* and transported between farms on the bulk milk route in an approved sanitizing solution equivalent to 100 *parts per million (ppm)[p.p.m.]* chlorine. Other sampling devices shall be kept free of contamination.

(b) ~~(2)~~ After removal from the sanitizing solution, all of the sanitizing solution shall be drained from the sample dipper.

(c) ~~(3)~~ The sample dipper shall ~~[be]~~ rinsed two (2) times in the milk in the farm bulk tank and completely drained before collecting the sample.

(d) ~~(4)~~ A sample shall be collected from the bulk tank and placed in a sterile container.

(e) ~~(5)~~ The sample container shall be closed and immediately placed in melting ice water in the sample carrying case.

(f) The top of the sample container shall not be submerged in the refrigerant.

(g) Producer raw milk samples shall be maintained at temperatures of thirty-two (32) to forty (40) degrees Fahrenheit until delivered to the milk plant, receiving station, or transfer station.

(h) Samples shall not be frozen.

(4) ~~(6)~~ Each sample shall be identified with date and time collected, the temperature of the milk in the farm bulk tank, the route

and name or identity number of the milk producer, and the name of the person collecting the sample.

(5)(7) Prior to or at the time of collecting raw milk from the first milk producer on the bulk milk route, the bulk milk hauler shall collect a sample of milk for temperature determination. The temperature sample shall have date, time, and temperature recorded on the sample container. The sample shall be refrigerated until it arrives at the laboratory.

(6)(8) Sampling equipment shall be rinsed in clean water immediately after each usage.

Section 5. Frequency of Raw Milk Pickup. (1) All raw milk for manufacturing purposes shall be collected as required by 902 KAR 50:031.

(2) Raw milk collection frequencies may be waived by the cabinet in the case of an emergency/emergencies.

(3) All Grade A bulk tank raw milk shall be collected at least every seventy-two (72)[forty-eight (48)] hours, and all Grade A milk shipped in cans shall be collected every twenty-four (24) hours.

(4) Collection of raw milk, from the first producer on the bulk milk pickup route to the final producer, shall be without undue delay.

(5) Collection of a partial load of milk, holding the milk overnight, and finishing the collection the following day shall not be permitted unless pump and pickup hose have been washed and sanitized at a location approved by the cabinet.

Section 6. Bulk Milk Tank Truck Owner Standards. (1) Every bulk tank truck used to collect raw milk on a bulk milk route shall be of sanitary design and construction.

(2) The owner of the bulk tank connected to the truck chassis shall:

(a) Be responsible for maintaining the bulk tank and milk contact appurtenances in good repair and in a clean, sanitary condition; and

(b) The owner of the bulk tank connected to the truck chassis shall Obtain an identification number from the cabinet that shall be placed on the rear of the tank in letters at least three (3) inches high.

(3) Each bulk milk tank truck and milk contact appurtenances shall be cleaned after the completion of each day's usage and sanitized prior to beginning the next day's operation in a manner and at a location approved by the cabinet.

(4)(a) Each plant, receiving or transfer station, or other location that which washes bulk tank trucks shall provide truck wash tags.

(5)(b) The company or person responsible for washing the bulk tank truck shall affix a wash tag in the interior pump compartment of the truck signifying the date and location where [at which] the truck and appurtenances were cleaned and sanitized, and the signature [or initials] of the person responsible. Over the road tankers without rear pump compartments shall have the wash tag affixed to the top manhole cover or the outlet valve.

(6)(c) A receiving location/locations shall not receive milk from a truck not properly tagged signifying date and location cleaned, unless approved by the cabinet.

(7) Cleaning tags shall be removed when[if] a truck is unloaded and the tags shall be maintained at the receiving location for a minimum of ninety (90) days.

(8)(d) A truck/trucks that picks up and delivers[which] pick up and deliver two (2) loads of milk in the same day shall have a new cleaning tag affixed after the first load is delivered explaining why the truck is running unwashed on the second trip.

(9)(e) Wash tag requirements shall apply to all farm bulk milk pickup trucks and milk transport tankers.

(10) If a transport truck is/trucks are not washed by the plant that[which] loads the truck, the truck shall have a wash tag prior to loading.

(11) A bulk milk truck/trucks shall have a properly identified wash tag before the milk is received and unloaded unless approved by the cabinet.

(12)(4) The bulk milk tank and its milk contact appurtenances shall be protected from contamination after being cleaned and sanitized.

(13)(5) Milk in bulk milk tank trucks shall be maintained at a temperature of forty-five (45) degrees Fahrenheit or less for Grade A

milk and fifty (50) degrees Fahrenheit or less for manufacturing milk from the time of collection until delivered to a milk plant, receiving station, or transfer station. Grade A milk may be collected within two (2) hours after milking if the blend temperature in the farm bulk cooler does not exceed fifty (50) degrees Fahrenheit.

(14)(6) Milk in farm bulk tanks in excess of forty-five (45) degrees Fahrenheit for Grade A milk and fifty (50) degrees Fahrenheit for manufacturing milk shall not be commingled with other producers' milk on a bulk tank truck, except as provided for in subsection (13)(5) of this section.

(15)(7) The name of the milk plant or company or the name and address of the owner of the bulk milk pickup tank shall be legibly marked on both sides or on the rear of the vehicle in letters not less than one and one-half (1 1/2) inches in height.

(16)(8) Each bulk milk route owner shall provide a bulk milk hauler who holds a valid permit for all bulk milk collection. The permit shall be carried on the person or in the vehicle. A milk processing plant/plants shall not receive raw milk from a Kentucky producer if the milk/which has not been collected by a permitted hauler.

Section 7. Milk Plant, Receiving Station, and Transfer Station Standards. (1) ~~[It shall be the responsibility of]~~ The milk plant, receiving station, or transfer station shall have[to provide] competent personnel to receive producer raw milk samples from each bulk milk tank truck.

(2) The temperature of the temperature sample ~~[(if applicable),]~~ shall be recorded and the samples shall be properly identified and stored prior to delivery to the laboratory.

(3) The milk plant, receiving station, or transfer station shall be responsible for providing facilities for the storage of producer raw milk samples at a temperature of thirty-two (32) to forty (40) degrees Fahrenheit.

(4) Raw milk samples ~~[at which temperature they]~~ shall be maintained at the temperature specified in subsection (3) of this section until they are received by the laboratory for analysis.

(5) A producer raw milk sample/samples shall not be transferred to another sample container after the sample has/they have been collected by the bulk milk hauler.

(6) Required laboratory analysis shall begin no later than thirty-six (36) hours after the first sample on the route was collected.

(7) A milk producer or/producers and bulk milk hauler/haulers shall not receive notice of which samples are to be used for bacteriological analysis.

Section 8. Milk Hauler Permit Suspension, Revocation, and Reinstatement. In addition to the penalties established in KRS 217C.990, the cabinet may suspend or revoke a milk hauler's permit, in accordance with KRS 217C.040.

(1) The cabinet shall, upon notice to the hauler and owner, immediately suspend the permit if:

(a) There is reason to believe that an imminent public health hazard exists;

(b) The hauler or owner has interfered with the cabinet in the performance of the cabinet's duties; or

(c) The hauler or owner has falsified any records or documents.

(2) In all other instances of violation of this administrative regulation, the cabinet shall:

(a) Serve on the hauler a written notice stating the violation; and

(b) Afford the hauler the opportunity to correct the violation.

(3) A hauler whose permit has been suspended may, at any time, submit an Application for Reinstatement of Permit, incorporated by reference in 902 KAR 50:033.

(4) Suspension of a permit shall remain in effect until the violation has been corrected to the satisfaction of the cabinet.

(5) For serious or repeated violations of this administrative regulation, the hauler's permit may be permanently revoked.

(6) Prior to revocation, the cabinet shall notify the hauler 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 with the Milk Safety Branch.

(7) The hearing shall be conducted in accordance with KRS

217C.100.

Section 9. Incorporation by Reference. (1) "Application for Permit to Haul Milk and Collect Samples of Raw Milk", 1/2020, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Milk Safety Branch, Division of Public Health Protection and Safety, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. [If the cabinet has reason to believe that a public health hazard exists, or the permit holder has willfully refused to allow inspection, the permit may be suspended immediately upon notice to the permit holder without a hearing. The permit holder may request a hearing which shall be granted within ten (10) days.]

(2) In all other instances of violation of the provisions of this administrative regulation, the cabinet shall serve upon the holder of the permit a written notice of intent to suspend which shall specify the violation in question and afford the holder a reasonable opportunity to correct same.

(3) If the cabinet's reinspection, after the written notice of intent has been issued, indicates the violation has not been corrected, the cabinet may suspend the hauler's permit or require the hauler and owner to appear before the cabinet at a hearing to justify why the permit should not be suspended.

(4) Upon written application of a person whose permit has been suspended, or upon application within forty-eight (48) hours of a person who has been served with a notice of intention to suspend, and in the latter case before suspension, the cabinet shall within a reasonable time 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 notice of intention to suspend.

(a) The request for a hearing shall be made in writing on Form DFS-8, "Request for Hearing," revised January 1989, incorporated by reference. Form DFS-8, "Request for Hearing," 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.

(b) The cabinet shall notify the requesting party in writing of the:

1. Name of the hearing officer; and
2. Time and place of the hearing.

(c) All parties shall be allowed a reasonable time to prepare for the hearing, including the right to:

1. Be represented by counsel;
2. Present evidence on his behalf; and
3. Cross-examine witnesses.

(d) 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.

(e) 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.

(5) A permit suspended under the provisions of this section may be reinstated if all violations are found to be corrected upon reinspection by the cabinet, and the cabinet is in receipt of 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-]

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 OF HEALTH AND FAMILY SERVICES**  
**Department for Behavioral Health**  
**Developmental and Intellectual Disabilities**  
**Division of Behavioral Health**  
**(As Amended at ARRS, December 3, 2020)**

**908 KAR 1:400. Licensing and standards [Procedures] for substance use and misuse [abuse] prevention.**

RELATES TO: KRS Chapter 13B, 61.870 to 61.884, 194A.005 [194A.050], 194A.070, 209.030, 222.003, 222.005(2), 222.221, 222.990, 223.231, 620.030

STATUTORY AUTHORITY: 194A.050, KRS 222.211, 222.231

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050 and 222.231 require[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) [(10)] "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) [(11)] "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) [(13)] "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) [(14)] "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, in accordance with the procedures of 908 KAR 1:370, 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, incorporated by reference in 908 KAR 1:370, 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) [(11)] 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/sabq> 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. ~~If/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.]~~

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.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING  
OR RECEIPT OF WRITTEN COMMENTS

EDUCATION AND WORKFORCE DEVELOPMENT CABINET  
Kentucky Board of Education  
Department of Education  
(Amended After Comments)

702 KAR 4:090. Property disposal.

RELATES TO: KRS [456.034,] 156.160

STATUTORY AUTHORITY: KRS 156.160, 156.070

NECESSITY, FUNCTION, AND CONFORMITY: [KRS 156.034 requires that administrative regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary and resubmitted to the Legislative Research Commission prior to December 30, 1990; and] KRS 156.160 requires the State Board for Elementary and Secondary Education to promulgate administrative regulations dealing with the disposal of real and personal property owned by local boards of education. This administrative regulation is necessary to provide for real property disposal, leases, and easements in accordance with an approved educational program. KRS 156.070 provides that the Kentucky Board of Education shall have the management and control of the common schools.

Section 1. Disposition of Real Property. (1) School property proposed for disposal shall be surplus to the need for the educational program need of the district as determined by the effective district facility plan. Surplus property includes real property designated as a "Transitional Center" or not listed on the effective district facility plan. Request for approval to dispose of real property shall be submitted in writing to the Kentucky Department of Education [chief state school officer]. The request shall identify the property by its address and last reported name and include a plan for resolving mortgage liens or other encumbrances. Upon receipt of written contingent approval from the department, the district may start the disposal process using one of the following methods that secures the fair market value for the property and ensures that the district retains no residual interest as owner or lender:

- (a) By public auction;
- (b) By accepting sealed bids; or
- (c) By setting a minimum acceptable price, which is at least the fair market value of the property.

(2) For property disposal by public auction or sealed bids, the proposed sale shall be advertised in accordance with KRS 424.130(1)(b), and the legal notice shall include the following statement: "The board of education reserves the right to reject any and all bids and final approval by the Kentucky Department of Education is required." Following the conclusion of the auction or receipt of bids, the local board of education shall submit the following to the department for review and final approval:

- (a) The appraisal;
- (b) An affidavit attesting to the publication of legal notice;
- (c) Results of the public auction or sealed bids;
- (d) The proposed sale agreement reviewed and approved by the board's attorney; and
- (e) The local board order approving the sale contingent on approval by the department.

(3) For property disposal by setting a minimum acceptable price, the minimum acceptable price shall be the fair market value, which shall be determined by an appraisal from a certified general real property appraiser commissioned by the school district and obtained in connection with the disposal of the property. Following receipt of an acceptable offer to purchase, the local board of education shall submit the following documentation to the department for review and final approval:

- (a) The appraisal;
- (b) The proposed sale agreement reviewed and approved by the board's attorney; and
- (c) The local board order approving the sale contingent on approval by the department.

(4) Upon receipt of written final approval from the department, the local school district may execute the sale agreement. The district shall provide the department with a copy of the executed agreement within thirty (30) days from the date of execution.[Disposal may be implemented upon approval.]

Section 2. Disposition by Easement. (1) Prior to the execution of a proposed easement upon school property, the agreement shall be reviewed by the local district's board attorney. The reviewed agreement and an appraisal from a certified general real property appraiser commissioned by the school district and obtained in connection with the easement[the proposed lease agreement for, or easement upon, public school property] shall be submitted to the local board of education for its consideration. Upon approval, the local school district's [and] written board order[recommendation] shall be forwarded to the department[chief state school officer] for review and approval.[his review, approval and] The local board of education shall include assurance that disposal will not affect the integrity or usefulness of property crucial to the educational needs of the district.

(2) Proposed easement agreements, including but not limited to utility and access easement agreements shall include:

- (a) The parties to the agreement;
- (b) A legal description of the easement;
- (c) Documentation regarding receipt of fair market value as determined by an appraisal from a certified general real property appraiser commissioned by the school district and obtained in connection with the disposal of the property or equivalent valuable consideration;

(d) A reversionary clause that reverts the property back to the exclusive unrestricted control of the local board of education when the need for the easement no longer exists; and

(e) A plat by a licensed surveyor indicating the easement boundaries, acreage and its relationship to the larger property.

(3) Upon receipt of written final approval from the department, the local school district may execute the agreement. The district shall provide the department with a copy of the executed agreement within thirty (30) days from the date of execution.

(4) Temporary and construction easements do not require department approval but shall include provisions related to the amount of time in effect, and a requirement that any disturbed areas shall be returned to original condition.

Section 3. Disposition by Lease (District as Lessor/Landlord).

(1) Prior to the execution of a proposed lease agreement for school property, the proposed lease agreement shall be reviewed by the local district's board attorney and the board's insurance carrier. The proposed lease agreement shall be submitted to the local board of education for its consideration and a written board order forwarded to the department for review and approval. The local board of education shall provide assurance that the disposal will not affect the integrity or the usefulness of the property subject to the educational need of the district.

(2) The proposed lease agreement shall include, but is not limited to the following provisions:

- (a) The parties to the agreement;
- (b) The proposed use and occupation;
- (c) A description of the leased space including square footage and description of common areas if applicable;
- (d) Use of site and parking;
- (e) Term of lease including beginning and ending dates. The term shall include an annual renewal/cancellation provisions;
- (f) Determination of fair market value and how payments are to be made;
- (g) Insurance requirements of the parties;
- (h) Identification of the parties' responsibilities for payment of utilities, performance of maintenance and related supplies;
- (i) Notice provisions;
- (j) Provisions for security;
- (k) Requirements for compliance with established board

policies if tenants will be in contact with students; and

(l) Any other applicable terms or conditions.

(3) Upon receipt of written final approval from the department, the local school district may execute the lease agreement. The district shall provide the department with a copy of the executed agreement within thirty (30) days from the date of execution.

**Section 4. Conflict of Interest. (1) ~~Members of the local school board requesting department approval to lease or dispose of surplus property shall submit a certification that the members of the local school board have no conflict of interest with regard to the transaction and that neither board members, nor member of their family, have any financial interest in the transaction. In the event of any conflict of interest in the transaction, a conflicted local school board member shall publicly disclose the conflict of interest to the school board and recuse himself/herself from voting on the matter. The local school board shall provide minutes of any such meeting to the department when requesting approval under any section of this administrative regulation.~~**

**(2) If a local school board uses a third party to dispose of or lease property, the third party shall not have any financial interest in the transaction or adjacent property beyond a standard commission approved by the school board. In the event the third party has any financial interest in the transaction or adjacent property beyond a standard commission, the third party must publicly disclose his/her conflict of interest to the local school board and said conflict shall be spread on the local school board's meeting minutes. The local school board shall provide minutes of any such meeting to the department when requesting approval under any section of this administrative regulation.**

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

JASON GLASS, Ed.D., Interim Commissioner of Education  
LU YOUNG, Chair

APPROVED BY AGENCY: December 14, 2020

FILED WITH LRC: December 14, 2020 at 12:24 p.m.

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

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd G. Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the procedures for the disposition of surplus real property by a local board of education.

(b) The necessity of this administrative regulation: The regulation is necessary to clarify the process by which local boards of education dispose of surplus real property to explicitly include the constitutionally required steps for a district to obtain fair market value for the property.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations dealing with the disposal of real and personal property owned by local boards of education. This administrative regulation is necessary to provide for real property disposal, leases, and easements in accordance with an approved educational program. KRS 156.070 provides that the Kentucky Board of Education shall have the management and control of the common schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the processes by which local boards of education may dispose of surplus real property. KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations dealing with the disposal of real and personal property

owned by local boards of education.

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

(a) How the amendment will change this existing administrative regulation: The regulation sets out the steps a local board of education must undertake when disposing of surplus real property. Prior to the amendment the requirements for disposal were informed by court cases and Attorney General Opinions. This regulation clarifies the process to explicitly include the required steps for a district to obtain fair market value for the property in one location.

(b) The necessity of the amendment to this administrative regulation: The regulation is necessary to clarify the process by which local boards of education dispose of surplus real property to explicitly include the constitutionally required steps for a district to obtain fair market value for the property.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations dealing with the disposal of real and personal property owned by local boards of education. This administrative regulation is necessary to provide for real property disposal, leases, and easements in accordance with an approved educational program. KRS 156.070 provides that the Kentucky Board of Education shall have the management and control of the common schools.

(d) How the amendment will assist in the effective administration of the statutes: This regulation establishes the processes by which local boards of education may dispose of surplus real property. KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations dealing with the disposal of real and personal property owned by local boards of education.

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulation sets out the steps a local board of education must undertake when disposing of surplus real property. Prior to the amendment the requirements for disposal were informed by court cases and Attorney General Opinions. This regulation does not change the process but rather puts the required steps for a district to obtain fair market value for the property in one location.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no new costs associated with the amendment. The regulation codifies existing requirements for the disposal of surplus property.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation provides clarification to local boards of education when disposing of surplus property. The regulation sets out the steps a local board of education must undertake when disposing of surplus real property. Prior to the amendment the requirements for disposal were informed by court cases and Attorney General Opinions. This regulation does not change the process but rather puts the required steps for a district to obtain fair market value for the property in one location.

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

(a) Initially: Since the proposed amendment merely codifies the existing requirements for the disposal of surplus property, there will be no new cost to implement the regulation.

(b) On a continuing basis: No new costs are expected related to the regulation amendment.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not applied. The regulation applies equally to all Kentucky school districts.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation establishes the processes by which local boards of education may dispose of surplus real property. KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations dealing with the disposal of real and personal property owned by local boards of education.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation should have no impact on revenue, beyond the proceeds generated from the sale of any surplus property. The amendment clarifies the process for the disposal of local board of education surplus property.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation should have no impact on revenue, beyond the proceeds generated from the sale of any surplus property. The amendment clarifies the process for the disposal of local board of education surplus property.

(c) How much will it cost to administer this program for the first year? This regulation is not expected create any new costs. It merely reduces existing requirements to inside of the regulation. The costs associated with the administration of this regulation is mainly staff time.

(d) How much will it cost to administer this program for subsequent years? This regulation is not expected create any new costs. It merely reduces existing requirements to inside of the regulation. The costs associated with the administration of this regulation is mainly staff time.

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

Revenues (+/-): N/A.

Expenditures (+/-): N/A.

Other Explanation:

#### PUBLIC PROTECTION CABINET Department of Insurance Health and Life Division (Amended After Comments)

#### 806 KAR 12:150. Annuity disclosures

RELATES TO: KRS 304.12-010, 304.12-020, 304.12-230, 26 U.S.C. 401, 403, 414, 457, 29 U.S.C. 1001-1461

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner of the Department of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. This administrative regulation

requires insurers to deliver information to purchasers of annuities that will improve the buyer's ability to select the most appropriate annuity for the buyer's needs and improve the buyer's understanding of the basic features of the product that has been purchased or is under consideration.

Section 1. Definitions. (1) "Buyer's Guide" means the current National Association of Insurance Commissioner's approved Annuity Buyer's Guide [~~Annuity Buyer's Guide published by the Commonwealth of Kentucky Department of Insurance~~].

(2) "Charitable gift annuity" is defined in KRS 304.1-120(6)(b).

(3) "Contract owner" means the owner named in the annuity contract or certificate holder in the case of a group annuity contract.

(4) "Determinable elements" means elements derived from processes or methods that are guaranteed at issue and not subject to company discretion, but ones in which the values or amounts cannot be determined until some point after issue. These elements include the premiums, credited interest rates including any bonus, benefits, values, noninterest based credits, charges, or elements of formulas used to determine at issue. An element is determinable if it was calculated from underlying determinable elements only, or from both determinable and guaranteed elements.

(5) "Funding agreement" means an agreement for an insurer to accept and accumulate funds and to make one (1) or more payments at future dates in amounts that are not based on mortality or morbidity contingencies.

(6) "Generic name" means a short title descriptive of the annuity contract being applied for or illustrated.

(7) "Guaranteed elements" means the premiums and credited interest rates, including any bonus, benefits, values, noninterest based credits, charges, or elements of formulas used to determine any of these, that are guaranteed and determined at issue. An element is guaranteed if all of the underlying elements that go into its calculation are guaranteed.

(8) "Illustration" means a personalized presentation or depiction prepared for and provided to an individual consumer that includes nonguaranteed elements of an annuity contract over a period of years.

(9) "Market Value Adjustment" or "MVA" feature means a positive or negative adjustment that may be applied to the account value or cash value of the annuity upon withdrawal, surrender, contract annuitization or death benefit payment based on either the movement of an external index or on the company's current guaranteed interest rate being offered on new premiums or new rates for renewal periods, if that withdrawal, surrender, contract annuitization or death benefit payment occurs at a time other than on a specified guaranteed benefit date.

(10) "Nonguaranteed elements" means the premiums and credited interest rates including any bonus, benefits, values, non-interest based credits, charges, or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue. An element is nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.

(11) "Registered Product" means an annuity contract or life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933.

(12) ~~(9)~~ "Structured settlement annuity" means:

(a) A "qualified funding asset" as defined in 26 U.S.C. 130(d); or

(b) An annuity that would be a qualified funding asset pursuant to 26 U.S.C. 130(d) except for the fact that it is not owned by an assignee under a qualified assignment.

Section 2. Applicability. This administrative regulation shall apply to all group and individual annuity contracts and certificates except:

(1) Immediate and deferred annuities that contain no non-guaranteed elements [~~Registered or non-registered variable annuities or other registered products~~];

(2)(a) Annuities used to fund:

1. An employee pension plan which is covered by the

Employee Retirement Income Security Act (ERISA), codified as 29 U.S.C. 1001 to 1461;

2. A plan described by 26 U.S.C. 401(a), (k), or 403(b), if the plan, for purposes of ERISA, is established or maintained by an employer;

3. A governmental or church plan defined in 26 U.S.C. 414 or a deferred compensation plan of a state or local government or a tax exempt organization under 26 U.S.C. 457; or

4. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(b)1. Notwithstanding paragraph (a) of this subsection, this administrative regulation shall apply to annuities used to fund a plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis, and if the insurance company has been notified that plan participants may choose from among two (2) or more fixed annuity providers and there is a direct solicitation of an individual employee by a producer for the purchase of an annuity contract; and

2. As used in this subsection, direct solicitation shall not include a meeting held by a producer solely for the purpose of educating or enrolling employees in the plan or arrangement;

(3) Non-registered variable annuities issued exclusively to an accredited investor or qualified purchaser as those terms are defined by the Securities Act of 1933 (15 U.S.C. Section 77a et seq.), the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.), or the regulations promulgated under either of those acts, and offered for sale and sold in a transaction that is exempt from registration under the Securities Act of 1933 (15 U.S.C. Section 77a et seq.)

(4)(a) Transactions involving variable annuities and other registered products in compliance with Securities and Exchange Commission (SEC) rules and Financial Industry Regulatory Authority (FINRA) rules relating to disclosures and illustrations, except that compliance with Section 3 shall be required after January 1, 2014, unless, or until the SEC has adopted a summary prospectus rule or FINRA has approved for use a simplified disclosure form applicable to variable annuities or other registered products.

(b) Notwithstanding Subsection (4), the delivery of the Buyer's Guide is required in sales of variable annuities, and if appropriate, in sales of other registered products.

(c) Nothing in this subsection shall limit the commissioner's ability to enforce the provisions of this regulation or to require additional disclosure.

(5) ~~[(3)]~~ Structured settlement annuities;

(6) ~~[(4)]~~ Charitable gift annuities; and

(7) ~~[(5)]~~ Funding agreements.

Section 3. Standards for the Disclosure Document and Buyer's Guide. (1)(a) If the application for an annuity contract is solicited personally by an agent, the applicant shall be given both the disclosure document described in subsection (3) of this section and the Buyer's Guide no later than the time of application.

(b) If the application for an annuity contract is taken by means other than a personal solicitation by an agent, the applicant shall be sent both the disclosure document described in subsection (3) of this section and the Buyer's Guide no later than five (5) business days after the completed application is received by the insurer.

1. With respect to an application received as a result of a direct solicitation through the mail:

a. Providing a Buyer's Guide in a mailing inviting prospective applicants to apply for an annuity contract shall satisfy the requirement that the Buyer's Guide be provided no later than five (5) business days after receipt of the application; and [or]

b. Providing a disclosure document in a mailing inviting a prospective applicant to apply for an annuity contract shall satisfy the requirement that the disclosure document be provided no later than five (5) business days after receipt of the application.

2. With respect to an application received via the Internet:

a. Taking reasonable steps to make the Buyer's Guide available for viewing and printing on the insurer's Web site shall satisfy the requirement that the Buyer's Guide be provided no later than five (5) business days after receipt of the application; or

b. Taking reasonable steps to make the disclosure document available for viewing and printing on the insurer's Web site shall satisfy the requirement that the disclosure document be provided no later than five (5) business days after receipt of the application.

3. A solicitation for an annuity contract that is not personally solicited by an agent shall include a statement that the proposed applicant may obtain a free Annuity Buyer's Guide by contacting the Department of Insurance or the insurer.

(c) 1. If the Buyer's Guide and disclosure document described in subsection (3) of this section are not provided at or before the time of application, a free look period of no less than fifteen (15) days shall be provided for the applicant to return the annuity contract without penalty.

2. This free look period shall run concurrently with any other free look period provided under state law or administrative regulation.

(2) The following information shall be included in the disclosure document:

(a) The generic name of the contract, the company product name, if different, the form number, and the fact that it is an annuity;

(b) The insurer's name, physical address, website address and telephone number [and address];

(c) A description of the contract and its benefits, emphasizing its long-term nature, including the following information:

1. The guaranteed and nonguaranteed ~~[and determinable]~~ elements of the contract and their limitations, if any, including for fixed indexed annuities, the elements used to determine the index-based interest, such as the participation rates, caps or spreads, and an explanation of how they operate;

2. An explanation of the initial crediting rate, or for fixed indexed annuities, an explanation of how the index-based interest is determined, specifying any bonus or introductory portion, the duration of the rate, and the fact that rates may change from time to time and shall not be guaranteed;

3. Periodic income options both on a guaranteed and nonguaranteed basis;

4. Value reductions caused by withdrawals from or surrender of the contract;

5. How values in the contract can be accessed;

6. The death benefit, if available, and how it will be calculated;

7. A summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract; and

8. An explanation of the impact of a rider, such as a long-term care rider or guaranteed living benefit;

(d) Specific dollar amount or percentage charges and fees shall be listed with an explanation of how they apply; and

(e) Information about the current guaranteed rate or indexed crediting rate formula, for new contracts that contains a clear notice that the rate is subject to change.

(3) The disclosure statement shall comply with the minimum standards for readability and intelligibility established in 806 KAR 14:121.[

#### **Section 4. Standards for Annuity Illustrations.**

~~(1) An insurer or producer may elect to provide a consumer an illustration at any time, if the illustration is in compliance with this section and;~~

~~(a) Is clearly labeled as an illustration;~~

~~(b) Includes a statement referring consumers to the Disclosure Document and Buyer's Guide provided to them at time of purchase for additional information about their annuity; and~~

~~(c) Is prepared by the insurer or third party using software that is authorized by the insurer prior to its use, if the insurer maintains a system of control over the use of illustrations.~~

~~(2) An illustration furnished to an applicant for a group annuity contract or a contract issued to a single applicant on multiple lives may be an individual or composite illustration representative of the coverage on the lives of members of the group or the multiple lives covered;~~

~~(3) The illustration shall not be provided unless accompanied by the disclosure document referenced in~~

Section 3.

(4) When using an illustration, the illustration shall not:

(a) Describe nonguaranteed elements in a manner that is misleading or has the capacity or tendency to mislead;

(b) State or imply that the payment or amount of nonguaranteed elements is guaranteed; or

(c) Be incomplete.

(5) Costs and fees of any type noted on the illustration shall be individually noted and explained.

(6) An illustration shall conform to the following requirements:

(a) The illustration shall be labeled with the date on which it was prepared;

(b) Each page, including any explanatory notes or pages, shall be numbered and show its relationship to the total number of pages in the disclosure document;

(c) The assumed dates of premium receipt and benefit payout within a contract year shall be clearly identified;

(d) If the age of the proposed insured is shown as a component of the tabular detail, it shall be issue age plus the number of years the contract is assumed to have been in force;

(e) The assumed premium on which the illustrated benefits and values are based shall be clearly identified, including rider premium for any benefits being illustrated;

(f) Any charges for riders or other contract features assessed against the account value or the crediting rate shall be:

1. Recognized in the illustrated values; and

2. Accompanied by a statement indicating the nature of the rider benefits or the contract features, and whether or not they are included in the illustration;

(g) Guaranteed death benefits and values available upon surrender, if any, for the illustrated contract premium shall be shown and clearly labeled guaranteed;

(h) The nonguaranteed elements underlying the nonguaranteed illustrated values:

1. Shall be no more favorable than current nonguaranteed elements; and

2. Shall not include any assumed future improvement of nonguarantee elements;

(i) Nonguaranteed elements used in calculating nonguaranteed illustrated values at any future duration shall:

1. Reflect any planned changes; and

2. Reflect planned changes that occur after expiration of an initial guaranteed or bonus period;

(j) In determining the nonguaranteed illustrated values for a fixed indexed annuity, the index-based interest rate and account value shall be calculated for the following three different scenarios:

1. To reflect historical performance of the index for the most recent ten (10) calendar years;

2. To reflect the historical performance of the index for the continuous period of ten (10) calendar years out of the last twenty (20) calendar years that would result in the least index value growth (the low scenario); and

3. To reflect the historical performance of the index for the continuous period of ten (10) calendar years out of the last twenty (20) calendar years that would result in the most index value growth, known as the high scenario. The following requirements apply to this scenario:

a. The most recent ten (10) calendar years and the last twenty (20) calendar years are defined to end on the prior December 31, except for illustrations prepared during the first three (3) months of the year, for which the end date of the calendar year period may be the December 31 prior to the last full calendar year;

b. If any index utilized in determination of an account value has not been in existence for at least ten (10) calendar years, indexed returns for that index shall not be illustrated. If the fixed indexed annuity provides an option to allocate account value to more than one indexed or fixed declared rate account, and one or more of those indexes has not been in

existence for at least ten (10) calendar years, the allocation to such indexed accounts shall be assumed to be zero;

c. If any index utilized in determination of an account value has been in existence for at least ten (10) calendar years but less than twenty (20) calendar years, the ten (10) calendar year periods that define the low and high scenarios shall be chosen from the exact number of years the index has been in existence;

d. The nonguaranteed elements, such as caps, spreads, participation rates or other interest crediting adjustments, used in calculating the nonguaranteed index-based rate shall be no more favorable than the corresponding current elements;

e. If a fixed indexed annuity provides an option to allocate the account value to more than one indexed or fixed declared rate account:

i. The allocation used in the illustration shall be the same for all three scenarios; and

ii. The ten (10) calendar year periods resulting in the least and greatest index growth periods shall be determined independently for each indexed account option;

f. The geometric mean annual effective rate of the account value growth over the ten (10) calendar year period shall be shown for each scenario;

g. If the most recent ten (10) calendar year historical period experience of the index is shorter than the number of years needed to fulfill the requirement of subsection (8) of this section, the most recent ten (10) calendar year historical period experience of the index shall be used for each subsequent ten (10) calendar year period beyond the initial period for the purpose of calculating the account value for the remaining years of the illustration;

h. The low and high scenarios:

(i) Are not required to show surrender values if they are different than account values;

(ii) Shall not extend beyond ten (10) calendar years and therefore are not subject to the requirements of subsection (8) of this section except for subsection (8)(a)(1); and

(iii) May be shown on a separate page.

i. A graphical presentation shall also be included comparing the movement of the account value over the ten (10) calendar year period for the low scenario, the high scenario and the most recent ten (10) calendar year scenario;

j. The low and high scenarios shall reflect the irregular nature of the index performance and shall trigger every type of adjustment to the index-based interest rate under the contract, clearly explaining the effect of the adjustments. The illustration shall state if an adjustment to the index-based interest rate is not triggered in the illustration because no historical values of the index in the required illustration range would have triggered it;

k. The guaranteed elements, if any, shall be shown before corresponding nonguaranteed elements and shall be specifically referred to on any page of an illustration that shows or describes only the non-guaranteed elements;

l. The account or accumulation value of a contract, if shown, shall be identified by the name this value is given in the contract being illustrated and shown in close proximity to the corresponding value available upon surrender;

m. The value available upon surrender shall be identified by the name this value is given in the contract being illustrated and shall be the amount available to the contract owner in a lump sum after deduction of surrender charges, bonus forfeitures, contract loans, contract loan interest and application of any market value adjustment, as applicable;

n. Illustrations may show contract benefits and values in graphic or chart form in addition to the tabular form;

o. Any illustration of nonguaranteed elements shall be accompanied by a statement indicating that:

1. The benefits and values are not guaranteed;

2. The assumptions on which they are based are subject to change by the insurer; and

3. Actual results may be higher or lower;

p. Illustrations based on nonguaranteed credited interest and non-guaranteed annuity income rates shall contain equally prominent comparisons to guaranteed credited interest and guaranteed annuity income rates, including any guaranteed and nonguaranteed participation rates, caps or spreads for fixed indexed annuities;

g. The annuity income rate illustrated shall not be greater than the current annuity income rate unless the contract guarantees are in fact more favorable;

r. Illustrations shall be concise and easy to read;

s. Key terms shall be defined and then used consistently throughout the illustration;

t. Illustrations shall not depict values beyond the maximum annuitization age or date;

u. Annuitization benefits shall be based on contract values that reflect surrender charges or any other adjustments, if applicable; and

v. Illustrations shall show annuity income rates per \$1000.00 and the dollar amounts of the periodic income payable;

(7) If the information is not included in a disclosure statement provided at the same time as an illustration, an annuity illustration shall include a narrative summary that includes the following:

(a) A brief description of any contract features, riders or options, guaranteed and nonguaranteed, shown in the basic illustration and the impact they may have on the benefits and values of the contract;

(b) A brief description of any other optional benefits or features that are selected, but not shown in the illustration and the impact they have on the benefits and values of the contract;

(c) Identification and a brief definition of column headings and key terms used in the illustration;

(d) A statement containing in substance the following:

1. For other than fixed indexed annuities:

a. This illustration assumes the annuity's current nonguaranteed elements will not change. It is likely that they will change and actual values will be higher or lower than those in this illustration but will not be less than the minimum guarantees; and

b. The values in this illustration are not guarantees or even estimates of the amount you can expect from your annuity. Please review the entire Disclosure Document and Buyer's Guide provided with your Annuity Contract for more detailed information;

2. For fixed indexed annuities:

a. This illustration assumes the index will repeat historical performance and that the annuity's current nonguaranteed elements, such as caps, spreads, participation rates or other interest crediting adjustments, will not change. It is likely that the index will not repeat historical performance, the nonguaranteed elements will change, and actual values will be higher or lower than those in this illustration but will not be less than the minimum guarantees; and

b. The values in this illustration are not guarantees or even estimates of the amount you can expect from your annuity. Please review the entire Disclosure Document and Buyer's Guide provided with your Annuity Contract for more detailed information; and

(e) Additional explanations as follows:

1. Minimum guarantees shall be clearly explained;

2. The effect on contract values of contract surrender prior to maturity shall be explained;

3. Any conditions on the payment of bonuses shall be explained;

4. For annuities sold as an individual retirement account, qualified plan, or in another arrangement subject to the required minimum distribution requirements of the Internal Revenue Code, the effect of required distribution requirements on the contract values shall be explained;

5. A brief description of the types of annuity income options available shall be explained including:

a. The earliest or only maturity date for annuitization as the term is defined in the contract;

b. For a contract with an optional maturity date, the periodic income amount for at least one of the annuity income options available based on the guaranteed rates in the contract, at the later of age seventy (70) or ten (10) years after issue, but in no case later than the maximum annuitization age or date in the contract;

c. For contracts with a fixed maturity date, the periodic income amount for at least one of the annuity income options available, based on the guaranteed rates in the contract at the fixed maturity date; and

d. The periodic income amount based on the currently available periodic income rates for the annuity income option in item 1 or item 2.

(8) Following the narrative summary, an illustration shall include a numeric summary which shall include at minimum, numeric values at the following durations:

(a) 1. First ten (10) contract years; or

2. Surrender charge period if longer than ten (10) years, including any renewal surrender charge period;

(b) Every tenth contract year up to the later of thirty (30) years or age seventy (70); and

(c) 1. Required annuitization age; or

2. Required annuitization date.

(9) If the annuity contains a market value adjustment the following provisions apply to the illustrations:

(a) The market value adjustment shall be referred to as a market value adjustment throughout the illustration;

(b) The narrative shall include an explanation, in simple terms, of the potential effect of the MVA on the value available upon surrender;

(c) The narrative shall include an explanation, in simple terms, of the potential effect of the MVA on the death benefit;

(d) A statement, containing in substance the following, shall be included: "When you make a withdrawal, the amount you receive may be increased or decreased by a Market Value Adjustment (MVA). If interest rates on which the MVA is based go up after you buy your annuity, the MVA likely will decrease the amount you receive. If interest rates go down, the MVA will likely increase the amount you receive."

(e) Illustrations shall describe both the upside and the downside aspects of the contract features relating to the market value adjustment;

(f) The illustrative effect of the market value adjustment shall be shown under at least one positive and one negative scenario. This demonstration shall appear on a separate page and be clearly labeled that it is information demonstrating the potential impact of a market value adjustment;

(g) Actual market value adjustment floors and ceilings as listed in the contract shall be illustrated; and

(h) If the market value adjustment has significant characteristics not addressed by paragraphs (a) through (f) of this subsection, the effect of the characteristics shall be shown in the illustration.

(10) A narrative summary for a fixed indexed annuity illustration also shall include the following unless provided at the same time in a disclosure document:

(a) An explanation, in simple terms, of the elements used to determine the index-based interest, including the following elements:

1. The indexes which will be used to determine the index-based interest;

2. The indexing method;

3. The index term, including the period over which index-based interest is calculated;

4. The participation rate, if applicable;

5. The cap, if applicable; and

6. The spread, if applicable;

(b) The narrative shall include an explanation, in simple terms, of how index-based interest is credited in the indexed annuity;

(c) The narrative shall include a brief description of the



~~frequency with which the company can re-set the elements used to determine the index-based credits, including the participation rate, the cap and the spread, if applicable; and~~

~~(d) If the product allows the contract holder to make allocations to declared-rate segment, the narrative shall include a brief description of:~~

~~1. Any options to make allocations to a declared-rate segment, both for new premiums and for transfers from the indexed-based segments; and~~

~~2. Differences in guarantees applicable to the declared-rate segment and the indexed-based segments.~~

~~(11) A numeric summary for a fixed indexed annuity illustration shall include, at a minimum, the following elements:6(i);~~

~~(a) The assumed growth rate of the index in accordance with subsection (6)(i);~~

~~(b) The assumed values for the participation rate, cap and spread, if applicable; and~~

~~(c) The assumed allocation between indexed-based segments and declared-rate segment, if applicable, in accordance with subsection 6(i);~~

~~(12) If the contract is issued other than as applied for, a revised illustration conforming to the contract as issued shall be sent with the contract, except that non-substantive changes, including changes in the amount of expected initial or additional premiums and any changes in amounts of exchanges pursuant to Section 1035 of the Internal Revenue code, rollovers or transfers, which do not alter the key benefits and features of the annuity as applied for shall not require a revised illustration unless requested by the applicant.]~~

**Section 4.[Section 5.]** Report to Contract Owners. For annuities in the payout period ~~that include[with changes in]~~ nonguaranteed elements and for the accumulation period of a deferred annuity, the insurer shall provide each contract owner with a report, at least annually, on the status of the contract that contains at least the following information:

- (1) The beginning and end date of the current report period;
- (2) The accumulation and cash surrender value, if any, at the end of the previous report period and at the end of the current report period;
- (3) The total amounts, if any, that have been credited, charged to the contract value or paid during the current report period; and
- (4) The amount of outstanding loans, if any, as of the end of the current report period.

**Section 5.[Section 6.]** Effective Date. The requirements of this administrative regulation shall not be implemented or enforced prior to the effective date, determined pursuant to KRS 13A.330, or July 1, 2021, [January 1, 2012], whichever is later.

**Section 6.[Section 7.]** Incorporation by Reference. (1) "Buyer's Guide for Deferred Annuities" published by the National Association of Insurance Commissioners, Revised 2013 [The Annuity Buyer's Guide, Commonwealth of Kentucky", July 2011]-is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Insurance, 500 Mero [215-West Main] Street, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30 p.m.

(3) This material is also available on the department's Web site at <http://insurance.ky.gov/>.

KERRY B. HARVEY, Secretary  
SHARON P. CLARK, Commissioner

APPROVED BY AGENCY: December 11, 2020

FILED WITH LRC: December 14, 2020 at 8:51 a.m.

CONTACT PERSON: DJ Wasson, Deputy Commissioner, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email [dj.wasson@ky.gov](mailto:dj.wasson@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation requires insurers to deliver information to purchasers of annuities that will improve the buyer's ability to select the most appropriate annuity for the buyer's needs and improve the buyer's understanding of the basic features of the product that has been purchased or is under consideration

(b) The necessity of this administrative regulation: This administrative regulation will provide guidance and a consumer guide to insurers to assist in educating Kentucky citizens prior to purchasing an annuity.

(c) How does this administrative regulation conform to the content of the authorizing statutes: KRS 304.2-110 authorizes the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. This regulation and the material incorporated by reference will aid insurers to educate consumers regarding the purchase of annuities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation currently provides guidance, procedures and the Annuities Buyer's Guide to insurers for use with consumers.

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

(a) How the amendment will change this existing administrative regulation? The amendment adopts the National Association of Insurance Commissioners (NAIC) model language regarding illustrations related to the sale of annuities and to adopt the NAIC buyers guide. The amendments based on the comments received by the department remove Section 4 of the regulation completely as to wait for the NAIC to complete its processes in amending Model Law 245. A result of removing Section 4 and having to rename each Section in the proper numerical order. The Department also accepted the amendment to expand the exemptions listed in the applicability, Section 2, to include immediate deferred annuities that contain no non-guaranteed elements, this language aligns more closely to the model language. Section 5 was amended to more closely align with the model requirements.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to provide consumers with information necessary for them to make an annuity purchase decision. The further amendments are to ensure the regulations is more closely aligned to the model law provided by the NAIC, which ensures uniformity and reciprocity across states.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. This administrative regulation requires insurers to deliver information to purchasers of annuities that will improve the buyer's ability to select the most appropriate annuity for the buyer's needs and improve the buyer's understanding of the basic features of the product that has been purchased or is under consideration. The amendments also conform to the language written by the NAIC's Model Law 245: Annuity Disclosure Model Regulation.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide buyers with the information needed to consider the various annuity products being offered before finalizing a purchase.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Amendment to this administrative regulation will affect approximately 450 insurers offering annuity products.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensees selling annuities will be required to provide a copy of the new buyer's guide and illustrations meeting the requirements of this amendment to consumers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Since these insurers and agents are already providing the previous version of the illustration and buyer's guide, the costs associated with providing the amended version should be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The insurers and agents will be in compliance with state law and will have resources to aid consumers in purchasing an annuity.

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

(a) Initially: Minimal, if any.

(b) On a continuing basis: Minimal, if any.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The budget of the Department of Insurance.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No new fees, or direct or indirect increases in fees, will be established or incurred.

(9) TIERING: Is tiering applied? Tiering is not applied: The provisions of this administrative regulation will be implemented in the same manner for all insurers who have annuity products.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation..

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

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

(c) How much will it cost to administer this program for the first year? The cost to administer the program will not change.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the program is indeterminable.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: N/A

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Family Support (Amended After Comments)

##### 921 KAR 3:035. Certification process.

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

STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. 271.4  
NECESSITY, FUNCTION, AND CONFORMITY: 7 C.F.R. 271.4 requires the Cabinet for Health and Family Services to administer a Supplemental Nutrition Assistance Program (SNAP) within the state. KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. This administrative regulation establishes the certification process used by the cabinet in the administration of SNAP.

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

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

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

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

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

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

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

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

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

2. Have no earned income.

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

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

2. Postpone verification.

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

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

(b) If a household fails to return a completed FS-2 or the required verification, the cabinet shall take action in accordance with 7 C.F.R. 273.12(a)(5).

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

application:

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

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

(1) If a household files the application:

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

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

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

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

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

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

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

1. Represents a household's annual income; or

2. Is received on a monthly basis that represents a household's annual support.

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

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

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

1. Averaged annualized amount does not accurately reflect the household's actual circumstances; and

2. Household has experienced a substantial increase or decrease in business.

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

(a) Income from the boarder shall:

1. Be treated as self-employment income; and

2. Include all direct payments to the household for:

a. Room;

b. Meals; and

c. Shelter expenses.

(b) Deductible expenses shall include:

1. Cost of doing business;

2. Twenty (20) percent of the earned income; and

3. Shelter costs.

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

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

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

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

1. Assigning benefit levels;

2. Comparing monthly income with income eligibility standards; and

3. Comparing household resources with resource eligibility standards.

(4) A household with a member ineligible due to failure to provide a Social Security number[, delinquency in payment of court-ordered child support through the Department of Income Support, Child Support Enforcement Program in accordance with 921 KAR 3:025, Section 3(11);] or ineligible **immigrant [alien]** status[,] shall be processed as established in this subsection.

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

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

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

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

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

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

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

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

1. Count that portion due to the household as earned income, if identifiable; or

2. Count a pro rata share of earned income, if the nonhousehold member's share cannot be identified.

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

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

(a) An eligible household shall include:

1.a. A narcotic addict; or

b. An alcoholic; and

2. A child of the narcotic addict or alcoholic.

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

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

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

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

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

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

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

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

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

1. If a resident applies, the household shall report a change in household circumstance to the cabinet; or

2. If the group living arrangement acts as authorized representative, the group living arrangement shall report a change in household circumstance.

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

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

(8) A case of a resident in a shelter for battered women and

children shall be processed as established in this subsection.

(a) The shelter shall:

1. Have FNS authorization to redeem SNAP benefits at wholesalers; or
2. Meet the federal definition of a shelter as defined in 7 C.F.R. 271.2.

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

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

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

(a) An application may be filed at the:

1. Social Security Administration (SSA) Office; or
2. Local Department for Community Based Services office.

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

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

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

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

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

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

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

(c) Allowing the appropriate earnings deduction.

(11) Sponsored immigrants [aliens].

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

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

a. Include total monthly earned and unearned income; and

b. Be reduced by:

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

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

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

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

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

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

1. Becomes a naturalized citizen;

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

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

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

5. Dies, or the sponsor dies.

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

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

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

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

(b) A household member, who does not have an exemption

from work requirements, as established in 921 KAR 3:025, Section 3(8)(b), to work less than twenty (20) hours per week.

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

(a) At the certification interview; or

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

Section 8. Incorporation by Reference. (1) The "FS-2, MID [SNAP] REVIEW NOTICE", 12[8]/20 [9/16], is incorporated by reference.

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

MARTA MIRANDA-STRAUB, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: December 11, 2020

FILED WITH LRC: December 14, 2020 at 1:14 p.m.

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

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact persons: Laura Begin and Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the certification process used by the cabinet in the administration of the Supplemental Nutrition Assistance Program (SNAP).

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

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

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the certification process for SNAP.

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

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

This administrative regulation and material incorporated by reference was further amended in response to a written comment to update language relating to sponsored immigrants per federal guidance, Systematic Alien Verification for Entitlements (SAVE) sponsorship initiative.

(b) The necessity of the amendment to this administrative regulation: This regulatory amendment is necessary to decrease the possibility of certification errors that could jeopardize the food security of Kentucky residents who participate in the SNAP

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

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

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

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

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This regulatory amendment will require affected SNAP households to submit an interim report during their extended certification time periods.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to SNAP households affected by the amendment.

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

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

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

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

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

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation will be applied in a like manner statewide.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 271.2, 273.1, 273.2, 273.4, 273.5, 273.10, 273.11, 273.12, 273.14, 274, 280.1, 7 U.S.C. 2014, 2015, 42 U.S.C. 5122, 5179

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

3. Minimum or uniform standards contained in the federal

mandate. The provisions of the administrative regulation comply with the federal mandate.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter, additional, or different responsibilities or requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services is impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 7 C.F.R. 271.2, 273.1, 273.2, 273.4, 273.5, 273.10, 273.11, 273.12, 273.14, 274, 280.1, 7 U.S.C. 2014, 2015, 42 U.S.C. 5122, 5179, KRS 194A.050(1)

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

#### CABINET FOR HEALTH AND FAMILY SERVICES Department for Community Based Services Division of Protection and Permanency (Amended After Comments)

#### 922 KAR 1:500. Educational and training vouchers.

RELATES TO: KRS Chapter 13B, 164.2847, 610.110(6), 620.020(5), 620.140(1)(d), 45 C.F.R. 1355.20(a), 20 U.S.C. 1001, 1002, 1087II, 42 U.S.C. 677(d)(2), (i)

STATUTORY AUTHORITY: KRS 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for proper administration of the cabinet and its programs.

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In addition, 42 U.S.C. 677(i) makes available vouchers for education and training to youths who have aged out of foster care or were adopted from foster care at age sixteen (16) or older. This administrative regulation establishes eligibility and an application process, specifies allowable uses, and provides a procedure for administrative hearings pertaining to the educational and training vouchers.

### Section 1. Definitions.

- (1) "Cost of attendance" is defined by 20 U.S.C. 1087II.
- (2) "Educational and training voucher" means resources provided to an eligible individual to meet educational or training purposes as specified under 42 U.S.C. 677(i).
- (3) "Foster care" is defined by KRS 620.020(5) and 45 C.F.R. 1355.20(a).
- (4) "Institution of higher education" is defined by 20 U.S.C. 1001 and 1002.
- (5) "Tuition waiver" means waiver of tuition and mandatory fees for Kentucky foster or adopted children pursuant to KRS 164.2847 and 922 KAR 1:450.

### Section 2. Eligibility.

- (1) An individual shall be eligible to receive an educational and training voucher if the individual:
  - (a) Is committed to the cabinet in accordance with:
    1. KRS 620.140(1)(d); or
    2. KRS 610.110(6);
  - (b) Was adopted or entered a state Title IV-E Guardianship Assistance Program from foster care after attaining sixteen (16) years of age; or
  - (c) Left foster care upon attaining eighteen (18) years of age.
- (2) An individual shall be eligible to participate in the voucher program for a maximum of five (5) years until twenty-six (26) years of age if the individual is enrolled in an institution of higher education and is making satisfactory progress towards completion:
  - (a) As determined by the institution of higher education; and
  - (b) In accordance with Section 3(2) of this administrative regulation.

### Section 3. Application Process.

- (1) To request an educational and training voucher, an applicant shall submit a completed DPP-334, Request for Educational and Training Voucher Funds, to the cabinet:
  - (a) Upon initial application for enrollment into an institution of higher education;
  - (b) When the student transfers to another institution of higher education; or
  - (c) If a student has not been enrolled continuously at the same institution of higher education.
- (2)(a) To maintain eligibility in accordance with Section 2 of this administrative regulation, for each semester or equivalent term of instruction, the cabinet shall contact the National Student Clearinghouse to verify an applicant's enrollment in an institution of higher education.
- (b) If verification cannot be obtained through the National Student Clearinghouse in accordance with paragraph (a) of this subsection, the cabinet shall notify the applicant, and the applicant shall:
  1. Contact the applicant's institution of higher education; and
  2. Request that written confirmation of enrollment from the institution of higher education be sent to the cabinet.
- (3) **Designated cabinet staff shall make a determination within thirty (30) business days of receipt of a completed DPP-334.**
- (4) If an applicant is determined ineligible by the cabinet, the cabinet shall provide notification, in writing, to the applicant stating the reason for ineligibility.

### Section 4. Allowable Payments.

- (1) An educational and training voucher shall be used to:
  - (a) Assist an eligible individual to prepare for and enter an institution of higher education, including:
    1. A fee for an educational aptitude examination to qualify for

or apply to an institution of higher education;

2. An entrance or application fee required by an institution of higher education;
3. An enrollment fee or deposit required by an institution of higher education;
4. Cost of an educational aptitude course to prepare the eligible individual for an examination as specified in this subsection; or
5. An expense, in addition to an expense specified in subparagraphs 2 and 3 of this paragraph, required for entrance by the institution of higher education; or
- (b) Pay for the cost of attendance at an institution of higher education.
- (2) An educational and training voucher shall not exceed the lesser of \$5,000 per year or the total cost of attendance per year.
- (3) To the extent that funds are available, the cabinet shall authorize payment for an application for an educational and training voucher to an eligible individual.
- (4) In accordance with 42 U.S.C. 677(d)(2), an educational and training voucher shall not be approved for the same purpose as a tuition waiver or other student financial aid.

Section 5. Service Appeal. An applicant who is determined ineligible for an educational and training voucher **by the cabinet** shall have access to an administrative hearing in accordance with 922 KAR 1:320.

### Section 6. Incorporation by Reference.

- (1) "DPP-334, Request for Educational and Training Voucher Funds", **12(08)/20** [41/46], is incorporated by reference.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

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

APPROVED BY AGENCY: December 11, 2020

FILED WITH LRC: December 14, 2020 at 12:07 p.m.

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

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact persons: Laura Begin or Donna Little

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: This administrative regulation establishes eligibility and an application process, specifies allowable uses, and provides a procedure for administrative hearings pertaining to educational and training vouchers.
  - (b) The necessity of this administrative regulation: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for proper administration of the cabinet and its programs. 42 U.S.C. 677(i) makes available vouchers for education and training to youths who have aged out of foster care or were adopted from foster care at age sixteen (16) or older. This administrative regulation outlines this process.
  - (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with state statute KRS 194A.050(1) and federal code 42 U.S.C. 677.
  - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by explaining the process through which an education and training voucher may be obtained and how it may be used.

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

(a) How the amendment will change this existing administrative regulation: The amendment is necessary to update the material incorporated by reference, the DPP-334 form. The amendment also includes reference to a federal program for consistency with the federal rule. Although Kentucky does not participate in this program, Kentucky does provide educational and training voucher (ETV) funds to individuals who were eligible in other states if pursuing their education or training in Kentucky.

The administrative regulation and form are being further amended in response to comments received from the Children's Alliance to make clarifications regarding the process of completing this request form.

(b) The necessity of the amendment to this administrative regulation: The amendment is needed in the material incorporated by reference, the DPP-334, to include students who are currently in the legal custody of the Cabinet for Health and Family Services as meeting the eligibility for educational and training voucher funds. This was inadvertently excluded from previous versions of the form.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is necessary to conform to state statute and federal rule.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes through clarifying the instructions and making technical corrections to assist an individual in the application for educational and training voucher funds.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There were 146 individuals who received education and training voucher funds in State Fiscal Year 2018 and 195 individuals who received these funds in SFY 2019.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Eligible individuals may receive educational and training voucher funds up to the age of twenty-six (26) if they have not received these funds for five (5) years already when they complete the application and submit it as outlined in this administrative regulation. The amendment includes more individuals in the eligibility, consistent with state statute and federal rule.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation imposes no new or additional costs on eligible individuals.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Eligible individuals will benefit through the eligibility process and utilization of educational and training voucher funds.

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

(a) Initially: This is an existing program and the cabinet projects there will be no costs. The educational and training voucher program is funded through a federal grant that requires no matching state funds.

(b) On a continuing basis: This is an existing program and the cabinet projects there will be no continuing costs to implement this amendment. The educational and training voucher program is funded through a federal grant that requires no matching state funds.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This program is entirely funded by federal funds.

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

administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation is applied in a like manner statewide.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 677(d)(2), (i)

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

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 677(d)(2), (i)

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amended administrative regulation does not impose stricter requirements or responsibilities. This amendment conforms with federal rule.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services is impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 42 U.S.C. 677(d)(2), (i)

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

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

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

(c) How much will it cost to administer this program for the first year? An increase in fees or funding is not necessary to implement this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation is not projected to have a new fiscal impact on the administrative body.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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*.

**BOARDS AND COMMISSIONS**  
**Kentucky Board of Pharmacy**  
**(Amendment)**

**201 KAR 2:380. Board authorized protocols.**

RELATES TO: KRS 315.010(25), 315.191(1)(a), (f)  
STATUTORY AUTHORITY: KRS 315.010(25), 315.191(1)(a),

(f) NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.010(25) defines a prescription drug order, which includes orders issued through protocols authorized by the board. KRS 315.191(1)(a) authorizes the board to promulgate administrative regulations necessary to regulate and control all matters pertaining to pharmacists, pharmacist interns, pharmacy technicians, and pharmacies. KRS 315.191(1)(f) authorizes the board to promulgate administrative regulations that are necessary to control the dispensing of prescription drug orders. This administrative regulation establishes procedures for board authorized protocols by which pharmacists may initiate the dispensing of noncontrolled medications or other professional services.

Section 1. Definition. "Prescriber" means any individual authorized to prescribe a legend drug.

Section 2. Procedures. A pharmacist may initiate the dispensing of noncontrolled medications, over-the-counter medications, or other professional services under the following conditions:

(1) A prescriber-approved protocol that meets the minimum requirements in Section 3 of this administrative regulation is in place, and is dated and signed by the prescriber and pharmacist authorized to initiate the dispensing of noncontrolled medications, over-the-counter medications, or other professional services;

(2) The protocol directs the care, based on current clinical guidelines, for conditions listed in Section 5 of this administrative regulation;

(3) The protocol has been approved by the board, who provides notice to the prescriber's licensure board within ten (10) business days of approval by the board;

(4) The pharmacist documents the dispensing event in the pharmacy management system, including:

(a) Documentation as required by 201 KAR 2:170 for the dispensing of prescription medication; and

(b) Documentation that the individual receiving the medication or other professional service was provided with education pursuant to Section 4 of this administrative regulation; and

(5) A pharmacist shall request the individual's primary care provider's information, provided one exists, and shall provide notification to the primary care provider within two (2) business days.

Section 3. Minimum Requirements of Protocol. Protocols shall contain the following elements:

(1) Criteria for identifying persons eligible to receive medication therapies or other professional services under the protocol, and referral to an appropriate prescriber if the patient is high-risk or treatment is contraindicated;

(2) A list of the medications, including name, dose, route, frequency of administration, and refills authorized to be dispensed under the protocol;

(3) Procedures for how the medications are to be initiated and monitored, including a care plan implemented in accordance with clinical guidelines;

(4) Education to be provided to the person receiving the dispensed medications, including aftercare instructions, if appropriate;

(5) Procedures for documenting in the pharmacy management system all medications dispensed, including notification of the prescriber signing the protocol, if requested;

(6) Length of time protocol is in effect;

(7) Date and signature of prescriber approving the protocol;

(8) Dates and signatures of pharmacists authorized to initiate dispensing of medications or other professional services under the protocol; and

(9) The date, and education or training of the pharmacist as referenced in Section 4 of this administrative regulation.

Section 4. Pharmacist Education and Training Required. A pharmacist who dispenses medication pursuant to a prescriber-approved protocol shall first receive education and training in the subject matter of the protocol from a provider accredited by the Accreditation Council for Pharmacy Education or by a comparable provider approved by the board. Documentation of education shall be provided to the board upon request. Education shall be obtained prior to initiating care under the protocol.

Section 5. Authorized Conditions. Board-authorized protocols may be established for the following conditions:

(1) Acute influenza infection pursuant to recommendations by the Centers for Disease Control and Prevention (CDC);

(2) Acute streptococcal pharyngitis infection;

(3) Acute, uncomplicated urinary tract infection;

(4) Acute cutaneous/mucocutaneous fungal infection;

(5) Alcohol use disorder [pursuant to recommendations by the American Society of Addiction Medicine];

(6[5]) Allergic rhinitis;

(7[6]) Anaphylaxis;

(8) Colorectal cancer prevention and screening;

(9) HCV infection screening

(10) HIV infection prophylaxis, pre- and post-exposure;

(11) HIV infection screening[~~(7) HIV infection prevention through pre-exposure prophylaxis pursuant to recommendations by the CDC;~~

(12[8]) Nutritional supplementation with vitamins and minerals;

(13[9]) Opioid use disorder pursuant to recommendations by the American Society of Addiction Medicine;

(14[10]) Tobacco use disorder;

(15[14]) Traveler's health pursuant to recommendations by the CDC;

(16[12]) Tuberculosis prevention and control through skin testing, and referral as necessary, pursuant to recommendations by the CDC; and

(17[13]) Self-care conditions appropriately treated with over-the-counter medications and products.

LARRY A. HADLEY, R.Ph., Executive Director

APPROVED BY AGENCY: December 11, 2020

FILED WITH LRC: December 14, 2020 at 9:25 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 23, 2021 at 9:00 a.m. Eastern Time at the Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted



through February 28, 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:** Larry Hadley, Executive Director, Kentucky Board of Pharmacy, 125 Holmes Street, Suite 300, State Office Building Annex, Frankfort, Kentucky 40601, phone (502) 564-7910, fax (502) 696-3806, email Larry.Hadley@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Larry Hadley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures for board authorized protocols by which pharmacists may initiate the dispensing of noncontrolled medications or offer other professional services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for pharmacists to provide a high level of care to their patients, in accordance with protocols that have been provided from the prescriber and approved by the Board of Pharmacy. This will expand the scope of board authorized conditions which allow for prescriber approved protocols to include protocols for alcohol use disorder, colorectal cancer prevention and screening, HCV infection screening, HIV infection prophylaxis, pre and post exposure and HIV infection screening.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 315.191(1)(a) authorizes the Board of Pharmacy to promulgate administrative regulations to regulate and control all matters pertaining to pharmacists and pharmacies. KRS 315.191(1)(f) authorizes the Board to promulgate administrative regulations pertaining to prescription drug orders. KRS 315.010(25) defines a prescription drug order to include protocols authorized by the Board. This administrative regulation establishes criteria for protocols to be authorized by the Board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Prescribers, pharmacists, pharmacies, patients and the public will be able to ascertain what is required for pharmacist dispensing of medications pursuant to prescriber approved protocols.

(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 expand the scope of board-authorized conditions allowing prescriber approved protocols to include protocols for alcohol use disorder, colorectal cancer prevention and screening, HCV infection screening, HIV infection prophylaxis, pre and post exposure and HIV infection screening.

(b) The necessity of the amendment to this administrative regulation: To allow pharmacists to play a more critical clinical role in public health by expanding the scope to include four more authorized conditions for prescriber-approved protocols.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 315.002 and 315.005 authorize the board to regulate the practice of pharmacy. KRS 315.191 authorizes the board to promulgate administrative regulations pertaining to pharmacists and pharmacies.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will further promote, preserve, and protect public health through effective regulation of pharmacists and pharmacies by providing an increased board approved conditions for potential prescriber approved protocols to include alcohol use disorder, colorectal cancer prevention and screening, HCV infection screening, HIV infection prophylaxis, pre and post exposure and HIV infection screening.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The board anticipates pharmacists will be impacted, as their potential scope of practice could be increased. Individuals that wish to be treated for alcohol use disorder will have the ability to be treated in a pharmacy. Individuals wishing to be screened for colorectal cancer, HCV infection or HIV infection can now do so in a pharmacy, pursuant to prescriber approved protocol. Moreover, individuals wishing to obtain pre and post HIV infection

prophylaxis can do so in a pharmacy that has a prescriber-approved protocol.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Pharmacies and pharmacists will have to familiarize themselves with new amended language in the regulation. The board will help to educate pharmacists and pharmacies in these changes.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Pharmacists and the public can refer to the correct information for accreditation questions.

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

(a) Initially: No costs will be incurred.

(b) On a continuing basis: No costs will be incurred.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Board revenues from pre-existing fees provide the funding to enforce the regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because the regulation is applicable to all pharmacists.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 315.191(a).

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

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

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

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

(d) How much will it cost to administer this program for subsequent years? No costs are required to administer this program for subsequent years.

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

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation:

**BOARDS AND COMMISSIONS**  
**Board of Physical Therapy**  
**(Amendment)**

**201 KAR 22:170. Physical Therapy Compact Commission.**

RELATES TO: KRS 327.300(12)

STATUTORY AUTHORITY: KRS 327.300(12)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 327.300(12) requires the Board of Physical Therapy to review any rule adopted by the Physical Therapy Compact Commission within sixty (60) days of adoption for the purpose of filing the rule as an emergency administrative regulation pursuant to KRS Chapter 13A.190 and for filing the rule as an accompanying ordinary administrative regulation, following the requirements of KRS Chapter 13A. This administrative regulation sets forth the Rules adopted by the Physical Therapy Compact Commission.

Section 1. The Kentucky Board of Physical Therapy shall comply with all bylaws, rules, and administrative regulations of the Physical Therapy Compact Commission, which includes the Physical Therapy Compact Commission Rules and Bylaws.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Physical Therapy Compact Commission Rules", October 2020 [2049]; and

(b) "Physical Therapy Compact Commission Bylaws", October 2020 [2048].

(2)(a) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(b) This material may be obtained on the Kentucky Board of Physical Therapy's Web site at <https://pt.ky.gov>.

(3) This material may also be obtained at:

(a) The Physical Therapy Compact Commission, 124 West Street South, Third Floor, Alexandria, Virginia, 22314; or

(b) <http://www.ptcompact.org>.

TOM PENNINGTON, PT, Chair

APPROVED BY AGENCY: November 19, 2020

FILED WITH LRC: December 9, 2020 at 4:29 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 26, 2021, at 2:00 p.m. (EST). 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. All individuals who notify this agency in writing at least five workdays prior to this hearing shall be notified whether the hearing will be held virtually by video teleconference or in person at the Board's office, 312 Whittington Parkway, Louisville, Kentucky 40202. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 28, 2021, at 5:00 p.m. (EST). Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Scott D. Majors, Executive Director, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, (502) 429-7140 and fax (502) 429-7142, [ScottD.Majors@ky.gov](mailto:ScottD.Majors@ky.gov); and M. Keith Poynter, General Counsel, Board of Physical Therapy, 312 Whittington Parkway, Suite 102, Louisville, Kentucky 40222, (502) 210-7112 and fax (502) 584-5055, [MartinK.Poynter@ky.gov](mailto:MartinK.Poynter@ky.gov).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Scott D. Majors and M. Keith Poynter

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates the rules and bylaws for the Physical Therapy Compact Commission.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to implement provisions of KRS Chapter 327.300(12).

(c) How this administrative regulation conforms to the content of the authorizing statutes: It promulgates the rules and bylaws established by the Physical Therapy Compact Commission as administrative regulations pursuant to KRS 327.300(12).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It complies with the requirement that any rule or bylaw adopted by the Physical Therapy Compact Commission receive appropriate oversight.

(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 Physical Therapy Compact Rules and Bylaws add a new rule 3.10 requiring reporting of new criminal convictions; clarify the reporting requirements to include non-disciplinary encumbrances, licensees and compact privilege holders; change the time period for saving reports; establish a process by which tie votes for elections held during the Commission's annual meeting will be addressed; clarify language concerning indemnification and the Commission's obligation to defend agents of member states in legal proceedings; and make language gender neutral.

(b) The necessity of the amendment to this administrative regulation: The amendment to the Physical Therapy Compact Rules and Bylaws is necessary to comport with the requirements of KRS 327.300(12).

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to the Physical Therapy Compact Rules and Bylaws is necessary to comport with the requirements of KRS 327.300(12).

(d) How the amendment will assist in the effective administration of the statutes: The Physical Therapy Compact Rules and Bylaws add a new rule 3.10 requiring reporting of new criminal convictions; clarify the reporting requirements to include non-disciplinary encumbrances, licensees and compact privilege holders; change the time period for saving reports; establish a process by which tie votes for elections held during the Commission's annual meeting will be addressed; clarify language concerning indemnification and the Commission's obligation to defend agents of member states in legal proceedings; and make language gender neutral.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Board of Physical Therapy.

(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 reporting of new criminal convictions and non-disciplinary encumbrances.

(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): Credentialed physical therapists and physical therapist assistants in Kentucky will be able to participate in the Physical Therapy Licensure Compact.

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

(a) Initially: No cost.

(b) On a continuing basis: No cost.

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

implementation and enforcement of this administrative regulation: Agency Revenue Fund and funds derived from compact privilege applications from other states.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: None.

(9) TIERING: Is tiering applied? Tiering was not used in this administrative regulation because the administrative regulation applies equally to all those individuals regulated by it.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 327.300(12).

(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? 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:

#### **PUBLIC PROTECTION CABINET Kentucky Real Estate Authority Kentucky Real Estate Appraisers Board (Amendment)**

#### **201 KAR 30:040. Professional standards of practice and conduct.**

RELATES TO: KRS 324A.035, 324A.050(1)(j), 12 C.F.R. 225.62-225.67, 12 U.S.C. 3331, 3336, 3339

STATUTORY AUTHORITY: KRS 324A.035(3)(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.020 and 324A.035 require the Real Estate Appraisers Board, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out the provisions of KRS 324A.010 to 324A.090. KRS 324A.035(3)(d) requires the board to establish by administrative regulation standards of professional appraisal practice. 12 U.S.C. 3331, 3336, and 3339 and 12 C.F.R. 225.64 and 225.65 require that real estate appraisals in connection with federally related transactions be performed in accordance with appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation. This administrative regulation establishes the scope of practice and professional standards of conduct, and includes the supervision requirements for associate

appraisers.

Section 1. USPAP Compliance. (1) Certificate holders and licensees listed in paragraphs (a) through (e) of this subsection shall comply with the Uniform Standards of Professional Appraisal Practice:

- (a) A certified general real property appraiser;
- (b) A certified residential real property appraiser;
- (c) A licensed residential real property appraiser;
- (d) An associate real property appraiser; and
- (e) A licensed nonfederal real property appraiser.

(2) The board shall evaluate an appraisal report in accordance with the USPAP in effect when the certificate holder or licensee signed the certification of the report, or when the report was prepared if the report was unsigned.

Section 2. Calculation of Square Footage. The standard for the calculation and reporting of above-grade square footage and below-grade square footage in single-family houses shall be the American National Standard for Single-Family Residential Buildings; Square Footage- Method for Calculating, ANSI Z765 2013.

Section 3. Appraisal Reporting Requirements. For each appraisal assignment that includes an appraisal management company reference as the client or agent for the client, an appraiser shall identify within the appraisal report:

(1) The name that is on file with the board for the appraisal management company;

(2) The Kentucky registration number that is on file with the board for the appraisal management company; and

(3) The fee that will be paid to the appraiser for each appraisal assignment ordered by an appraisal management company, unless the appraiser is a W-2 employee of the appraisal management company.

Section 4. Licensed Nonfederal Real Property Appraiser Advertising. (1) In a written or broadcast communication, a licensed nonfederal real property appraiser shall include the following statement: "Not licensed or certified to perform appraisals for any transactions requiring a licensed or certified appraiser pursuant to federal law or regulations."

(2) A written or broadcast communication shall include:

- (a) Appraisal reports;
- (b) Advertisements; and
- (c) Business cards and stationery.

(3) In a print advertisement, the statement shall be in letters at least fifty (50) percent the size of the largest letter in the advertisement.

(4) In a radio or television advertisement, the statement shall be stated clearly and understandably.

Section 5. Supervision of Associate Appraisers. (1) Each associate appraiser shall maintain an appraisal log for each supervising appraiser. The associate appraiser shall record the following information in the log for each appraisal:

- (a) Type of property;
- (b) Client name and address;
- (c) Address of appraised property;
- (d) Description of work performed by the associate;
- (e) Scope of the review;
- (f) Scope of the supervision by the supervising appraiser;
- (g) Number of actual hours worked by the associate on the assignment; and
- (h) Signature and state certification number of the supervising appraiser.

(2) The associate shall be entitled to obtain copies of the appraisal reports he or she prepared. The supervising appraiser shall keep copies of appraisal reports for a period of at least five (5) years or at least two (2) years after final disposition of any judicial proceeding in which testimony was given, whichever period expires last.

(3) The supervising appraiser shall:

(a) Have been a state certified real property appraiser for a period of at least three (3) years;

(b) Be certified by the board prior to applying to become a supervising appraiser;

(c) Be in good standing and shall not have received a suspension, a revocation, or other sanction that limited or prohibited that licensee's practice of real property appraising within the three (3) year period immediately prior to applying to become a supervising appraiser; and

(d) Be responsible for the training and supervision of the associate.

(4) Only a certified general real property appraiser who satisfies the requirements of a supervising appraiser in subsection (3) of this section may supervise a person acquiring experience toward a Certified General Real Property Appraiser certificate.

(5) Any certified general real property appraiser or a certified residential real property appraiser who satisfies the requirements of a supervising appraiser in subsection (3) of this section may supervise a person acquiring experience toward a Certified Residential Real Property Appraiser certificate.

(6) The supervising appraiser shall:

(a) Accept responsibility for an associate's appraisal report by signing and certifying that the report is in compliance with the Uniform Standards of Professional Appraisal Practice;

(b) Review reports by the associate;

(c) Accompany the associate on all inspections and personally inspect each appraised property and the comparable sales with the associate on the associate's real property appraisal assignments, until the associate is competent to conduct inspections independently, has met all specific requirements pertaining to property inspection established by KRS Chapter 324A and 201 KAR Chapter 30, and the supervising appraiser ensures the associate is acting in accordance with the competency provision of the Uniform Standards of Appraisal Practice for the property type. ~~Personally inspect each appraised property and the comparable sales with the associate on the associate's first fifty (50) real property appraisal assignments, to ensure that the associate is competent and is acting in accordance with the competency provision of the Uniform Standards of Professional Appraisal Practice for the property type;~~

(d) Be limited to a maximum of three (3) real property associates at a time;

(e) Notify the board immediately if the supervision of a real property associate has terminated; and

(f) Not be employed by an associate or by a company, firm, or partnership in which the associate has a controlling interest.

(7) A person otherwise qualified to be a supervising appraiser who has been disciplined by the board under KRS 324A.050 shall be subject to one (1) or more of the following, according to the severity of the prior violation:

(a) Prohibited from supervising associates;

(b) Limited in the number of associates to supervise; or

(c) Be required to take additional courses approved by the board before being permitted to supervise an associate.

(8) If necessary to determine the competency of the associate, the board shall request additional reports from the associate.

(9)(a) A first time supervisor and a new associate shall attend a Kentucky-specific seven (7) hour board-approved course in supervision practices prior to beginning supervision or training.

(b) To remain eligible to provide supervision, a supervisor shall attend the board-approved course in supervision practices every three (3) years.

(c) To continue logging creditable experience, an associate shall attend the board-approved course in supervision practices every three (3) years.

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

(a) "Uniform Standards of Professional Appraisal Practice", 2020-2021 [2018-2019] edition; and

(b) "American National Standard for Single Family Residential Buildings; Square Footage Method for Calculating, ANSI Z765 2013", 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 321 N. Madison Avenue, Richmond, Kentucky 40475, (859) 623-1658, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the Appraisal Standards Board of the Appraisal Foundation, 1155 15th Street, N.W., Suite 1111, Washington, D.C. 20005, (202) 347-7722.

JOHN G. KENKEL, Jr., Chair

ROBERT ASTORINO, Executive Director

APPROVED BY AGENCY: December 11, 2020

FILED WITH LRC: December 14, 2020 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 10:00 A.M. EST on February 24, 2021 at 500 Mero Street, Room 127CW, 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 February 24, 2021, but if the location is closed to in-person services on February 24, 2021, then the public hearing on this administrative regulation shall be held by video teleconference at 10:00 A.M. on February 24, 2021. The primary location for the video teleconference will be at 500 Mero Street, Room 127CW, Frankfort, Kentucky 40601. However, in light of the COVID-19 pandemic, all public agencies are required to take proper health precautions to mitigate the spread of COVID-19 and to use video teleconference software by which the general public may view the meeting, adequate public viewing space will not be available and instructions for accessing the video teleconference a link will be provided on the website of the Kentucky Real Estate Appraiser Board, <http://kreab.ky.gov>, by which members of the public will be able to view the video teleconference of the public hearing remotely. Members of the public wishing to attend may utilize the link provided on the Board's website. 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. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the 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 administrative regulation. Written comments shall be accepted through 11:59 PM on February 28, 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: John Hardesty, General Counsel, Kentucky Real Estate Authority, 500 Mero Street, 2 NE 09, Frankfort, Kentucky 40601, phone (502) 782-1045, email [John.Hardesty@ky.gov](mailto:John.Hardesty@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: John L. Hardesty

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the scope of practice and professional standards of conduct. This administrative regulation also establishes the supervision requirements for associate appraisers.

(b) The necessity of this administrative regulation: KRS 324A.020 and 324A.035 require the Real Estate Appraisers Board, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out the provisions of KRS 324A.010 to 324A.090. KRS 324A.035(3)(d) requires the board to establish by administrative regulation standards of professional appraisal practice. 12 U.S.C. 3331, 3336, and 3339 and 12 C.F.R. 225.64

and 225.65 require that real estate appraisals in connection with federally related transactions be performed in accordance with appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324A.020 and 324A.035 require the Real Estate Appraisers Board, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out the provisions of KRS 324A.010 to 324A.090. KRS 324A.035(3)(d) requires the board to establish by administrative regulation standards of professional appraisal practice. 12 U.S.C. 3331, 3336, and 3339 and 12 C.F.R. 225.64 and 225.65 require that real estate appraisals in connection with federally related transactions be performed in accordance with appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation. This administrative regulation establishes the scope of practice and professional standards of conduct. This administrative regulation also establishes the supervision requirements for associate appraisers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the scope of practice and professional standards of conduct. This administrative regulation also establishes the supervision requirements for associate appraisers.

(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: Amendment to this administrative regulation updates the associate appraiser supervisions to bring them into compliance with current versions of binding regulatory guidance, specifically, the 2020 Real Property Appraiser Qualification Criteria published by the Appraisal Qualifications Board of the Appraisal Foundation. The amendment also updates the referenced version of the Uniform Standards of Professional Appraisal Practice to the current version.

(b) The necessity of the amendment to this administrative regulation: KRS 324A.020 and 324A.035 require the Real Estate Appraisers Board, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out the provisions of KRS 324A.010 to 324A.090. KRS 324A.035(3)(d) requires the board to establish by administrative regulation standards of professional appraisal practice. 12 U.S.C. 3331, 3336, and 3339 and 12 C.F.R. 225.64 and 225.65 require that real estate appraisals in connection with federally related transactions be performed in accordance with appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation establishes the scope of practice and professional standards of conduct. This administrative regulation also establishes the supervision requirements for associate appraisers. The amendment brings this administrative regulation into compliance with current versions of binding regulatory guidance.

(d) How the amendment will assist in the effective administration of the statutes: This amendment updates the relevant associate appraiser supervision provisions to include current versions of binding regulatory guidance, and updated the referenced version of the Uniform Standards of Professional Appraisal Practice to the current version.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 1577 licensed real estate appraisers, anyone interested in becoming a real estate appraiser, and all persons seeking to have real estate appraised. This administrative regulation also affects the Kentucky Real Estate Appraisers Board.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Regulated entities, and specifically supervising appraisers within those entities, will have to accompany associate appraisers on an unspecified number of appraisals – as opposed to the current requirement of fifty (50) appraisals – and only cease accompanying the associate on appraisals after assessing the associate's performance and determining the associate is competent to conduct inspections independently, has met all specific requirements pertaining to property inspection established by KRS Chapter 324A and 201 KAR Chapter 30, and the supervising appraiser ensures the associate is acting in accordance with the competency provision of the Uniform Standards of Appraisal Practice for the property type. Likewise, they will have to use the 2020-2021 version of the Uniform Standards of Professional Appraisal Practice.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Compliance with this administrative regulation should not cost regulated entities anything.

(c) As a result of compliance, what benefits will accrue to the entities: The entities identified in question (3) will benefit from clearly defined rules relating to supervision of associate appraisers, and from assurance that associate appraisers are competent before being allowed to inspect properties and choose comparable sales without supervision.

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

(a) Initially: There will be no cost to implement this administrative regulation initially.

(b) On a continuing basis: There will be no cost to implement this administrative regulation on a continuing basis.

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

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

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

(9) TIERING: Is tiering applied? No. Tiering is not applied because this administrative regulation applies similarly to all similarly situated persons.

#### 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 Real Estate Appraisers Board will be affected.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 324A.020, 324A.035, 12 U.S.C. 3331, 3336, and 3339, and 12 C.F.R. 225.64 and 225.65.

(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 in the first year.

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

years? This administrative regulation will not generate revenue for state or local government in subsequent years.

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

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

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 12 U.S.C. §§ 3331, 3336, and 3339, and 12 C.F.R. 225.64 and 225.65.

(2) State compliance standards. 12 U.S.C. § 3331 requires that appraisals used in connection with federally related transactions are performed in writing according to certain uniform standards. 12 U.S.C. § 3336 requires that the federal government implement certain uniform standards through a public notice and comment period prescribed by federal law. 12 U.S.C. § 3339 requires the creation of rules in accordance with generally accepted appraisal standards evidenced by the appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation and that such appraisals be subject to review and compliance with the Uniform Standards of Professional Appraisal Practice. 12 C.F.R. 225.64 and 225.65 reiterate these rules in the form of federal regulation. To satisfy these requirements, the Kentucky Real Estate Appraisers Board adopts the minimum qualifications as set forth by the Appraisal Standards Board of the Appraisal Foundation and incorporates by reference the most recent version of the Uniform Standards of Professional Appraisal Practice.

(3) Minimum or uniform standards contained in the federal mandate. 12 U.S.C. § 3331 requires that appraisals used in connection with federally related transactions are performed in writing according to certain uniform standards. 12 U.S.C. § 3336 requires that the federal government implement certain uniform standards through a public notice and comment period prescribed by federal law. 12 U.S.C. § 3339 requires the creation of rules in accordance with generally accepted appraisal standards evidenced by the appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation and that such appraisals be subject to review and compliance with the Uniform Standards of Professional Appraisal Practice. 12 C.F.R. 225.64 and 225.65 reiterate these rules in the form of federal regulation.

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

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

#### **PUBLIC PROTECTION CABINET Kentucky Real Estate Authority Kentucky Real Estate Appraisers Board (Amendment)**

#### **201 KAR 30:190. Certification and licensing requirements.**

RELATES TO: KRS 324A.010, 324A.030, 324A.035(1), (3), 324A.040(2), 324A.045, 324A.047, 324A.052, 324A.065, 324A.075, 12 C.F.R. 225.64, 225.65, 12 U.S.C. 3331-3351

STATUTORY AUTHORITY: KRS 324A.015(1), 324A.020, 324A.035(1), (3), 324A.045, 324A.065(1), 324A.075, 12 U.S.C. 3331-3351

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.020 and 324A.035 require the Real Estate Appraisers

Board, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out the provisions of KRS 324A.010 to 324A.090. KRS 324A.035(1) and 12 U.S.C. 3331 through 3351 require the board to establish by administrative regulation requirements for certification or licensure of appraisers of real property in federally related transactions. KRS 324A.035(3)(a) through (f) require the board to establish by administrative regulations requirements for classifications of appraisers, certification and licensure, renewal, suspension, or revocation of certificate or licensure, experience, continuing education, and examination of applicants. KRS 324A.045 requires each license or certificate to be renewed annually on the date or dates determined by the board by administrative regulation. KRS 324A.065 requires the board to establish and collect fees for certification or licensure as an appraiser. KRS 324A.075 authorizes the board to issue a reciprocal credential to a person licensed or certified in another state. This administrative regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. 3331 through 12 U.S.C. 3351). This administrative regulation establishes the types of appraisers required in federally related transactions, scope of the practice, and general requirements for certification or licensure, and adopts the requirements for certification or licensure of appraisers of real property in federally related transactions, including the education, experience, and examination requirements established by the Appraisers Qualifications Board. This administrative regulation establishes the criteria for licensure as a nonfederal real property appraiser; the requirements for certification or licensure of persons licensed or certified in another state; the requirements for temporary appraisal licenses and certificates; the requirements for continuing education for appraisers and license renewal procedures for certificate holders or licensees; and the fees for initial application, annual renewal, roster, and examination, for both federally and nonfederally related transactions.

#### Section 1. Types of Appraisers.

(1) An appraiser for a federally related transaction shall be a:

- (a) Certified general real property appraiser;
- (b) Certified residential real property appraiser;
- (c) Licensed residential real property appraiser; or
- (d) Associate real property appraiser.

(2) The board may license nonfederal real property appraisers pursuant to Section 20 of this administrative regulation.

#### Section 2. Scope of Practice.

(1) A certified general real property appraiser may perform appraisals of all types of real property.

(2) A certified residential real property appraiser may perform residential appraisals on vacant or improved sites with up to four (4) residential units, without regard to value or complexity.

(3) A licensed residential real property appraiser may perform appraisals of:

- (a) Non-complex, one (1) to four (4) residential units with a transaction value less than \$1,000,000; and
- (b) Complex, one (1) to four (4) residential units with a transaction value less than ~~\$400,000~~ \$250,000.

(4) An associate real property appraiser may perform an appraisal of property that the supervising appraiser of the associate may appraise and shall be subject to the Uniform Standards of Professional Appraisal Practice, incorporated by reference in 201 KAR 30:040.

Section 3. General Requirements for Certification or Licensure. Except as provided by Section 4 of this administrative regulation, certification or licensure, as appropriate, shall be granted if an applicant:

- (1) Has met the examination, education, experience, and fee requirements established by this administrative regulation; and
- (2) Applies to the board on the notarized Application for Appraiser Credential and Reciprocal.

Section 4. Armed Forces Exemption. An applicant who was a member of a Reserve component of the U.S. Armed Forces, who was pursuing an appraiser licensure or certification prior to December 1, 2011, and who was called to active duty between December 1, 2011 and December 31, 2014, may satisfy the examination, education, and experience requirements under the 2008 AQB Real Property Appraiser Qualification Criteria instead of the requirements in this administrative regulation for a time period equal to the applicant's time of active duty, plus twelve (12) months.

#### Section 5. Qualifying Education for Licensure or Certification.

(1) Credit for the qualifying education requirements established in this administrative regulation may be obtained only from the following providers:

- (a) Colleges or universities;
  - (b) Community or junior colleges;
  - (c) Real estate appraisal or real estate related organizations;
  - (d) State or federal agencies or commissions;
  - (e) Proprietary schools;
  - (f) Providers approved by the board in accordance with 201 KAR 30:130; and
  - (g) The Appraisal Foundation or its boards.
- (2) Experience shall not be substituted for education.

#### Section 6. Criteria Specific to Qualifying Education.

(1) A class hour shall be credited only for educational offerings with content that follows the Required Core Curriculum established in Sections 8 through 12 of this administrative regulation for each respective credential.

(2) The course content requirement may be general or specific to a property type.

(3) A class hour shall be obtained only if:

- (a) The minimum length of the educational offering is at least fifteen (15) hours; and
- (b) The student successfully completes an approved closed-book examination pertinent to that educational offering.

(4) If an individual qualifying education course covers multiple topics identified within the Required Core Curriculum, there shall be appropriate testing of each component.

(5) Courses taken to satisfy the qualifying education requirements shall not be repetitive.

(6) Courses shall foster problem-solving skills in the education process by utilizing case studies as a major teaching method if applicable.

#### Section 7. Uniform Standards of Professional Appraisal Practice (USPAP) Courses.

(1) An applicant shall take the 15-Hour National USPAP Course, or its equivalent, and pass the associated 15-Hour National USPAP Course Examination as approved by the AQB.

(2) At least one (1) of the course instructors shall be an AQB Certified USPAP instructor who is also a state certified appraiser.

(3) USPAP course content equivalency shall be determined by the AQB or by an alternate method established by the AQB.

#### Section 8. Qualifying Education for Associate Real Property Appraisers.

(1) Prior to applying for an associate real property appraiser certification, an applicant shall have completed ninety (90) class hours as specified in the required core curriculum.

(2) The required core curriculum and class hours for an associate real property appraiser certification shall be:

- (a) Basic appraisal principles: thirty (30) class hours;
- (b) Basic appraisal procedures: thirty (30) class hours;
- (c) Residential market analysis and highest and best use: fifteen (15) class hours; and
- (d) 15-Hour national USPAP course or fifteen (15) hours its equivalent: fifteen (15) hours.

(3) An applicant shall pass the Required Core Curriculum examination for each course taken.

(4) All qualifying education shall be completed within the five (5) year period immediately preceding the submission of an

application for an Associate Real Property Appraiser credential.

#### Section 9. Qualifying Education for Licensed Residential Real Property Appraisers.

(1) The prerequisite for taking the AQB approved examination shall be successful completion of 150 class hours as established in the required core curriculum.

(2) The required core curriculum and class hours for a licensed residential real property appraiser shall be:

- (a) Basic appraisal principles: thirty (30) class hours;
- (b) Basic appraisal procedures: thirty (30) class hours;
- (c) 15-Hour national USPAP course or fifteen (15) hours its equivalent: fifteen (15) class hours;
- (d) Residential market analysis and highest and best use: fifteen (15) class hours;
- (e) Residential appraiser site valuation and cost approach: fifteen (15) class hours;
- (f) Residential sales comparison and income approaches: thirty (30) class hours; and
- (g) Residential report writing and case studies: fifteen (15) class hours.

#### Section 10. Qualifying Education for Certified Residential Real Property Appraisers Certification.[1]

(1) The prerequisite for taking the AQB approved examination shall be completion of 200 class hours as established in the required core curriculum.

(2) The required core curriculum and class hours for a certified residential real estate appraiser shall be:

- (a) Basic appraisal principles: thirty (30) class hours;
- (b) Basic appraisal procedures: thirty (30) class hours;
- (c) 15-Hour national USPAP course or fifteen (15) hours its equivalent: fifteen (15) class hours;
- (d) Residential market analysis and highest and best use: fifteen (15) class hours;
- (e) Residential appraiser site valuation and cost approach: fifteen (15) class hours;
- (f) Residential sales comparison and income approaches: thirty (30) class hours;
- (g) Residential report writing and case studies: fifteen (15) class hours;
- (h) Statistics, modeling, and finance: fifteen (15) class hours;
- (i) Advanced residential applications and case studies: fifteen (15) class hours; and
- (j) Appraisal subject matter electives: twenty (20) class hours.

(3) An applicant for the certified residential real property certificate shall satisfy at least one of the following options:

- (a) Possess a bachelor's degree from an accredited college or university in any field of study;
- (b) Possess an associate's degree from an accredited college or university in any field of study related to:

- 1. Business Administration;
- 2. Accounting;
- 3. Finance;
- 4. Economics; or
- 5. Real Estate;

(c) Have successfully completed thirty (30) semester hours of college-level courses that cover each of the following specific topic areas and hours:

- 1. English Composition (three (3) semester hours);
- 2. Microeconomics (three (3) semester hours);
- 3. Macroeconomics (three (3) semester hours);
- 4. Finance (three (3) semester hours);
- 5. Algebra, Geometry, or higher mathematics (three (3) semester hours);
- 6. Statistics (three (3) semester hours);
- 7. Computer Science (three (3) semester hours);
- 8. Business or Real Estate Law (three (3) semester hours); and
- 9. Two (2) elective courses in any of the topics listed in this paragraph or in accounting, geography, agricultural economics, business management, or real estate (three (3) semester hours each);

(d) Successful completion of at least thirty (30) semester hours

of College Level Examination Program® (CLEP®) examinations from each of the following subject matter areas:

1. College Algebra (three (3) semester hours);
2. College Composition (six (6) semester hours);
3. College Composition Modular (three (3) semester hours);
4. College Mathematics (six (6) semester hours);
5. Principles of Macroeconomics (three (3) semester hours);
6. Principles of Microeconomics (three (3) semester hours);
7. Introductory Business Law (three (3) semester hours); and
8. Information Systems (three (3) semester hours).

(e) Any combination of paragraphs (c) and (d) of this subsection that ensure coverage of all topics and hours identified in paragraph (c) of this subsection; or

(f) Proof of credential as a licensed residential real property appraiser for a minimum of five (5) years with no record of adverse, final, and non-appealable disciplinary action affecting the licensed residential real property appraiser's legal ability to engage in appraisal practice within the five (5) years immediately preceding the date of application for the certified residential credential.

#### Section 11. Qualifying Education for Certified General Real Property Appraiser Certification.

(1) The prerequisite for taking the AQB approved examination shall be completion of 300 class hours as established in the required core curriculum.

(2) The required core curriculum and class hours for a certified general real property appraiser shall be:

- (a) Basic appraisal principles: thirty (30) class hours;
- (b) Basic appraisal procedures: thirty (30) class hours;
- (c) 15-Hour national USPAP course or fifteen (15) hours its equivalent: fifteen (15) class hours;
- (d) General appraiser market analysis and highest and best use: thirty (30) class hours;
- (e) Statistics, modeling, and finance: fifteen (15) class hours;
- (f) General appraiser site valuation and cost approach: thirty (30) class hours;
- (g) General appraiser sales comparison approach: thirty (30) class hours;
- (h) General appraiser income approach: sixty (60) class hours;
- (i) General appraiser report writing and case studies: thirty (30) class hours; and
- (j) Appraisal subject matter electives: thirty (30) class hours.

(3) An applicant shall demonstrate that his or her education includes the core courses listed in these criteria, with particular emphasis on nonresidential properties.

(4) An applicant for the certified general real property certificate shall hold a bachelor's degree or higher from an accredited college or university.

Section 12. Required Core Curriculum. The required core curriculum and class hours for each of the types or classification of licensees or certificate holders prescribed in Sections 8 through 11 of this administrative regulation shall be consistent with and cover the topics established in the 2018 AQB Real Property Appraiser Qualification Criteria for qualifying education issued by the Appraiser Qualification Board of the Appraisal Foundation.

#### Section 13. Required Experience.

(1) Certification as a general real property appraiser shall require:

- (a) 3,000 hours of appraisal experience, which shall not be acquired in a period of fewer than eighteen (18) calendar months; and
- (b) At least 1,500 hours of appraisal experience that is nonresidential.

(2) Certification as a residential real property appraiser shall require 1,500 hours of appraisal experience, which shall not be acquired in a period of fewer than twelve (12) calendar months.

(3) Licensure as a residential real property appraiser shall require 1,000 hours of appraisal experience, which shall not be acquired in a period of fewer than six (6) calendar months.

(4) More than fifty (50) percent of the required experience credit shall not be obtained for appraisal assignments without a

traditional client (e.g., a client hiring an appraiser for a business purpose) being identified.

(5) More than fifty (50) percent of the required experience credit shall not be obtained in a board-approved practicum course that requires students to:

- (a) Produce credible appraisals that utilize an actual subject property;
- (b) Perform market research containing sales analysis;
- (c) Perform assignments that require problem solving skills for a variety of property types; and

(d) Apply and report the appraisal approaches in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), incorporated by reference in 201 KAR 30:040.

(6) The appraisal experience required by this section may have been acquired in any calendar years, whether or not the calendar years are consecutive. Hours may be treated as cumulative in order to achieve the necessary hours of appraisal experience.

(7) Real property appraisal assignments submitted for experience credit shall be completed:

(a) In compliance with the requirements of USPAP as incorporated by reference in 201 KAR 30:040 and defined in KRS 324A.010(7);

(b) Under the supervision of a certified residential real property appraiser for experience of one (1) to four (4) unit residential properties; and

(c) Under the supervision of a certified general real property appraiser for experience of all property uses other than one (1) to four (4) unit residential properties.

(8) To count towards the requirements of this section, the experience shall be acquired while the applicant is licensed or certified by the board.

#### Section 14. Examination.

(1) An applicant for certification as a certified general real property appraiser, a certified residential real property appraiser, a licensed residential real property appraiser, or an associate real property appraiser shall pass an examination specific for the certification or license applied for and approved by:

- (a) The board; and
- (b) The Appraiser Qualifications Board of the Appraisal Foundation.

(2) A passing score from an examination shall be valid for two (2) years.

(3) An applicant shall complete all the education and experience requirements for the credential which the individual is seeking prior to being approved to sit for the national appraisal examination.

(4)(a) An individual shall submit a completed Application for Appraiser Credential and Reciprocal, which documents the completed education and experience to the board prior to being approved to sit for the national appraisal examination.

(b) The applicant shall submit the following information with the application:

1. Proof of completion of the education;
2. Proof of completion of the required experience as established in Section 13 of this administrative regulation, including any reports identified by the board; and
3. The fee required by 201 KAR 30:110.

(5)(a) An applicant shall verify experience credit on the Appraiser Assignment Log contained in the Application for Appraiser Credential and Reciprocal.

(b) An applicant shall submit satisfactory reports, file memoranda, and other documentation requested by the board to confirm the applicant's appraisal experience.

#### Section 15. Temporary Appraisal Licenses and Certificates.

(1) A real estate appraiser from another state who is licensed or certified by the appraiser licensing or certifying agency in that state shall apply for registration to receive temporary appraiser licensing or certification privileges in this state by paying a fee of \$150 and filing with the board a notarized Non-Resident Appraiser Application for Temporary Practice. The completed application shall include:



(a) An irrevocable consent that service of process in an action against the applicant arising out of the applicant's appraisal activities in this state may be made by delivery on the board;

(b) Information sufficient to identify the appraisal assignment to be performed under the temporary practice certificate or license, including the projected beginning and ending dates for performing the appraisal assignment, but the applicant shall not divulge information concerning the appraisal assignment that would breach the applicant's duty of confidentiality to his client under the provisions of the Uniform Standards of Professional Appraisal Practice, incorporated by reference in 201 KAR 30:040; and

(c) Upon request of the board, statement under seal issued by the appraiser licensing or certifying agency setting forth:

1. The applicant's name, business name, and address;

2. The type of license or certificate held by the applicant and the license or certificate number;

3. The dates of licensure or certification and the expiration date of the applicant's current license or certificate;

4. If the license or certificate was issued as a result of passing a licensure or certification examination, by reciprocity, or by some other means; and

5. A complete record of disciplinary actions taken or disciplinary proceedings pending against the applicant.

(2) An applicant shall be granted a temporary practice certificate or license by the board, to perform the appraisal assignment described in his or her application, if the applicant:

(a) Has filed a properly completed application;

(b) Has submitted the required fee with the application;

(c) Has satisfied the board as to his or her qualifications and eligibility for temporary licensing or certification privileges; and

(d) The time projected by the applicant for completion of the assignment is reasonable, given the scope and complexity of the assignment.

(3) Except as provided by subsection (1) of this section, licensing and certification privileges granted under the provisions of this administrative regulation shall expire upon completion of the appraisal assignment described in the Non-Resident Appraiser Application for Temporary Practice.

(4) To afford an applicant additional time to complete the appraisal assignment, the board shall extend the licensing or certification privileges granted under an applicant's temporary practice certificate or license, if the applicant shows that additional time is needed to complete the assignment.

(5) A person granted temporary licensing or certification privileges under the provisions of this administrative regulation shall not advertise or otherwise claim to be a Kentucky state-licensed or state-certified appraiser.

#### Section 16. Reciprocal Licensing Requirements for Applicants Licensed or Certified in Another State.

(1) A licensee from another state may obtain a certification or licensed residential real property appraiser credential in Kentucky by reciprocity.

(2) An individual who is a certified residential, a certified general, or a licensed residential real property appraiser out-of-state may apply for a Kentucky credential that is the same as the out-of-state certification held by that individual in the other state if the appraiser licensing program of the other state:

(a) Is in compliance with the provisions of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of Title XI Real Estate Appraisal Reform Amendments (12 U.S.C. 3331-3351) as administered by the Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council (FFIEC); and

(b) The credentialing requirements of the home state meets or exceeds the KREAB requirements that exist at the time the reciprocal application is submitted to the board.

(3) To obtain a Kentucky certification issued by the board, an out-of-state applicant shall:

(a) Complete the notarized Application for Appraiser Credential and Reciprocal;

(b) Be identified on the National Registry of the Appraisal Subcommittee as an active licensed or certified real property

appraiser that currently conforms to the AQB criteria;

(c) Not have received disciplinary action that limited or stopped the ability to complete the practice of real property appraising; and

(d) Not have lost a license to practice any profession by revocation, suspension, or voluntary surrender.

(4) The out-of-state applicant shall indicate whether the applicant:

(a) Has had an application for certification or licensure as an appraiser denied by any agency within the Commonwealth or any other state, and if so, explain and submit with the application a copy of the denial notice;

(b) Has been reprimanded, fined, or had a license, certificate, or registration suspended, revoked, restricted, denied, or surrendered in the Commonwealth or in any other state, and if so, submit with the application:

1. A written explanation; and

2. A copy of any documentation that describes the charges and action taken by the agency;

(c) Is the subject of any pending investigation, administrative sanction proceeding, hearing, trial, or similar action by any agency that granted or denied the license, certificate, or registration, and if so, explain and submit with the application a copy of any documentation describing the charges;

(d) Has ever entered a plea of nolo contendere, been found guilty of, or been convicted of a felony, or within the last ten (10) years of a misdemeanor, and if so, submit with the application:

1. An explanation of the offense;

2. The location of the proceedings; and

3. A copy of all final court documents identifying the charges and assessing the penalties;

(e) Is awaiting trial or sentencing in any criminal proceeding, and if so, submit with the application:

1. An explanation of the facts of the alleged offense; and

2. The location of the proceedings; and

(f) Has had any disciplinary action brought against him or her as a member of any professional organization or trade association, and if so, submit with the application:

1. An explanation of the action;

2. A copy of any document reflecting the allegations; and

3. The final action or decision if rendered.

(5) No provision of this administrative regulation shall be construed to prohibit the professional appraisal practice activities of any out-of-state certified appraiser who is performing the duties and responsibilities while a direct full-time employee of any entity of the United States government.

#### Section 17. Individual Appraiser License Renewal and Fees.

(1) Except as provided in subsection (2) of this section, a licensed or certified real property appraiser seeking to renew his or her license shall:

(a) Use the online License Renewal System offered by the board at [www.kreab.ky.gov](http://www.kreab.ky.gov) on or before July 1 each year; and

(b) Pay a renewal fee in the amount of \$212 for associate appraiser renewal and \$252 for certified or licensed residential renewal.

(2) If a licensed or certified appraiser is unable to utilize the online procedure, he or she shall:

(a) Complete and submit on or before July 1 one (1) of the following Annual Renewal Notices:

1. Annual Renewal Notice Associate;

2. Annual Renewal Notice Certified Residential and Certified General; or

3. Annual Renewal Notice Licensed Residential; and

(b) Submit a check or money order made payable to the Kentucky Real Estate Appraisers Board in the amount of \$212 for associate appraiser renewal and \$252 for certified or licensed residential renewal.

(3) The board shall notify a licensee that his or her license is due to expire in accordance with the renewal dates established in KRS 324A.045(2). Failure to receive a renewal notification shall not excuse a licensee of his or her obligation to renew.

(4) The renewal date for a certificate or license shall be July 1

of each calendar year.

(5) The fee required for annual renewal of a certificate or license shall be submitted by each certificate holder or licensee on or before July 1 of each calendar year.

(6) Failure to renew a license or certificate by July 1 shall result in a \$200 late renewal fee.

#### Section 18. Certificate Holder or Licensee Continuing Education.

(1) All licensed or certified real property appraisers, including associate appraisers, shall:

(a) Complete fourteen (14) hours of board approved continuing education each license year prior to May 31 of the current renewal year; and

(b) Submit to the board proof of course completion prior to May 31 of the current renewal year.

(2)(a) Each certificate holder or licensee shall successfully complete the seven (7) hour National Uniform Standards of Professional Appraisal Practice Update Course, or its equivalent, between January 1 and May 31 of each even numbered year.

(b) Equivalency shall be determined by the Appraiser Qualifications Board Course Approval Program.

(c) USPAP continuing education credit shall only be awarded if the class is instructed by an AQB Certified Instructor who is also a State Certified General Real Property Appraiser or a State Certified Residential Real Property Appraiser.

(3) Failure to complete and submit to the board proof of course completion prior to the May 31 deadline shall prevent renewal until the certificate holder or licensee completes the deficient education and remits payment of a \$200 late fee.

(4) Continuing education credit may be granted by the board. If granted, continuing education credit shall be for:

(a) Approved continuing education courses; or

(b) Participation, other than as a student, in appraisal educational programs and processes not to exceed seven (7) hours of the required fourteen (14) hours of continuing education for each licensure year.

(5) Appraisal educational programs and processes shall include:

(a) Teaching a course. Credit for instructing any given course shall only be awarded one (1) time during a continuing education cycle;

(b) Program development;

(c) Authorship of textbooks; or

(d) Similar activities.

(6) Continuing education credit shall be granted if a course:

(a) Is at least two (2) hours in duration;

(b) The subject is designed to ensure that an appraiser's skill, knowledge, and competency in real estate appraisal shall be maintained or increased; and

(c) Has been approved by the board.

(7) The board shall defer continuing education requirements for up to 180 days for a certificate holder or licensee:

(a) Returning from active military duty; or

(b) Whose business or residence is located in a county that has been declared a disaster area by the governor or President of the United States.

(8) Credit for repeating the same course title and content within a twenty-four (24) monthperiod shall not be granted.

#### Section 19. Inactive Status.

(1) Requests to enter inactive status pursuant to KRS 324A.047 shall be submitted to the board on the Request for Inactive Status form.

(2) The completed form shall be accompanied by the required fifty (50) dollarfee.

#### Section 20. Licensed Nonfederal Real Property Appraisers.

(1) The provisions of this section shall not apply to persons who, prior to April 7, 1992 have engaged in the appraisal of real property for at least ten (10) years.

(2) An applicant shall be licensed as a nonfederal real property appraiser if he or she has:

(a) A:

1. High school diploma; or

2. General equivalency diploma;

(b) Applied to the board for licensure; and

(c) Paid the fees required by KRS 324A.065(1)(b).

(3) A licensed nonfederal real property appraiser shall not be required to meet the conditions established for the:

(a) Certification of:

1. General real property appraisers; or

2. Residential real property appraisers; or

(b) Licensure of licensed residential real property appraisers.

(4) A licensed nonfederal real property appraiser shall not perform real property appraisals of property that is the subject of a federally related transaction as defined by 201 KAR30:010.

#### Section 21. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Appraiser Credential and Reciprocal", 6/2019;

(b) "AQB Real Property Appraiser Qualification Criteria", 5/2018;

(c) "Non-Resident Appraiser Application for Temporary Practice", 6/2019;

(d) "Annual Renewal Notice Associate", 6/2019;

(e) "Annual Renewal Notice Certified Residential and Certified General", 6/2019;

(f) "Annual Renewal Notice Licensed Residential", 6/2019;

(g) "Request for Inactive Status", 6/2019; and

(h) "AQB Real Property Appraiser Qualification Criteria", 1/2008.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Appraisers Board, 321 N. Madison Avenue, Richmond, Kentucky 40475, (859) 623-1658, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN G. KENKEL, JR., Chair

ROBERT ASTORINO, Executive Director

APPROVED BY AGENCY: December 11, 2020

FILED WITH LRC: December 14, 2020 at 8 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held at 10:00 A.M. EST on February 24, 2021 at 500 Mero Street, Room 127CW, 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 February 24, 2021, but if the location is closed to in-person services on February 24, 2021, then the public hearing on this administrative regulation shall be held by video teleconference at 10:00 A.M. on February 24, 2021. The primary location for the video teleconference will be at 500 Mero Street, Room 127CW, Frankfort, Kentucky 40601. However, in light of the COVID-19 pandemic, all public agencies are required to take proper health precautions to mitigate the spread of COVID-19 and to use video teleconference software by which the general public may view the meeting, adequate public viewing space will not be available and instructions for accessing the video teleconference a link will be provided on the website of the Kentucky Real Estate Appraiser Board, <http://kreab.ky.gov>, by which members of the public will be able to view the video teleconference of the public hearing remotely. Members of the public wishing to attend may utilize the link provided on the Board's website. 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. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the 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 administrative regulation. Written comments shall be accepted through 11:59 PM on February 28, 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: John Hardesty, General Counsel, Kentucky Real Estate Authority, 500 Mero Street, 2 NE 09, Frankfort, Kentucky 40601, phone (502) 782-1045, email John.Hardesty@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: John L. Hardesty

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the types of appraisers required in federally related transactions, scope of the practice, and general requirements for certification or licensure. Additionally, this administrative regulation adopts the requirements for certification or licensure of appraisers of real property in federally related transactions, including the education, experience, and examination requirements promulgated by the Appraisers Qualifications Board established by 12 U.S.C. 3331-3351. This administrative regulation also establishes the criteria for licensure as a nonfederal real property appraiser. This administrative regulation establishes the requirements for certification or licensure of persons licensed or certified in another state. This administrative regulation establishes the requirements for temporary appraisal licenses and certificates. This administrative regulation establishes fees for initial application, annual renewal, roster, and examination, for both federally and nonfederally related transactions. This administrative regulation establishes the continuing education requirements for credential holders.

(b) The necessity of this administrative regulation: KRS 324A.020 and 324A.035 require the Real Estate Appraisers Board, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out the provisions of KRS 324A.010 to 324A.090. KRS 324A.035(1) and 12 U.S.C. 3331 through 3351 require the board to establish by administrative regulation requirements for certification or licensure of appraisers of real property in federally related transactions. KRS 324A.035(3)(d), (e), and (f) require the board to establish by administrative regulations requirements for experience and examination of applicants. KRS 324A.065 requires the board to establish and collect fees for certification or licensure as an appraiser. KRS 324A.075 authorizes the board to issue a reciprocal credential to a person licensed or certified in another state. KRS 324A.035 requires the board to promulgate administrative regulations establishing license renewal procedures for credential holders. This administrative regulation is necessary to establish the continuing education requirements for credential holders and the deadline for submission of course completion documentation. This administrative regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. 3331 through 12 U.S.C. 3351).

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324A.020 and 324A.035 require the Real Estate Appraisers Board, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out the provisions of KRS 324A.010 to 324A.090. KRS 324A.035(1) and 12 U.S.C. 3331 through 3351 require the board to establish by administrative regulation requirements for certification or licensure of appraisers of real property in federally related transactions. KRS 324A.035(3)(d), (e), and (f) require the board to establish by administrative regulations requirements for experience and examination of applicants. KRS 324A.065 requires the board to establish and collect fees for certification or licensure as an appraiser. KRS 324A.075 authorizes the board to issue a reciprocal credential to a person licensed or certified in another state. KRS 324A.035 requires the board to promulgate administrative regulations establishing license renewal procedures

for credential holders. KRS 324A.035(3) requires the board to establish by administrative regulation requirements for continuing education for appraisers. This administrative regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. 3331 through 12 U.S.C. 3351). This administrative regulation establishes the types of appraisers required in federally related transactions, scope of the practice, and general requirements for certification or licensure. Additionally, this administrative regulation adopts the requirements for certification or licensure of appraisers of real property in federally related transactions, including the education, experience, and examination requirements promulgated by the Appraisers Qualifications Board established by 12 U.S.C. 3331-3351. This administrative regulation also establishes the criteria for licensure as a nonfederal real property appraiser. This administrative regulation establishes the requirements for certification or licensure of persons licensed or certified in another state. This administrative regulation establishes the requirements for temporary appraisal licenses and certificates. This administrative regulation establishes fees for initial application, annual renewal, roster, and examination, for both federally and nonfederally related transactions. This administrative regulation establishes the continuing education requirements for credential holders.

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

This administrative regulation establishes the types of appraisers required in federally related transactions, scope of the practice, and general requirements for certification or licensure. Additionally, this administrative regulation adopts the requirements for certification or licensure of appraisers of real property in federally related transactions, including the education, experience, and examination requirements promulgated by the Appraisers Qualifications Board established by 12 U.S.C. 3331-3351. This administrative regulation also establishes the criteria for licensure as a nonfederal real property appraiser. This administrative regulation establishes the requirements for certification or licensure of persons licensed or certified in another state. This administrative regulation establishes the requirements for temporary appraisal licenses and certificates. This administrative regulation establishes fees for initial application, annual renewal, roster, and examination, for both federally and nonfederally related transactions. This administrative regulation establishes the requirements for continuing education for credential holders. The regulation requires fourteen hours per year of continuing education, to include seven hours of National Uniform Standards of Professional Appraisal Practice updates and instruction.

(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 current version of this administrative regulation allows any individual licensed by the Board as a Licensed Residential Real Property Appraiser to appraise non-complex one-to-four residential units having a transaction value less than \$1,000,000, and complex one-to-four residential units having a transaction value less than \$250,000. This administrative regulation amendment changes that requirement to allow any individual licensed by the Board as a Licensed Residential Real Property Appraiser to appraise non-complex one-to-four residential units having a transaction value less than \$1,000,000, and complex one-to-four residential units having a transaction value less than \$400,000.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation incorporates the 2020 Real Property Appraiser Qualification Criteria published by the Appraisal Qualifications Board of the Appraisal Foundation. KRS 324A.035 prohibits the board from establishing requirements relating to appraisers of federally related transactions in excess of the minimum requirements established by federal law or regulation. Therefore, amendment to 201 KAR 30:190 Section 2(3)(b) is necessary to discharge this statutory duty.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 324A.020 and 324A.035 require the Real

Estate Appraisers Board, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out the provisions of KRS 324A.010 to 324A.090. KRS 324A.035(1) and 12 U.S.C. 3331 through 3351 require the board to establish by administrative regulation requirements for certification or licensure of appraisers of real property in federally related transactions. KRS 324A.035(3)(d), (e), and (f) require the board to establish by administrative regulations requirements for experience and examination of applicants. KRS 324A.065 requires the board to establish and collect fees for certification or licensure as an appraiser. KRS 324A.075 authorizes the board to issue a reciprocal credential to a person licensed or certified in another state. KRS 324A.035 requires the board to promulgate administrative regulations establishing license renewal procedures for credential holders. KRS 324A.035(3) requires the board to establish by administrative regulation requirements for continuing education for appraisers. This administrative regulation is necessary to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. 3331 through 12 U.S.C. 3351). This administrative regulation establishes the types of appraisers required in federally related transactions, scope of the practice, and general requirements for certification or licensure. Additionally, this administrative regulation adopts the requirements for certification or licensure of appraisers of real property in federally related transactions, including the education, experience, and examination requirements promulgated by the Appraisers Qualifications Board established by 12 U.S.C. 3331-3351. This administrative regulation also establishes the criteria for licensure as a nonfederal real property appraiser. This administrative regulation establishes the requirements for certification or licensure of persons licensed or certified in another state. This administrative regulation establishes the requirements for temporary appraisal licenses and certificates. This administrative regulation establishes fees for initial application, annual renewal, roster, and examination, for both federally and nonfederally related transactions. This administrative regulation establishes the continuing education requirements for credential holders.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes the types of appraisers required in federally related transactions, scope of the practice, and general requirements for certification or licensure. Additionally, this administrative regulation adopts the requirements for certification or licensure of appraisers of real property in federally related transactions, including the education, experience, and examination requirements promulgated by the Appraisers Qualifications Board established by 12 U.S.C. 3331-3351. This administrative regulation also establishes the criteria for licensure as a nonfederal real property appraiser. This administrative regulation establishes the requirements for certification or licensure of persons licensed or certified in another state. This administrative regulation establishes the requirements for temporary appraisal licenses and certificates. This administrative regulation establishes fees for initial application, annual renewal, roster, and examination, for both federally and nonfederally related transactions. This administrative regulation incorporates the 2020 Real Property Appraiser Qualification Criteria published by the Appraisal Qualifications Board of the Appraisal Foundation. KRS 324A.035 prohibits the board from establishing requirements relating to appraisers of federally related transactions in excess of the minimum requirements established by federal law or regulation. Therefore, amendment to 201 KAR 30:190 Section 2(3)(b) is necessary to discharge this statutory duty.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 1577 licensed real estate appraisers, anyone interested in becoming a real estate appraiser, and all persons seeking to have real estate appraised. This administrative regulation also affects the Kentucky Real Estate Appraisers Board.

(4) Provide an analysis of how the entities identified in the

previous question will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Licensed Residential Real Property Appraisers will benefit from the higher value threshold of complex one-to-four residential units they can appraise with that license. No other new action is required to comply with this administrative regulation amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is no cost to any affected individual to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance, Licensed Residential Real Property Appraisers will benefit from the higher value threshold of complex one-to-four residential units they can appraise with that license. No other new action is required to comply with this administrative regulation amendment.

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

(a) Initially: There will be no cost to implement this administrative regulation initially.

(b) On a continuing basis: There will be no cost to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There will be no cost to implement this administrative regulation initially.

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

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

(9) TIERING: Is tiering applied? No. Tiering is not applied because all similarly situated regulated entities are treated the same.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Real Estate Appraisers Board will be affected.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 324A.020, 324A.035(1), 324A.045, 324A.065, 324A.075, and 12 U.S.C. 3331 through 3351.

(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 in the first year.

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

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

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

subsequent years? There is no additional cost to administer this program for subsequent years.

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

Revenues (+/-): Neutral.

Expenditures (+/-): Neutral.

Other Explanation: None.

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 12 U.S.C. 3331 through 3351.

(2) State compliance standards. 12 U.S.C. 3345 requires states to adopt licensing and certification criteria and recommends that state licensing agencies defer to the Appraisal Qualification Board of the Appraisal Foundation. 12 U.S.C. 3347 permits disapproval of a state's licensing scheme if it fails to produce licensing and certification qualifications, supervision, and regulation of appraisers consistent with 12 U.S.C. 3331 through 3351. This administrative regulation incorporates the 2020 Real Property Appraiser Qualification Criteria published by the Appraisal Qualifications Board of the Appraisal Foundation. KRS 324A.035 prohibits the board from establishing requirements relating to appraisers of federally related transactions in excess of the minimum requirements established by federal law or regulation. Therefore, amendment to the education and experience qualifications is necessary to discharge this statutory duty.

(3) Minimum or uniform standards contained in the federal mandate. 12 U.S.C. 3345 requires states to adopt licensing and certification criteria and recommends that state licensing agencies defer to the Appraisal Qualification Board of the Appraisal Foundation. 12 U.S.C. 3347 permits disapproval of a state's licensing scheme if it fails to produce licensing and certification qualifications, supervision, and regulation of appraisers consistent with 12 U.S.C. 3331 through 3351.

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

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

#### DEPARTMENT OF AGRICULTURE Office of the State Veterinarian (Amendment)

#### 302 KAR 22:150. Cervids.

RELATES TO: KRS 150.730-150.735, 246.030(4), 257.020, 257.030, 257.080, 257.990, Chapter 321, 9 C.F.R. 55, 81.4, 161.1-161.4

STATUTORY AUTHORITY: KRS 150.720(1), 246.295(1), 257.550, KRS 257.552

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.720(1), 246.295(1), and 257.550 require the Department of Agriculture, in cooperation with the Department of Fish and Wildlife Resources, to promulgate administrative regulations pertaining to health requirements, eradication of diseases, and identification of privately owned and farm-raised cervids maintained for the production of meat and other products. This administrative regulation establishes criteria and health requirements necessary to prevent the introduction of chronic wasting disease into Kentucky and develop a herd monitoring system, and establishes requirements for intrastate and interstate movement of farmed cervids.

#### Section 1. Definitions.

(1) "USDA-accredited veterinarian" means a veterinarian accredited by the USDA as category II in accordance with the provisions of 9 C.F.R. 161.1 to 161.4, and licensed to practice veterinary medicine in their home state.

(2) "Adjacent herd" means:

(a) A herd of cervids occupying premises that shares[share] a border or boundary line with premises occupied by a chronic wasting disease positive herd, including herd[a-herd] separated by a road or stream; and [

(b) A herd of cervids occupying premises that were previously occupied by a chronic wasting disease positive herd within the past five (5) years.]

(3) "Animal identification number" or "AIN" means a numbering system for the official identification of individual animals in the United States that provides a nationally unique identification number for each animal. The AIN consists of fifteen (15) digits, with the first three (3) being the country code (either 840 for the United States at large or a unique code for any U.S. territory that elects to use it in place of the 840 code).

(4) "APHIS" means the Animal and Plant Health Inspection Service of the United States Department of Agriculture.

(5) "Approved laboratory" means the National Veterinary Service Laboratory in Ames, Iowa, or any other laboratory approved by the APHIS [Administrator of the Cervid and Plant Health Inspection Service of the USDA].

(6) "Certificate of Veterinary Inspection" or "CVI" means an official document, on a form approved by the chief animal health official of the state of origin or by USDA APHIS Veterinary Services for verification of veterinary inspection that is issued by a licensed and accredited veterinarian.

(7) "Certified" means the status achieved by a herd that has met the standards of the Chronic Wasting Disease Herd Certification Program continuously for at least five (5) years.

(8) "Certified Chronic Wasting Disease (CWD) Herd" or "herd" means a group of cervids under common ownership or supervision that has achieved "certified" status in the Kentucky Herd Certification Program, the federal Chronic Wasting Disease Herd Certification Program, or a state Chronic Wasting Disease Certification Program approved by APHIS or the State Veterinarian, [and that is on:

(a) One (1) or more parts of any single permitted premises (lot, far, or ranch); or

(b) Two (2) or more premises that are geographically separated but on which animals have been interchanged or had direct or indirect contact with one another.]

(9) "Cervid" means deer, elk, moose, caribou, reindeer, and related species and hybrids thereof, including all members of the Cervidae family and hybrids thereof.

(10) "Cervid Chronic Wasting Disease Surveillance and Identification" or "CCWDSI" means the [a-Cervid-Management Plan that includes two (2) programs:

(a) The Chronic Wasting Disease HCP; and

(b) The Chronic Wasting Disease HMP.

(11) "Cervid Herd Plan" means a written herd management agreement or premises management agreement:

(a) Developed by OSV in collaboration with the herd owner to address compliance issues within a HCP or HMP herd; or [and]

(b) That establishes the steps needed to eradicate CWD from a CWD positive herd, to control the risk of CWD in a CWD [CDD] exposed or CWD-suspect herd, or to prevent introduction of CWD into that herd or any other herd.

(12) "Chronic Wasting Disease" or "CWD" means a transmissible spongiform encephalopathy of cervids.

(13) "[~~Chronic Wasting Disease~~] Herd Certification Program" or "HCP" means a program established by this administrative regulation to determine the CWD status of farmed cervid herds.

(14) "[~~Chronic Wasting Disease~~] Herd Monitoring Program" or "HMP" means a program established by this administrative regulation to monitor farmed cervids in harvesting facilities for CWD.

(15) "Farmed cervid":

(a) Means cervid livestock that are enrolled in a CCWDSI program and are maintained for propagation, selling, trade, or barter or for taking by any harvest or slaughter method; and

(b) Does not mean any cervid that has not originated from and been continuously maintained within a herd that is enrolled in and complies with a HCP or HMP.

(16) "Exposed" means a cervid that is part of a CWD positive herd, or that has been exposed to a CWD-positive cervid or contaminated premises within the previous five (5) years.

(17) "Harvest" means to slaughter or take by hunting farmed cervids for meat and other products.

(18) "Identification" means a device or means of identification approved for use under this administrative regulation by the State Veterinarian.

(19) "Interstate movement" means movement from another state into or out of Kentucky.

(20) "Intrastate movement" means movement solely within the boundaries of Kentucky.[]

~~(21) "Licensed and accredited veterinarian" means a veterinarian:~~

~~(a) Approved by the Deputy Administrator of USDA APHIS VS and the State Veterinarian, in accordance with 9 C.F.R. Part 161, to perform functions required by cooperative state-federal cervid disease control and eradication programs; and~~

~~(b) Who is licensed to practice veterinary medicine in Kentucky under KRS Chapter 321-[]~~

(21) [(22)] "Move" means to carry, enter, import, [mail,] ship, or transport; to aid, abet, cause, or induce carrying, entering, importing, mailing, shipping, or transporting; to offer to carry, enter, import, mail, ship, or transport; to receive in order to carry, enter, import, mail, ship, or transport; or to allow any of these activities.

(22) [(23)] "National Uniform Eartagging System" or "NUES" means a numbering system for the official identification of individual animals in the United States that provides a nationally unique identification number for each animal that is USDA approved.[]

(24) "Official identification" means a device or means of cervid identification approved for use under 9 C.F.R. Part 55 by APHIS and the state veterinarian to uniquely identify individual cervids.[]

(23) [(25)] "Official Chronic Wasting Disease test" or "CWD test" means any test for the diagnosis of Chronic Wasting Disease approved by APHIS and conducted in a laboratory approved by APHIS in accordance with 9 C.F.R. Part 55.

(24) [(26)] "Official eartag" means an identification tag approved by APHIS that bears an official identification number for individual animals. Beginning March 11, 2014, all official eartags manufactured bear an official eartag shield. Beginning March 11, 2015, all official eartags applied to animals bear an official eartag shield. The design, size, shape, color, and other characteristics of the official eartag depend on the needs of the users, subject to the approval of the USDA Administrator. The official eartag is tamper-resistant and has a high retention rate in the animal.

(25) [(27)] "Official identification number" [or "OID"] means a nationally unique number that is permanently associated with a cervid and complies with:

(a) National Uniform Eartagging System (NUES);

(b) Animal Identification Number (AIN); or

(c) Any other numbering system approved by the Administrator for the official identification of animals, including a group identification number.

(26) [(28)] "Office of State Veterinarian" or "OSV" means that office within the Kentucky Department of Agriculture as established in KRS 246.030(4).

(27) [(29)] "Owner" is defined by KRS 257.010(14).

(28) [(30)] "Person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or other legal entity.

(29) "Physical inventory" means an inventory that confirms individual identification of each cervid by hands on observation to include physical or chemical restraint as needed.[]

~~(31) "POL" or "Premises of Origin Location" means the land, farm, or specific parts of a farm where the cervid are physically located.[]~~

(30) [(32)] "Positive" means a cervid has had a diagnosis of CWD confirmed by means of two (2) official CWD tests.

(31) [(33)] "Premises identification number" or "PIN" means a nationally unique number allocated to a premises[assigned] by a state or federal animal health official and [Tribal, or federal animal health authority to a premises that is, in the judgment of the State,

~~Tribal, or federal animal health authority, a geographically distinct location from other premises. The PIN can be used:]~~

(a) Is used in conjunction with a producer's own livestock production numbering system to provide a nationally unique and herd-unique identification number for an animal; and

(b) Is the number system permitted by the state of origin specifically as a CWD program site.[]

~~(b) As a component of a or identification number (GIN).[]~~

(32) [(34)] "Quarantine" means an imposed restriction prohibiting movement of live or dead cervids, or parts thereof, to any location without specific written approval of the State Veterinarian.

(33) [(35)] "Radio Frequency Identification Device" or "RFID" means a device electronically encoded with a unique identification and that complies with the applicable International Standards Organization (ISO) standards and that bears the visual number.

(34) [(36)] "State" means any state of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, or Guam.

(35) [(37)] "USDA" means the United States Department of Agriculture.

(36) "Visual inventory" means an inventory done when distance observation of identification of identification devices is possible.

Section 2. All Farmed Cervids Shall Be in a Program. Every farmed cervid in Kentucky shall be enrolled in either the Chronic Wasting Disease Herd Certification Program or the Chronic Wasting Disease Herd Monitoring Program. ~~[All farmed cervids shall follow the Chronic Wasting Disease Program Standards from the USDA.]~~

#### Section 3. Required CWD program Training.

(1) Prior to initial enrollment in a CWD program, a minimum of one (1) hour initial educational training provided by the OSV is required to be completed.

(2) Supplemental trainings provided by OSV shall be required when there is a change in Chronic Wasting Disease prevalence, change in Kentucky program regulations, or a change in USDA CWD program standards or any other time deemed necessary by the State Veterinarian. Notice for any additional training will be provided at least thirty (30) days in advance of such date.

(3) All persons with a HCP or HMP permit at the date this administrative regulation becomes effective shall complete an educational training for one (1) hour prior to their renewal for the following year.

Section 4[3]. Chronic Wasting Disease Herd Certification Program (HCP).

(1) A HCP permit shall be required to participate in the HCP program. A HCP permit shall be valid from January 1 to December 31 of each year, regardless of the date of application or enrollment.

(a) The applicant for the HCP shall submit:

1. A complete Cervid Chronic Wasting Disease Surveillance Identification (CCWDSI) Herd Certification Program (HCP) or Herd Monitoring Program (HMP) Application;

2. A written statement by a Kentucky-licensed and USDA accredited veterinarian certifying that the veterinarian and the herd owner have a valid veterinarian-client-patient relationship; and

3. An initial [A] fee of \$150. Renewal fees the next year are described in (2).

(b) The OSV shall grant a HCP permit within thirty (30) days after it receives the completed application package with the required fee. Incomplete applications or insufficient fees shall be returned to the applicant without approval. The OSV shall not approve any application if the applicant owes fees or fines to the KDA.

(c) A HCP participant whose permit expires prior to renewal shall be subject to the penalties established in Section 16 of this administrative regulation.

(2) Annual HCP permit renewal required. Fees shall be based on the officially tagged inventory submitted in (e). Renewal applicants shall:

(a) Submit a complete Cervid Chronic Wasting Disease Surveillance Identification (CCWDSI) Herd Certification Program (HCP) or Herd Monitoring Program (HMP) Application by

November 30 of each year;

(b) Pay a fee of \$135 for herds up to fifty (50) cervids, \$250 for herds between fifty-one (51) and 100, or \$450 for herds containing more than 101 cervids, for applications submitted prior to December 1, preceding the applicable permit year;

(c) Pay a fee of \$150 for herds up to fifty (50) cervids, \$275 for herds between fifty-one (51) and 100, or \$500 for herds containing more than 101 cervids, for applications submitted between December 1 and December 31, preceding the applicable permit year;

(d) Pay a fee of \$250 for herds up to fifty (50) cervids, \$375 for herds between fifty-one (51) and 100, or \$600 for herds containing more than 101 cervids, for applications submitted late, January 1 and after of the applicable permit year; and

(e) Submit a current herd inventory as of the time of application submission, and the most recent reporting documents due to the OSV as required in subsection (3)(c) of this section if not already on file with the OSV.

(3) HCP Requirements.

(a) Herds enrolled in this program shall comply with the requirements established in this section and 9 C.F.R. Part 55, Subpart B, and shall follow the USDA Chronic Wasting Disease Standards, and the RFID official identification requirements of Section 8.

1. After an initial permit is issued, the participant shall enroll the herd into the HCP by obtaining movement permits for those cervids moving into the premises. Any additions subsequent to the initial delivery shall be recorded and submitted according to the other timelines established in this administrative regulation.

2. After the first year in the HCP, the participant shall:

a. Conduct the physical inventory and continuously identify cervids as required;

b. Provide any records required by this administrative regulation to the OSV for the cervids; and

c. Maintain and complete the provisions of this administrative regulation and a Cervid Herd Plan, if developed.

(b) Cervid identification requirement.

1. Each cervid shall have at least two (2) forms of cervid identification prior to or at the time of the annual herd inventory, one (1) of which shall be a RFID [an] official identification and one (1) form shall be a visual type of identification, both of which shall be unique to that cervid within the herd.

2. A cervid of any age shall have official identification before being moved from the premises for any purpose.

(c) Cervid inventory.

1. The baseline herd inventory shall consist of the cervids that were delivered initially after program enrollment.

2. a. An annual herd inventory shall be conducted that reviews all records and includes observation of all cervids in an enclosed area, including physical restraint if necessary, to reconcile all visible identification devices with available records. This required inventory shall be conducted in January, February, March, or April.

b. Beginning May 1, the herd shall be placed in quarantine and no movement shall be permitted until the physical inventory is completed for those herds not completing a physical inventory January, February, March, or April.

3. The state veterinarian or an APHIS representative may request additional physical inventories to verify herd compliance with program standards.

4. The owner shall be responsible for assembling, handling, and restraining the cervids, and for all risks and costs incurred, to present the cervids for visual or physical inspection.

5. Additional herd inventory record inspections and reviews shall be conducted quarterly at the cervid premises or at another location mutually agreed to by the owner and the OSV.

(d) Herd Additions.

1. New cervids shall be introduced into the herd only from other herds enrolled in the Kentucky HCP, or from a herd in a state, approved by the OSV, with an USDA-approved CWD Certification Program in which CWD has never been confirmed. [New cervids shall be introduced into the herd only from other herds enrolled in the Kentucky HCP or from a herd in a state with a USDA-approved CWD Certification Program where chronic

wasting disease has never been confirmed.]

2. New cervids shall not be introduced into the herd unless it has been approved by the State Veterinarian.

3. If cervids are introduced from a herd of lower status, the receiving herd status shall revert to the lower status.

(e) HCP Reporting requirements. The owner shall report to OSV any cervids that escape or disappear and all deaths (including cervids killed by harvest or slaughter) of cervids in the herd.

1. The reporting time frame shall be:

a. For cervids that escape or disappear, a report shall be made within forty-eight (48) hours;

b. For cervids taken by harvest, a report shall be submitted within seven (7) days; and

c. For cervids that die from illness or any other reason, a report shall be submitted within seven (7) days. [; and

d. A confirmation that population changes have not occurred in the preceding calendar month if there were no events that required reporting as established in clauses a. through c. of this subparagraph. This report shall be submitted to the OSV by the close of business on the first of each month for the activities of the previous calendar month.]

2. The report shall include all applicable identification numbers, including the visual tag and the date of the death, disappearance, or escape.

3. Cervids that die or are harvested shall have the required tissue specimens collected and submitted for Chronic Wasting Disease testing except if exempted in writing by request to, and approval of, the OSV. [by 9 C.F.R. 55.23. ] Exemptions will only be granted in extenuating circumstances, such as natural disaster or a disease event.

4. An [In accordance with 9 C.F.R. 55.23, an] APHIS or OSV representative shall investigate herds that fail to comply with testing requirements and shall evaluate the herd's status.

5. Cervid escapes return protocol. Cervids that escape may be returned to the herd only when:

a. Within seventy-two (72) hours cervids must be re-captured and fence must be repaired and secured to prevent further escape and meet requirements of Kentucky Department of Fish and Wildlife Resources. Any cervid recaptured after seventy-two (72) hours shall be introduced back into the herd only with written permission of the OSV;

b. Within seven (7) days of initial escape an updated inventory must be provided to the OSV representative in writing; and

c. OSV representative may require physical inspection of cervids to confirm inventory.

(f) Herd Veterinarian Notice Requirement. The herd veterinarian shall be notified within twenty-four (24) hours of observance of a cervid with clinical signs suggestive of Chronic Wasting Disease.

(g) An owner maintaining separate herds shall comply with the separate-herd requirements established in 9 C.F.R. 55.23.

(h) The herd premises shall have a valid Kentucky Department of Fish and Wildlife Resources permit and shall maintain perimeter fencing meeting the requirements established in KRS 150.730 through 150.735.

(i) The owner shall maintain and provide to the OSV representative upon request the following herd records:

1. Complete inventory of cervids including the official identification[OID] and any other identification, and the age and sex of each cervid;

2. A record for each purchased or natural addition to the herd including:

a. The official identification[OID], species, age, and sex of the cervid;

b. The name and address of the person from whom the cervid was purchased;

c. The address of the herd from which the cervid was purchased;

d. A copy of the CVI that accompanied the cervid for intrastate or interstate movement;

e. Date the purchased addition entered the herd; and

f. Approximate date of birth, if a natural addition;

3. A record of each cervid leaving the herd, including:
    - a. The date of movement, the name of the person to whom it was shipped, the place to which it was shipped, and a copy of the Certificate of Veterinary Inspection related to the shipment; and
    - b. A cervid's death or harvest on the premises, including the date of death, the apparent cause of death; the cervid's age, sex, and state-federal official individual cervid identification; date and laboratory submitted for CWD testing, if required; and the disposition of the cervid's carcass. If the carcass was removed from the premises, the record shall identify the carcass' destination and recipient;
  4. A record of all individual CWD tests that were conducted on cervids in the herd;
  5. Records received from the herd veterinarian related to the veterinary services he or she provided to the herd; and
  6. All individual identification numbers (from, for example, tags and electronic implants) associated with each cervid.
- (j) Herd status levels.
1. Upon a herd being first enrolled in the Herd Certification Program, the herd shall be placed in first-year status, except that if the herd is comprised solely of cervids obtained from herds already enrolled in the Herd Certification Program, the newly enrolled herd shall have the same status as the lowest status of any herd that provided cervids for the herd.
  2. If a herd continues to comply with the requirements of the Herd Certification Program, the herd status shall be upgraded by one (1) year on the anniversary of the program enrollment date.
  3. One (1) year after the date a herd was placed in fifth-year status, the herd status shall be changed to "certified". The herd shall remain in "certified" status as long as the herd remains enrolled in the program, if its status is not revoked or suspended in accordance with this administrative regulation or 9 C.F.R. 55.24.
  4. A herd owner shall be issued a certificate of "Certified" status upon completing the Herd Certification Program requirements established in this administrative regulation.
  5. Renewal of a Certified Cervid Herd. A herd shall be certified for twelve (12) months. For continuous certification, adherence to the provisions in this administrative regulation and all other state laws and administrative regulations pertaining to holding cervids shall be required.
  6. The herd enrollment date shall be the latter date of:
    - a. The physical inventory being completed in accordance with paragraph (c) of this subsection; or
    - b. The initial cervid delivery.
  - (k) Disease surveillance procedures. A cervid that is twelve (12) months or older that dies for any reason, including harvest, shall be tested for CWD. The herd owner shall be responsible for sample collection by an OSV certified CWD sample collector, submission, and testing. Samples for testing shall be properly collected, handled, and preserved, and shall be submitted to an approved laboratory within seven (7) days of death and collection. If incidents of mass casualty or mortality events are confirmed by the OSV, the OSV may waive the testing requirements for all cervids and instead only require testing based on risk.
  - (l) USDA Chronic Wasting Disease Program Standards deficiencies may, based on the nature of the deficiencies, require a Cervid Herd Plan in lieu of, or in addition to, administrative penalties.
- Section 5[4]. Chronic Wasting Disease Herd Monitoring Program (HMP).
- (1) A HMP permit shall be required to participate in the HMP program. A HMP permit shall be valid from January 1 to December 31 of each year, regardless of the date of application or enrollment.
    - (a) The applicant for the HMP program shall submit:
      1. A complete Cervid Chronic Wasting Disease Surveillance Identification (CCWDSI) Herd Certification Program (HCP) or Herd Monitoring Program (HMP) Application;
      2. A written statement by a Kentucky-licensed and USDA accredited veterinarian, certifying that the veterinarian and the herd owner have a valid veterinarian-client relationship; and
      3. A fee of \$500.
    - (b) OSV shall grant the HMP permit within thirty (30) days after

- it receives the completed application package with the required fee. Incomplete applications or insufficient fees shall be returned to the applicant without approval. The OSV shall not approve any application if the applicant owes any fees or fines to the KDA.
- (c) HMP participants whose permit expires prior to renewal shall be subject to the penalties in Section 16 of this administrative regulation.
  - (2) Annual HMP permit renewal required. Renewal applicants shall:
    - (a) Submit a completed Cervid Chronic Wasting Disease Surveillance Identification (CCWDSI) Herd Certification Program (HCP) or Herd Monitoring Program (HMP) Application by November 30 of each year.
    - (b) Pay a fee of \$500.
    - (c) Submit a current herd inventory as of the moment of application, and the most recent reporting documents due to the OSV as required in subsection (4)(c) of this section if not already on file with the OSV.
    - (d) The permit shall be effective January 1 through December 31 of each year.
  - (3) Restrictions and limitations on HMP-enrolled cervids and herds.
    - (a) A cervid shall not leave an HMP-enrolled herd alive.
    - (b) A cervid shall not be moved to another HMP-enrolled herd.
    - (c) A HMP herd, or any cervid within a HMP-enrolled herd shall not be eligible to enter the HCP.
    - (4) HMP Requirements.
      - (a) Herds enrolled in this program shall comply with the requirements established in this section~~[and the requirements in 9 C.F.R. Part 55, Subpart B]~~.
      1. After an initial permit is issued, the participant shall enroll the herd into the HMP by obtaining movement permits for those cervids moving into the premises. Any additions subsequent to the initial delivery shall be recorded and submitted according to the other timelines established in this administrative regulation.
      2. After the first year in the HMP, the participant shall:
        - a. Conduct the inventory and continuously identify cervids as required;
        - b. Submit records to the OSV for the cervids that are required in this administrative regulation; and
        - c. Maintain and complete the provisions of this administrative regulation and a herd-specific Cervid Herd Plan, if developed.
      - (b) Cervid identification requirement.
        1. Each cervid twelve (12) months of age or older shall have at least two (2) forms of cervid identification, one (1) of which shall be a RFID[ an] official identification and one (1) form shall be a visual type of identification, which shall be unique to that cervid within the herd.~~[~~
        2. ~~A cervid of any age shall have official identification before being moved from the premises for any purpose.]~~
        3. Any untagged cervid that dies or is harvested shall be officially identified and shall be CWD tested.
      - (c) Cervid inventory.
        1. The baseline herd inventory shall consist of the cervids that were delivered initially after program enrollment.
        2. An annual herd inventory shall be conducted and submitted to the OSV that reviews all records and documents that would change the baseline herd inventory.
        3. The state veterinarian or an APHIS representative may request a visual or physical inventory to verify herd compliance with program standards.
        4. The owner shall be responsible for assembling, handling, and restraining the cervids, and for all risks and costs incurred, to present the cervids for inspection.
        - (d) Herd Additions. New cervids shall be introduced into the herd only from other herds enrolled in the Kentucky HCP, or from a herd in a state, approved by the OSV, with an USDA-approved CWD Certification Program in which CWD has never been confirmed.
        - (e) If evidence of natural additions are found, a Cervid Herd Plan shall be developed to eliminate future breeding. No intentional breeding is allowed.
        - (f) ~~[(e)]~~–HMP Participant Reporting requirements. The owner



shall report to the OSV any cervids that escape or disappear, and all deaths (including cervids killed by harvest or slaughter) of cervids in the herd.

1. This report shall be submitted to the OSV by the close of business on the first business day of each month for the activities of the previous calendar month.

2. The report shall include applicable cervid identification numbers, including the visual tag; the date of the death, disappearance, escape; and the dates the CWD tests were submitted for testing.

3. All cervids that die or are harvested shall have the required tissue specimens collected and submitted for CWD testing.

4. In accordance with 9 C.F.R. 55.23, an APHIS or OSV representative shall investigate herds that fail to comply with testing requirements, which shall be considered noncompliance. [and shall evaluate the herd's status.]

5. Cervid escapes return protocol. Cervids that escape may be returned to the herd only when:

a. Within seventy-two (72) hours cervids must be re-captured and fence must be repaired and secured to prevent further escape and meet requirements of Kentucky Department of Fish and Wildlife Resources;

b. Within seven (7) days of initial escape an updated inventory must be provided to the OSV representative in writing; and

c. OSV representative may require physical inspection of cervids to confirm inventory.

(g) ~~[(f)]~~ Herd Veterinarian Notice Requirement. The herd veterinarian shall be notified within twenty-four (24) hours of observance of a cervid with clinical signs suggestive of Chronic Wasting Disease.[]

(g) ~~An owner maintaining separate herds shall comply with the separate herds requirements established in 9 C.F.R. 55.23.]~~

(h) The herd premises shall have a valid Kentucky Department of Fish and Wildlife Resources permit and shall maintain perimeter fencing meeting the requirements established in KRS 150.730 through 150.735. (i) The owner shall maintain and provide to the OSV representative upon request the following herd records:

1. Complete inventory of cervids, including the official identification~~[OID]~~, and any other identification, and the age and sex of each cervid;

2. A record for each purchased or natural addition to the herd, including:

a. The official identification ~~[OID]~~, species, age, and sex of the cervid;

b. The name and address of the person from whom the cervid was purchased;

c. The address of the herd from which the cervid was purchased;

d. A copy of the CVI that accompanied the cervid for intra- or interstate movement;

e. Date the purchased addition entered the herd; and

f. Approximate date of birth, if a natural addition;

3. A record of each cervid leaving the herd including a record of each cervid that died or was harvested on the premises including:

a. The date of death;

b. The apparent cause of death;

c. The cervid's age and sex;

d. State-federal official individual cervid identification, date, and laboratory submitted for CWD testing, if required; and

e. The disposition of the cervid's carcass. If the carcass left the premises, the record shall identify the carcass destination and recipient;

4. A record of all individual CWD tests that were conducted on cervids in the herd;

5. Records received from the herd veterinarian related to the veterinary services he or she provided to the herd; and

6. All individual identification numbers (from, for example, tags and electronic implants) associated with each cervid.

(i) ~~[(k)]~~ Disease surveillance procedures. A cervid that is twelve (12) months or older that dies for any reason, including harvest, shall be tested for CWD. The herd owner shall be responsible for sample collection, submission, and testing. Samples for testing

shall be properly collected, handled, and preserved, and shall be submitted to an approved laboratory within thirty (30) days of collection.

Section 6[5]. Testing, Investigation, and Quarantine.

(1) Surveillance testing procedures.

(a) CWD testing shall be in accordance with the procedures established in 9 C.F.R. 55.8.

(b) A positive or non-negative ~~[diagnosis]~~ of CWD by an approved laboratory shall be sent to the National Veterinary Service Laboratory for confirmation.

(c) If required tissues from test eligible cervids are not submitted for laboratory diagnosis by the cervid owner, the state veterinarian shall revoke the permit or implement a mutually agreed upon Cervid Herd Plan.

(2) Investigation of CWD-positive cervids.

(a) An epidemiological investigation in accordance with 9 C.F.R. 55.23 shall be conducted by OSV or APHIS VS for all cervids diagnosed at an approved laboratory CWD positive or suspect.

(b) All CWD-positive herds and all source, exposed, and adjacent herds and the premises where these herds are located shall be investigated epidemiologically by OSV.

(3) Duration of Quarantine. Quarantines issued by the State Veterinarian for CWD in accordance with this administrative regulation shall be removed as established in paragraphs (a) and (b) of this section.

(a) A premises shall not be removed from quarantine until after completion of the cervid herd plan and five (5) years of compliance with all provisions of 9 C.F.R. Part 55.

(b) An adjacent or exposed herd or premises may be removed from quarantine only after an epidemiological investigation and by order of the OSV.

Section 7. CWD Sample Collection Training.

(1) Required CWD samples must be collected by a licensed accredited veterinarian or an individual certified by the OSV.

(2) To become certified an individual must:

(a) Submit a request for certification to the OSV at Statevet@ky.gov or contact the OSV, and

(b) Attend a training course offered by the OSV.

(3) Certification is valid for five (5) years from the date of training course or until new sample collection protocols have been mandated by OSV or USDA. Renewal certification requires completion of a renewal form.

(4) Certified individuals shall comply with CWD collection and submission protocols. Failure to submit quality samples may result in revocation of certification status.

(5) Certified individual shall maintain record of sample collections for ten (10) years. Records shall include a copy of the laboratory submission form or a generated report which contains the following:

(a) Date of sample collection;

(b) Premises Name and City where sample collection occurred;

(c) List of official identification devices of each sample;

(d) Number of samples collected; and

(e) Name of Laboratory where samples were submitted.

Section 8[6]. Certificate of Veterinary Inspection.

(1) A Certificate of Veterinary Inspection shall remain valid for thirty (30) days after date of inspection.

(2) A CVI shall contain:

(a) Identification of each animal recorded on the certificate;

(b) A RFID and visual identification for each cervid; [An official identification (OID) for each cervid;]

(c) The species, breed, sex, and age of each cervid;

(d) The name and address of the owner, cosigner, or agent shipping the cervid, and phone number of each;

(e) The location from which the animal is loaded for movement;

(f) The name and address of the consignee or person receiving the cervid;

(g) The location at which the animal will be received;

(h) The purpose of the movement and the total number of

cervids;

(i) All non-applicable data fields crossed out by the USDA-accredited Veterinarian prior to signing;

(j) The movement permit number issued by the OSV;

(k) The following statement or one substantially similar: "I certify as an accredited veterinarian that the above described animals have been inspected by me on this date and that they are not showing signs of infection or communicable disease. The vaccinations and results of tests are as indicated on the certificate. The animals listed on this certificate meet the state of destination requirements and federal interstate requirements"; and

(l) The signature, USDA category II accreditation number, and phone number of the veterinarian.

(3) Paper submitted Certificate of Veterinary Inspection.

(a) The first physical page shall be mailed or otherwise delivered to the office of the state veterinarian in the origin state [OSV] within seven (7) days of the date it is written.

(b) An exact replica image (a scan in a PDF) of the first page may be submitted in lieu of the first physical page required in paragraph (a) of this subsection by submitting via electronic mail within seven (7) days of the date it is written to Statevet@ky.gov.

(c) The second page shall physically accompany the cervid being moved and be readily accessible during the movement.

(d) The third page shall be sent to the Animal Health Official in the state of destination within seven (7) days of the date it is written.

(e) The fourth page shall be retained by the issuing veterinarian for at least five (5) years from the date of issuance.

(f) A legible copy of any supplemental pages shall be stapled to the original and each copy of the CVI.

(4) Electronically submitted CVIs.

(a) Certificate of Veterinary Inspection and Permit may be submitted via an importable format as approved by the OSV, [allowed by USAHA AHSIS Subcommittee on Data Standards' "standard XML schema document." ]

(b) Cervids moving with an electronically submitted Certificate of Veterinary Inspection shall be accompanied by a paper copy or have the electronic material stored on a device that may be read immediately upon request.

(5) A person shall not issue a CVI bearing the seal of the Commonwealth of Kentucky unless that person is a Kentucky licensed and USDA category II [-] accredited veterinarian.

#### Section 9[7]. Movement Permit.

(1) A person shall not move a cervid within or into Kentucky without first obtaining a permit from the OSV at least forty-eight (48) hours prior to the movement, unless approved in writing by the OSV.

(2) Proof of required vaccinations or other applicable health practices to ensure disease prevention based on place or origin, as found on the Web site at [www.kyagr.gov](http://www.kyagr.gov), shall be completed prior to permit issuance. Instructions for a permit may be obtained on the Web site.

(3) Movement permit instructions may be obtained by calling OSV at 502-573-0282, Monday through Friday, 8 a.m. EST to 4:30 p.m. EST.

(4) Required testing or vaccination. Required tests and vaccinations shall be performed or verified by a:

(a) Licensed and USDA category II[-] accredited veterinarian;

(b) Designee of the State Veterinarian; or

(c) Designee of the federal government.

(5) Required tests shall be conducted at no expense to the Commonwealth of Kentucky.

(6) Required laboratory tests shall be conducted in a state-federal approved laboratory.

#### Section 10[8]. Official Identification and Other Required Identification.

(1) Beginning July 1, 2020, RFID official identification shall be applied in any initial tagging event, retagging event, or anytime a cervid is restrained by any method, including permitted movements. All imported cervids shall require an RFID at the time of importation beginning July 1, 2020. This RFID shall be cross

referenced with any other existing official identification at the time of application. Existing official identification shall not be removed without the prior written approval of the OSV.

(2)[(4)] Methods of official identification. An official individual identification shall consist of a set of alphanumeric characters or physical characteristics that are uniquely associated with an individual cervid and that constitute:

(a) Official USDA NUES that was applied prior to June 30, 2020; and

(b) An RFID that [if]:

1. The RFID uniquely identifies the animal and is USDA approved;

2. The RFID is attached to[or implanted in] the animal;

3. The RFID is registered to a PIN or to a person; and

4. Only one (1) official RFID is placed on an animal.

(3)[(2)] Use of more than one (1) official eartag.[

(a) ~~More than one (1) official eartag may be used by the OSV for tagging events required by subsection (6) of this section.]~~

(a) Any [(b) The] person applying the additional official eartag shall record the following information about the event, and submit to the OSV within seven (7) days the required information, and maintain the record for at least ten (10) [five (5)] years:

1. The date the additional official eartag is added;

2. The reason for the additional official eartag device; and

3. The official identification numbers of the new official eartag and the one or ones already attached to the animal.

(b) [(e)] An eartag with an Animal Identification Number (AIN) beginning with the 840 prefix (either radio frequency identification or visual-only tag) may be applied to a cervid that is already officially identified with one (1) or more National Uniform Eartagging System tags. The person applying the Animal Identification Number eartag shall record the date the Animal Identification Number tag is added and the official identification numbers of any official eartags and shall maintain those records for at least ten (10) [five (5)] years.

(4)[(3)] Removal or loss of official identification devices.

(a) ~~[Official identification devices shall provide permanent identification of cervids and ensure the ability to find the source of animal disease outbreaks. ]~~ Removal of official identification [these devices] shall be prohibited, except as approved in writing by the OSV or a USDA area veterinarian in charge if a device needs to be replaced.

(b) If a cervid loses an official identification device ~~[and needs a new one]~~:

1. A replacement tag with a different official identification number may be applied. The person applying a new official identification device with a different official identification number shall record the following information about the event and maintain the record for at least ten (10) [five (5)] years:

a. The date the new official identification device was added;

b. The official identification number on the device; and

c. The official identification number on the old device, if known.

2. Replacement of a temporary identification device with a new official identification device shall be considered to be a retagging event and shall be noted on the Retag Form.[

(4) ~~Circumstances under which OSV may authorize replacement of an official identification device include, for example:~~

(a) ~~Deterioration of the device that or the number can no longer be read;~~

(b) ~~Infection at the site where the device is attached, necessitating application of a device at another location (for example, a slightly different location of an eartag in the ear);~~

(c) ~~Malfunction of the electronic component of a radio frequency identification (RFID) device; or~~

(d) ~~Incompatibility or inoperability of the electronic component of an RFID device with the management system or unacceptable functionality of the management system due to use of an RFID device.~~

(e) ~~982 tags may be replaced with RFID after written permission from the OSV has been given.]~~

(5) Removal of official identification[OID], without prior written approval of the OSV shall be strictly prohibited.

(6) Replacement records required. Any time an official

identification device is replaced, as authorized by OSV or the USDA, the person replacing the device shall record the following information about the event and maintain the record for at least five (5) years:

- (a) The date on which the previous device was removed;
- (b) Contact information for the location where the device was removed;
- (c) The official identification number (to the extent possible) on the device that was removed;
- (d) The type of device removed (for example, metal eartag or RFID eartag);
- (e) The reason for the removal of the former device;
- (f) The new official identification number on the replacement device; and
- (g) The type of replacement device that was applied to replace the former device.

~~(7) Beginning July 1, 2020, RFID OID shall be applied in any initial tagging event, retagging event, or anytime a cervid is restrained by any method, including permitted movements. All imported cervids shall require an RFID at the time of importation beginning July 1, 2020. This RFID shall be cross-referenced with any other existing OID at the time of application. Existing OID shall not be removed.]~~

Section 11[9]. Premises of Origin Location.

- (1) POL information shall be provided by the person seeking the permit for the premises from which the cervids are to be loaded upon seeking a movement permit.
- (2) The POL of the specific location the cervids were loaded shall include:
  - (a) A PIN issued by the USDA or the Animal Health Official in the state of origin or a LID; and
  - ~~(b)[(2)]~~ The owner at the time of movement and that owner's address and contact information.

Section 12[Section 10]. Requirements for Interstate Movement into Kentucky.

- (1) A person or hauler shall not move a cervid into Kentucky without first obtaining a CVI from a licensed and USDA category II accredited veterinarian; and
- ~~(2) Obtained a movement permit from the OSV at least forty-eight (48) hours prior to movement and scheduling by the OSV, that includes a scheduled appointment for delivery of cervids between the hours of 6 a.m. and 9 p.m.; and~~
- ~~(3) [(2)]~~ An OSV representative, USDA representative, or an USDA category III[-] accredited veterinarian shall be present for the unloading of the cervids at the point of destination at the time scheduled in (2) and shall be responsible for removing the transport seal and observing the offloading.
- ~~(4) [(3)]~~ An entry permit shall not be issued for a cervid that does not have certified status or an equivalent status, as documented by a certificate issued in accordance with 9 C.F.R. 81.4. An entry permit shall not be issued for a cervid that originated in, or at any time resided, in a state where CWD has been confirmed in either wild or captive cervids.
- ~~(5) [(4)]~~ An entry permit shall not be issued for a cervid that is not:
  - (a) Negative to an official tuberculosis test within ninety (90) days of entry; or
  - (b) Originating from a cervid tuberculosis accredited herd. The herd accreditation number and the last herd test date shall be listed on the CVI.

Section 13[Section 14]. Requirements for Movement Within Kentucky.

- (1) A movement permit issued by the OSV and CVI shall be required prior to cervid movement within Kentucky.
- (2) A CVI shall not be required if the movement is from the same herd to a different permitted premises within the same farm, if the cervid has official identification [OID], prior to the movement.
- (3) Movement shall not commence until forty-eight (48) hours after the issuance of the permit.
- (4) An OSV representative, USDA representative, or an USDA

category III[-] accredited veterinarian shall be present at the loading at the point of origin, or the unloading of the cervids at the point of destination for movements to a different premises. [For movements established in subsection (2) of this section, no a designee at time of unloading shall not be required.]

(5) The requirements of this section shall be the responsibility of the owners, agents, and haulers of the moved cervid.

Section 14[Section 12]. Requirements for Movement for Export from Kentucky.

- (1) A movement permit issued by the OSV and CVI shall be required prior to cervid movement from Kentucky.
- (2) Movement shall not commence until forty-eight (48) hours after the issuance of the permit by the OSV and scheduling.
- (3) All cervids being exported from Kentucky shall have movement documentation and any applicable permits as required by the state of destination, and have these documents immediately available for inspection.
- ~~(4) A cervid shall not leave Kentucky until:~~
  - ~~(a) The CVI is written to meet the state of destination requirements by a Kentucky licensed category II veterinarian, and~~
  - ~~(b) The owner, agent, or hauler contacts the OSV designee at least forty-eight (48) hours in advance of the movement to schedule an appointment for departure inspection and movement documentation between the hours of 6 a.m. and 9 p.m.~~

Section 15[Section 13]. Requirements for Movement Through Kentucky. Cervids moving through Kentucky shall have movement documentation and any applicable permits as required by the state of destination, and have these documents immediately available for inspection. A Kentucky movement permit shall not be required for direct movement through Kentucky. Persons directly moving cervids through Kentucky may voluntarily obtain a permit from the OSV.

Section 16. Reindeer Exhibition.

- ~~(1) Any reindeer exhibiting in the state of Kentucky must obtain written permission of the OSV.~~
- ~~(2) Requests for an exhibition permit shall be made to the OSV in writing or electronically at statevet@ky.gov a minimum of ten (10) business days prior to the movement to the exhibit.~~

Section 17[14]. Voluntary Accreditation and Certification Programs.

- (1) Cervid owners wishing to seek a voluntary herd certification for brucellosis shall follow the provisions established in APHIS 91-45-16, Brucellosis in Cervidae.
- (2) Cervid owners wishing to seek a voluntary herd accreditation for tuberculosis eradication shall follow the provisions established in APHIS 91-45-011, Bovine Tuberculosis Eradication.
- (3) After the completion of terms in APHIS 91-45-011 or APHIS 91-45-16, the OSV shall issue a certificate, for the respective disease, that shall be valid in Kentucky for a period of thirty-six (36) months from issuance.

Section 18[15]. Retention of Records.

- (1) Intrastate movement or sales documents shall be maintained by both the buyer and the seller for at least ten (10) [five (5)] years after the movement of the cervids.
- (2) Official identification device distribution records. Any veterinarian who distributes official identification [OIDS], shall maintain distribution lists and documents for at least ten (10) [five (5)] years after issuance.
- (3) Interstate movement records and documentation that is required by this administrative regulation shall be maintained for at least ten (10) [five (5)] years.
- (4) Herd plans, inventory records, and disposition of cervid records shall be maintained for at least ten (10) [five (5)] years.

Section 19[16]. Penalties.

- (1) Penalties for failure to comply with standards established in this administrative regulation.
  - (a) OSV shall have the authority to revoke or suspend a herd's

permit for the Herd Certification Program or the Herd Monitoring Program if a person:

1. Falsifies information on an enrollment application, falsifies subsequent information required for continued enrollment, or refuses to produce documents requested by a representative of OSV;

2. Fails to comply with requirements in this administrative regulation on cervid identification, cervid inventory, herd records, testing, or cervid movement;

3. Or facility fails to remain in compliance with KRS Chapters 257 or 150, or any administrative regulation promulgated under the authority thereof;

4. Fails to comply with an instruction from a representative of OSV; or

5. Fails to produce any document require to be created or maintained by this administrative regulation.

(b) In accordance with KRS 257.990, a permit holder shall be subject to a monetary fine for violation of this administrative regulation.

(2) Penalties for failure to comply with Section 6, 7, 8, or 9 of this administrative regulation.

(a) In accordance with KRS 150.740(6), a person shall be guilty of a Class D felony upon conviction; and

(b) Upon conviction of a second violation, a person shall be permanently ineligible for renewal of a captive cervid permit.

(3) In accordance with KRS 150.740(7), the Kentucky Department of Fish and Wildlife Resources shall have authority to seize captive cervids that were imported into the Commonwealth in violation of this administrative regulation or KRS 150.740 and 257.550.

(4) Any person whose permit is revoked shall not reapply to the HCP or HMP programs for a period of five (5) years.

(5) Herds enrolled in HMP or HCP programs whose permit holders fail to reapply for permits on or before the application deadline shall be immediately placed in quarantine. These herds shall be subject to a physical herd inventory prior to permit issuance. A hunting or harvest shall not take place during the quarantine period. Herds shall be re-enrolled in any program without first paying the initial fee of \$150 and the renewal fee as required in either the HCP or HMP program.

(6) Removal of official identification [OID], from a cervid without written permission of the OSV shall result in the loss of status for all cervids inside the herd.

Section 20[47]. Material Incorporated by Reference.

(1) The following material is incorporated by reference:

(a) "Cervid Chronic Wasting Disease Surveillance Identification (CCWDSI) Herd Certification Program (HCP) or Herd Monitoring Program (HMP) Application", October 2020; [February-2019]

(b) "Deceased Animal Report", May 2019;

(c) "Herd/Flock Additions", October 2020 [May-2019];

(d) "Herd/Flock Deletions", [May-2019];

(e) "Retag Form", February 2017;

(f) "USDA Chronic Wasting Disease Program Standards", May 2019;

(g) "APHIS 91-45-16, Brucellosis in Cervidae", September 2003; and

(h) "APHIS 91-45-011, Bovine Tuberculosis Eradication", January 1999.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Division of Animal Health, 111 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. ROBERT STOUT, State Veterinarian

APPROVED BY AGENCY: December 14, 2020

FILED WITH LRC: December 15, 2020 at 9:02 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 23, 2021 at 1:00 p.m., at the Kentucky Department of Agriculture, 109 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 February 28, 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) 782-0284, fax (502) 564-2133, email clint.quarles@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation creates the standards required for the farmed cervids industry in Kentucky.

(b) The necessity of this administrative regulation: This regulation is necessary to establish rules that comply with the USDA, that will allow for a farm cervid program in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 257.550 commands KDA to create a farmed cervids program, this filing does so.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by clearly identifying the steps required for producers to be in compliance with the KDA and federal programs.

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

(a) How the amendment will change this existing administrative regulation: This filing amends various sections to ease program restrictions and adds examples and clarifications.

(b) The necessity of the amendment to this administrative regulation: This filing necessary to help clarify rules.

(c) How the amendment conforms to the content of the authorizing statutes KRS 257.550 commands KDA to create a farmed cervids program, this filing does so.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by clearly identifying the steps required for producers to be in compliance with the KDA and federal programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Kentucky Department of Agriculture, 96 HCP and 7 HMP producers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities will be required to follow the individual regulatory instructions in each section.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fees or costs are associated with this filing vary depending on program and timeliness.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease on behalf of the KDA and clear guidance for entities. Entities will also benefit by the ability to sell cervids outside of the Commonwealth.

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

(a) Initially: Approximately \$130,000 annually.

(b) On a continuing basis: Approximately \$130,000 annually.

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

implementation and enforcement of this administrative regulation: Program fees and the general fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Fees are necessary at this time, and are included in the filing/

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

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 257.550, 552

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Approximately \$17,000.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Approximately \$17,000 this past year, the new fee provisions take place this January.

(c) How much will it cost to administer this program for the first year? Approximately \$130,000.

(d) How much will it cost to administer this program for subsequent years? Approximately \$130,000.

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

Revenues (+/-): \$17,000

Expenditures (+/-): Approximately \$130,000.

Other Explanation:

#### ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division for Air Quality (Amendment)

#### 401 KAR 60:005. 40 C.F.R. Part 60 standards of performance for new stationary sources.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Part 60, 42 U.S.C. 7411

STATUTORY AUTHORITY: KRS 224.10-100(5), 224.20-120, 42 U.S.C. 7411

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes the Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes the standards of performance for new stationary sources by referencing the Standards of Performance for New Stationary Sources (NSPS) codified in 40 C.F.R. Part 60. Delegation of implementation and enforcement authority for the federal NSPS program from the U.S. Environmental Protection Agency to the Commonwealth of Kentucky is provided by 42 U.S.C. 7411(c)(1).

Section 1. Definitions. (1) Except as provided in subsection (2) of this section, terms used in this administrative regulation shall have the meaning given to them in 40 C.F.R. Part 60.

(2) "Administrator" means the Secretary of the Energy and Environment Cabinet unless a specific provision of 40 C.F.R. Part 60 states that the U.S. Environmental Protection Agency retains authority.

Section 2. Applicability. This administrative regulation shall apply to sources subject to 40 C.F.R. Part 60. A source subject to this administrative regulation shall comply with:

(1) 40 C.F.R. 60.1 ~~through~~ 60.19, Table 1 (Subpart A), General Provisions, as published July 1, ~~2020~~ and at 85 F.R. 57739 and 85 F.R. 63394[2046];

(2)(a) 40 C.F.R. 60.40 ~~through~~ 60.46 (Subpart D), Standards of Performance for Fossil-Fuel-Fired Steam Generators, as published July 1, ~~2020~~[2046];

(b) 40 C.F.R. 60.40Da ~~through~~ 60.52Da (Subpart Da), Standards of Performance for Electric Utility Steam Generating Units, as published July 1, ~~2020~~[2046];

(c) 40 C.F.R. 60.40b ~~through~~ 60.49b (Subpart Db), Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units, as published July 1, ~~2020~~[2046];

(d) 40 C.F.R. 60.40c ~~through~~ 60.48c (Subpart Dc), Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units, as published July 1, ~~2020~~[2046];

(e) 40 C.F.R. 60.50 ~~through~~ 60.54 (Subpart E), Standards of Performance for Incinerators, as published July 1, ~~2020~~[2046];

(f) 40 C.F.R. 60.50a ~~through~~ 60.59a (Subpart Ea), Standards of Performance for Municipal Waste Combustors for Which Construction is Commenced After December 20, 1989 and On or Before September 20, 1994, as published July 1, ~~2020~~[2046];

(g) 40 C.F.R. 60.50b ~~through~~ 60.59b (Subpart Eb), Standards of Performance for Large Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994 or for Which Modification or Reconstruction is Commenced After June 19, 1996, as published July 1, ~~2020~~[2046];

(h) 40 C.F.R. 60.50c ~~through~~ 60.58c, ~~Tables 1A through 3~~[Tables 1 to 3] (Subpart Ec), Standards of Performance for New Stationary Sources: Hospital/Medical/Infectious Waste Incinerators, as published July 1, ~~2020~~[2046];

(i) 40 C.F.R. 60.60 ~~through~~ 60.66 (Subpart F), Standards of Performance for Portland Cement Plants, as published July 1, ~~2020~~[2046];

(j) 40 C.F.R. 60.70 ~~through~~ 60.74 (Subpart G), Standards of Performance for Nitric Acid Plants, as published July 1, ~~2020~~[2046];

(k) 40 C.F.R. 60.70a ~~through~~ 60.77a (Subpart Ga), Standards of Performance for Nitric Acid Plants for Which Construction, Reconstruction, or Modification Commenced After October 14, 2011, as published July 1, ~~2020~~[2046];

(l) 40 C.F.R. 60.80 ~~through~~ 60.85 (Subpart H), Standards of Performance for Sulfuric Acid Plants, as published July 1, ~~2020~~[2046];

(m) 40 C.F.R. 60.90 ~~through~~ 60.93 (Subpart I), Standards of Performance for Hot Mix Asphalt Facilities, as published July 1, ~~2020~~[2046];

(n) 40 C.F.R. 60.100 ~~through~~ 60.109 (Subpart J), Standards of Performance for Petroleum Refineries, as published July 1, ~~2020~~[2046];

(o) 40 C.F.R. 60.100a ~~through~~ 60.109a, Table 1 (Subpart Ja), Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007, as published July 1, ~~2020~~[2046];

(p) 40 C.F.R. 60.110 ~~through~~ 60.113 (Subpart K), Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978, as published July 1, ~~2020~~[2046];

(q) 40 C.F.R. 60.110a ~~through~~ 60.115a (Subpart Ka), Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984, as published July 1, ~~2020~~[2046];

(r) 40 C.F.R. 60.110b [through](#) 60.117b (Subpart Kb), Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984, as published July 1, [2020](#);

(s) 40 C.F.R. 60.120 [through](#) 60.123 (Subpart L), Standards of Performance for Secondary Lead Smelters, as published July 1, [2020](#);

(t) 40 C.F.R. 60.130 [through](#) 60.133 (Subpart M), Standards of Performance for Secondary Brass and Bronze Production Plants, as published July 1, [2020](#);

(u) 40 C.F.R. 60.140 [through](#) 60.144 (Subpart N), Standards of Performance for Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973, as published July 1, [2020](#);

(v) 40 C.F.R. 60.140a [through](#) 60.145a (Subpart Na), Standards of Performance for Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983, as published July 1, [2020](#);

(w) 40 C.F.R. 60.150 [through](#) 60.156 (Subpart O), Standards of Performance for Sewage Treatment Plants, as published July 1, [2020](#);

(x) 40 C.F.R. 60.160 [through](#) 60.166 (Subpart P), Standards of Performance for Primary Copper Smelters, as published July 1, [2020](#);

(y) 40 C.F.R. 60.170 [through](#) 60.176 (Subpart Q), Standards of Performance for Primary Zinc Smelters, as published July 1, [2020](#);

(z) 40 C.F.R. 60.180 [through](#) 60.186 (Subpart R), Standards of Performance for Primary Lead Smelters, as published July 1, [2020](#);

(aa) 40 C.F.R. 60.190 [through](#) 60.195 (Subpart S), Standards of Performance for Primary Aluminum Reduction Plants, as published July 1, [2020](#);

(bb) 40 C.F.R. 60.200 [through](#) 60.205 (Subpart T), Standards of Performance for the Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants, as published July 1, [2020](#);

(cc) 40 C.F.R. 60.210 [through](#) 60.215 (Subpart U), Standards of Performance for the Phosphate Fertilizer Industry: Superphosphoric Acid Plants, as published July 1, [2020](#);

(dd) 40 C.F.R. 60.220 [through](#) 60.225 (Subpart V), Standards of Performance for the Phosphate Fertilizer Industry: Diammonium Phosphate Plants, as published July 1, [2020](#);

(ee) 40 C.F.R. 60.230 [through](#) 60.235 (Subpart W), Standards of Performance for the Phosphate Fertilizer Industry: Triple Superphosphate Plants, as published July 1, [2020](#);

(ff) 40 C.F.R. 60.240 [through](#) 60.245 (Subpart X), Standards of Performance for the Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities, as published July 1, [2020](#);

(gg) 40 C.F.R. 60.250 [through](#) 60.258 (Subpart Y), Standards of Performance for Coal Preparation and Processing Plants, as published July 1, [2020](#);

(hh) 40 C.F.R. 60.260 [through](#) 60.266 (Subpart Z), Standards of Performance for Ferroalloy Production Facilities, as published July 1, [2020](#);

(ii) 40 C.F.R. 60.270 [through](#) 60.276 (Subpart AA), Standards of Performance for Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974, and On or Before August 17, 1983, as published July 1, [2020](#);

(jj) 40 C.F.R. 60.270a [through](#) 60.276a (Subpart AAa), Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 17, 1983, as published July 1, [2020](#);

(kk) 40 C.F.R. 60.280 [through](#) 60.285 (Subpart BB), Standards of Performance for Kraft Pulp Mills, as published July 1, [2020](#);

(ll) 40 C.F.R. 60.280a [through](#) 60.288a (Subpart BBa), Standards of Performance for Kraft Pulp Mill Affected Sources for Which Construction, Reconstruction, or Modification Commenced After May 23, 2013, as published July 1, [2020](#);

(mm) 40 C.F.R. 60.290 [through](#) 60.296 (Subpart CC), Standards of Performance for Glass Manufacturing Plants, as published July 1, [2020](#);

(nn) 40 C.F.R. 60.300 [through](#) 60.304 (Subpart DD), Standards of Performance for Grain Elevators, as published July 1, [2020](#);

(oo) 40 C.F.R. 60.310 [through](#) 60.316 (Subpart EE), Standards of Performance for Surface Coating of Metal Furniture, as published July 1, [2020](#);

(pp) 40 C.F.R. 60.330 [through](#) 60.335 (Subpart GG), Standards of Performance for Stationary Gas Turbines, as published July 1, [2020](#);

(qq) 40 C.F.R. 60.340 [through](#) 60.344 (Subpart HH), Standards of Performance for Lime Manufacturing Plants, as published July 1, [2020](#);

(rr) 40 C.F.R. 60.370 [through](#) 60.374 (Subpart KK), Standards of Performance for Lead-Acid Battery Manufacturing Plants, as published July 1, [2020](#);

(ss) 40 C.F.R. 60.380 [through](#) 60.386 (Subpart LL), Standards of Performance for Metallic Mineral Processing Plants, as published July 1, [2020](#);

(tt) 40 C.F.R. 60.390 [through](#) 60.398 (Subpart MM), Standards of Performance for Automobile and Light Duty Truck Surface Coating Operations, as published July 1, [2020](#);

(uu) 40 C.F.R. 60.400 [through](#) 60.404 (Subpart NN), Standards of Performance for Phosphate Rock Plants, as published July 1, [2020](#);

(vv) 40 C.F.R. 60.420 [through](#) 60.424 (Subpart PP), Standards of Performance for Ammonium Sulfate Manufacture, as published July 1, [2020](#);

(ww) 40 C.F.R. 60.430 [through](#) 60.435 (Subpart QQ), Standards of Performance for the Graphic Arts Industry: Publication Rotogravure Printing, as published July 1, [2020](#);

(xx) 40 C.F.R. 60.440 [through](#) 60.447 (Subpart RR), Standards of Performance for Pressure Sensitive Tape and Label Surface Coating Operations, as published July 1, [2020](#);

(yy) 40 C.F.R. 60.450 [through](#) 60.456 (Subpart SS), Standards of Performance for Industrial Surface Coating: Large Appliances, as published July 1, [2020](#);

(zz) 40 C.F.R. 60.460 [through](#) 60.466 (Subpart TT), Standards of Performance for Metal Coil Surface Coating, as published July 1, [2020](#);

(aaa) 40 C.F.R. 60.470 [through](#) 60.474 (Subpart UU), Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture, as published July 1, [2020](#);

(bbb) 40 C.F.R. 60.480 [through](#) 60.489 (Subpart VV), Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After January 5, 1981, and on or Before November 7, 2006, as published July 1, [2020](#);

(ccc) 40 C.F.R. 60.480a [through](#) 60.489a (Subpart VVa), Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006, as published July 1, [2020](#);

(ddd) 40 C.F.R. 60.490 [through](#) 60.496 (Subpart WW), Standards of Performance for the Beverage Can Surface Coating Industry, as published July 1, [2020](#);

(eee) 40 C.F.R. 60.500 [through](#) 60.506 (Subpart XX), Standards of Performance for Bulk Gasoline Terminals, as published July 1, [2020](#);

(fff) 40 C.F.R. 60.540 [through](#) 60.548 (Subpart BBB), Standards of Performance for the Rubber Tire Manufacturing Industry, as published July 1, [2020](#);

(ggg) 40 C.F.R. 60.560 [through](#) 60.566 (Subpart DDD), Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry, as published July 1, [2020](#);

(hhh) 40 C.F.R. 60.580 [through](#) 60.585 (Subpart FFF), Standards of Performance for Flexible Vinyl and Urethane Coating and Printing, as published July 1, [2020](#);

(iii) 40 C.F.R. 60.590 [through](#) 60.593 (Subpart GGG),

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Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After January 4, 1983, and On or Before November 7, 2006, as published July 1, 2020[2046];

(jjj) 40 C.F.R. 60.590a through[tē] 60.593a (Subpart GGGa), Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006, as published July 1, 2020[2046];

(kkk) 40 C.F.R. 60.600 through[tē] 60.604 (Subpart HHH), Standards of Performance for Synthetic Fiber Production Facilities, as published July 1, 2020[2046];

(lll) 40 C.F.R. 60.610 through[tē] 60.618 (Subpart III), Standards of Performance for Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes, as published July 1, 2020[2046];

(mmm) 40 C.F.R. 60.620 through[tē] 60.625 (Subpart JJJ), Standards of Performance for Petroleum Dry Cleaners, as published July 1, 2020[2046];

(nnn) 40 C.F.R. 60.630 through[tē] 60.636 (Subpart KKK), Standards of Performance for Equipment Leaks of VOC From Onshore Natural Gas Processing Plants for Which Construction, Reconstruction, or Modification Commenced After January 20, 1984, and On or Before August 23, 2011, as published July 1, 2020[2046];

(ooo) 40 C.F.R. 60.640 through[tē] 60.648 (Subpart LLL), Standards of Performance for SO<sub>2</sub> Emissions from Onshore Natural Gas Processing for Which Construction, Reconstruction, or Modification Commenced After January 20, 1984, and On or Before August 23, 2011, as published July 1, 2020[2046];

(ppp) 40 C.F.R. 60.660 through[tē] 60.668 (Subpart NNN), Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations, as published July 1, 2020[2046];

(qqq) 40 C.F.R. 60.670 through[tē] 60.676, Tables 1 through[tē] 3 (Subpart OOO), Standards of Performance for Nonmetallic Mineral Processing Plants, as published July 1, 2020[2046];

(rrr) 40 C.F.R. 60.680 through[tē] 60.685 (Subpart PPP), Standards of Performance for Wool Fiberglass Insulation Manufacturing Plants, as published July 1, 2020[2046];

(sss) 40 C.F.R. 60.690 through[tē] 60.699 (Subpart QQQ), Standards of Performance for VOC Emissions From Petroleum Refinery Wastewater Systems, as published July 1, 2020[2046];

(ttt) 40 C.F.R. 60.700 through[tē] 60.708 (Subpart RRR), Standards of Performance for Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes, as published July 1, 2020[2046];

(uuu) 40 C.F.R. 60.710 through[tē] 60.718 (Subpart SSS), Standards of Performance for Magnetic Tape Coating Facilities, as published July 1, 2020[2046];

(vvv) 40 C.F.R. 60.720 through[tē] 60.726 (Subpart TTT), Standards of Performance for Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines, as published July 1, 2020[2046];

(www) 40 C.F.R. 60.730 through[tē] 60.737 (Subpart UUU), Standards of Performance for Calciners and Dryers in Mineral Industries, as published July 1, 2020[2046];

(xxx) 40 C.F.R. 60.740 through[tē] 60.748 (Subpart VVV), Standards of Performance for Polymeric Coating of Supporting Substrates Facilities, as published July 1, 2020[2046];

(yyy) 40 C.F.R. 60.750 through[tē] 60.759 (Subpart WWW), Standards of Performance for Municipal Solid Waste Landfills, as published July 1, 2020 and at 85 F.R. 64398[2046];

(zzz) 40 C.F.R. 60.760 through[tē] 60.769 (Subpart XXX), Standards of Performance for Municipal Solid Waste Landfills that Commenced Construction, Reconstruction, or Modification After July 17, 2014, as published July 1, 2020 and at 85 F.R. 63394[at 84 F.R. 59368];

(aaaa) 40 C.F.R. 60.1000 through[tē] 60.1465, Tables 1

through[tē] 5 (Subpart AAAA), Standards of Performance for Small Municipal Waste Combustion Units for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction is Commenced After June 6, 2001, as published July 1, 2020[2046];

(bbbb) 40 C.F.R. 60.2000 through[tē] 60.2265, Tables 1 through[tē] 8 (Subpart CCCC), Standards of Performance for Commercial and Industrial Solid Waste Incineration Units, as published July 1, 2020 and at 85 F.R. 63394[2046];

(cccc) 40 C.F.R. 60.2880 through[tē] 60.2977, Tables 1 through[tē] 4 (Subpart EEEE), Standards of Performance for Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006, as published July 1, 2020[2046];

(dddd) 40 C.F.R. 60.4200 through[tē] 60.4219, Tables 1 through[tē] 8 (Subpart IIII), Standards of Performance for Stationary Compression Ignition Internal Combustion Engines, as published July 1, 2020[2046];

(eeee) 40 C.F.R. 60.4230 through[tē] 60.4248, Tables 1 through[tē] 4 (Subpart JJJJ), Standards of Performance for Stationary Spark Ignition Internal Combustion Engines, as published July 1, 2020 and at 85 F.R. 63394[2046];

(ffff) 40 C.F.R. 60.4300 through[tē] 60.4420, Table 1 (Subpart KKKK), Standards of Performance for Stationary Combustion Turbines, as published July 1, 2020 and at 85 F.R. 63394[2046];

(gggg) 40 C.F.R. 60.4760 through[tē] 60.4930, Tables 1 through[tē] 5 (Subpart LLLL), Standards of Performance for New Sewage Sludge Incineration Units, as published July 1, 2020[2046];

(hhhh) 40 C.F.R. 60.5360 through[tē] 60.5430, Tables 1 through[tē] 3 (Subpart OOOO), Standards of Performance for Crude Oil and Natural Gas ~~Facilities~~[Production, Transmission and Distribution] for Which Construction, Modification or Reconstruction Commenced after August 23, 2011, and On or Before September 18, 2015, as published July 1, 2020 and at 85 F.R. 57018[2046];

(iiii) 40 C.F.R. 60.5360a through[tē] 60.5432a, Tables 1 through[tē] 3 (Subpart OOOOa), Standards of Performance for Crude Oil and Natural Gas Facilities for Which Construction, Modification or Reconstruction Commenced After September 18, 2015, as published July 1, 2020 and at 85 F.R. 57018 and 85 F.R. 57398[2046]; or

(jjjj) 40 C.F.R. 60.5508 through[tē] 60.5580, Tables 1 through[tē] 3 (Subpart TTTT), Standards of Performance for Greenhouse Gas Emissions for Electric Generating Units, as published July 1, 2020[2046]; and

(3) The applicable methods, procedures, and reporting requirements codified in 40 C.F.R. Part 60, Appendices A-1 through[A-tē] F and I, as published July 1, 2020 and at 85 F.R. 63394[2046].

Section 3. Reporting Requirements. All documentation required by this administrative regulation to be submitted to the U.S. EPA shall also be submitted to the Cabinet.

REBECCA W. GOODMAN, Secretary

APPROVED BY AGENCY: December 8, 2020

FILED WITH LRC: December 14, 2020 at 10:41 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A virtual public hearing on this administrative regulation amendment will be held on February 24, 2021, at 10:00 a.m. (Eastern Time). The public hearing can be accessed at the following website address: <https://global.gotomeeting.com/join/212720813> or can be accessed by phone: +1 (224) 501-3412 using access code 212-720-813. Please note that registration is required to participate in this hearing. You must either email your name and mailing address to [Matthew.Dollar@ky.gov](mailto:Matthew.Dollar@ky.gov) or mail this information to Matthew Dollar, Division for Air Quality, 300 Sower Building, 2nd Floor, Frankfort, Kentucky 40601. Please put "Standards of Performance for New Stationary Sources Public Hearing" as the subject line, and state in the body of the message if you plan to speak during the hearing. If no one registers to speak by February 16, 2021, then the hearing will be cancelled. 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 February 28, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation amendment to the contact person.

CONTACT PERSON: Matthew Dollar, Environmental Scientist, Division for Air Quality, 300 Sower Boulevard, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 782-6468, fax (502) 564-4245, e-mail matthew.dollar@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Matthew Dollar

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards of performance for new stationary sources (NSPS) by referencing the NSPS, codified in 40 C.F.R. Part 60, pursuant to Section 111 of the Clean Air Act (CAA).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to control the emissions of air pollution from stationary sources which have been reasonably determined to endanger public health or welfare. This administrative regulation is necessary to be consistent with the federal regulations codified at 40 C.F.R. Part 60, and for the Energy and Environment Cabinet (Cabinet) to retain delegation of authority for implementation and enforcement of the standards established under 40 C.F.R. Part 60.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(5) authorizes the Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. 42 U.S.C. 7416 requires that state authorities not adopt or enforce emission standards or limitations that are less stringent than the federal standards. This administrative regulation updates the NSPS to be consistent with the federal standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will enable the Cabinet to continue to implement and enforce the NSPS requirements established in 40 C.F.R. Part 60, pursuant to Section 111 of the CAA. The standards established for stationary sources require emission reductions using control technologies and work practice standards, resulting in cleaner air and the protection of human 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: This amendment updates the existing administrative regulation to include amendments to 40 C.F.R. Part 60 that have been promulgated by U.S. EPA since the last amendment of this administrative regulation. These updates are current through July 1, 2020.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary for state standards of new stationary sources to be consistent with the federal standards established in 40 C.F.R. Part 60. This amendment is necessary for the Cabinet to retain delegation of authority to implement and enforce the federal NSPS program, and to be no less stringent than the federal standards in 40 C.F.R. Part 60.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute by adopting standards from new stationary sources that protect health and welfare. The amendment also conforms to the authorizing statute by being no less stringent than the federal standards in 40 C.F.R. Part 60.

(d) How the amendment will assist in the effective administration of statutes: The amendment adopts the federal NSPS to provide for consistency between state and federal regulations for new stationary sources. The new provisions will be enforceable by the Cabinet.

(3) List the type and number of individuals, businesses,

organizations, or state and local governments affected by this administrative regulation: There are no individuals, businesses, organizations, or state and local governments affected by this administrative regulation beyond those affected by the 40 C.F.R. Part 60 NSPS requirements. The Cabinet will retain delegation of authority for the implementation and enforcement of these requirements.

(4) Provide an assessment 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:

(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: Regulated entities are already subject to the 40 C.F.R. Part 60 NSPS requirements, and will not have to take any additional action to comply with this proposed amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Regulated entities are already subject to 40 C.F.R. Part 60. This amendment will allow the Cabinet to retain delegation of authority for implementation and enforcement of these requirements. Regulated entities will work with the Cabinet to comply with these requirements instead of the U.S. EPA.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, regulated entities will not be subject to enforcement actions. The standards established in 40 C.F.R. Part 60 limit the emissions of air pollutants, protecting public health and welfare.

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

(a) Initially: The Cabinet will not incur any additional costs for the implementation of this administrative regulation initially.

(b) On a continuing basis: The Cabinet will not incur any additional continuing costs for the implementation of this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The Cabinet's current operating budget will be used for the implementation and enforcement of the amendment to this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No increase in fees or funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes, tiering is applied. Standards for new stationary sources differ based on source category and applicability thresholds. However, this administrative regulation adopts the same standards as the federal regulations codified in 40 C.F.R. Part 60.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. U.S. EPA promulgated the federal regulations in 40 C.F.R. Part 60, pursuant to 42 U.S.C. 7411.

2. State compliance standards. This administrative regulation establishes performance standards for new stationary sources.

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 7411 establishes the requirements for the Administrator to develop performance standards for new stationary sources.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation is being amended to adopt the same standards as the federal regulations codified in 40 C.F.R. Part 60.

5. Justification for the imposition of the stricter standard, or



additional or different responsibilities or requirements. This amended administrative regulation does not impose stricter standards, or additional or different responsibilities or requirements.

#### FISCAL NOTE ON 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 will continue to permit sources in accordance with this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 224.10-100(5), 224.20-120, 42 U.S.C. 7411, 40 C.F.R. Part 60.

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 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 proposed administrative regulation will not generate new revenue in the first year.

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

(c) How much will it cost to administer this program for the first year? The Cabinet's current operating budget will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The Cabinet's operating budget will be used to administer this program for subsequent years.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

#### ENERGY AND ENVIRONMENT CABINET DEPARTMENT FOR ENVIRONMENTAL PROTECTION Division for Air Quality (Amendment)

#### 401 KAR 61:036. Emission guidelines and compliance times for municipal solid waste (MSW) landfills.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Part 60 Subpart Cf[60.30e-60.36e], 42 U.S.C. 7411(d)

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-110, 224.20-120[, 40 C.F.R. 60.30e-60.36e, 42 U.S.C. 7411(d)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes [requires] the [Environmental and Public Protection] cabinet to promulgate[prescribe] administrative regulations for the prevention, abatement, and control of air pollution. [The federal regulation incorporated by reference in] This administrative regulation provides for the control of emissions from existing municipal solid waste (MSW) landfills.

Section 1. Definitions. (1) Except as established in this section, terms used in this administrative regulation shall have the meaning established in 40 C.F.R. 60.41f, as published July 1, 2020.

(2) "Administrator" means the Secretary of the Energy and Environment Cabinet unless a specific provision of 40 C.F.R. Part 60, Subpart Cf states that the United States Environmental Protection Agency retains authority.

(3) "Affected facility" means each MSW landfill.

(4) "Classification date" means July 17, 2014.

Section 2. Applicability. This administrative regulation shall apply to each affected facility that commenced construction, modification, or reconstruction on or before the classification date as defined in Section 1 of this administrative regulation.

Section 3. Compliance Requirements. (1) An owner or operator of an affected facility shall comply with:

(2) 40 C.F.R. 60.31f, Designated Facilities, as published July 1, 2020;

(3) 40 C.F.R. 60.32f, Compliance Times, as published July 1, 2020;

(4) 40 C.F.R. 60.33f, Emission Guidelines for Municipal Solid Waste Landfill Emissions, as published July 1, 2020;

(5) 40 C.F.R. 60.34f, Operational Standards for Collection and Control Systems, as published July 1, 2020;

(6) 40 C.F.R. 60.35f, Test Methods and Procedures, as published July 1, 2020;

(7) 40 C.F.R. 60.36f, Compliance Provisions, as published July 1, 2020;

(8) 40 C.F.R. 60.37f, Monitoring of Operations, as published July 1, 2020;

(9) 40 C.F.R. 60.38f, Reporting Guidelines, as published July 1, 2020;

(10) 40 C.F.R. 60.39f, Recordkeeping Guidelines, as published July 1, 2020; and

(11) 40 C.F.R. 60.40f, Specifications for Active Collection Systems, as published July 1, 2020.

Section 4. A source shall submit a copy of all documentation required to be submitted to U.S. EPA pursuant to this administrative regulation to the cabinet. [Incorporation by Reference. (1) 40 C.F.R. 60.30e to 60.36e, (40 C.F.R. 60, Subpart Cf), Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills, as published in the Code of Federal Regulations, Title 40, Part 60, July 1, 1997, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) Division for Air Quality, 300 Sower Boulevard, Frankfort, Kentucky 40601, (502) 564-3999;

(b) Ashland Regional Office, 1550 Wolohan Drive, Suite 1, Ashland, Kentucky 41102-8942, (606) 929-5285;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (270) 746-7475;

(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 525-4923;

(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(f) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 330-2080;

(g) Owensboro Regional Office, 3032 Alvey Park Drive W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304; and

(h) Paducah Regional Office, 130 Eagle Nest Drive, Paducah, Kentucky 42003, (270) 898-8468.]

REBECCA W. GOODMAN, Secretary

APPROVED BY AGENCY: December 8, 2020

FILED WITH LRC: December 14, 2020 at 10:26 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A virtual public hearing on this administrative regulation amendment will be held on February 24, 2021, at 10:00 a.m. (Eastern Time). The public hearing can be accessed at the following website address: <https://global.gotomeeting.com/join/212720813> or can be accessed by phone: +1 (224) 501-3412 using access code 212-720-813. Please note that registration is required to participate in this hearing. You must either email your name and mailing address to [Christian.Ewing@ky.gov](mailto:Christian.Ewing@ky.gov) or mail this information to Christian Ewing, Division for Air Quality, 300 Sower Building, 2nd Floor, Frankfort, Kentucky 40601. Please put "Registration for Municipal

Solid Waste Landfills Public Hearing" as the subject line, and state in the body of the message if you plan to speak during the hearing. If no one registers to speak by February 16, 2021, then the hearing will be cancelled. Written comments shall be accepted until February 28, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation amendment to the contact person. The amendment to this administrative regulation will be part of Kentucky's state plan required by 40 C.F.R. Part 60, Subparts Ba and Cf, pursuant to Section 111(d) of the Clean Air Act. The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Chris Ewing, Environmental Scientist, Division for Air Quality, 300 Sower Blvd., Frankfort, Kentucky 40601, phone (502) 782-6604, fax (502) 564-4245, e-mail Christian.Ewing@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Chris Ewing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amendment adopts the federal Emission Guidelines (EG) for Municipal Solid Waste (MSW) landfills.

(b) The necessity of this administrative regulation: This administrative regulation amendment is necessary to reduce methane and non-methane emissions from municipal solid waste landfills. This amendment is necessary to develop a state plan for existing MSW landfills.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(5) authorizes the Energy and Environment Cabinet (Cabinet) to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation amendment will address Clean Air Act (CAA) Section 111(d) requirements for existing MSW landfills. This administrative regulation amendment reduces methane and non-methane emissions from existing MSW landfills. This administrative regulation amendment will be part of the Kentucky 111(d) MSW landfill plan.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of KRS 224.10-100(5) by reducing methane and non-methane emissions from existing MSW landfills, resulting in the protection of human health and the environment. This administrative regulation amendment will address requirements for a CAA Section 111(d) plan.

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

(a) How the amendment will change this existing administrative regulation: This amendment adopts the most recent emission guidelines for existing MSW landfills to be consistent with federal regulations.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to adopt the most recent federal emission guidelines for development of the state 111(d) plan.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute by adopting the federal emissions guidelines necessary for a state 111(d) plan for existing MSW landfills.

(d) How the amendment will assist in the effective administration of statutes: The amendment assists in the effective administration of the statutes by adopting the federal emissions guidelines for existing MSW landfills.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This administrative regulation applies to existing MSW landfills for which construction, reconstruction, or modification was commenced on or before July 17, 2014. This

includes 28 existing MSW landfills.

(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: Regulated entities will comply with the most recent federal emission guidelines for existing MSW landfills.

(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 costs to the regulated entities to comply with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, the sources will work with the state instead of US EPA.

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

(a) Initially: The Cabinet will not incur any additional costs for the implementation of this amendment initially.

(b) On a continuing basis: The Cabinet will not incur any additional costs for the implementation of this amendment on a continual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Cabinet's current operating budget will be used for the implementation and enforcement of this amendment to this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No increase in fees or funding is necessary to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No. The requirements of this administrative regulation apply to each existing MSW landfill for which construction, reconstruction, or modification was commenced on or before July 17, 2014.

#### FISCAL NOTE ON STATE AND 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 amendment will affect owners and operators of the 28 existing MSW landfills in Kentucky.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 224.10-100(5), 224.20-110, 224.20-120, 42 U.S.C. 7411, and 40 C.F.R. Part 60, Subpart Cf Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills

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 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 proposed administrative regulation will not generate revenue in the first year.

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

(c) How much will it cost to administer this program for the first year? The Cabinet's current operating budget will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The Cabinet's operating budget will be used to

administer this program for subsequent years.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate for this administrative regulation amendment is in 40 C.F.R. Part 60, Subpart Cf and Subpart Ba pursuant to Clean Air Act (CAA) Section 111.

2. State compliance standards. This administrative regulation amendment adopts the federal standards for the control of methane and non-methane emissions from existing MSW landfills meeting the applicability provisions of the 40 C.F.R. Part 60, Subpart Cf Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires states to revise their CAA 111(d) plans to reduce the emissions of methane and non-methane substances.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation establishes the same requirements as the federal requirement for existing MSW landfills and will impose no more stringent requirements than those required by 40 C.F.R. Part 60, Subpart Cf.

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

#### ENERGY AND ENVIRONMENT CABINET Department for Environmental Protection Division for Air Quality (Amendment)

#### 401 KAR 63:002. 40 C.F.R. Part 63 national emission standards for hazardous air pollutants.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 C.F.R. Part 63, 42 U.S.C. 7401, 7412, 7414, 7416, 7601

STATUTORY AUTHORITY: KRS 224.10-100(5), 224.20-120, 42 U.S.C. 7401, 7412, 7414, 7416, 7601

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(5) authorizes the Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes national emission standards for hazardous air pollutants by referencing the National Emission Standards for Hazardous Air Pollutants (NESHAP) codified in 40 C.F.R. 63.1 through 63.56, 63.70 through 63.81, and 63.100 through 63.12005. Delegation of implementation and enforcement authority for the federal NESHAP program from the United States Environmental Protection Agency (U.S. EPA) to the Commonwealth of Kentucky is provided under 42 U.S.C. 7412(l).

Section 1. Definitions. (1) Except as provided in subsection (2) of this section, terms used in this administrative regulation shall have the meaning given to them in 40 C.F.R. Part 63.

(2) "Administrator" means the Secretary of the Energy and Environment Cabinet unless a specific provision of 40 C.F.R. Part 63 states that the United States Environmental Protection Agency retains authority.

Section 2. Applicability. This administrative regulation shall

apply to sources subject to 40 C.F.R. Part 63. A source subject to this administrative regulation shall comply with:

(1) 40 C.F.R. 63.1 through 63.16, Table 1 (Subpart A), General Provisions, as published July 1, 2020 and at 85 F.R. 39980, 85 F.R. 40386, 85 F.R. 40594, 85 F.R. 40740, 85 F.R. 41100, 85 F.R. 41276, 85 F.R. 41411, 85 F.R. 41680, 85 F.R. 42074, 85 F.R. 44216, 85 F.R. 44960, 85 F.R. 45476, 85 F.R. 49084, 85 F.R. 49434, 85 F.R. 49724 and 85 F.R. 63394[2016];

(2) 40 C.F.R. 63.40 through 63.56, Tables 1 through 2 (Subpart B), Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(j), as applicable, as published July 1, 2020[2016];

(3) 40 C.F.R. 63.70 through 63.81 (Subpart D), Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants, as applicable, as published July 1, 2020[2016];

(4)(a) 40 C.F.R. 63.100 through 63.107, Tables 1 through 4 (Subpart F), National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry, as published July 1, 2020[2016];

(b) 40 C.F.R. 63.110 through 63.153, Tables 1 through 37, and Figure 1 (Subpart G), National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater, as published July 1, 2020[2016];

(c) 40 C.F.R. 63.160 through 63.183, Tables 1 through 4 (Subpart H), National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks, as published July 1, 2020[2016];

(d) 40 C.F.R. 63.190 through 63.193 (Subpart I), National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks, as published July 1, 2020[2016];

(e) 40 C.F.R. 63.210 through 63.217 (Subpart J), National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production, as published July 1, 2020[2016];

(f) 40 C.F.R. 63.300 through 63.313, Appendix A (Subpart L), National Emission Standards for Coke Oven Batteries, as published July 1, 2020[2016];

(g) 40 C.F.R. 63.320 through 63.326 (Subpart M), National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities, as published July 1, 2020[2016];

(h) 40 C.F.R. 63.340 through 63.348, Table 1 (Subpart N), National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks, as published July 1, 2020[2016];

(i) 40 C.F.R. 63.360 through 63.368 (Subpart O), Ethylene Oxide Emissions Standards for Sterilization Facilities, as published July 1, 2020[2016];

(j) 40 C.F.R. 63.400 through 63.407, Table 1 (Subpart Q), National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers, as published July 1, 2020[2016];

(k) 40 C.F.R. 63.420 through 63.429, Table 1 (Subpart R), National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations), as published July 1, 2020[2016];

(l) 40 C.F.R. 63.440 through 63.459, Table 1 (Subpart S), National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry, as published July 1, 2020[2016];

(m) 40 C.F.R. 63.460 through 63.471, Appendices A through B (Subpart T), National Emission Standards for Halogenated Solvent Cleaning, as published July 1, 2020[2016];

(n) 40 C.F.R. 63.480 through 63.507, Tables 1 through 9 (Subpart U), National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins, as published July 1, 2020[2016];

(o) 40 C.F.R. 63.520 through 63.529, Table 1 (Subpart W), National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production,

as published July 1, 2020[2046];

(p) 40 C.F.R. 63.541 through[te] 63.552, Tables 1 through[te] 3 (Subpart X), National Emission Standards for Hazardous Air Pollutants from Secondary Lead Smelting, as published July 1, 2020[2046];

(q) 40 C.F.R. 63.560 through[te] 63.568 (Subpart Y), National Emission Standards for Marine Tank Vessel Loading Operations, as published July 1, 2020[2046];

(r) 40 C.F.R. 63.600 through[te] 63.611, Tables 1 through 5[te 4], and Appendix A (Subpart AA), National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants, as published July 1, 2020[2046];

(s) 40 C.F.R. 63.620 through[te] 63.632, Tables 1 through[te] 5, and Appendix A (Subpart BB), National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants, as published July 1, 2020[2046];

(t) 40 C.F.R. 63.640 through[te] 63.671, Appendix (Subpart CC), National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries, as published July 1, 2020[2046];

(u) 40 C.F.R. 63.680 through[te] 63.698, Tables 1 through[te] 5 (Subpart DD), National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations, as published July 1, 2020[2046];

(v) 40 C.F.R. 63.701 through[te] 63.708, Table 1 (Subpart EE), National Emission Standards for Magnetic Tape Manufacturing Operations, as published July 1, 2020[2046];

(w) 40 C.F.R. 63.741 through[te] 63.759, Table 1, and Appendix A (Subpart GG), National Emission Standards for Aerospace Manufacturing and Rework Facilities, as published July 1, 2020[2046];

(x) 40 C.F.R. 63.760 through[te] 63.777, Appendix (Subpart HH), National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities, as published July 1, 2020[2046];

(y) 40 C.F.R. 63.780 through[te] 63.789, Tables 1 through[te] 3, and Appendices A through[te] B (Subpart II), National Emission Standards for Shipbuilding and Ship Repair (Surface Coating), as published July 1, 2020[2046];

(z) 40 C.F.R. 63.800 through[te] 63.808, Tables 1 through[te] 6 (Subpart JJ), National Emission Standards for Wood Furniture Manufacturing Operations, as published July 1, 2020[2046];

(aa) 40 C.F.R. 63.820 through[te] 63.831, Table 1, and Appendix A (Subpart KK), National Emission Standards for the Printing and Publishing Industry, as published July 1, 2020[2046];

(bb) 40 C.F.R. 63.840 through[te] 63.855, Tables 1 through[te] 4, and Appendix A (Subpart LL), National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants, as published July 1, 2020[2046];

(cc) 40 C.F.R. 63.860 through[te] 63.868, Table 1 (Subpart MM), National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills, as published July 1, 2020[2046];

(dd) 40 C.F.R. 63.880 through[te] 63.888, Table 1 (Subpart NN), National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing at Area Sources, as published July 1, 2020[at 80 Fed. Reg. 45325, July 29, 2016];

(ee) 40 C.F.R. 63.900 through[te] 63.908 (Subpart OO), National Emission Standards for Tanks - Level 1, as published July 1, 2020[2046];

(ff) 40 C.F.R. 63.920 through[te] 63.929 (Subpart PP), National Emission Standards for Containers, as published July 1, 2020[2046];

(gg) 40 C.F.R. 63.940 through[te] 63.949 (Subpart QQ), National Emission Standards for Surface Impoundments, as published July 1, 2020[2046];

(hh) 40 C.F.R. 63.960 through[te] 63.967 (Subpart RR), National Emission Standards for Individual Drain Systems, as published July 1, 2020[2046];

(ii) 40 C.F.R. 63.980 through[te] 63.999 (Subpart SS), National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process, as published at July 1, 2020 and at 85 F.R. 40386[2046];

(jj) 40 C.F.R. 63.1000 through[te] 63.1018 (Subpart TT), National Emission Standards for Equipment Leaks - Control Level 1, as published July 1, 2020[2046];

(kk) 40 C.F.R. 63.1019 through[te] 63.1039, Table 1 (Subpart UU), National Emission Standards for Equipment Leaks - Control Level 2 Standards, as published July 1, 2020[2046];

(ll) 40 C.F.R. 63.1040 through[te] 63.1050 (Subpart VV), National Emission Standards for Oil-Water Separators and Organic-Water Separators, as published July 1, 2020[2046];

(mm) 40 C.F.R. 63.1060 through[te] 63.1067 (Subpart WW), National Emission Standards for Storage Vessels (Tanks) - Control Level 2, as published July 1, 2020[2046];

(nn) 40 C.F.R. 63.1080 through[te] 63.1097, Tables 1 through[and] 2 (Subpart XX), National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations, as published July 1, 2020 and at 85 F.R. 40386[2046];

(oo) 40 C.F.R. 63.1100 through[te] 63.1114 (Subpart YY), National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards, as published July 1, 2020 and at 85 F.R. 40386[2046];

(pp) 40 C.F.R. 63.1155 through[te] 63.1166, Table 1 (Subpart CCC), National Emission Standards for Hazardous Air Pollutants for Steel Pickling - HCl Process Facilities and Hydrochloric Acid Regeneration Plants, as published July 1, 2020[2046];

(qq) 40 C.F.R. 63.1175 through[te] 63.1197, Tables 1 through[te] 2, and Appendix A (Subpart DDD), National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production, as published July 1, 2020[2046];

(rr) 40 C.F.R. 63.1200 through[te] 63.1221, Table 1, and Appendix (Subpart EEE), National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors, as published July 1, 2020[2046];

(ss) 40 C.F.R. 63.1250 through[te] 63.1261, Tables 1 through[te] 9 (Subpart GGG), National Emission Standards for Pharmaceuticals Production, as published July 1, 2020[2046];

(tt) 40 C.F.R. 63.1270 through[te] 63.1287, Tables 1 through[and] 2 (Subpart HHH), National Emission Standards for Hazardous Air Pollutants From Natural Gas Transmission and Storage Facilities, as published July 1, 2020[2046];

(uu) 40 C.F.R. 63.1290 through[te] 63.1309, Appendix, and Tables 1 through[te] 3 (Subpart III), National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production, as published July 1, 2020[2046];

(vv) 40 C.F.R. 63.1310 through[te] 63.1336, Tables 1 through[te] 9 (Subpart JJJ), National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins, as published July 1, 2020[2046];

(ww) 40 C.F.R. 63.1340 through[te] 63.1358, Tables 1 through 2[Table—4] (Subpart LLL), National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry, as published July 1, 2020 and at 85 F.R. 63394[2046];

(xx) 40 C.F.R. 63.1360 through[te] 63.1369, Tables 1 through[te] 4 (Subpart MMM), National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production, as published July 1, 2020[2046];

(yy) 40 C.F.R. 63.1380 through[te] 63.1389, Tables 1 through[te] 2, and Appendices A through[te] C (Subpart NNN), National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing, as published July 1, 2020[2046];

(zz) 40 C.F.R. 63.1400 through[te] 63.1419, Tables 1 through[te] 6 (Subpart OOO), National Emission Standards for Hazardous Air Pollutant Emissions: Manufacture of Amino/Phenolic Resins, as published July 1, 2020[2046];

(aaa) 40 C.F.R. 63.1420 through[te] 63.1439, Tables 1 through[te] 8 (Subpart PPP), National Emission Standards for Hazardous Air Pollutant Emissions for Polyether Polyols Production, as published July 1, 2020[2046];

(bbb) 40 C.F.R. 63.1440 through[te] 63.1459, Table 1, and Figure 1 (Subpart QQQ), National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting, as published July 1, 2020[2046];

(ccc) 40 C.F.R. 63.1500 through 63.1519, Tables 1 through 3, and Appendix A (Subpart RRR), National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production, as published July 1, 2020[2046];

(ddd) 40 C.F.R. 63.1541 through 63.1551, Table 1 (Subpart TTT), National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting, as published July 1, 2020[2046];

(eee) 40 C.F.R. 63.1560 through 63.1579, Tables 1 through 44, and Appendix A (Subpart UUU), National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units, as published July 1, 2020[2046];

(fff) 40 C.F.R. 63.1580 through 63.1595, Tables 1 through 2 [Table 4] (Subpart VVV), National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works, as published July 1, 2020[2046];

(ggg) 40 C.F.R. 63.1620 through 63.1661, Table 1 (Subpart XXX), National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production: Ferromanganese and Silicomanganese, as published July 1, 2020[2046];

(hhh) 40 C.F.R. 63.1930 through 63.1990, Table 1 (Subpart AAAA), National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills, as published July 1, 2020 and at 85 F.R. 64398[2046];

(iii) 40 C.F.R. 63.2130 through 63.2192, Tables 1 through 8 [to 6] (Subpart CCCC), National Emission Standards for Hazardous Air Pollutants: Manufacturing of Nutritional Yeast, as published July 1, 2020[2046];

(jjj) 40 C.F.R. 63.2230 through 63.2292, Tables 1A through 10, and Appendix A (Subpart DDDD), National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products, as published July 1, 2020 and at 85 F.R. 49434 and 85 F.R. 51668[2046];

(kkk) 40 C.F.R. 63.2330 through 63.2406, Tables 1 through 12 (Subpart EEEE), National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline), as published July 1, 2020 and at 85 F.R. 40740[2046];

(lll) 40 C.F.R. 63.2430 through 63.2550, Tables 1 through 12 (Subpart FFFF), National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing, as published July 1, 2020 and at 85 F.R. 42074 and 85 F.R. 49084[2046];

(mmm) 40 C.F.R. 63.2830 through 63.2872 (Subpart GGGG), National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production, as published July 1, 2020[2046];

(nnn) 40 C.F.R. 63.2980 through 63.3004, Tables 1 through 2, and Appendices A through B (Subpart HHHH), National Emission Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production, as published July 1, 2020[2046];

(ooo) 40 C.F.R. 63.3080 through 63.3176, Tables 1 through 5 [to 4], and Appendix A (Subpart IIII), National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks, as published July 1, 2020 and at 85 F.R. 41100[2046];

(ppp) 40 C.F.R. 63.3280 through 63.3420, Tables 1 through 2 (Subpart JJJJ), National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating, as published July 1, 2020 and at 85 F.R. 41276[2046];

(qqq) 40 C.F.R. 63.3480 through 63.3561, Tables 1 through 8 [to 7] (Subpart KKKK), National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans, as published July 1, 2020[2046];

(rrr) 40 C.F.R. 63.3880 through 63.3981, Tables 1 through 5 [to 4], and Appendix A (Subpart MMMM), National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products, as published July 1, 2020 and at 85 F.R. 41100[2046];

(sss) 40 C.F.R. 63.4080 through 63.4181, Tables 1 through 5 [to 4] (Subpart NNNN), National Emission Standards for Hazardous Air Pollutants: Surface Coating of Large Appliances, as published July 1, 2020 and at 85 F.R. 41100[2046];

(ttt) 40 C.F.R. 63.4280 through 63.4371, Tables 1 through 6 [to 5] (Subpart OOOO), National Emission Standards for Hazardous Air Pollutants: Printing, Coating, and Dyeing of Fabrics and Other Textiles, as published July 1, 2020 and at 85 F.R. 41100[2046];

(uuu) 40 C.F.R. 63.4480 through 63.4581, Tables 1 through 5 [to 4], and Appendix A (Subpart PPPP), National Emission Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products, as published July 1, 2020 and at 85 F.R. 41100[2046];

(vvv) 40 C.F.R. 63.4680 through 63.4781, Tables 1 through 6 (Subpart QQQQ), National Emission Standards for Hazardous Air Pollutants: Surface Coating of Wood Building Products, as published July 1, 2020[2046];

(www) 40 C.F.R. 63.4880 through 63.4981, Tables 1 through 5 [to 4] (Subpart RRRR), National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Furniture, as published July 1, 2020 and at 85 F.R. 41100[2046];

(xxx) 40 C.F.R. 63.5080 through 63.5200, Tables 1 through 3 [to 2] (Subpart SSSS), National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Coil, as published July 1, 2020[2046];

(yyy) 40 C.F.R. 63.5280 through 63.5460, Figure 1, and Tables 1 through 2 (Subpart TTTT), National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations, as published July 1, 2020[2046];

(zzz) 40 C.F.R. 63.5480 through 63.5610, Tables 1 through 10 (Subpart UUUU), National Emission Standards for Hazardous Air Pollutants for Cellulose Products Manufacturing, as published July 1, 2020 and at 85 F.R. 39980[2046];

(aaaa) 40 C.F.R. 63.5680 through 63.5779, Tables 1 through 8 (Subpart VVVV), National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing, as published July 1, 2020[2046];

(bbbb) 40 C.F.R. 63.5780 through 63.5935, Tables 1 through 15, and Appendix A (Subpart WWWW), National Emissions Standards for Hazardous Air Pollutants: Reinforced Plastic Composites Production, as published July 1, 2020[2046];

(cccc) 40 C.F.R. 63.5980 through 63.6015, Tables 1 through 17 (Subpart XXXX), National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing, as published July 1, 2020 and at 85 F.R. 44752[2046];

(dddd) 40 C.F.R. 63.6080 through 63.6175, Tables 1 through 7 (Subpart YYYYY), National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines, as published July 1, 2020[2046];

(eeee) 40 C.F.R. 63.6580 through 63.6675, Tables 1a through 8, and Appendix A (Subpart ZZZZ), National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines, as published July 1, 2020[2046];

(ffff) 40 C.F.R. 63.7080 through 63.7143, Tables 1 through 9 [to 8] (Subpart AAAAA), National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants, as published July 1, 2020 and at 85 F.R. 44960[2046];

(gggg) 40 C.F.R. 63.7180 through 63.7195, Tables 1 through 2 (Subpart BBBB), National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing, as published July 1, 2020[2046];

(hhhh) 40 C.F.R. 63.7280 through 63.7352, Table 1 (Subpart CCCCC), National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks, as published July 1, 2020[2046];

(iiii) 40 C.F.R. 63.7480 through 63.7575, Tables 1 through 13 (Subpart DDDDD), National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters, as published July 1, 2020[2046];

(jjjj) 40 C.F.R. 63.7680 through 63.7765, Table 1 (Subpart EEEEE), National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries, as published July 1, 2020 and at 85 F.R. 56080[2046];

(kkkk) 40 C.F.R. 63.7780 through 63.7852, Tables 1

through 4[Table 1 to 4] (Subpart FFFFF), National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing Facilities, as published July 1, 2020[2046];

(lllll) 40 C.F.R. 63.7880 through[te] 63.7957, Tables 1 through[te] 3 (Subpart GGGGG), National Emission Standards for Hazardous Air Pollutants: Site Remediation, as published July 1, 2020 and at 85 F.R. 41680[2046];

(mmmm) 40 C.F.R. 63.7980 through[te] 63.8105, Tables 1 through 11[te 10] (Subpart HHHHH), National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing, as published July 1, 2020 and at 85 F.R. 49724[2046];

(nnnn) 40 C.F.R. 63.8180 through[te] 63.8266, Tables 1 through[te] 10 (Subpart IIIII), National Emission Standards for Hazardous Air Pollutants: Mercury Emissions From Mercury Cell Chlor-Alkali Plants, as published July 1, 2020[2046];

(oooo) 40 C.F.R. 63.8380 through[te] 63.8515, Tables 1 through[te] 10 (Subpart JJJJJ), National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing, as published July 1, 2020[2046];

(pppp) 40 C.F.R. 63.8530 through[te] 63.8665, Tables 1 through[te] 11 (Subpart KKKKK), National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing, as published July 1, 2020[2046];

(qqqq) 40 C.F.R. 63.8680 through[te] 63.8698, Tables 1 through[te] 7 (Subpart LLLLL), National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing, as published July 1, 2020[2046];

(rrrr) 40 C.F.R. 63.8780 through[te] 63.8830, Tables 1 through[te] 7 (Subpart MMMMM), National Emission Standards for Hazardous Air Pollutants: Flexible Polyurethane Foam Fabricating Operations, as published July 1, 2020[2046];

(ssss) 40 C.F.R. 63.8980 through[te] 63.9075, Tables 1 through[te] 7 (Subpart NNNNN), National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production, as published July 1, 2020[2046];

(tttt) 40 C.F.R. 63.9375, Tables 1 through[te] 7 (Subpart PPPPP), National Emission Standards for Hazardous Air Pollutants for Engine Test Cells/Stands, as published July 1, 2020[2046];

(uuuu) 40 C.F.R. 63.9480 through[te] 63.9570, Table 1 (Subpart QQQQQ), National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities, as published July 1, 2020[2046];

(vvvv) 40 C.F.R. 63.9580 through[te] 63.9652, Tables 1 through[te] 2 (Subpart RRRRR), National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing, as published July 1, 2020 and at 85 F.R. 45476[2046];

(www) 40 C.F.R. 63.9780 through[te] 63.9824, Tables 1 through[te] 11 (Subpart SSSSS), National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing, as published July 1, 2020[2046];

(xxxx) 40 C.F.R. 63.9880 through[te] 63.9942, Tables 1 through[te] 5 (Subpart TTTTT), National Emissions Standards for Hazardous Air Pollutants for Primary Magnesium Refining, as published July 1, 2020[2046];

(yyyy) 40 C.F.R. 63.9980 through[te] 63.10042, Tables 1 through[te] 9, and Appendices A through E[te B] (Subpart UUUUU), National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units, as published July 1, 2020 and at 85 F.R. 55744[2046];

(zzzz) 40 C.F.R. 63.10382 through[te] 63.10448, Table 1 (Subpart WWWWW), National Emission Standards for Hospital Ethylene Oxide Sterilizers, as published July 1, 2020[2046];

(aaaaa) 40 C.F.R. 63.10680 through[te] 63.10692, Table 1 (Subpart YYYYY), National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities, as published July 1, 2020[2046];

(bbbbb) 40 C.F.R. 63.10880 through[te] 63.10906, Tables 1 through[te] 4 (Subpart ZZZZZ), National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources, as published July 1, 2020 and at 85 F.R. 56080[2046];

(ccccc) 40 C.F.R. 63.11080 through[te] 63.11100, Tables 1

through[te] 3 (Subpart BBBBBB), National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities, as published July 1, 2020[2046];

(ddddd) 40 C.F.R. 63.11110 through[te] 63.11132, Tables 1 through[te] 3 (Subpart CCCCC), National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities, as published July 1, 2020[2046];

(eeee) 40 C.F.R. 63.11140 through[te] 63.11145, Tables 1 through[te] 2 (Subpart DDDDD), National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production Area Sources, as published July 1, 2020[2046];

(ffff) 40 C.F.R. 63.11146 through[te] 63.11152, Table 1 (Subpart EEEEE), National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting Area Sources, as published July 1, 2020[2046];

(ggggg) 40 C.F.R. 63.11153 through[te] 63.11159, Table 1 (Subpart FFFFF), National Emission Standards for Hazardous Air Pollutants for Secondary Copper Smelting Area Sources, as published July 1, 2020[2046];

(hhhhh) 40 C.F.R. 63.11160 through[te] 63.11168, Table 1 (Subpart GGGGG), National Emission Standards for Hazardous Air Pollutants for Primary Nonferrous Metals Area Sources - Zinc, Cadmium, and Beryllium, as published July 1, 2020[2046];

(iiii) 40 C.F.R. 63.11169 through[te] 63.11180, Table 1 (Subpart HHHHH), National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources, as published July 1, 2020[2046];

(jjjjj) 40 C.F.R. 63.11193 through[te] 63.11237, Tables 1 through[te] 8 (Subpart JJJJJ), National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources, as published July 1, 2020[2046];

(kkkkk) 40 C.F.R. 63.11393 through[te] 63.11399, Table 1 (Subpart LLLLL), National Emission Standards for Hazardous Air Pollutants for Acrylic and Modacrylic Fibers Production Area Sources, as published July 1, 2020[2046];

(lllll) 40 C.F.R. 63.11400 through[te] 63.11406 (Subpart MMMMM), National Emission Standards for Hazardous Air Pollutants for Carbon Black Production Area Sources, as published July 1, 2020[2046];

(mmmmm) 40 C.F.R. 63.11407 through[te] 63.11413, Tables 1 through[te] 2 (Subpart NNNNN), National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources: Chromium Compounds, as published July 1, 2020[2046];

(nnnn) 40 C.F.R. 63.11414 through[te] 63.11420, Table 1 (Subpart OOOOO), National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production and Fabrication Area Sources, as published July 1, 2020[2046];

(oooo) 40 C.F.R. 63.11421 through[te] 63.11427, Table 1 (Subpart PPPPP), National Emission Standards for Hazardous Air Pollutants for Lead Acid Battery Manufacturing Area Sources, as published July 1, 2020[2046];

(ppppp) 40 C.F.R. 63.11428 through[te] 63.11434, Table 1 (Subpart QQQQQ), National Emission Standards for Hazardous Air Pollutants for Wood Preserving Area Sources, as published July 1, 2020[2046];

(qqqqq) 40 C.F.R. 63.11435 through[te] 63.11445, Table 1 (Subpart RRRRR), National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing Area Sources, as published July 1, 2020[2046];

(rrrrr) 40 C.F.R. 63.11448 through[te] 63.11460, Tables 1 through[te] 2 (Subpart SSSSS), National Emission Standards for Hazardous Air Pollutants for Glass Manufacturing Area Sources, as published July 1, 2020[2046];

(sssss) 40 C.F.R. 63.11462 through[te] 63.11473, Table 1 (Subpart TTTTT), National Emission Standards for Hazardous Air Pollutants for Secondary Nonferrous Metals Processing Area Sources, as published July 1, 2020[2046];

(ttttt) 40 C.F.R. 63.11494 through[te] 63.11503, Tables 1 through[te] 9 (Subpart VVVVV), National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources, as published July 1, 2020[2046];

(uuuuu) 40 C.F.R. 63.11504 through[te] 63.11512, Table 1

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(Subpart WWWWWW), National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Plating and Polishing Operations, as published July 1, 2020[2046];

(vvvvv) 40 C.F.R. 63.11514 through[te] 63.11523, Tables 1 through[te] 2 (Subpart XXXXXX), National Emission Standards for Hazardous Air Pollutants Area Source Standards for Nine Metal Fabrication and Finishing Source Categories, as published July 1, 2020[2046];

(wwwww) 40 C.F.R. 63.11524 through[te] 63.11532, Table 1 (Subpart YYYYYY), National Emission Standards for Hazardous Air Pollutants for Area Sources: Ferroalloys Production Facilities, as published July 1, 2020[2046];

(xxxxx) 40 C.F.R. 63.11544 through[te] 63.11557, Table 1 (Subpart ZZZZZZ), National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Aluminum, Copper, and Other Nonferrous Foundries, as published July 1, 2020[2046];

(yyyyy) 40 C.F.R. 63.11559 through[te] 63.11567, Tables 1 through[te] 5 (Subpart AAAAAA), National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing, as published July 1, 2020[2046];

(zzzzz) 40 C.F.R. 63.11579 through[te] 63.11588, Tables 1 through[te] 6 (Subpart BBBBBB), National Emission Standards for Hazardous Air Pollutants for Area Sources: Chemical Preparations Industry, as published July 1, 2020[2046];

(aaaaa) 40 C.F.R. 63.11599 through[te] 63.11607, Table 1 (Subpart CCCCCC), National Emission Standards for Hazardous Air Pollutants for Area Sources: Paints and Allied Products Manufacturing, as published July 1, 2020[2046];

(bbbbb) 40 C.F.R. 63.11619 through[te] 63.11627, Table 1 (Subpart DDDDDD), National Emission Standards for Hazardous Air Pollutants for Area Sources: Prepared Feeds Manufacturing, as published July 1, 2020[2046];

(ccccc) 40 C.F.R. 63.11640 through[te] 63.11652, Table 1 (Subpart EEEEEEE), National Emission Standards for Hazardous Air Pollutants: Gold Mine Ore Processing and Production Area Source Category, as published July 1, 2020[2046]; or

(ddddd) 40 C.F.R. 63.11860 through[te] 63.12005, Tables 1 through[te] 10 (Subpart HHHHHH), National Emission Standards for Hazardous Air Pollutant Emissions for Polyvinyl Chloride and Copolymers Production, as published July 1, 2020[2046]; and

(5) The applicable test methods, procedures, and other provisions codified in 40 C.F.R. Part 63, Appendices A through E, as published July 1, 2020 and at 85 F.R. 63394[2046].

Section 3. Reporting Requirements. All documentation required by this administrative regulation to be submitted to the U.S. EPA shall also be submitted to the Cabinet[A source shall submit all documentation required by this administrative regulation to both the cabinet and U.S. EPA].

REBECCA W. GOODMAN, Secretary

APPROVED BY AGENCY: December 8, 2020

FILED WITH LRC: December 14, 2020 at 10:41 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A virtual public hearing on this administrative regulation amendment will be held on February 24, 2021, at 10:00 a.m. (Eastern Time). The public hearing can be accessed at the following website address: <https://global.gotomeeting.com/join/212720813> or can be accessed by phone: +1 (224) 501-3412 using access code 212-720-813. Please note that registration is required to participate in this hearing. You must either email your name and mailing address to [Matthew.Dollar@ky.gov](mailto:Matthew.Dollar@ky.gov) or mail this information to Matthew Dollar, Division for Air Quality, 300 Sower Building, 2nd Floor, Frankfort, Kentucky 40601. Please put "National Emission Standards for Hazardous Air Pollutants Public Hearing" as the subject line, and state in the body of the message if you plan to speak during the hearing. If no one registers to speak by February 16, 2021, then the hearing will be cancelled. 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 February 28, 2021. Send written notification of intent to be heard at the public hearing or written comments on the

proposed administrative regulation amendment to the contact person.

CONTACT PERSON: Matthew Dollar, Environmental Scientist, Division for Air Quality, 300 Sower Boulevard, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 782-6468, fax (502) 564-4245, e-mail [matthew.dollar@ky.gov](mailto:matthew.dollar@ky.gov).

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Matthew Dollar

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes emission standards for hazardous air pollutants by referencing the National Emission Standards for Hazardous Air Pollutants for Source Categories (NESHAP), codified in 40 C.F.R. Part 63, pursuant to Section 112 of the Clean Air Act (CAA).

(b) The necessity of this administrative regulation: The administrative regulation is necessary to control the air emissions of hazardous air pollutants (HAPs) that are known or suspected to cause cancer or other serious health effects. The standards protect public health by requiring major and area sources to control emissions to the level achievable by the maximum achievable control technology (MACT) consistent with Section 112(d) of the CAA. This administrative regulation is necessary for the Cabinet to retain delegation of authority for implementation and enforcement of the standards established under 40 C.F.R. Part 63.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100(5) authorizes the Energy and Environment Cabinet (Cabinet) to promulgate administrative regulations for the prevention, abatement, and control of air pollution. 42 U.S.C. 7416 requires that state authorities not adopt or enforce emission standards or limitations that are less stringent than the federal standards. This administrative regulation updates the NESHAPs to be consistent with the federal standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will enable the Cabinet to continue to implement and enforce the NESHAPs consistent with the federal standards established in 40 C.F.R. Part 63, pursuant to Section 112 of the CAA. The standards established for major and area sources require emission reductions using control technologies and work practice standards, resulting in cleaner air and the protection of human 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: This amendment updates the existing administrative regulation to adopt the NESHAPs, codified in 40 C.F.R. Part 63, that have been promulgated by U.S. EPA since the last amendment to this administrative regulation. These updates will be current through July 1, 2020.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary for the state emission standards for NESHAPs to be consistent with the federal standards established in 40 C.F.R. Part 63. This amendment is necessary for the Cabinet to retain delegation of authority to continue to implement and enforce the federal NESHAP program, and be no less stringent than the federal standards.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statute by adopting standards for major and area sources that protect public health and welfare. The amendment also conforms to the content of the authorizing statute by adopting NESHAPs consistent with the federal requirements in 40 C.F.R. Part 63.

(d) How the amendment will assist in the effective administration of statutes: The amendment adopts federal NESHAPs to provide for consistency between federal and state regulations for source categories. The new NESHAPs will be enforceable by the Cabinet.

(3) List the type and number of individuals, businesses,

organizations, or state and local governments affected by this administrative regulation. There are no individuals, businesses, organizations, or state and local governments affected by this administrative regulation beyond those affected by the federal 40 C.F.R. Part 63 NESHAP requirements. The Cabinet will retain delegation of authority for implementation and enforcement of these requirements.

(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: Regulated entities are subject to the 40 C.F.R. 63 NESHAP requirements, this amendment does not require additional action.

(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 regulated entities to comply with this amendment as regulated entities are already subject to the federal 40 C.F.R. Part 63 NESHAP requirements. This amendment will allow the Cabinet to retain delegation of authority for implementation and enforcement of the NESHAPs. Regulated entities will work with the Cabinet to comply with these requirements instead of U.S. EPA.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, sources will not be subject to enforcement actions and HAPs will be controlled. Regulated entities will also have the benefit of working with the state instead of the U.S. EPA.

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

(a) Initially: The Cabinet will not incur any additional costs for the implementation of this administrative regulation initially.

(b) On a continuing basis: The Cabinet will not incur any continuing costs for the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Cabinet's current operating budget will be used for the implementation and enforcement of the amendment to this administrative regulation.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Yes. The administrative regulation establishes the HAP thresholds to determine if a regulated source is considered a major or area emitter of HAPs.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. U.S. EPA promulgated the federal regulations in 40 C.F.R. Part 63, pursuant to 42 U.S.C. 7412.

2. State compliance standards. This administrative regulation establishes national emission standards for hazardous air pollutants (NESHAPs).

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 7412 requires that the U.S. EPA promulgate NESHAPs for source categories.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation is being amended to adopt the same standards as the federal regulations codified in 40 C.F.R. Part 63.

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

standards or additional or different responsibilities or requirements are not imposed.

#### FISCAL NOTE ON STATE AND 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 will continue to permit sources in accordance with this administrative regulation.

2. Identify each state or federal statute or federal regulation that requires or authorizes action taken by the administrative regulation. KRS 224.10-100(5), 224.20-120, 40 C.F.R. Part 63, 42 U.S.C. 7401, 7412, 7414, 7416, 7601

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 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 proposed administrative regulation will not generate revenue in the first year.

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

(c) How much will it cost to administer this program for the first year? The cabinet's current operating budget will be used to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? The cabinet's operating budget will be used to administer the program for subsequent years.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

#### BOARD OF EDUCATION Department of Education (Amendment)

#### 702 KAR 5:080. Bus drivers' qualifications, responsibilities, and training.

RELATES TO: KRS 156.160, 161.011, 189.540, 281A.170 – 281A.175, 49 C.F.R. Parts 380, 382 and 391

STATUTORY AUTHORITY: KRS 156.160(1), 189.540

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160(1) requires the Kentucky Board of Education to promulgate administrative regulations relating to the transportation of children to and from school and to medical inspections and other matters deemed relevant to the protection of the physical welfare and safety of public school children. KRS 189.540 requires the board to promulgate administrative regulations governing the design and operation of school buses. This administrative regulation establishes the qualifications, training, and responsibilities of the school bus driver.

Section 1. Licensing Requirement. A school bus driver shall have a current, valid Commercial Driver's License with applicable endorsements and restrictions pursuant to KRS 281A.170 to 281A.175.

Section 2. Medical Fitness. (1) A local board of education shall require an annual medical examination that complies with KRS 281A.175 for each school bus driver.

(2) A person shall not drive a school bus unless physically



and mentally able to operate a school bus safely and in accordance with the requirements of this administrative regulation.

(3) If there is limitation of motion in joints, neck, back, arms, legs, or other body parts, due to injury or disease that may limit the driver's ability to safely perform the task of driving a school bus or performing other driver responsibilities, the person shall not be employed as a school bus driver.

(4) A temporarily-injured or ill school bus driver may be assigned duties other than driving until the employee regains the ability to safely perform school bus driver duties.

(5) An otherwise medically and physically eligible school bus driver with diabetes mellitus, may be employed as a school bus driver, if the driver possesses a valid federal Medical Examiner's Certificate as required under 49 C.F.R. Part 391.41.

(6) A school bus driver taking medication either by prescription or without prescription shall report the medication to the immediate supervisor and shall not drive if that medication may affect the driver's ability to safely drive a school bus or perform other driver responsibilities.

(7)(a) To ensure student safety, a district may require a school bus driver to pass a medical examination or a special type medical examination more often than annually at the district's expense.

(b) The medical examination shall include risk assessment and appropriate follow-through, as established in 702 KAR 1:160, Section 1, for tuberculosis upon initial employment.

(c) The medical examination shall be documented on the same form required by the Kentucky Department of Transportation to obtain a commercial driver's license and retained by the district.

Section 3. Criminal Records Check, Driving History, and Drug Testing. (1)(a) A criminal records and driving history check shall be performed by a local district on school bus drivers prior to initial employment and prior to reemployment following a break in employment.

(b)1. Employment shall be contingent upon meeting the requirements of paragraph (a) of this subsection.

2. A local board of education shall adopt policies outlining employment qualifications for school bus drivers as related to these criminal records and driving history checks.

(c) A school bus driver shall immediately report to the local superintendent or the superintendent's designee a:

1. Revocation of the driver's license;
2. Conviction for driving under the influence (DUI) or driving while intoxicated (DWI);
3. Conviction for reckless driving; or
4. Citation for a moving motor vehicle violation, including:
  - a. Driving under the influence (DUI) or driving while intoxicated (DWI);
  - b. Reckless driving; or
  - c. A violation of state or local law governing motor vehicle traffic control, other than a parking violation.

(2)(a) Controlled substance and alcohol use testing shall be a condition of employment for anyone in a safety sensitive student[pupil] transportation position, including:

1. School bus drivers;
2. School bus mechanics; and
3. Other safety-sensitive jobs requiring a Commercial Drivers License (CDL) license.

(b) The controlled substance and alcohol use testing program shall include the following tests:

1. Preemployment testing (controlled substance only);
2. Postaccident testing;
3. Random testing; and
4. Reasonable suspicion testing.

(c) Prospective employees who have tested positive for a controlled substance within the last five (5) years shall not be considered for employment to drive a school bus or the performance of safety-sensitive services related to student[pupil] transportation.

(d) A school bus driver, school bus mechanic, or anyone performing safety-sensitive student[pupil] transportation duties having a confirmed positive test for a controlled substance shall be

relieved of those duties immediately and not be eligible for reemployment in a safety-sensitive student transportation position for five (5) years.

(e) A school bus driver, school bus mechanic, or anyone performing safety-sensitive student[pupil] transportation duties who tests at 0.02 percent or higher on the confirmation alcohol test immediately before, during, or immediately following the performance of these duties shall be relieved of these duties immediately and not be eligible for reemployment in a safety-sensitive student[pupil] transportation position for five (5) years.

(f) A person shall not be employed as a school bus driver if convicted within the past five (5) years of driving under the influence (DUI) or driving while intoxicated (DWI).

Section 4. Training Requirements. (1)(a) Minimum training requirements to become a school bus driver shall consist of the successful completion of the twenty-one (21) hour initial training course and follow-up reviews as set forth in the Kentucky School Bus Driver Trainer Manual.

(b) Prior to the beginning of each school year, a bus driver shall successfully complete a district specific eight (8) hour update training.

(c) Each district shall annually provide the eight (8) hour update training, which shall be aligned with the Kentucky School Bus Driver Trainer Manual, address the needs of the district's school bus drivers, and be conducted by a driver trainer certified in accordance with subsection two (2) of this section.

(d) The eight (8) hour update training shall be provided after the district's last student attendance day of the school year, but prior to opening day of the proceeding school year.

(e) If a district employs a school bus driver, after the eight (8) hour annual update training was provided to bus drivers, the district shall provide the driver with the update training prior to allowing the driver to transport students.

(f) If a school bus driver leaves the employment of a school district as a bus driver, and is subsequently reemployed in the district as a driver, the driver shall complete the eight (8) hour update training within twelve (12) months following the driver's last date of employment in the district as a bus driver.

(g) A driver who does not timely complete the annual eight (8) hour update training and recertification pursuant to this section shall be required to complete the twenty-one (21) hour initial training course.

(2)(a) A driver trainer shall satisfactorily complete the thirty-three (33) hour classroom and driving curriculum developed by the Kentucky Department of Education[department] and delivered by a Kentucky Department of Education approved[state approved] driver trainer instructor in accordance with the Kentucky School Bus Driver Trainer Manual.

(b) A driver trainer shall annually complete a minimum of six (6) hours of training developed by the Kentucky Department of Education[Department] and delivered by a Kentucky Department of Education[state] approved driver trainer in accordance with the Kentucky School Bus Driver Trainer Manual.

Section 5. First Aid and Cardiopulmonary Resuscitation (CPR). All school bus drivers, student[pupil] transportation technicians, and employees that transport students shall, at a minimum, receive basic first aid and CPR training by a person with:

- (1) A valid certificate in first-aid training, including CPR, from the American Red Cross; or
- (2) Equivalent training that can be verified by documentary evidence.

Section 6. Emergency Operation. (1) If an emergency makes it necessary for the driver to leave the bus while students[pupils] are on board, the driver shall follow local board policy.

(2) A driver shall not permit a student[pupil] to operate the entrance handle or any other bus control except in case of an emergency.

Section 7. Transport of Items on School Bus. (1) A local board of education shall develop a policy regarding the transport of

persons and items on a school bus.

(2) To ensure student safety, the policy shall include:

(a) A prohibition on firearms or weapons, either operative or ceremonial, except that the policy may permit archery bows, used in connection with a school archery team, to be transported inside the passenger compartment and arrows transported in the underneath storage compartment;

(b) A prohibition on fireworks or other explosive materials of any type;

(c) A prohibition on live animals, except for a service animal necessary for the student to attend school;

(d) A prohibition on glass objects or helium balloons; and

(e) A prohibition on any object that may block the bus aisle or exits or otherwise impede exiting the bus.

(3) The policy may additionally address issues related to the safe transport of students, including eating and drinking on the school bus.

Section 8. Student Assignment. (1) A school bus driver shall transport only those students[pupils] officially assigned to a bus trip unless an unassigned student[pupil] presents the driver with written permission[~~a written permit~~] to ride the bus trip that has been signed by the school principal or a designee.

(2) A school bus driver shall not permit an assigned student[pupil] to leave the bus at a stop other than the student's[pupil's] regular stop unless presented with written permission signed by the school principal or a designee.

(3) A school bus driver shall not transport a person who is not a student, including adult employees of the board, unless provided with written permission from the district superintendent or a designee.

Section 9. Student Seating. (1) A school bus driver shall supervise the seating of the students[pupils] on the bus and may assign a student[pupil] to a specific seat on the bus.

(2)(a) The school bus driver shall make certain the seating capability of the bus has been fully utilized before any student[pupil] is permitted to stand in the bus aisle.

(b) A school bus driver shall not permit students[pupils] to stand in the stepwell or landing area if:

1. The student[pupil] would likely fall out of the bus if the emergency door were opened; or

2. The driver's view directly in front of the bus or to either side of the front of the bus would be obscured.

(3) A school bus driver shall report to the superintendent or a designee an overcrowded condition on the bus as soon as practicable and in accordance with local district policies.

Section 10. Loading and Unloading. (1) A school bus driver shall activate the flashing amber signal lights at least 200 feet, if available, or a sufficient distance from a bus stop to warn motorists of the intended stop.

(2) Once the bus comes to a complete stop, the school bus driver shall follow the loading and unloading procedure outlined in the Kentucky School Bus Driver Trainer Manual.

(3) A stop signal arm and flashing warning lights shall be in operation anytime students[pupils] are boarding or leaving the bus, including on school property.

(4) A school bus driver shall signal students[pupils] to board or exit only after determining that any visible approaching traffic has come to a complete stop and is not beginning to move or attempting to pass the bus.

(5) A driver of a school bus shall be on the bus at all times students are loading or unloading.

Section 11. Fueling. For safety reasons, a driver shall not permit fueling of the bus while students[pupils] are on board the bus.

Section 12. Student Conduct. (1) A local board of education shall develop a policy regarding[~~Local boards of education shall adopt policies related to~~] student conduct on school buses.

(2) If a student's[pupil's] conduct on the bus makes it unsafe

for the bus to continue on its route, the school bus driver shall follow local district policy. Ejecting a student[pupil] from the bus shall be done only in the most extreme circumstances.

(b) If a student has been ejected from a bus the school bus driver shall notify the immediate supervisor who shall notify the appropriate district authorities, who shall subsequently notify the student's parent or legal guardian according to local board policy.

Section 13. Railroad. A school bus driver shall stop the bus at all places where the roadway crosses a railroad track or tracks at the grade level. The stop shall be made not less than fifteen (15) feet and not more than fifty (50) feet from the nearest track.

(1) After making the stop, the driver shall:

(a) Set the parking brake;

(b) Shift to neutral;

(c) Activate the noise abatement switch;

(d) Open the service door and driver side window; and

(e) Carefully look in each direction and listen for approaching trains before proceeding.

(2) If visibility is impaired at a crossing, after stopping the driver may allow the vehicle to roll forward to gain required visibility before proceeding.

(3) When a driver has ascertained that it is safe for the bus to cross the railroad tracks or tracks at the grade level, the driver shall:

(a) Close the bus service[entrance] door;

(b) Shift the bus into the lowest gear;

(c) Release the parking brake;

(d) Proceed immediately to cross the railroad tracks or tracks at the grade level; and

(e) Turn the noise abatement switch off when safe to do so.

Section 14. Driver Inspection. (1) A school bus driver shall perform and document a pretrip inspection of the bus safety and operating equipment each time that the bus is taken out for the transportation of students[pupils].

(2) A school bus driver shall inspect the school bus at the completion of each bus trip[~~bus run~~] to ensure that no students remain in the bus.

Section 15. Road Conditions. A school bus driver shall not drive the school bus on any roadway if the conditions of the roadway, weather conditions, or other extenuating circumstances may make it unsafe.

Section 16. Driver Seat Belt. A school bus driver shall wear the driver's seat belt at all times that the bus is operated.

Section 17. Tobacco. A school bus driver shall not use tobacco products on the school bus and shall not permit students[pupils] to use tobacco products on the school bus.

Section 18. Drug and Alcohol. (1) A school bus driver shall not operate a school bus while under the influence of alcoholic beverages or any illegal drug or other drug.

(2) A driver found under the influence of alcohol or any illegal drug while on duty or with remaining driving responsibilities that day shall[~~shall, that same day,~~] be dismissed from employment.

Section 19. Incorporation by Reference. (1) The "Kentucky School Bus Driver Trainer Manual, November 2020[~~October 2019~~], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Pupil Transportation Branch, Department of Education, 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).

JASON E. GLASS, Ed.D., Commissioner & Chief Learner  
LU YOUNG, Chair

APPROVED BY AGENCY: December 10, 2020

FILED WITH LRC: December 14, 2020 at 12:24 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on February 22, 2021, at 10:00 a.m. in the State Board Room, 5th Floor, 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five (5) working days prior to 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 February 28, 2021.

CONTACT PERSON: Todd G. Allen, 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](mailto:regcomments@education.ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd G. Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation sets forth the training requirements for school bus drivers, and includes the policies and procedures for the safe operation of school buses and transportation of students. The regulation was recently amended becoming effective September 1, 2020. This amendment is necessary to correct and clarify language around the termination of a bus driver found to be under the influence while on duty. There are additional minor language cleanup changes to the regulation and material incorporated by reference for consistency and clarity.

(b) The necessity of this administrative regulation: KRS 156.160(1) requires the Kentucky Board of Education to promulgate administrative regulations relating to the transportation of children to and from school and to medical inspections and other matters deemed relevant to the protection of the physical welfare and safety of public school children. KRS 189.540 requires the Kentucky Board of Education to promulgate administrative regulations governing the design and operation of school buses. This administrative regulation establishes the qualifications, training, and responsibilities of the school bus driver.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 156.160(1) requires the Kentucky Board of Education to promulgate administrative regulations relating to the transportation of children to and from school and to medical inspections and other matters deemed relevant to the protection of the physical welfare and safety of public school children. KRS 189.540 requires the Kentucky Board of Education to promulgate administrative regulations governing the design and operation of school buses. This administrative regulation establishes the qualifications, training, and responsibilities of the school bus driver.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 156.160(1) requires the Kentucky Board of Education to promulgate administrative regulations relating to the transportation of children to and from school and to medical inspections and other matters deemed relevant to the protection of the physical welfare and safety of public school children. KRS 189.540 requires the Kentucky Board of Education to promulgate administrative regulations governing the design and operation of school buses. This administrative regulation establishes the qualifications, training, and responsibilities of the school bus driver.

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

(a) How the amendment will change this existing

administrative regulation: The amendment is necessary to correct and clarify language around the termination of a bus driver found to be under the influence while on duty. Specifically, the language is clarified that an on-duty driver or a driver with remaining driving duties that day shall be terminated. The recently amended language incorrectly inserted commas that resulted in a requirement that the driver be terminated the very day they are found under the influence. This was identified as problematic because district termination policies may take more than one day to accomplish. At any rate, a driver found in such condition shall not be allowed to drive, and under the amended language, the district shall begin the termination process.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to allow districts to uniformly implement their termination policies.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 156.160(1) requires the Kentucky Board of Education to promulgate administrative regulations relating to the transportation of children to and from school and to medical inspections and other matters deemed relevant to the protection of the physical welfare and safety of public school children. KRS 189.540 requires the Kentucky Board of Education to promulgate administrative regulations governing the design and operation of school buses. This administrative regulation is applicable to the safe operation of school buses and clarifies the process for termination of school bus drivers found under the influence.

(d) How the amendment will assist in the effective administration of the statutes: KRS 156.160(1) requires the KBE to promulgate administrative regulations relating to the transportation of children to and from school and to medical inspections and other matters deemed relevant to the protection of the physical welfare and safety of public school children. KRS 189.540 requires the Kentucky Board of Education to promulgate administrative regulations governing the design and operation of school buses. This administrative regulation is applicable to the safe operation of school buses and clarifies the process for termination of school bus drivers found under the influence.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation is applicable to Kentucky's 170 school districts and their bus drivers.

(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 corrects a mistake from a recent amendment that unintentionally created an administrative burden on districts. This amendment relieves districts of that burden and allows them to implement their ordinary termination policy rather than having to create a new policy.

(b) In compliance with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There should be no additional cost resulting from the amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): School districts will not have to create a new policy relating to the termination of school bus drivers.

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

(a) Initially: No new costs are anticipated from this amendment.

(b) On a continuing basis: No additional costs are anticipated.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No increases are anticipated.

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.160(1) requires the Kentucky Board of Education to promulgate administrative regulations relating to the transportation of children to and from school and to medical inspections and other matters deemed relevant to the protection of the physical welfare and safety of public school children. KRS 189.540 requires the Kentucky Board of Education to promulgate administrative regulations governing the design and operation of school buses. This administrative regulation is applicable to the safe operation of school buses and clarifies the process for termination of school bus drivers found under the influence.

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 minimal impact. No new costs are anticipated from this amendment.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is anticipated from this amendment.

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

(c) How much will it cost to administer this program for the first year? Minimal to nil costs associated with this amendment.

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

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

Revenues (+/-): N/A.

Expenditures (+/-): N/A.

Other Explanation:

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

**703 KAR 5:280. School improvement procedures.**

RELATES TO: KRS 158.6453, 158.6455, 158.782, 160.346, 20 U.S.C. 6301

STATUTORY AUTHORITY: KRS 156.029(7), 156.070(5), 158.6453, 158.6455, 160.346, 20 U.S.C. 6301

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.029(7) requires the Kentucky Board of Education (KBE) to adopt policies and administrative regulations that shall govern the Kentucky Department of Education (department) in planning and operating programs within its jurisdiction. KRS 156.070(5) requires the KBE, upon the recommendation of the Commissioner of Education (commissioner), to establish policy or act on all programs, services, and other matters that are within the administrative responsibility of the department. KRS 158.6453(3)(a) requires the KBE to create an assessment system that measures achievement of the state learning goals, ensures compliance with Title I of the federal Elementary and Secondary Education Act of 1965 (ESEA), 20 U.S.C. sec. 6301, et seq., as

amended by the Every Student Succeeds Act (2015) or its successor, and ensures school accountability. KRS 158.6455 requires the KBE to create an accountability system to classify schools and LEAs, and to establish appropriate consequences for schools failing to meet accountability measures. KRS 158.782 requires the KBE to promulgate administrative regulations establishing the process for monitoring and periodic review of schools' turnaround efforts for schools identified for comprehensive support and improvement pursuant to KRS 160.346. KRS 160.346 establishes the process for the required audit and turnaround efforts for schools identified for comprehensive support and improvement. Additionally, KRS 160.346 requires the KBE to create state-wide exit criteria for identified schools, additional action to support schools continuously failing to meet improvement goals, and additional support for LEAs with a significant number of schools identified for comprehensive and targeted support and improvement. Section 1111(c) of Title I of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, 20 U.S.C. 6311(c) and (d), requires the KBE to identify the state's lowest achieving schools as schools identified for comprehensive support and improvement and for those schools to follow the requirements of 20 U.S.C. 6311(c) and (d) regarding school improvement. This administrative regulation establishes the process and procedures for school improvement efforts.

Section 1. Definitions. (1) "Additional Targeted Support and Improvement" means the process for schools identified pursuant to KRS 160.346(2)(b).

(2) "Advisory leadership team" means the team established pursuant to KRS 160.346(8)(f) ~~[(7)(g)]~~ and Section 7 [8] of this administration regulation.

(3) "Annual improvement" means a school reaching annual goals, established by the department, in the areas identified for comprehensive support and improvement.

(4) "Audit" means the process established in KRS 160.346~~[(5) and](6)-(7)~~.

(5) "Audit team" means the department, which completes the audit ~~team selected by the LEA,~~ pursuant to KRS 160.346(6)-(7)~~[(5), to complete a school or district audit]~~.

(6) "Charter school" means a "public charter school" as defined in KRS 160.1590(12).

(7) "Charter school board of directors" or "governing board" means charter school board of directors as defined in KRS 160.1590(6).

(8) "Comprehensive Support and Improvement" means the process for schools identified pursuant to KRS 160.346(3).

(9) "District" or "school district" means the local school district governed by a local board of education.

(10) "District audit" means an audit that:

(a) Reviews the functioning of the district and the district's ability to manage an intervention in a school identified for comprehensive support and improvement; and

(b) Meets the requirements of Section 4 [5] of this administrative regulation.

(11) "Evidence based interventions" is defined in the Elementary and Secondary Education Act, as reauthorized by the Every Student Succeeds Act (2015), 20 U.S.C.A. Section 7801.

(12) "Local education agency" or "LEA" means a local school district as established in KRS 160.010 and KRS 160.020 or a charter school board of directors as established in KRS 160.1590.

(13) "Minority" is defined in KRS 160.345(1)(a).

(14) "School audit" means an audit that:

(a) Reviews the functioning of a school;

(b) Assesses principal capacity for leadership of school turnaround; and

(c) Meets the requirements of KRS 160.346(6)-(7).

(15) "School improvement assistance" means a program designed by the department to support improved teaching and learning.

(16) "School improvement plan" means the plan created by schools identified for targeted support and improvement or additional targeted support and improvement pursuant to KRS

160.346(4)-(5) and embedded in the comprehensive school improvement plan required pursuant to 703 KAR 5:225.

(17) "Targeted Support and Improvement" means the process for schools identified pursuant to KRS 160.346(2)(a).

(18) "Turnaround plan" means the plan created pursuant to KRS 160.346(8)(g)(7)(h) and embedded in the comprehensive school improvement plan required pursuant to 703 KAR 5:225.

(19) "Turnaround team" means the team selected pursuant to KRS 160.346(8)(7)(a).

Section 2. ~~[Notification of Status for Comprehensive Support and Improvement. (1) Following notification of a school's identification for comprehensive support and improvement, an LEA shall, within thirty (30) days, declare its intent to either utilize the department for the audit team or another option pursuant to KRS 160.346(5).~~

~~(2) If the LEA declares its intent to use any option other than the department for the audit team, the LEA shall provide, to the Kentucky Department of Education, the following information:~~

~~(a) The name and address of each person included on the audit team;~~

~~(b) The role and responsibilities of each person included on the audit team;~~

~~(c) The occupation and any vendor affiliations of each person included on the audit team; and~~

~~(d) Each person or entity's documented expertise in diagnosing the causes of an organization's low performance and providing advice and strategies resulting in effective turnaround leadership. (3) If the LEA declares its intent to use any other option other than the department for the audit team, the LEA shall ensure that all audit team members report potential conflicts of interest. The LEA shall report these conflicts of interest to the department and provide information regarding the LEA's work to remedy the conflicts of interest.~~

~~(4) Audit team members shall not be employed by or otherwise affiliated with the LEA or school under review.~~

~~(5) Upon receipt of the notification and appropriate information from the LEA, the department, within fifteen (15) days, shall review the proposals for non-department audit teams and either accept or deny the proposal. Denied proposals shall be returned to the LEA and the department shall advise the LEA to remedy the proposal.~~

~~(6) The LEA shall provide the information required in this Section utilizing the "Notification of Non-Department Audit Team Form" incorporated by reference in this administrative regulation.~~

~~(7) Non-department audit teams shall complete a Kentucky-specific induction training prior to conducting an audit.~~

Section 3. ~~]~~ Audit Team Membership. ~~[For audit teams directed by the department:] (1) Pursuant to KRS 160.346(6)(a), a school, including a charter school, identified for comprehensive support and improvement shall undergo an audit conducted by the department.~~

~~(2) Members of the audit team shall be selected from qualified applicants by the department, and approved by the commissioner [of Education,] or his designee;~~

~~(3)[(2)] Members shall complete department-provided or department-approved training in any areas needed to effectively perform their duties;~~

~~(4)[(3)] Members shall hold appropriate certification or qualifications for the position being represented;~~

~~(5)[(4)] The team shall not include any members currently employed by or otherwise affiliated with the LEA or school under review;~~

~~(6)[(5)] The team shall include the following representation:~~

~~(a) The chairperson, who shall be designated by the department or its designee, and shall be:~~

~~1. A certified administrator approved by the department to provide school improvement assistance;~~

~~2. A certified administrator member of the review team; or~~

~~3. A similarly qualified professional approved by the department;~~

~~(b) An individual approved by the department to provide school improvement assistance;~~

~~(c) A teacher who is actively teaching or has taught within the last three (3) years;~~

~~(d) A principal who is currently serving or has served as a principal within the last three (3) years;~~

~~(e) An LEA administrator who is currently serving or has served in an LEA administrative position within the last three (3) years;~~

~~(f) A parent or legal guardian who has or has had a school-aged child; and~~

~~(g) A university representative who is currently serving or has served in that capacity within the last three (3) years;~~

~~(7)[(6)] The chair may serve in addition to the six (6) members outlined in subsection (6) [(5)] of this section, or may be selected from those six (6) members who also meet the qualifications of this section.~~

Section 3. 4.] School Audit. (1) A school audit shall be scheduled within forty-five (45) days of a school's identification for comprehensive support and improvement.

(2) [The KBE recommends a school audit, in] In addition to the requirements established in KRS 160.346(7)(6), a school audit shall consist of and incorporate into the audit process and report the following criteria:

(a) Analysis of state and local education data;

(b) An analysis and recommendation regarding the principal's capacity to lead turnaround in a school identified for comprehensive support and improvement and whether the principal should be replaced;

(c) Review of comprehensive school improvement plans and other planning documents;

(d) Interviews with students, parents, all school council members, if applicable, school and LEA personnel, and community members;

(e) Direct observation;

(f) Administration of teacher and principal working conditions surveys and student satisfaction surveys;

(g) Review of school council minutes and agendas, if applicable; and

(h) Other information deemed necessary by the commissioner [of Education,] or his designee.

(3) [Where the audit team is directed by the department, the] The recommendation of the principal's ability to lead the intervention in the school, as required by (2)(b) of this section [KRS 160.346(6)(a)2], shall be based upon an assessment consistent with the Professional Standards for Educational Leaders approved by the National Policy Board for Educational Administration and incorporated by reference in 16 KAR 3:090, Certifications for advanced educational leaders, [of whether:

(a) The principal demonstrates maintenance and communication of a visionary purpose and direction committed to high expectations for learning as well as shared values and beliefs about teaching and learning;

(b) The principal leads and operates the school under a governance and leadership style that promotes and supports student performance and system effectiveness;

(c) The principal establishes a data-driven system for curriculum, instructional design, and delivery, ensuring both teacher effectiveness and student achievement;

(d) The principal ensures that systems are in place for accurate collection and use of data;

(e) The principal ensures that systems are in place to allocate human and fiscal resources to support improvement and ensure success for all students; and

(f) The principal ensures that the school implements a comprehensive assessment system that generates a range of data about student learning and system effectiveness and uses the results to guide continuous improvement.]

(4) [An audit team not directed by the department may utilize the criteria established in subsection (3) of this section for the recommendation of principal capacity, as required by KRS 160.346(6)(a)2. An audit team not directed by the department shall include a recommendation as to the principal's capacity to serve as a leader in school intervention and turnaround at a school identified

~~for comprehensive support and improvement. If that audit team chooses not to use the criteria established in subsection (3) of this section, it shall provide notification to the department as well as the framework to be used in the analysis of principal capacity and submit the criteria that shall be utilized to the department for approval.~~

~~(5) Upon identification as a school in need of comprehensive support and improvement, the authority of the school council shall be suspended.~~

~~(6) Pursuant to KRS 160.346, the authority of the school council may be restored if the school is not classified under comprehensive support and improvement status for two (2) consecutive years.~~

~~(7) Charter schools shall be subject to a school audit that shall include an addendum providing a determination regarding the governing board's capacity to provide support for turnaround. Each addendum shall include:~~

~~(a) Analysis of state and local education data;~~

~~(b) A review of the governing board's level of functioning and recommendation to the commissioner [of Education] as to whether the governing board has the capacity to manage the intervention in the charter school;~~

~~(c) Interviews with governing board members, students, parents, school personnel, authorizer, and community members;]~~

~~(d) Direct observations;~~

~~(e) Administration of teacher and principal working conditions surveys and student satisfaction surveys;~~

~~(f) Review of charter school governing board minutes and agendas; and~~

~~(g) Other information deemed necessary by the commissioner [of Education], or his designee, to assess the functionality of the governing board to support school improvement.[]~~

~~(8) If the audit team chooses not to use the criteria established in subsection (7) of this section, it shall provide notification to the department as well as the framework to be used in the analysis of the governing board's capacity and submit the criteria that shall be utilized to the department for approval.]~~

Section 4. [5-] District Audit. (1) A district shall be subject to a district audit upon identification of a school within the district for comprehensive support and improvement.

(2) Within forty-five (45) days of identification by the department of a district containing a school identified for comprehensive support and improvement, an audit shall be scheduled to review the functioning of the district's administration and its specific leadership capacity related to each school identified for comprehensive support and improvement.

(3) Each district audit shall include:

(a) Analysis of state and local education data;

(b) A review of the district's level of functioning and recommendation to the commissioner [of Education] as to whether the district has the capacity to manage the intervention in each identified school;

(c) Review of comprehensive district improvement plan and other planning documents;

(d) Interviews with local board members, students, parents, school and district personnel, and community members;

(e) Direct observation;

(f) Administration of teacher and principal working conditions surveys and student satisfaction surveys;

(g) Review of school board minutes and agendas; and

(h) Other information deemed necessary by the commissioner [of Education], or his designee, to assess the functionality of the district to support school improvement.

(4) ~~[If the audit team is directed by the department, the]~~ The determination of the district's level of functioning and ability to manage the intervention in the school identified for comprehensive support and improvement shall be based upon an assessment of capacity in the following areas: (a) The district demonstrates maintenance and communication of a visionary purpose and direction committed to high expectations for learning as well as shared values and beliefs about teaching and learning;

(b) The district leads and operates under a governance and

leadership style that promotes and supports student performance and system effectiveness;

(c) The district establishes a data-driven system for curriculum, instructional design, and delivery, ensuring both teacher effectiveness and student achievement;

(d) The district ensures that systems are in place for accurate collection and use of data;

(e) The district ensures that systems are in place to allocate human and fiscal resources to support improvement and ensure success for all students; and

(f) The district ensures that a comprehensive assessment system, which generates a range of data about student learning and system effectiveness and uses the results to guide continuous improvement, is implemented.

~~(5) [An audit team not directed by the department may utilize the criteria established in subsection (4) of this section for recommendation to the Commissioner of Education of the district's level of functioning and ability to manage the intervention in the school identified for comprehensive support and improvement. An audit team not directed by the department shall include a recommendation as to district functioning and capacity to manage the interventions at a school identified for comprehensive support and improvement. If that audit team chooses not to use the criteria established in subsection (4) of this section, it shall provide notification to the department as well as the framework to be used in the analysis of district functioning and capacity to manage the intervention in each identified school to the department for approval.]~~

~~(6) There shall be only one (1) district audit per district, per year, regardless of the number of schools identified for comprehensive support and improvement located in the district.~~

Section 5. [6-] Notification to Schools and LEAs of Audit Findings. (1) Following any school audit, the audit team shall submit all findings and the principal capacity recommendation to the commissioner [of Education].

(2) Following any charter school or district audit, the district or governing board audit findings and capacity recommendations shall be submitted to the commissioner [of Education] who shall then make a determination regarding the district or governing board's level of functioning and whether the district or governing board has the capacity to manage the intervention in each identified school.

(3) After completion of the initial school or district audits and within thirty (30) days of receiving the audit findings, the commissioner [of Education] shall notify in writing the school, district or [charter] governing board, and the charter authorizer of the audit findings and recommendation regarding principal or school leader's leadership capacity and authority and a determination regarding district or governing board's leadership capacity and authority. The superintendent shall then make any necessary determination regarding the principal or other certified staff pursuant to KRS 160.346(8)(c)-(d) [(7)(e)-(f)].

(4)(a) A school, including a charter school, or district that believes the recommendation regarding the principal or school leader's leadership capacity and authority or the district or governing board's leadership capacity and authority is grossly unfair may appeal such recommendation within fifteen (15) days after the commissioner notifies the school, district or governing board, and the charter authorizer of the audit findings, as described in subsection (3);

(b) The written request for an appeal shall be submitted by mail to the department at the address supplied in Section 16 of this administrative regulation and shall identify:

1. The reason(s) and supporting evidence that the recommendation regarding the principal or school leader's leadership capacity and authority or the district or governing board's leadership capacity and authority is believed to be grossly unfair; and

2. The requested adjustment to be made to the recommendation regarding the principal or school leader's leadership capacity and authority or the district or governing board's leadership capacity and authority; and

(c) The request for an appeal shall be signed by the superintendent of the district or comparable leader of the charter school upon approval of the local board of education or governing board.

(5)(a) Upon receipt of the request for an appeal filed under subsection (4), the commissioner, or his designee, shall review such appeal against the standards set forth in either Section 3(3), if the appeal relates to the recommendation regarding the principal or school leader's leadership capacity and authority, or Section 4(4), if the appeal relates to the district or governing board's leadership capacity and authority, to determine whether to dispute the appeal:

(b) Within thirty (30) days of the request for an appeal filed under subsection (4), the commissioner shall determine whether to:

1. Adopt the requested adjustment to the recommendation regarding the principal or school leader's leadership capacity, and authority or the district or governing board's leadership capacity and authority, set forth in the request for an appeal as required by subsection (4)(b)2.; or

2. Dispute the requested adjustment to the recommendation regarding the principal or school leader's leadership capacity and authority, or the district or governing board's leadership capacity and authority, set forth in the request for an appeal as required by subsection (4)(b)2.;

(c) If the request for an appeal is disputed by the commissioner, an appeal shall be submitted to the hearing officer for the Kentucky Board of Education; and

(d) The hearing officer appointed shall conduct a hearing in accordance with KRS Chapter 13B and submit a written recommended order to the Kentucky Board of Education for the board's consideration in rendering its final order, in accordance with KRS Chapter 13B.

Section 6. [7-] Turnaround Team and Development of Turnaround Plan for School Identified for Comprehensive Support and Improvement. (1) Within fifteen (15) days after the commissioner notifies the school, district or charter governing board, and the charter authorizer of the audit findings, as described in Section 5[6](3) of this administrative regulation, an LEA shall declare its intent to either utilize the department for the turnaround team or another vendor from the approved turnaround vendor list published [option] pursuant to KRS 160.346(1)(a) and (8)(a)[(7)] as well as Section 15 of this administrative regulation and, if the LEA declares its intent to use any option other than the department for the turnaround team, the LEA shall use the "Notification of Non-Department Turnaround Team Form." [to provide the following information to the department:

(a) The name and address of each person or entity fulfilling the status of turnaround team;

(b) The role and responsibilities of each person or entity fulfilling the status of turnaround team; and

(c) The evidence-based interventions that shall be utilized by the person or entity fulfilling the status of turnaround team.;

(2) [If the LEA utilizes a private entity to serve as the turnaround team, pursuant to KRS 160.356(7)(a)(1), the LEA shall submit to the department evidence of the private entity's documented success at turnaround diagnosis, training, and improved performance of organizations and provide ongoing oversight of the private entity's work, functioning, and accomplishments as the turnaround team.

(3) If the LEA utilizes the local staff and community partners to serve as the turnaround team, pursuant to KRS 160.346(7)(a)(2), the LEA shall ensure the following:

1. Schools having eight (8) percent or more minority students enrolled, as determined by the enrollment on the preceding October 1, shall have at least one (1) minority member serving on the turnaround team; and

2. At least one (1) parent of a student in the identified school is selected as a member of the turnaround team.

(4) Upon receipt of the notification and appropriate information from the LEA, the department shall review within fifteen (15) days the proposals for non-department turnaround teams and either

accept or deny the proposal. Denied proposals shall be returned to the LEA and the department shall advise the LEA to remedy the proposal.

(5) If the LEA utilizes the department to serve as the turnaround team, the turnaround team shall be comprised of team members selected and approved by the commissioner [of Education], or his designee, to provide school improvement assistance.

(3) A school, including a charter school, identified for comprehensive support and improvement shall be eligible to apply for funding under 20 U.S.C. 6303. Any funds awarded to a school pursuant to 20 U.S.C. 6303 shall be utilized to pay for turnaround activities, which may include assisting with funding an LEA's utilization of a non-department vendor from the approved turnaround vendor list published pursuant to KRS 160.346(1)(a) and (8)(a) as well as Section 15 of this administrative regulation. [

(6) (4) Within forty-five (45) days after the commissioner notifies the school, district or [charter] governing board, and the charter authorizer of the audit findings, as described in Section 5[6](3) of this administrative regulation, the turnaround team shall develop a turnaround plan pursuant to KRS 160.346(8)(g)[(7)(h)]. [

(7) (5) In addition to the requirements established in KRS 160.346(8)(g)[(7)(h)], the turnaround plan shall be embedded in the comprehensive school improvement plan required pursuant to 703 KAR 5:225 and shall include:

(a) Evidence-based interventions to be utilized to increase student performance and address the critical needs identified in the school audit;

(b) A comprehensive list of persons and entities involved in the turnaround efforts and the specific roles each shall play in the school's turnaround; and

(c) A review of resource inequities that shall include an analysis of school level budgeting to ensure resources are adequately channeled towards school improvement. [

(8) (6) The turnaround plan shall be approved by the superintendent and local board of education, as required by KRS 160.346(8)(g)[(7)(h)], who shall provide the necessary support and resources for the turnaround plan and submit the turnaround plan to the commissioner [of Education] for final approval. [

(9) (7)(a) Following receipt of the turnaround plan specified in subsection (6) [(8)] of this section and before the beginning of the school year following the audit, the commissioner [of Education], in consultation with the advisory leadership team, superintendent, and local board of education, shall determine the sufficiency of the school's turnaround plan to meet the needs of the school's turnaround effort.

(b) If the commissioner [of Education] finds that the plan is not sufficient to meet the needs of the school turnaround effort for a school identified for comprehensive support and improvement, the department shall provide feedback detailing the deficiencies and advise the LEA and school to make changes to the plan.

Section 7. [8-] Advisory Leadership Team. (1) The principal or charter school leader of a school identified for comprehensive support and improvement shall provide to the department, in a format acceptable to the department, the names and addresses of advisory leadership team members appointed pursuant to KRS 160.346(8)(f)[(7)(g) to the department].

(2) The department shall maintain a database of all advisory leadership team members appointed pursuant to KRS 160.346(8)(f)[(7)(g)].

(3) In establishing the advisory leadership team, the principal or charter school leader shall ensure that schools having eight (8) percent or more minority students enrolled, as determined by the enrollment on the preceding October 1, shall have at least one (1) minority member serving on the advisory leadership team.

(4) Meetings of the advisory leadership team shall be open to the public.

(5) Duties of the advisory leadership team shall include:

(a) Providing support for systems that seek to build capacity in school leadership;

(b) Promoting positive school climate and culture; and

(c) Supporting the continual use of data-driven decision-

making to support school improvement.

Section 8. [9.] Monitoring and Periodic Review of Plan Implementation. (1) Pursuant to the Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act, 20 U.S.C.A. Section 6301, all schools identified for comprehensive support and improvement shall be subject to monitoring and periodic review by the department.

(2) Monitoring shall include:

(a) Onsite support by department staff if the department is chosen by the LEA to serve as the turnaround team pursuant to KRS 160.346(8)(a) or if more rigorous intervention by the department is warranted as established in Section 9 [10] of this administrative regulation;

(b) Annual review of school and LEA state accountability data;

(c) Review of indicators of school quality; and

(d) Other measures deemed necessary by the department to ensure compliance with the Every Student Succeeds Act, or its successor.

(3) Periodic review of the turnaround plan shall include:

(a) Periodic site visits;

(b) Direct observation; and

(c) Interviews with students, parents, all school council members, if applicable, school and LEA personnel, and community members.

Section 9. [10.] More Rigorous Intervention. (1) Schools identified for comprehensive support and improvement that do not exit that status after three (3) years shall be subject to intervention by the department including but not limited to:

(a) A school audit conducted by the department;

(b) Onsite assistance by department staff; and

(c) Evaluation and modification of the school turnaround plan.

(2) Schools identified for comprehensive support and improvement that do not exit after three (3) years shall be subject to an audit by the department every two (2) years, or as deemed necessary by the commissioner [of Education].

(3) Schools identified for comprehensive support and improvement that do not make annual improvement for two (2) consecutive years shall be subject to intervention by the department, as established in subsections (1) and (2) of this section, after the second year;

(4) Districts serving any number of schools identified for comprehensive support and improvement that do not exit after three (3) years, or two (2) years as established in subsection [(2)] (3) of this section, shall be subject to a district audit. Additional district audits for districts serving schools identified for comprehensive support and improvement that do not exit that status shall occur every two (2) years, or as deemed necessary by the commissioner [of Education]. No district, regardless of the number of schools identified for comprehensive support and improvement that fail to exit that status, shall have more than one (1) district audit every two (2) years.

Section 10. [11.] Targeted Support and Improvement and Additional Targeted Support and Improvement. (1) Upon identification as a school for targeted support and improvement or additional targeted support and improvement, the identified school shall comply with the requirements of KRS 160.346(4)-(5). The school improvement plan shall be embedded in the comprehensive school improvement plan required pursuant to 703 KAR 5:225.

(2) LEAs with a school identified for targeted support and improvement or additional targeted support and improvement shall monitor and provide support to the school to ensure the successful implementation of the school improvement plan.

Section 11. [12.] Significant Number of Schools. (1) In addition to providing notification to LEAs as to the identification of schools for comprehensive support and improvement, additional targeted support and improvement, or targeted support and improvement, the department shall notify LEAs as to whether they shall be considered an LEA supporting a significant number of schools identified for [either] comprehensive support and improvement or

targeted support and improvement, including additional targeted support and improvement.

(2) To determine whether an LEA meets this designation, the department shall calculate, based on the total number of A1 schools, as defined in 703 KAR 5:240, in the LEA, the LEA's percentage of schools identified for comprehensive support and improvement or [and the LEA's percentage of schools identified for] targeted support and improvement, including additional targeted support and improvement. Any LEA containing two (2) or more schools identified for comprehensive support and improvement or targeted support and improvement, including additional targeted support and improvement, and whose percentage of identified schools exceeds ten (10) percent of all schools within the district shall be designated an LEA supporting a significant number of schools identified for [either] comprehensive support and improvement or targeted support and improvement, including additional targeted support and improvement.

Section 12. [13.] Technical Assistance for LEAs Supporting a Significant Number of Schools Identified for Comprehensive Support and Improvement. (1) LEAs supporting a significant number of schools identified for comprehensive support and improvement shall receive the following technical assistance:

(a) A district audit, or school audit if a charter school, conducted by the department; and

(b) Onsite support from department staff.

(2) The district audit, or school audit if a charter school, completed by the department pursuant to subsection (1)(a) of this section shall take the place of any district or school audit conducted under Sections 3 and 4 [and 5] of this administrative regulation.

(3) Department staff shall:

(a) Coordinate with the LEA to ensure direct support of schools identified for comprehensive support and improvement;

(b) Review, via the district or school audit, if a charter school, resources and allocations to determine if they are being used effectively for school improvement;

(c) Work with the LEA to address any identified resource inequities that negatively impact schools and students; and

(d) Work with the LEA to develop sustainable systems to support school improvement.

Section 13. [14.] Technical Assistance for LEAs Supporting a Significant Number of Schools Identified for Targeted Support and Improvement. (1) LEAs supporting a significant number of schools identified for targeted support and improvement, including additional targeted support and improvement, shall receive the following technical assistance:

(a) Periodic site visits; and

(b) Onsite support by department staff.

(2) Department staff shall:

(a) Review LEA resources and allocations to determine if they are being used effectively for school improvement;

(b) Provide technical assistance to the LEA regarding resource allocation to support school improvement; and

(c) Connect LEAs with professional development opportunities to build capacity for school improvement efforts.

Section 14. [15.] Exit Criteria. (1) A school identified for comprehensive support and improvement pursuant to KRS 160.346(3)(a) or (c) shall exit that status if:

(a) It no longer meets the criteria for identification; and

(b) It demonstrates progress on the data that served as the basis for identification.

(2) Schools identified for comprehensive support and improvement pursuant to KRS 160.346(3)(b) shall exit that status if they no longer meet the criteria for identification.

(3) Schools identified for comprehensive support and improvement as a result of more than one (1) criteria shall exit if all relevant exit criteria are met.

(4) Schools identified for targeted support and improvement pursuant to KRS 160.346(2)(a) or additional targeted support and improvement pursuant to KRS 160.346(2)(b) shall exit that status if



they:

(a) No longer meet the criteria for identification; and  
(b) Demonstrate progress on the data that served as the basis for identification.

(5) Schools identified for additional targeted support and improvement pursuant to KRS 160.346(2)(b) that do not exit that status within three (3) years shall be identified for comprehensive support and improvement pursuant to KRS 160.346(3)(c).

Section 15. Approved Turnaround Vendor List. (1) On or after July 1 and prior to August 15 of each calendar year, an entity may request to be a KBE-approved turnaround vendor by submitting to the Chair of the KBE and the commissioner the "Turnaround Vendor Application" outlining evidence of the entity's documented success at turnaround diagnosis, training, improved performance of organizations, and expertise in using evidence-based strategies to improve student achievement, instruction, and schools.

(2) Within forty-five (45) days from receipt of a completed "Turnaround Vendor Application," the commissioner, or his designee, shall review and recommend the KBE approve or deny the "Turnaround Vendor Application."

(3) At the next regularly scheduled meeting of the KBE following the receipt of the recommendation from the commissioner, or his designee, pursuant to subsection (4) of this section, the KBE shall approve or deny a completed "Turnaround Vendor Application."

(4) Any entity with a "Turnaround Vendor Application" that has been approved by the KBE shall be placed on the approved turnaround vendor list that the KBE is required to maintain pursuant to KRS 160.346(1)(a) and, thereafter, may be selected, in accordance with KRS 160.346(8)(a), by an LEA to provide turnaround training and support to a school identified for comprehensive support and improvement.

(5) An entity placed on the KBE's approved turnaround vendor list shall annually by October 15 submit the following to the department:

(a) The name and address of each school, including charter school, identified for comprehensive support and improvement wherein the entity provided turnaround training and support during the immediately prior school year;

(b) The accountability system performance of each school, including charter school, identified for comprehensive support and improvement wherein the entity provided turnaround training and support during the immediately prior school year;

(c) An accounting of the funds the entity received during the immediately prior school year from an LEA in consideration for the entity providing turnaround training and support to a school, including charter school, identified for comprehensive support; and

(d) Any other information the department deems necessary to evaluating the performance of the turnaround vendor and reporting thereon to the KBE and the Interim Joint Committee on Education, as required by KRS 160.346(10).

(6) The KBE may revoke approval of an entity's "Turnaround Vendor Application" as a result of evidence collected pursuant to subsection (5) or through any other means and remove the entity from the approved turnaround vendor list that the KBE is required to maintain pursuant to KRS 160.346(1)(a).

(7) Any entity that has had approval of its "Turnaround Vendor Application" revoked by the KBE shall be disqualified from submitting a new "Turnaround Vendor Application" or being placed on the KBE approved turnaround vendor list for a period of two (2) years from the date of revocation.

(8) An entity may, by letter to the Chair of the KBE and the commissioner, withdraw its approved "Turnaround Vendor Application" and be removed from the approved turnaround vendor list that the KBE is required to maintain pursuant to KRS 160.346(1)(a). An entity voluntarily removed from the approved turnaround vendor list that the KBE is required to maintain pursuant to KRS 160.346(1)(a) shall be eligible to reapply using the "Turnaround Vendor Application" at any time.

(9) An entity with a "Turnaround Vendor Application" that has been denied by the KBE or one that has been voluntarily or involuntarily removed from the approved turnaround vendor list that

the KBE is required to maintain pursuant to KRS 160.346(1)(a) shall be ineligible to be selected, in accordance with KRS 160.346(8)(a), by an LEA to provide turnaround training and support to a school, including charter school, identified for comprehensive support and improvement.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) [~~"Notification of Non-Department Audit Team Form," August 2019;~~

~~(b)] "Notification of Non-Department Turnaround Team Form," December 2020[August 2019.];~~

(b) "Turnaround Vendor Application," December 2020.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Education, Office of Continuous Improvement and Support, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

JASON E. GLASS, Ed.D., Commissioner

LU YOUNG, Chairperson

APPROVED BY AGENCY: December 10, 2020

FILED WITH LRC: December 14, 2020 at 12:24 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on February 22, 2021, at 10:00 a.m. in the State Board Room, 5th Floor, 300 Sower Blvd, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through February 28, 2021.

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

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Todd G. Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: The Elementary and Secondary Education Act of 1965 as amended by the Every Student Succeeds Act (ESSA) requires the Kentucky Department of Education (KDE) to adopt a system of accountability and support for low-achieving schools and districts. Specifically, Sections 1111(c)(4)(D) and 1111(d)(1) of the ESSA require the KDE to identify schools for comprehensive support and improvement (CSI), and Section 1111(d)(2) requires the KDE identify schools for targeted support and improvement (TSI). Additionally, KRS 160.346 requires the Kentucky Board of Education (KBE) to, among other items, maintain an "approved turnaround vendor list" and establish annual statewide exit criteria for schools identified for CSI or TSI. This regulation establishes a system of support and ongoing accountability for CSI and TSI schools in compliance with the ESSA and KRS 160.346.

(b) The necessity of this administrative regulation: This amended regulation is necessary because it establishes a system of support and ongoing accountability for CSI and TSI schools in compliance with the ESSA and KRS 160.346. Amendments to 703 KAR 5:280 are necessary to align the regulation with KRS 160.346 as amended by Senate Bill (SB) 158 (2020).

(c) How this administrative regulation conforms to the content of the authorizing statute: This amended regulation conforms to federal and state statutes by establishing a system of support and ongoing accountability for CSI and TSI schools in compliance with the ESSA and KRS 160.346. Specifically, Sections 1111(c)(4)(D) and 1111(d)(1) of the ESSA require the KDE to identify schools for CSI, and Section 1111(d)(2) requires the KDE identify schools for TSI. Additionally, KRS 160.346 requires the KBE to, among other items, maintain an “approved turnaround vendor list” and establish annual statewide exit criteria for schools identified for CSI or TSI.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amended regulation assists in the effective administration of federal and state statutes by establishing a system of support and ongoing accountability for CSI and TSI schools in compliance with the ESSA and KRS 160.346. Specifically, Sections 1111(c)(4)(D) and 1111(d)(1) of the ESSA require the KDE to identify schools for CSI, and Section 1111(d)(2) requires the KDE identify schools for TSI. Additionally, KRS 160.346 requires the KBE to, among other items, maintain an “approved turnaround vendor list” and establish annual statewide exit criteria for schools identified for CSI or TSI.

(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: Substantive amendments to 703 KAR 5:280 are necessary to align the regulation with KRS 160.346 as amended by SB 158 (2020). Specifically, SB 158 (2020) impacts how and when schools are identified for CSI or TSI, including additional targeted support and improvement; requires all newly identified CSI schools receive an audit conducted by the Kentucky Department of Education (KDE); and, mandates turnaround efforts in CSI schools be led by an entity on the KBE’s “approved turnaround vendor list,” which is newly defined in SB 158 (2020).

(b) The necessity of the amendment to this administrative regulation: Substantive amendments to 703 KAR 5:280 are necessary to align the regulation with KRS 160.346 as amended by SB 158 (2020).

(c) How the amendment conforms to the content of the authorizing statute: Substantive amendments to 703 KAR 5:280 conform to federal and state statutes by establishing a system of support and ongoing accountability for CSI and TSI schools in compliance with the ESSA and KRS 160.346. Specifically, Sections 1111(c)(4)(D) and 1111(d)(1) of the ESSA require the KDE to identify schools for CSI, and Section 1111(d)(2) requires the KDE identify schools for TSI. Additionally, KRS 160.346 requires the KBE to, among other items, maintain an “approved turnaround vendor list” and establish annual statewide exit criteria for schools identified for CSI or TSI.

(d) How the amendment will assist in the effective administration of the statutes: Substantive amendments to 703 KAR 5:280 assist in the effective administration of federal and state statute by establishing a system of support and ongoing accountability for CSI and TSI schools in compliance with the ESSA and KRS 160.346. Specifically, Sections 1111(c)(4)(D) and 1111(d)(1) of the ESSA require the KDE to identify schools for CSI, and Section 1111(d)(2) requires the KDE identify schools for TSI. Additionally, KRS 160.346 requires the KBE to, among other items, maintain an “approved turnaround vendor list” and establish annual statewide exit criteria for schools identified for CSI or TSI.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Local education agencies (LEAs), entities seeking placement on the KBE’s “approved turnaround vendor list,” the KBE, and the KDE will be impacted by this regulation.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: LEAs with schools, including charter schools, identified for CSI must comply with the process established within the regulation, pursuant to KRS 158.6455(6),

whereby “a school or school district shall be allowed to appeal any judgment made by the department...of a principal, superintendent, school, or school district which it considers grossly unfair.” LEAs with schools, including charter schools, identified for CSI must also select a turnaround team from the “approved turnaround vendor list” the KBE is required to maintain pursuant to KRS 160.346(1)(a) and (8)(a) and Section 15 of the revised regulation. LEAs must notify the KDE of selected turnaround teams using the Notification of Non-Department Audit Team Form incorporated by reference within the regulation. Entities seeking placement on the KBE’s “approved turnaround vendor list” must comply with Section 15 of the revised regulation, including utilization of the Turnaround Vendor Application incorporated by reference within the regulation. The KBE and the KDE will implement all aspects of the amended regulation, which aligns with SB 158 (2020) requiring, among other items, the KDE act as the audit team in all schools identified for CSI and the KBE establish and maintain an “approved turnaround vendor list,” sets forth revised criteria for the KDE-led audit team to determine a principal’s capacity to lead turnaround efforts in a CSI school; and, delineates a process, pursuant to KRS 158.6455(6), by which “a school or school district shall be allowed to appeal any judgment made by the department...of a principal, superintendent, school, or school district which it considers grossly unfair.”

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no anticipated budget impact related to the amendment of this administrative regulation for local education agencies or entities seeking placement on the KBE’s “approved turnaround vendor list.” While the KBE and the KDE may incur unknown costs in the form of additional staff time and dedicated resources with regard to the creation and maintenance of an “approved turnaround vendor list,” which the KBE is required to oversee pursuant to KRS 160.346(1)(a), providing a system of school improvement procedures and supports continues to be required by federal and state law, and Kentucky is estimated to receive \$600,000 in federal funding under Title I, Part A to support school improvement in identified schools.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amended regulation conforms to federal and state statutes, including the ESSA and KRS 160.346, and conformance with authorizing statutes ensures clarity and legal compliance for the entities identified in question (3). Further, the system of accountability and support for low-achieving schools and districts provided in this regulation is aimed at creating sustainable turnaround and, ultimately, spurring school and district improvement across Kentucky.

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

(a) Initially: The ESSA, which became effective in 2015, requires the KDE to adopt a system of accountability and support for low-achieving schools and districts. Specifically, Sections 1111(c)(4)(D) and 1111(d)(1) of the ESSA require the KDE to identify schools for CSI, and Section 1111(d)(2) requires the KDE identify schools for TSI. Additionally, KRS 160.346 requires the KBE to, among other items, maintain an “approved turnaround vendor list” and establish annual statewide exit criteria for schools identified for CSI or TSI. While the KBE and the KDE may incur unknown costs in the form of additional staff time and dedicated resources with regard to the creation and maintenance of an “approved turnaround vendor list,” which the KBE is required to oversee pursuant to KRS 160.346(1)(a), providing a system of school improvement procedures and supports continues to be required by the ESSA and KRS 160.346, and the KBE and the KDE have been complying with these federal and state statutes since their effective dates.

(b) On a continuing basis: While the KBE and the KDE may incur unknown costs in the form of additional staff time and dedicated resources with regard to the creation and maintenance of an “approved turnaround vendor list,” which the KBE is required to oversee pursuant to KRS 160.346(1)(a), providing a system of school improvement procedures and supports continues to be required by the ESSA and KRS 160.346, and the KBE and the KDE have been complying with these federal and state statutes

since their effective dates. Therefore, on a continuing basis, the KDE incurs costs for providing support, monitoring, and technical assistance to low-achieving schools and districts. Since the state legislature's decision not to fund the Commonwealth School Improvement Fund in the 2018-2020 biennial budget, federal funding has supported this work. Kentucky is expected to receive \$600,000 under Title I, Part A of the ESSA to support school improvement in identified schools.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: While the KBE and the KDE may incur unknown costs in the form of additional staff time and dedicated resources with regard to the creation and maintenance of an "approved turnaround vendor list," which the KBE is required to oversee pursuant to KRS 160.346(1)(a), providing a system of school improvement procedures and supports continues to be required by the ESSA and KRS 160.346, and the KBE and the KDE have been complying with these federal and state statutes since their effective dates. Federal funding is used for the implementation and enforcement of the obligations in the ESSA and KRS 160.346, including the provision of support, monitoring, and technical assistance to low-achieving schools and districts, and Kentucky is expected to receive \$600,000 under Title I, Part A of the ESSA to support school improvement in identified schools.

(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 anticipated to be necessary to implement the amendment to this administrative regulation.

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

(9) TIERING: Is tiering applied? Tiering is not applied because the amendment to this administrative regulation applies equally to individuals, businesses, organizations, or state and local governments affected 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? Local education agencies (LEAs), the Kentucky Board of Education (KBE), and the Kentucky Department of Education (KDE).

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.029(7), 156.070(5), 158.6453, 158.6455, 160.346, 20 U.S.C. 6301.

(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. For the first full year, there is no anticipated budget impact related to the amendment of this administrative regulation for LEAs; however, the KBE and the KDE may incur unknown costs in the form of additional staff time and dedicated resources with regard to the creation and maintenance of an "approved turnaround vendor list," which the KBE is required to oversee pursuant to KRS 160.346(1)(a). However, because providing a system of school improvement procedures and supports continues to be required by the Elementary and Secondary Education Act of 1965 as amended by the Every Student Succeeds Act (ESSA) as well as KRS 160.346 and because the KBE and the KDE have been complying with these federal and state statutes since their effective dates, there is no anticipated additional cost in the first full year.

(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? N/A

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

years? N/A

(c) How much will it cost to administer this program for the first year? While the KBE and the KDE may incur unknown costs for the first year in the form of additional staff time and dedicated resources with regard to the creation and maintenance of an "approved turnaround vendor list," which the KBE is required to oversee pursuant to KRS 160.346(1)(a), providing a system of school improvement procedures and supports continues to be required by the ESSA and KRS 160.346, and the KBE and the KDE have been complying with these federal and state statutes since their effective dates.

(d) How much will it cost to administer this program for subsequent years? While the KBE and the KDE may incur unknown costs in subsequent years in the form of additional staff time and dedicated resources with regard to the creation and maintenance of an "approved turnaround vendor list," which the KBE is required to oversee pursuant to KRS 160.346(1)(a), continuing costs are incurred as a result of the obligations in the ESSA and KRS 160.346 to provide support, monitoring, and technical assistance to low-achieving schools and districts. Since the state legislature's decision not to fund the Commonwealth School Improvement Fund in the 2018-2020 biennial budget, federal funding has supported this work. Kentucky is expected to receive \$600,000 under Title I, Part A of ESSA to support school improvement in identified schools.

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

Revenues (+/-): N/A

Expenditures (+/-): NA

Other Explanation: N/A

#### 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 2:021. Identification, classification and regulation of potential occupational carcinogens.

RELATES TO: KRS Chapter 338, 29 C.F.R. Part 1990

STATUTORY AUTHORITY: KRS 338.051, 338.061[KRS Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This administrative regulation establishes criteria and procedures for the identification, classification, and regulation of potential occupational carcinogens [KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, administrative regulations and standards. Express authority to adopt by reference established federal standards and national consensus standards is also given to the board].

Section 1. Definitions. (1) "C.F.R." means Code of Federal Regulations.

(2) "Employee" is defined in KRS 338.015(2).

(3) "Employer" is defined in KRS 338.015(1).

Section 2. [(4)] Except as modified by Section 1 of this administrative regulation, general industry and the construction industry shall comply with 29 C.F.R. 1990, Identification, Classification, and Regulation of Potential Carcinogens, published by the Office of the Federal Register, National Archives and Records Administration, General Services Administration[The

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~~Occupational Safety and Health Standards Board adopts by reference 29 C.F.R. 1990, the general policy for "Identification, Classification, and Regulation of Potential Occupational Carcinogens," printed in the Federal Register, Volume 45, Number 15, and 29 C.F.R. 1990 Correction, printed in the Federal Register, Volume 45, Number 126, which set forth a general policy for the identification and regulation of physical and chemical substances that pose a potential occupational carcinogenic risk to humans.~~

~~(2) Revisions to 29 C.F.R. 1990.111 "General statement of regulatory policy" as printed in the Federal Register, Volume 46, Number 12, Monday, January 19, 1981, are adopted by reference.~~

~~(3) Revisions to 29 C.F.R. 1990.142 "Initiation of rulemaking" as printed in the Federal Register, Volume 46, Number 12, Monday, January 19, 1981, are adopted by reference.~~

~~(4) Revisions to 29 C.F.R. 1990.144 "Criteria for consideration of arguments on certain issues" as printed in the Federal Register, Volume 46, Number 12, Monday, January 19, 1981, are adopted by reference.~~

~~(5) Revisions to 29 C.F.R. 1990.146 "Issues to be considered in the rulemaking" as printed in the Federal Register, Volume 46, Number 12, Monday, January 19, 1981, are adopted by reference.~~

~~(6)(a) Revisions to 29 C.F.R. 1990.151 "Model Standard" as printed in the Federal Register, Volume 45, Number 102, Friday, May 23, 1980, are adopted by reference.~~

~~(b) Revisions to 29 C.F.R. 1990.151 "Model Standard" as printed in the Federal Register, Volume 46, Number 12, Monday, January 19, 1981, are adopted by reference.~~

~~(7)(a) Revisions to 29 C.F.R. 1990.152 "Model Emergency Standard" as printed in the Federal Register, Volume 45, Number 102, Friday, May 23, 1980, are adopted by reference.~~

~~(b) Revisions to 29 C.F.R. 1990.152 "Model Emergency Standard" as printed in the Federal Register, Volume 46, Number 12, Monday, January 19, 1981, are adopted by reference.~~

~~(c) Corrections to 29 C.F.R. 1990.152 "Model Emergency Standard" as printed in the Federal Register, Volume 46, Number 25, Friday, February 6, 1981, are adopted by reference.~~

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: December 8, 2020

FILED WITH LRC: December 10, 2020 at 11:44 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 23, 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/83618567636?pwd=a2FuQnRFeXNNNE5wQjB5QnJkK1ITdz09>, password 224995, 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 February 28, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email [Robin.Maples@ky.gov](mailto: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 August 6, 1980, defines

terms not used in the federal standard. Section 2 adopts by reference 29 C.F.R. 1990, the criteria and procedures for identification, classification, and regulation of potential occupational carcinogens. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with House Bill (HB) 50 2017 from the Regular Session of the 2017 General Assembly.

(b) The necessity of this administrative regulation: This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5.

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

(a) How the amendment will change this existing administrative regulation: Section 1 of this administrative regulation, effective since August 6, 1980, defines terms not used in the federal standard. Section 2, effective since August 6, 1980, adopts by reference 29 C.F.R. 1990, the criteria and procedures for identification, classification, and regulation of potential occupational carcinogens. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with HB 50 2017 from the Regular Session of the 2017 General Assembly. Amendments to this regulation are technical and maintain consistency with other regulations.

(b) The necessity of the amendment to this administrative regulation: The OSH Program is mandated to be at least as effective as OSHA.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation promotes employee health and safety throughout Kentucky and ensures the state is as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth 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 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 associated with the amendment to this administrative regulation.

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

promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement.

(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 amendment to the administrative regulation.

(b) On a continuing basis: There is no continuing cost to the OSH Program to implement the 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: Current state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard. This regulation is equivalent.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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

This administrative regulation affects any unit, part, or division of local government covered by KRS Chapter 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, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

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

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

years? None.

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

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

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

Revenues (+/-): Unknown

Expenditures (+/-): Unknown

Other explanation: This amendment does not impose any additional requirements or expenditures to the employer.

#### LABOR CABINET

##### Department of Workplace Standards

##### Division of Occupational Safety and Health Compliance

##### Division of Occupational Safety and Health Education and Training (Amendment)

#### 803 KAR 2:050. Scope.

RELATES TO: KRS Chapter 338.021

STATUTORY AUTHORITY: KRS 338.015, 338.016 [KRS Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This administrative regulation establishes standards that are enforced by the Department of Workplace Standards in general industry. [Pursuant to the authority granted the Kentucky Occupational Safety and Health Standards Board by KRS 338.051, this administrative regulation is adopted. The function of this administrative regulation is to identify the scope of the administrative regulations pertaining to Kentucky Occupational Safety and Health under KRS Chapter 338. 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. (1) "Employee" is defined by KRS 338.015(2).

(2) "Employer" is defined by KRS 338.015(1).

Section 2. These administrative regulations shall apply to all employers, employees, and places of employment throughout the Commonwealth pursuant to KRS 338.021[except the following:

(1) Employees of the United States Government;

(2) Employers, employees, and places of employment over which federal agencies other than the United States Department of Labor exercise statutory authority to prescribe or enforce standards or administrative regulations affecting occupational safety and health.

(3) Nothing in these administrative regulations shall be construed to supersede or in any manner affect any workmen's compensation law or to enlarge or diminish or affect in any manner the common law or statutory rights, duties, or liabilities of employees, under any law with respect to injuries, diseases, or death of employees arising out of, or in the course of employment].

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: December 8, 2020

FILED WITH LRC: December 10, 2020 at 11:44 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 23, 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/83618567636?pwd=a2FuQnRFeXNNNE5wQjB5QnJDK1ITdz09>, password 224995, 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 February 28, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email [Robin.Maples@ky.gov](mailto: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 December 11, 1974, defines terms used in the regulation. Section 2 establishes the scope of Title 803 Chapter 2, occupational safety and health (OSH) administrative regulations, pursuant KRS Chapter 338. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance House Bill (HB) 50 from the Regular Session of the 2017 General Assembly.

(b) The necessity of this administrative regulation: This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms to the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5.

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

(a) How the amendment will change this existing administrative regulation: Section 1 of this administrative regulation, effective since December 11, 1974, defines terms used in the regulation. Section 2 establishes the scope of Title 803 Chapter 2, OSH administrative regulations, pursuant KRS Chapter 338. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance HB 50 from the Regular Session of the 2017 General Assembly.

(b) The necessity of the amendment to this administrative regulation: The OSH Program is mandated to be at least as effective as OSHA. Amendments to this regulation are technical and maintain consistency with other regulations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky OSH

Standards Board to promulgate OSH administrative regulations. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms to the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirement. This amendment promotes employee health and safety throughout Kentucky and keeps the state program consistent with the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth 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 associated with the amendment to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection will result from the promulgation of this amendment, due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: (a) Initially: There is no cost to the OSH Program to implement this amendment to the administrative regulation.

(b) On a continuing basis: There is no continuing cost to the OSH Program to implement the 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: Current state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5

2. State compliance standards. The Kentucky OSH Program is mandated by Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5 to be at least as effective as the federal requirement.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5 to be at least as effective as the federal requirement.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This amendment does not impose stricter requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects any unit, part, or division of state or local government covered by KRS Chapter 338.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, 29 C.F.R. 1953.5

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

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

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

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

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

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: This amendment does not impose any additional requirements or expenditures to the employer.

#### LABOR CABINET

##### Department of Workplace Standards

##### Division of Occupational Safety and Health Compliance

##### Division of Occupational Safety and Health Education and Training

##### (Amendment)

#### 803 KAR 2:080. Advance notice of inspections.

RELATES TO: KRS 338.991(9)

STATUTORY AUTHORITY: KRS 338.051, 338.061 [KRS Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This administrative regulation establishes standards enforced by the Department of Workplace Standards in construction and general industry. [Pursuant to the authority granted the Kentucky Occupational Safety and Health Standards Board by KRS 338.051, the following rules and administrative regulations are adopted, governing advance notice of inspections.]

Section 1. Definitions. (1) "Commissioner" is defined by 803 KRS 338.015(7).

(2) "Compliance Safety and Health Officer" means a person authorized by the commissioner to conduct occupational safety and health inspections.

(3) "Employee" is defined by KRS 338.015(2).

(4) "Employer" is defined by KRS 338.015(1).

Section 2. Advance Notice of Inspection. (1) Advance notice of inspections may not be given, except [in the following situations]:

(a) In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible;

(b) In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary [for an inspection];

(c) When [Where] necessary to assure the presence of representatives of the employer or [and] employees or the appropriate personnel needed to aid in the inspection; and

(d) When [In other circumstances where] the commissioner, or designee, [of the Department of Workplace Standards] determines that [the giving of] advance notice would enhance the probability of an effective and thorough inspection.

(2)(a) Advance [In the situations described in subsection (1) of this section, advance notice of inspections may be given only if authorized by the Commissioner of the Department of Workplace Standards, except that in cases of apparent imminent danger, advance] notice may be given by the compliance safety and health officer without commissioner, or designee, [such] authorization if the commissioner, or designee, is not immediately available.

(b) When advance notice is given, it shall be employer's responsibility [promptly] to promptly notify the authorized representative of the employees of the inspection, if the identity of such representative is known to the employer [(See 803-KAR 2:110(2) as to situation where there is no authorized representative of employees.)]

(c) Upon the request of the employer, the compliance safety and health officer may [will] inform the authorized representative of employees of the inspection, provided [that] the employer furnishes the compliance safety and health officer the identity of such representative and with [such other] information [as is] necessary to enable him or her promptly to inform such representative [of the inspection].

Section 3. An employer who fails to comply with this requirement [his obligation under this paragraph promptly to inform the authorized representative of employees of the inspection or to furnish such information as is necessary to enable the compliance safety and health officer promptly to inform such representative of the inspection] may be subject to citation and penalty pursuant [under] KRS 338.991.

Section 4. [(b)] Advance notice [in any of the situations described in subsection (1) of this section] shall not be given more than twenty-four (24) hours before the inspection is scheduled to be conducted, except in apparent imminent danger situations or [and in] other unusual circumstances.]

(3) KRS Chapter 338.991(9) provides that any person who gives advance notice of any inspection to be conducted under this chapter, without authority from the commissioner, shall, upon conviction, be punished by fine of not more than \$1,000 or by imprisonment for not more than six (6) months, or by both.]

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: December 8, 2020

FILED WITH LRC: December 10, 2020 at 11:44 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 23, 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/83618567636?pwd=a2FuQnRFeXNNNE5wQjB5QnJkD1tDz09>, password 224995, 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 February 28, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation, effective since December 11, 1974, defines terms used in the regulation. Sections 2, 3, and 4 establish the requirements regarding advance notice of inspections. Section 2 establishes when advance notice of inspections may be given. Section 3 establishes that citations and penalties may be issued to an employer not complying with this regulation. Section 4 establishes that advance notice of more than twenty-four (24) hours shall not be given unless there is an imminent danger or other unusual condition. 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 is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirement.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirement. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5.

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

(a) How the amendment will change this existing administrative regulation: Section 1 of this administrative regulation, effective since December 11, 1974, defines terms used in the regulation. Sections 2, 3, and 4 establish the requirements regarding advance notice of inspections. Section 2 establishes when advance notice of inspections may be given. Section 3 establishes that citations and penalties may be issued to an employer not complying with this regulation. Section 4 establishes that advance notice of more than twenty-four (24) hours shall not be given unless there is an imminent danger or other unusual condition. This amendment also 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 maintain consistency with other regulations.

(b) The necessity of the amendment to this administrative

regulation: The OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS 338.051 and 338.061. KRS 338.051(3) requires and 338.061 authorizes the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health rules and administrative regulations and standards.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements. This amendment promotes employee health and safety throughout Kentucky and keeps the state program consistent with the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth covered by KRS Chapter 338.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are imposed and no immediate action is required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement.

(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. Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard. This regulation is equivalent.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard; this regulation is equivalent.



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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This amendment does not impose stricter requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects any unit, part, or division of state or local government covered by KRS Chapter 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, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

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

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

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

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

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: This amendment does not impose any additional requirements or expenditures to the employer.

#### LABOR CABINET

##### Department of Workplace Standards

##### Division of Occupational Safety and Health Compliance Division of Occupational Safety and Health Education and Training (Amendment)

#### 803 KAR 2:090. Complaint inspections[Unwarranted inspections; complaint].

RELATES TO: KRS 338.121

STATUTORY AUTHORITY: KRS 338.051, 338.061 [KRS Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. [Pursuant to the authority granted the Commissioner of the Department of Workplace Standards by KRS 338.121, the following procedure has been formulated, which an employee is to follow in filing a complaint alleging a violation of KRS Chapter 338.] This [The function of this] administrative regulation establishes occupational safety and health complaint procedures [is to outline this procedure to be followed by the employee in filing his complaint; the administrative regulation also outlines the procedure

~~to be followed by the Commissioner of the Department of Workplace Standards if he reviews the complaint and finds an inspection is not warranted].~~

Section 1. Definitions. (1) "Commissioner" is defined by KRS 338.015.

(2) "Employee" is defined by KRS 338.015(2).

(3) "Employer" is defined by KRS 338.015(1).

Section 2. (1) Inspections conducted pursuant KRS 338.121 shall not be limited to matters referred to in the complaint. [Complaints by Employees. (1) Any employee or representative of employees who believes that a violation of KRS Chapter 338 exists in any workplace where such employee is employed may request an inspection of such workplace by giving notice of the alleged violation to the Commissioner of the Department of Workplace Standards. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy shall be provided the employer or his agent by the commissioner no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available by the Commissioner of the Department of Workplace Standards.

(2) ~~If upon receipt of such notification the commissioner determines that the complaint meets the requirements set forth in subsection (1) of this section, and that there are reasonable grounds to believe that the alleged violation exists, he shall cause an inspection to be made as soon as practicable, to determine if such alleged violation exists. Inspections under this section shall not be limited to matters referred to in the complaint.~~

(3) ~~Prior to or during any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the Commissioner of the Department of Workplace Standards in writing of any violation of KRS Chapter 338 which he has reason to believe exists in such workplace. Any such notice shall comply with the requirements of subsection (1) of this section.]~~

(2) If [(4) If, after an inspection based on a complaint,] a citation is issued for [covering] a violation or danger alleged [set forth] in the complaint, a copy of the citation shall [should] be sent to the complainant on or about [at] the same time it is sent to the employer.

Section 3. Informal Review When No Citation Warranted. (1) ~~If [(5) If, after an inspection based on a complaint,] the commissioner determines that a citation is not warranted with respect to a danger or violation alleged in the complaint, the complainant shall [must] be informed in writing of such determination and [At the same time, the complainant should be notified] of her or his right [his rights] of review of the [such] determination.~~

(2) The complaining party may obtain review by submitting a written statement of position to the commissioner [Commissioner of the Department of Workplace Standards].

(6) ~~KRS 338.121(3)(a) provides: "No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this chapter."~~

(3) Upon request of the complaining party, the commissioner, at her or his discretion, may hold an informal conference in which the complaining party may present her or his views.

(4) After considering all views presented, the commissioner shall affirm, modify, or reverse her or his determination and furnish the complaining party a written notification of her or his decision and the reasons therefore.

(5) The decision of the commissioner shall be final and not subject to further review.

Section 4. Informal Review When Inspection Not warranted [Section 2. Inspection not Warranted; Informal Review]. (1) If the commissioner [Commissioner of the Department of Workplace Standards] determines that an inspection is not warranted [because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint under Section 1 of this administrative regulation], she or he shall notify the complaining party in writing of such determination.

(2) The complaining party may obtain review of such determination by submitting a written statement of position to the commissioner.

(3) Upon request of the complaining party, the commissioner, at her or his discretion, may hold an informal conference in which the complaining party may [orally] present her or his views.

(4) After considering all [written and oral] views presented, the commissioner shall affirm, modify, or reverse her or his determination and furnish the complaining party a written notification of her or his decision and the reasons therefore.

(5) The decision of the commissioner shall be final and not subject to further review.

(6) [(2) If the commissioner determines that an inspection is not warranted [because the requirements of Section 1 of this administrative regulation have not been met, he shall notify the complaining party in writing of such determination.] Such determination shall be without prejudice to the filing of a new complaint pursuant KRS 338.121[meeting the requirements of Section 1 of this administrative regulation].

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: December 8, 2020

FILED WITH LRC: December 10, 2020 at 11:44 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on February 23, 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/83618567636?pwd=a2FuQnRFeXNNNE5wQjB5QnJDK1ITdz09>, password 224995, 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 February 28, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation, effective since December 11, 1974, defines terms used in the regulation. Section 2 establishes occupational safety and health complaint procedures. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with House Bill (HB) 50 2017 from the Regular Session of the 2017 General Assembly.

(b) The necessity of this administrative regulation: This regulation is necessary to meet the requirements established in

Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5.

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

(a) How the amendment will change this existing administrative regulation: Section 1 of this administrative regulation, effective since December 11, 1974, defines terms used in the regulation. Section 2 establishes occupational safety and health complaint procedures. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with HB 50 2017 from the Regular Session of the 2017 General Assembly. Amendments to this regulation are technical and maintain consistency with other regulations.

(b) The necessity of the amendment to this administrative regulation: The OSH Program is mandated by Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5 to be as effective as OSHA.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements. This amendment promotes employee health and safety throughout Kentucky and keeps the state program consistent with the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth 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 associated with the amendment to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection will result from the promulgation of this amendment, due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

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

(a) Initially: There is no cost to the OSH Program to implement this amendment to the administrative regulation.

(b) On a continuing basis: There is no continuing cost to the OSH Program to implement the 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: Current state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5

2. State compliance standards. The OSH Program is mandated by Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5 to be as effective as OSHA. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard. This regulation is equivalent.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5 to be at least as effective as the federal requirement. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard. This regulation is equivalent.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This amendment does not impose stricter requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects any unit, part, or division of state or local government covered by KRS Chapter 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, Public Law 91-596 84 STAT. 1590, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, 29 C.F.R. 1953.5

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

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

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

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

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

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: This amendment does not impose any additional requirements or expenditures to the employer.

#### LABOR CABINET

##### Department of Workplace Standards

##### Division of Occupational Safety and Health Compliance

##### Division of Occupational Safety and Health Education and Training

##### (Amendment)

#### 803 KAR 2:100. Imminent danger.

RELATES TO: KRS 338.131

STATUTORY AUTHORITY: KRS 338.051, 338.061 [KRS Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This administrative regulation establishes occupational safety and health imminent danger procedures in construction and general industry. [Pursuant to the authority granted the Kentucky Occupational Safety and Health Standards Board by KRS 338.051, the following administrative regulation is adopted, outlining the procedure to be followed by a compliance safety and health officer as soon as he detects an imminent danger condition.]

Section 1. Definitions. (1) "Commissioner" is defined by KRS 338.015(7).

(2) "Compliance Safety and Health Officer" means a person authorized by the Commissioner to conduct occupational safety and health inspections.

(3) "Employee" is defined by KRS 338.015(2).

(4) "Employer" is defined by KRS 338.015(1).

Section 2. Imminent Danger. (1) When [Whenever and as soon as] a compliance safety and health officer concludes on the basis of an inspection that conditions or practices exist [in any place of employment] which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by KRS Chapter 338, the compliance safety and health officer [he] shall inform the affected employee and employer [employees and employers] of the danger.

(2) The compliance safety and health officer shall notify the affected employee and employer that if the imminent danger is not immediately abated, the compliance safety and health officer is recommending a civil action to restrain such conditions or practices and for other appropriate relief pursuant KRS 338.133 [and that if the imminent danger is not immediately abated he is recommending a civil action to restrain such conditions or practices and for other appropriate relief in accordance with the provisions of KRS 338.133].

(3) A citation [Appropriate citations and notices of proposed penalties] may be issued [with respect to an imminent danger] even though, after being informed of such danger by the compliance safety and health officer, the employer immediately eliminates the imminence of the danger and initiates steps to abate the [such] danger.

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: December 8, 2020

FILED WITH LRC: December 10, 2020 at 11:54 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 23, 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/83618567636?pwd=a2FuQnRFeXNNNE5wQjB5QnJDK1lTdz09>, password 224995, 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 February 28, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation, effective December 11, 1974, defines terms used in the regulation. Section 2 establishes the requirement of the compliance safety and health officer (CSHO) to make employers and employees aware of an imminent danger. Section 2 establishes that civil action may be recommended to protect workers from the imminent danger if the employer does not immediately abate the danger. In addition, Section 2 establishes that citations and penalties may be issued. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with House Bill (HB) 50 2017 from the Regular Session of the 2017 General Assembly.

(b) The necessity of this administrative regulation: This administrative regulation is necessary for effective enforcement of the purposes and policies of the Occupational Safety and Health Act, which ensures, so far as is possible, safe and healthful working conditions of Kentucky workers. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R.

1953.5.

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

(a) How the amendment will change this existing administrative regulation: Section 1 of this administrative regulation, effective since December 11, 1974, defines terms used in the regulation. Section 2 establishes the requirement of the CSHO to make employers and employees aware of an imminent danger. Section 2 establishes that civil action may be recommended to protect workers from the imminent danger if the employer does not immediately abate the danger. In addition, Section 2 establishes that citations and penalties may be issued. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with HB 50 2017 from the Regular Session of the 2017 General Assembly. Amendments to this regulation were technical and intended to maintain consistency with other regulations.

(b) The necessity of the amendment to this administrative regulation: This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in construction and 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: Not applicable.

(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 associated with the amendment to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection will result from the promulgation of this amendment, due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

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

(a) Initially: There is no cost to the OSH Program to implement this amendment to the administrative regulation.

(b) On a continuing basis: There is no continuing cost to the OSH Program to implement the 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: Current state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5

2. State compliance standards. The Kentucky OSH Program is mandated by Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5 to develop and enforce standards that are at least as effective as the federal requirement. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard. This regulation is equivalent.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5 to be at least as effective as the federal requirement. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard. This regulation is equivalent.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable

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 Chapter 338 and engaged in construction and general industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, 29 C.F.R. 1953.5

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

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

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

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

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

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: This amendment does not impose any additional requirements or expenditures to the employer.

LABOR CABINET  
Department of Workplace Standards  
Division of Occupational Safety and Health Compliance  
Division of Occupational Safety and Health Education and Training  
(Amendment)

803 KAR 2:115. Penalties.

RELATES TO: KRS 338.141, 338.991

STATUTORY AUTHORITY: KRS 338.051, 338.061 [KRS Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 (3) requires [Pursuant to the authority granted] 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 to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards [by KRS 338.051, the following rules and administrative regulations are adopted pertaining to the issuance of citations and the levying of penalties concurrent with the issuance of citations]. This administrative regulation establishes occupational safety and health penalty procedures followed by the Department of Workplace Standards.

Section 1. Definitions. (1) "Commissioner" is defined by KRS 338.015.

(2) "Compliance safety and health officer" means a person authorized by the commissioner to conduct occupational safety and health inspections.

(3) "Employee" is defined by KRS 338.015(2).

(4) "Employer" is defined by KRS 338.015(1).

(5) "Review commission" is defined by KRS 338.015(8).

(6) "Working days" means Monday through Friday but does not include Saturday, Sunday, federal, or state holidays, and the day of receipt of notice.

Section 2. Proposed Penalties. (1) After, or concurrent with, the issuance of a citation, and within a reasonable time [after the termination of the inspection], the commissioner [Commissioner of the Department of Workplace Standards] shall notify, with delivery or receipt confirmation, the employer [by certified mail or by personal service by the compliance safety and health officer] of the proposed penalty [under KRS 338.991] or that no penalty is [being] proposed.

(2) Each notice of proposed penalty shall state the proposed penalty shall be deemed a final order of the review commission and not be subject to review by any court or agency if an employer, employee, or representative of the employees fails to notify the commissioner in writing within fifteen (15) working days from the receipt of the proposed penalty that he or she intends to contest the proposed penalty [Any notice of proposed penalty shall state that the proposed penalty shall be deemed to be the final order of the review commission and not subject to review by any court or agency unless, within fifteen (15) working days from the date of receipt of such notice, the employer notifies the Commissioner of the Department of Workplace Standards in writing that he intends to contest the citation or the notification of proposed penalty before the review commission].

(3) [(2)] The commissioner shall determine the amount of any proposed penalty pursuant KRS 338.991, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations.

(4) [(3)] Appropriate penalties may be proposed with respect to an alleged violation even though after being informed of an [such] alleged violation by the compliance safety and health officer, the employer immediately abates, or initiates steps to abate, an [such] alleged violation[. Penalties shall not be proposed for de minimis violations which have no direct or immediate relationship

to safety or health].

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: December 8, 2020

FILED WITH LRC: December 10, 2020 at 11:54 a.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on February 23, 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/83618567636?pwd=a2FuQnRFeXNNNE5wQjB5QnJDK1lTdz09>, password 224995, 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 February 28, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation, effective since December 11, 1974, defines terms used in the regulation. Section 2 establishes the requirements regarding penalty notification, the final order statement, and penalty considerations. 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 is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes employee health and safety throughout Kentucky and ensures the state is as effective as the federal requirement. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5.

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

(a) How the amendment will change this existing administrative regulation: Section 1 of this administrative regulation, effective since December 11, 1974, defines terms used in the regulation. Section 2

establishes the requirements regarding penalty notification, the final order statement, and penalty considerations. This amendment also 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 maintain consistency with other regulations.

(b) The necessity of the amendment to this administrative regulation: The OSH Program is mandated by Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5 to be as effective as OSHA.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements. This amendment promotes employee health and safety throughout Kentucky and keeps the state program consistent with the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth covered by KRS Chapter 338.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are imposed and no immediate action is required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement.

(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. Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5

2. State compliance standards. The OSH Program is mandated

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by Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5 to be as effective as OSHA. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard. This regulation is equivalent.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard. This regulation is equivalent.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This amendment does not impose stricter requirements.

### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects any unit, part, or division of state or local government covered by KRS Chapter 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, Public Law 91-596 84 STAT. 1590, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, 29 C.F.R. 1953.5

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

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

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

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

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

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: This amendment does not impose any additional requirements or expenditures to the employer.

### LABOR CABINET

#### Department of Workplace Standards

#### Division of Occupational Safety and Health Compliance

#### Division of Occupational Safety and Health Education and

#### Training

#### (Amendment)

### 803 KAR 2:240. Time for filing discrimination complaint.

RELATES TO: KRS 338.121(3)(b)

STATUTORY AUTHORITY: KRS 338.051, 338.061[Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board

to establish, modify, or repeal standards and reference federal standards. This [The function of this] administrative regulation establishes [is to identify what should be considered] a reasonable time for filing employee complaints pursuant [alleging discriminatory practice in violation of] KRS 338.121.

Section 1. Definition. "Commissioner" is defined by KRS 338.015(7).

Section 2. Reasonable Time[Defined]. A reasonable time as used in KRS 338.121(3)(b) shall be [defined to be] no more than 120 calendar days for the purpose of filing a complaint with the commissioner[Commissioner of the Department of Workplace Standards].

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: December 8, 2020

FILED WITH LRC: December 10, 2020 at 11:54 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 23, 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/83618567636?pwd=a2FuQnRFexNNNE5wQjB5QnJDK1ITdz09>, password 224995, 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 February 28, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation, effective since May 6, 1986, defines terms used in the regulation. Section 2 establishes the time to file an occupational safety and health (OSH) discrimination complaint. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance House Bill (HB) 50 from the Regular Session of the 2017 General Assembly.

(b) The necessity of this administrative regulation: This regulation is necessary to meet the requirements established in Sections 11(c) and 18 of the OSH Act, 29 C.F.R. 1902.4(c)(2)(v), and 29 C.F.R. 1977.23, which all require Kentucky OSH regulations to be as effective as the federal requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation is necessary to meet the requirements established in Sections 11(c) and 18 of the OSH Act, 29 C.F.R. 1902.4(c)(2)(v), and 29 C.F.R. 1977.23, which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures the state is as effective as the federal requirement. This regulation is necessary to meet the requirements established in Sections 11(c) and 18 of the OSH Act,

29 C.F.R. 1902.4(c)(2)(v), and 29 C.F.R. 1977.23, which all require Kentucky OSH regulations to be as effective as the federal requirements.

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

(a) How the amendment will change this existing administrative regulation: Section 1 of this administrative regulation defines terms used in the regulation. Section 2, effective since May 6, 1986, establishes the time to file an OSH discrimination complaint. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance HB 50 from the Regular Session of the 2017 General Assembly. Amendments to this regulation are technical and maintain consistency with other regulations.

(b) The necessity of the amendment to this administrative regulation: The OSH Program is mandated to be at least as effective as OSHA.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky OSH Standards Board to promulgate OSH administrative regulations. This regulation is necessary to meet the requirements established in Sections 11(c) and 18 of the OSH Act, 29 C.F.R. 1902.4(c)(2)(v), and 29 C.F.R. 1977.23, which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with other administrative regulations.

(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 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 associated with the amendment to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection will result from the promulgation of this amendment, providing all a clear understanding of the requirements.

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

(a) Initially: There is no cost to the OSH Program to implement this amendment to the administrative regulation.

(b) On a continuing basis: There is no continuing cost to the OSH Program to implement the 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: Current state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596, the Occupational Safety and Health Act of 1970,

Sections 11(c) and 18; 29 C.F.R. 1902.4(c)(2)(v), and 29 C.F.R. 1977.23

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1902 and 1977 to be at least as effective as OSHA. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1902 and 1977 to be at least as effective as OSHA. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This amendment does not impose stricter requirements. The administrative regulation establishes a 120 calendar days to file an OSH discrimination complaint whereas the federal timeframe is thirty (30) days.

#### 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 state or local government covered by KRS Chapter 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, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1902 and 1977

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

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

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

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

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

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: This amendment does not impose any additional requirements or expenditures to the employer.

#### LABOR CABINET

#### Department of Workplace Standards Division of Occupational Safety and Health Compliance Division of Occupational Safety and Health Education and Training (Amendment)

#### 803 KAR 2:314. Machinery and machine guarding.

RELATES TO: KRS Chapter 338, 29 C.F.R. Part 1910, 211-219

STATUTORY AUTHORITY: KRS 338.051(3), 338.061 [~~219~~ 29 C.F.R. Part 1910]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health



Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061[(2)] authorizes the board to establish, modify, or repeal standards and reference federal standards [incorporate by reference established federal standards and national consensus standards]. This administrative regulation establishes [machinery and machine guarding] standards that are [to be] enforced by the Department of Workplace Standards [Division of Occupational Safety and Health Compliance] in general industry.

Section 1. Definitions. (1) "Assistant Secretary of Labor" means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet [the Secretary of Labor, Commonwealth of Kentucky].

(2) "C.F.R." means Code of Federal Regulations.

(3) "Employee" is defined in KRS 338.015(2).

(4) [(3)] "Employer" of defined in KRS 338.015(1).

(5) [(4)] "National consensus standard" is defined in KRS 338.015(9).

(6) [(5)] "Standard" is defined in KRS 338.015(3).

(7) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet, Mayo-Underwood Building, 3<sup>rd</sup> Floor, 500 Mero Street, Frankfort, Kentucky 40601.

Section 2. Except as modified by the definitions in Section 1 and requirements in Section 3 [of Sections 3 and 4] of this administrative regulation, general industry shall comply with 29 C.F.R. 1910 Subpart O, Machinery and Machine Guarding [the following federal regulations] published by the Office of the Federal Register, National Archives and Records Administration [:

(1) 29 C.F.R. 1910.211 through 1910.219, revised as of July 1, 2013; and

(2) The revisions to 29 C.F.R. 1910.217 as published in the November 20, 2013 Federal Register, Volume 78, Number 224 and confirmed in the April 18, 2014 Federal Register, Volume 79, Number 75].

Section 3. Reporting Requirement. An employer required by this administrative regulation to report information to the United States Department of Labor, or any subsidiary thereof, shall instead report the information to the Kentucky Labor Cabinet [, U.S. Highway 127 South, Suite 4, Frankfort, Kentucky 40601.

Section 4. Clutch/Brake Control. (1) The language in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1910.217(b)(7)(xii).

(2) The clutch/brake control shall incorporate an automatic means to prevent initiation or continued activation of the single stroke or continuous functions unless the press drive motor is energized and in the forward direction. This provision shall not prevent the employer from utilizing a reversing means of the drive motor with the clutch-brake control in the "inch" position].

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: December 8, 2020

FILED WITH LRC: December 10, 2020 at 11:53 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 23, 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/83618567636?pwd=a2FuQnRFeXNNNE5wQjB5QnJDK1ITdz09>, password 224995, 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 February 28, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email [Robin.Maples@ky.gov](mailto:Robin.Maples@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation defines terms not found in the federal standard. Section 2, effective since December 15, 1989, adopts the requirements of 29 C.F.R. 1910.211-219, which establishes the federal requirements for machinery and machine guarding. Section 3 of this administrative regulation requires employers to report information to the Labor Cabinet. Section 4 is duplicative of the federal standard and removed. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with House Bill (HB) 50 2017 from the Regular Session of the 2017 General Assembly.

(b) The necessity of this administrative regulation: This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5.

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

(a) How the amendment will change this existing administrative regulation: Section 1 of this administrative regulation defines terms not found in the federal standard. Section 2, effective since December 15, 1989, adopts the requirements of 29 C.F.R. 1910.211-219, which establishes the federal requirements for machinery and machine guarding. Section 3 of this administrative regulation requires employers to report information to the Labor Cabinet. Section 4 is duplicative of the federal standard and removed. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with House Bill (HB) 50 2017 from the Regular Session of the 2017 General Assembly.

(b) The necessity of the amendment to this administrative regulation: The OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Amendments to this administrative regulation are technical and maintain consistency with other regulations.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements. This amendment promotes employee health and safety throughout Kentucky and keeps the state program consistent with the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in general industry covered by KRS Chapter 338.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are imposed and no immediate action is required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement.

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

(a) Initially: There will be no cost to the OSH Program implement this administrative regulation.

(b) On a continuing basis: There will be no continuing costs 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 these revisions.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. Part 1952; 29 C.F.R. Part 1953

2. State compliance standards. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as the federal requirement. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This amendment does not impose stricter or additional requirements or responsibilities.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect any unit, part, or division of local government covered by KRS 338 and engaged in general industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

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

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

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

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

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: This amendment does not impose any additional requirements or expenditures to the employer.

#### LABOR CABINET

#### Department of Workplace Standards Division of Occupational Safety and Health Compliance Division of Occupational Safety and Health Education and Training (Amendment)

#### 803 KAR 2:413. [~~Subpart N—~~] Helicopters, hoists, elevators, and conveyors.

RELATES TO: KRS Chapter 338, 29 C.F.R. 1926.550-556

STATUTORY AUTHORITY: KRS 338.051, 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires [~~and 338.061 require~~] the Kentucky Occupational Safety and Health Standards Board to [~~adopt and~~] promulgate occupational safety and health [~~rules,~~] administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements[ ~~and standards~~]. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This [~~The following~~] administrative regulation establishes [~~contains those~~] standards that are [~~to be~~] enforced by the Department of Workplace Standards in [~~Division of Occupational Safety and Health Compliance in the area of~~] construction.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) [~~"Assistant Secretary of Labor" means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet.~~]

(3) "C.F.R." means Code of Federal Regulations.

(3) [(4)] "Employee" is defined by KRS 338.015(2).

(4) [(5)] "Employer" is defined by KRS 338.015(1). [

(6) [~~"Established federal standard" is defined in KRS 338.015(10).~~]

(7) [~~"National consensus standard" is defined in KRS~~]

338.015(9).

(8) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.]

(5)(9) "Standard" is defined in KRS 338.015(3).]

(10) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.]

Section 2. Except as established by the definitions in Section 1, the construction industry shall comply with 29 C.F.R. 1926 Subpart N, Helicopters, Hoists, Elevators, and Conveyors, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration[The Construction Industry shall comply with the Following Federal Regulations published by the Office of the Federal Register, National Archives, and Records Administration:

(1) 29 C.F.R. 1926.550 – 1926.556, revised July 1, 2010; and

(2) The revision of 29 C.F.R. 1926.550 and 553 as published in the August 9, 2010 Federal Register, Volume 75, Number 152.

Section 3. (1) The language in paragraph (2) of this subsection shall apply in lieu of 29 C.F.R. 1926.552(b)(8).

(2) All material hoists shall conform to the requirements of ANSI A10.5-1969, Safety Requirements for Material Hoists, with the exception that material hoists manufactured prior to January 1, 1970 may be used with a drum pitch diameter at least eighteen (18) times the normal rope diameter provided the hoisting wire rope is at least equal in flexibility to 6 x 37 classification wire rope].

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: December 8, 2020

FILED WITH LRC: December 10, 2020 at 11:53 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 23, 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/83618567636?pwd=a2FuQnRFeXNNNE5wQjB5QnJDK1lTd099>, password 224995, 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 February 28, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation, effective since December 15, 1989, defines terms not used in the federal standard. Section 2 of this administrative regulation adopts the requirements of 29 C.F.R. 1926, Subpart N, Helicopters, Hoists, Elevators, and Conveyors. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance House Bill (HB) 50 2017 from the Regular Session of the 2017 General Assembly.

(b) The necessity of this administrative regulation: This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5.

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

(a) How the amendment will change this existing administrative regulation: Section 1 of this administrative regulation, effective since December 15, 1989, defines terms not used in the federal standard. Section 2 of this administrative regulation adopts the requirements of 29 C.F.R. 1926, Subpart N, Helicopters, Hoists, Elevators, and Conveyors and strikes outdated, unnecessary material hoist language. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance HB 50 2017 from the Regular Session of the 2017 General Assembly. Amendments to this regulation are technical and maintain consistency with other regulations.

(b) The necessity of the amendment to this administrative regulation: The OSH Program is mandated by Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5 to be as effective as OSHA.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation maintains consistency with the federal requirements. This amendment promotes employee health and safety throughout Kentucky and keeps the state program consistent with the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in construction activities covered by KRS Chapter 338.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are imposed and no immediate action is required.

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

question (3): There is no additional cost to the OSH Program to implement this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement.

(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. Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5

2. State compliance standards. The OSH Program is mandated by Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5 to be as effective as OSHA. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5 to be at least as effective as the federal requirement. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This administrative regulation does not impose stricter requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects any unit, part, or division of local government covered by KRS 338 and engaged in construction activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, 29 C.F.R. 1953.5

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

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

None.

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

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

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

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: This amendment does not impose any additional requirements or expenditures to the employer.

#### LABOR CABINET Department of Workplace Standards Division of Occupational Safety and Health Compliance Division of Occupational Safety and Health Education and Training (Amendment)

#### 803 KAR 2:420. Blasting and use of explosives.

RELATES TO: KRS 338.051(3), 338.061, 29 C.F.R. 1926.900-.914

STATUTORY AUTHORITY: KRS 338.051(3), 338.061[,-29 C.F.R.-1926]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires[and 338.061 authorize] the Kentucky Occupational Safety and Health Standards Board to [adopt-and] promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. [KRS 338.061(2) provides that the board may incorporate by reference established federal standards and national consensus standards.] This[The following] administrative regulation establishes[contains these] standards [to-be] enforced by the Department of Workplace Standards in the construction industry[Division of Occupational Safety and Health Compliance in the area of construction].

Section 1. Definitions. (1) "C.F.R." means Code of Federal Regulations.

(2) "Employee" is defined by KRS 338.015(2).

(3) "Employer" is defined by KRS 338.015(1).

(4) "Secretary" is defined by KRS 338.015(12).

(5) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(6) "Standard" is defined in KRS 338.015(3). [Precautions to be taken to prevent accidental discharge of electric blasting caps from current induced by radar, radio transmitters, lightning, adjacent powerlines dust storms, or other sources of extraneous electricity.]

Section 2. Except as modified by definitions in Section 1 of this administrative regulation, the construction industry shall comply with 29 C.F.R. 1926, Subpart U, Blasting and the Use of Explosives, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. [(1) The language in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1926.900(k)(3)(i).

(a) 1926.900(k)(3)(i). The prominent display of adequate signs warning against the use of mobile radio transmitters, on all roads within 1,000 feet of blasting operations. Whenever adherence to this 1,000 foot distance would create an operational handicap, a competent person shall be consulted to evaluate the particular situation, and alternative provisions may be made which are adequately designed to prevent premature firing of electric blasting

caps. The competent person may be a blaster certified by the Kentucky Department of Mines and Minerals with a working knowledge of mobile radio transmission and receiving hazards as related to use of electric blasting cap firing systems and designated by the employer. A description of any alternative shall be in writing describing the unusual conditions at the site and the alternative measure used. The description shall be maintained at the construction site during the duration of the work and shall be available for inspection by representatives of the Secretary, Kentucky Labor Cabinet.

(b) 1926.900(k)(4), Ensuring that mobile radio transmitters which are less than 100 feet away from electric blasting caps, in other than original containers, shall be deenergized, and have the radio transmission circuit or vehicle effectively locked against transmitter usage.

(2) 29 C.F.R. 1926.900(k)(3)(i) is amended to read: The prominent display of adequate signs warning against the use of mobile radio transmitters, on all roads within 1,000 feet of blasting operations. Whenever adherence to this 1,000-foot distance would create an operational handicap, a competent person shall be consulted to evaluate the particular situation, and alternative provisions may be made which are adequately designed to prevent premature firing of electric blasting caps. The competent person may be a blaster certified by the Kentucky Department of Mines and Minerals with a working knowledge of mobile radio transmission and receiving hazards as related to use of electric blasting cap firing systems and designated by the employer. A description of any alternative shall be in writing describing the unusual conditions at the site and the alternative measure used. The description shall be maintained at the construction site during the duration of the work and shall be available for inspection by representatives of the Secretary, Kentucky Labor Cabinet.

(3) The language in subsection (4) of this section shall apply in lieu of 29 C.F.R. 1926.900(k)(4).

(4) 29 C.F.R. 1926.900(k)(4) is amended to read: Ensuring that mobile radio transmitters which are less than 100 feet away from electric blasting caps, in other than original containers, shall be deenergized, and have the radio transmission circuit or vehicle effectively locked against transmitter usage.

Section 2. Use of Black Powder. (1) The language in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1926.900(p).

(2) 29 C.F.R. 1926.900(p) is amended to read: The use of black powder shall be prohibited except when a desired result cannot be obtained with another type of explosive, such as in quarrying certain types of dimension stone.

Section 3. Electric Blast Initiation. (1) The language in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1926.900(r).

(2) 29 C.F.R. 1926.900(r) is amended to read: All electric blasts shall be fired with an electric blasting machine or properly designed electric power source, and in accordance with the provisions of subsection. 906(a) and (r).

Section 4. Transporting of Explosives or Blasting Agents. (1) The language in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1926.902(d).

(2) 29 C.F.R. 1926.902(d) is amended to read: Explosives or blasting agents shall be transported in separate vehicles unless the detonators are packaged in specified containers and transported all in compliance with DOT Regulation 49 C.F.R. 177.835(g).

Section 5. Underground Transportation of Explosives. (1) The language in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1926.903(e).

(2) 29 C.F.R. 1926.903(e) is deleted.

Section 6. Loading of Explosives or Blasting Agents. (1) The language in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1926.905(h).

(2) 29 C.F.R. 1926.905(h) is amended to read: Machines and

all tools not used for loading explosives into the boreholes shall be removed from the immediate location of holes before explosives are delivered. Equipment shall not be operated within fifty (50) feet of a loaded hole except that which is required when the containment of the blast is necessary to prevent flyrock. When equipment or machinery is used to place mats, overburden, or protective material on the shot area, a competent person (who may be a blaster certified by the Kentucky Department of Mines and Minerals) shall implement adequate precautions to protect the lead wires or initiating systems such as protecting the components from direct contact with materials which sever, damage, impact, or conduct stray currents to the explosives system. This would include preventing the dragging of blasting mats or running over the holes and systems with the equipment used.

(3) The language in subsection (4) of this section shall apply in lieu of 29 C.F.R. 1926.905(i).

(4) 1926.905(i) is amended to read: No activity of any nature other than that which is required for loading holes with explosives and preparation required for initiating the blast and containment of flyrock from the blast shall be permitted in a blast area.

(5) The language in subsection (6) of this section shall apply in lieu of 29 C.F.R. 1926.905(k).

(6) 29 C.F.R. 1926.905(k), Holes shall be inspected prior to loading to determine depth and conditions. When necessary to drill a hole in proximity to a charged or misfired hole, the distance between these two (2) holes must be greater than the depth being drilled and precautions taken to ensure the integrity of any adjacent charged hole or misfired hole. This distance must be determined by a competent person (who may be a blaster certified by the Kentucky Department of Mines and Minerals) in order to insure that there is no danger of intersecting the charged or misfired hole.

(7) The language in subsection (8) of this section shall apply in lieu of 29 C.F.R. 1926.905(n).

(8) 29 C.F.R. 1926.905(n) is amended to read: In blasting, explosives in Fume Class I, as set forth by the Institute of the Makers of Explosives, shall be used; however, Fume Class I explosives are not required when adequate ventilation is provided and the workings are abandoned for a period of time sufficient to allow dissipation of all fumes.

Section 7. Initiation of Explosive Charges - Electric Blasting. (1) The language in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1926.906(p).

(2) 29 C.F.R. 1926.906(p) is amended to read: The blaster shall be in charge of the blasting machines, and no other person shall connect the leading wires to the machine except under the immediate physical and visual supervision of the blaster.

(3) The language in subsection (4) of this section shall apply in lieu of 29 C.F.R. 1926.906(q).

(4) 29 C.F.R. 1926.906(q) is amended to read: Blasters, when testing circuits to charged holes, shall use only blasting galvanometers equipped with a silver chloride cell especially designed for this purpose or an instrument designed solely for use in blasting, which incorporates a current-limiting device into its circuitry. No instrument capable of producing over fifty (50) milliamps on direct short circuit shall be used.

(5) The language in subsection (6) of this section shall apply in lieu of 29 C.F.R. 1926.906(s).

(6) 29 C.F.R. 1926.906(s) is amended to read: Leading wires shall remain shorted and not be connected to the blasting machine or other source of current until the charge is to be fired.

Section 8. Use of Safety Fuse. (1) The language in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1926.907(a).

(2) 29 C.F.R. 1926.907(a) is amended to read: The use of a fuse that has been hammered or injured in any way shall be forbidden.

Section 9. Inspection After Blasting. (1) The language in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1926.910(o).

(2) 29 C.F.R. 1926.910(b) is amended to read: Sufficient time shall be allowed, not less than fifteen (15) minutes in tunnels, for

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the smoke and fumes to leave the blasted area before returning to the shot. An inspection of the area and the surrounding rubble shall be made by the blaster to determine if all charges have been exploded before employees are allowed to return to the operation.

~~Section 10. Incorporation by Reference (1) The following material is incorporated by reference:~~

~~(a) The material in subparagraphs 1 through 14 of this paragraph, the Code of Federal Regulations, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, revised as of July 1, 1997, is incorporated by reference:~~

- ~~1. 29 C.F.R. 1926.900 through 1926.900(k)(2);~~
- ~~2. 29 C.F.R. 1926.900(k)(3)(ii);~~
- ~~3. 29 C.F.R. 1926.900(k)(5) through 1926.900(o);~~
- ~~4. 29 C.F.R. 1926.900(q);~~
- ~~5. 29 C.F.R. 1926.900(s) through 1926.902(c);~~
- ~~6. 29 C.F.R. 1926.902(e) through 1926.903(d);~~
- ~~7. 29 C.F.R. 1926.903(f) through 1926.905(g);~~
- ~~8. 29 C.F.R. 1926.905(i);~~
- ~~9. 29 C.F.R. 1926.905(l) through 1926.905(m);~~
- ~~10. 29 C.F.R. 1926.905(o) through 1926.906(e);~~
- ~~11. 29 C.F.R. 1926.906(f);~~
- ~~12. 29 C.F.R. 1926.906(h);~~
- ~~13. 29 C.F.R. 1926.907(b) through 1926.910(a);~~
- ~~14. 29 C.F.R. 1926.910(c) through 1926.914.~~

~~(b) The revision to 29 C.F.R. 1926.906, "Initiation of Explosive Charges – Electric Blasting", as published in the Federal Register, Volume 63, Number 117, June 18, 1998, is incorporated by reference.~~

~~(2) This material may be inspected and copied at: Kentucky Labor Cabinet, Division of Occupational Safety and Health Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. – 4:30 p.m. (ET), Monday through Friday.]~~

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: December 8, 2020

FILED WITH LRC: December 10, 2020 at 11:53 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 23, 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/83618567636?pwd=a2FuQnRFeXNNNE5wQjB5QnJDK1lTdz09>, password 224995, 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 February 28, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email [Robin.Maples@ky.gov](mailto: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 December 15, 1989, defines terms not used in the federal standard. Section 2 adopts

the requirements of 29 C.F.R. 1926, Subpart U and strikes unnecessary language. 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 regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health (OSH) Standards Board to promulgate OSH administrative regulations. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5.

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

(a) How the amendment will change this existing administrative regulation: Section 1 of this administrative regulation, effective since December 15, 1989, defines terms not used in the federal standard. Section 2 adopts the requirements of 29 C.F.R. 1926, Subpart U and strikes unnecessary language. This amendment also 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 requirement.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA.

(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) requires and 338.061 authorizes the Kentucky OSH Standards Board to promulgate occupational safety and health rules and administrative regulations and standards.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements. This amendment promotes employee health and safety throughout Kentucky and keeps the state program consistent with the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in construction activities covered by KRS Chapter 338.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are imposed and no immediate action is required.

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

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

promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement.

(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. Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5

2. State compliance standards. The Kentucky OSH Program is mandated by Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5 to develop and enforce standards that are at least as effective as the federal requirement. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5 to develop and enforce standards that are at least as effective as the federal requirement. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard.

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 requirements.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects any unit, part, or division of local government covered by KRS 338 and engaged in construction industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, 29 C.F.R. 1953.5

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

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

(b) How much revenue will this administrative regulation

generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

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

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

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: This amendment does not impose any additional requirements or expenditures to the employer.

#### ENERGY AND ENVIRONMENT CABINET Public Service Commission (Amendment)

##### 807 KAR 5:056. Fuel adjustment clause.

RELATES TO: KRS 61.870 - 61.884, 143.020, Chapter 278

STATUTORY AUTHORITY: KRS 278.030(1), (2), 278.040(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) authorizes the Public Service Commission to promulgate administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.030(1) authorizes utilities to demand, collect, and receive fair, just, and reasonable rates. KRS 278.030(2) requires every utility to furnish adequate, efficient, and reasonable service. This administrative regulation establishes the requirements with respect to the implementation of automatic fuel adjustment clauses by which electric utilities may immediately recover increases in fuel costs subjected to later scrutiny by the Public Service Commission.

Section 1. Fuel Adjustment Clause. Fuel adjustment clauses that are not in conformity with the requirements established in subsections (1) through (6) of this section are not in the public interest and may result in suspension of those parts of the rate schedules based on severity of the nonconformity and any history of nonconformity:

(1) The fuel adjustment clause shall provide for periodic adjustment per Kilowatt Hour (KWH) of sales equal to the difference between the fuel costs per KWH sale in the base period and in the current period according to the following formula:

$$\text{Adjustment Factor} = \frac{F(m)}{S(m)} - \frac{F(b)}{S(b)}$$

Where F(b) is the cost of fuel in the base period, F(m) is the cost of fuel in the current period, S(b) is sales in the base period, and S(m) is sales in the current period, all as defined below.

(2) F(b)/S(b) shall be determined so that on the effective date of the commission's approval of the utility's application of the formula, the resultant adjustment shall be equal to zero.

(3) Fuel costs (F) shall be the most recent actual monthly cost, based on weighted average inventory costing, of:

(a) Fossil fuel consumed in the utility's own plants, and the utility's share of fossil and nuclear fuel consumed in jointly owned or leased plants, plus the cost of fuel that would have been used in plants suffering forced generation or transmission outages, but less the cost of fuel related to substitute generation; plus

(b) The actual identifiable fossil and nuclear fuel costs associated with energy purchased for reasons other than as established in paragraph (c) of this subsection, but excluding the cost of fuel related to purchases to substitute for the forced outages; plus

(c) The net energy cost of energy purchases, exclusive of capacity or demand charges irrespective of the designation assigned to the transaction, if the energy is purchased on an economic dispatch basis. Costs, such as the charges for economy energy purchases, the charges as a result of scheduled outage,



and other charges for energy being purchased by the buyer to substitute for the buyer's own higher cost energy, may be included; and less

(d) The cost of fossil fuel recovered through intersystem sales, including the fuel costs related to economy energy sales and other energy sold on an economic dispatch basis.

(4) Forced outages ~~shall include [are]~~ all nonscheduled losses of generation or transmission that require substitute power for a continuous period in excess of six (6) hours. If forced outages are not the result of faulty equipment, faulty manufacture, faulty design, faulty installations, faulty operation, or faulty maintenance, but are Acts of God, riot, insurrection, or acts of the public enemy, then the utility may, upon proper showing, with the approval of the commission, include the fuel cost of substitute energy in the adjustment. In making the calculations of fuel cost (F) in subsection (3)(a) and (b) of this section, the forced outage costs to be subtracted shall be no less than the fuel cost related to the lost generation until approval is obtained.

(5) Sales (S) shall be all KWH's sold, excluding intersystem sales. Utility used energy shall not be excluded in the determination of sales (S). If, for any reason, billed system sales cannot be coordinated with fuel costs for the billing period, sales may be equated to:

- (a) Generation; plus
- (b) Purchases; plus
- (c) Interchange-in; less
- (d) Energy associated with pumped storage operations; less
- (e) Intersystem sales referred to in subsection (3)(d) above[of this section]; less

(f) Total system losses.

(6) The cost of fossil fuel shall only include the cost of the fuel itself and necessary charges for transportation of the fuel from the point of acquisition to the unloading point, as listed in Account 151 of FERC Uniform System of Accounts for Public Utilities and Licensees, less any cash or other discounts.

Section 2. Filing Requirements. (1) If a utility initially proposes a fuel adjustment clause, the utility shall submit copies of each fossil fuel purchase contract not otherwise on file with the commission and all other agreements, options, amendments, modifications, and similar documents related to the procurement of fuel supply or purchased power.

(2) Any changes in the contracts or other documents filed pursuant to subsection (1) of this section, including price escalations, and any new agreements entered into after the initial submission, shall be submitted at the time they are entered into.

(3) If fuel is purchased from utility-owned or controlled sources, or the contract contains a price escalation clause, those facts shall be noted, and the utility shall explain and justify them in writing.

(4) The monthly fuel adjustment shall be filed with the commission no later than ten (10) days before it is scheduled to go into effect, along with all the necessary supporting data to justify the amount of the adjustment.

(5) Copies of all documents required to be filed with the commission under this administrative regulation shall be open and made available for public inspection at the office of the Public Service Commission pursuant to the provisions of KRS 61.870 [te] through 61.884.

Section 3. Review of Fuel Adjustment Clauses. (1) Fuel charges that are unreasonable shall be disallowed and may result in the suspension of the fuel adjustment clause based on the severity of the utility's unreasonable fuel charges and any history of unreasonable fuel charges.

(2) The commission on its own motion may investigate any aspect of fuel purchasing activities covered by this administrative regulation.

(3) (a) At six (6) month intervals, the commission shall conduct a formal review and may conduct public hearings on a utility's past fuel adjustments.

(b) The commission shall order a utility to charge off and amortize, by means of a temporary decrease of rates, any adjustments the commission finds unjustified due to improper

calculation or application of the charge or improper fuel procurement practices.

(4)(a) Every two (2) years following the initial effective date of each utility's fuel clause, the commission shall conduct a formal review and evaluate past operations of the clause, disallow improper expenses and, to the extent appropriate, reestablish the fuel clause charge in accordance with Section 1 (2) of this administrative regulation.

(b) The commission may conduct a public hearing if the commission finds that a hearing is necessary for the protection of a substantial interest or is in the public interest. [

~~(5) For any contracts entered into on or after December 1, 2019, the commission shall, in determining the reasonableness of fuel costs in procurement contracts and fuel procurement practices, evaluate the reasonableness of fuel costs in contracts and competing bids based on the cost of the fuel less any coal severance tax imposed by any jurisdiction.]~~

This is to certify that the Public Service Commission approved promulgation of this administrative regulation, pursuant to KRS 278.040(3), on December 14, 2020.

LINDA C. BRIDWELL, PE Executive Director

MICHAEL J. SCHMITT, Chairman

APPROVED BY AGENCY: December 14, 2020

FILED WITH LRC: December 14, 2020 at 3:50 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A virtual public hearing on this administrative regulation shall be held on February 25, 2021, at 9:00 a.m. Eastern Standard Time at the Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing, by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public and instructions on how to attend and participate virtually will be published on the Commission's website at [psc.ky.gov](http://psc.ky.gov). 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. The Commission, however, will post a video recording of the hearing on its website. 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 February 28, 2021. Written notification of intent to be heard at the public hearing and written comments on the proposed amendment should be sent or delivered to the contact person listed below.

CONTACT PERSON: John E.B. Pinney, Acting General Counsel, Kentucky Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601, phone (502) 782-2587, mobile (502) 545-6180, fax (502) 564-7279, email [Jeb.Pinney@ky.gov](mailto:Jeb.Pinney@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John E.B. Pinney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation prescribes the requirements with respect to the implementation of automatic fuel adjustment clauses by which electric utilities may immediately recover increases in fuel costs subject to later scrutiny by the Kentucky Public Service Commission.

(b) The necessity of this administrative regulation: This regulation promotes reliable electric service at reasonable rates by creating a mechanism by which fluctuations in fuel costs, which are a significant and volatile cost in electric generation, may be reflected in customer bills in a timely manner, subject to commission oversight, without a more burdensome general rate adjustment proceeding.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 278.040(3) provides that the commission may promulgate administrative regulations to



implement the provisions of KRS Chapter 278. KRS 278.030(1) provides that all rates received by an electric utility subject to the jurisdiction of the commission shall be fair, just and reasonable. KRS 278.030(2) provides that every utility shall furnish adequate, efficient and reasonable service. Administrative regulation number, 807 KAR 5:056, limits regulatory lag by prescribing a mechanism by which fluctuations in fuel prices, which are a significant and volatile cost in electric generation, may be reflected in customer bills in a timely manner, subject to commission oversight, without a more burdensome general rate adjustment proceeding.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation limits regulatory lag by prescribing a mechanism by which fluctuations in fuel prices, which are a significant and volatile cost in electric generation, may be reflected in customer bills in a timely manner, subject to commission oversight, without a more burdensome general rate adjustment proceeding.

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

(a) How the amendment will change this existing administrative regulation: The proposed amendment deletes Section 3(5), so that the Commission is no longer required to subtract any severance taxes when evaluating the reasonableness of fuel costs in contracts and competing bids

(b) The necessity of the amendment to this administrative regulation: (1) a federal legal challenge has been brought alleging that 807 KAR 5:056 Section 3(5) is unconstitutional because it violates the Dormant Commerce Clause of the United States Constitution; (2) in the event that a federal court finds that Section 3(5) is unconstitutional, Section 3(5) will be enjoined and the Commonwealth may have to pay significant attorneys' fees to the prevailing party; and (3) removing Section 3(5) reduces regulatory uncertainty for regulated electricity generators whose reporting requirements to the commission may change suddenly based upon the legal challenge.

(c) How the amendment conforms to the content of the authorizing statutes: Administrative regulation number, 807 KAR 5:056, continues to limit regulatory lag by prescribing a mechanism by which fluctuations in fuel prices, whether up or down, may be reflected in customer bills in a timely manner, subject to commission oversight, without a more burdensome general rate adjustment proceeding. The amendment clarifies the application of the regulation by removing regulatory uncertainty related to the legal challenge to Section 3(5). The proposed amendment is consistent with the content of the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: The proposed amendment further clarifies the application of 807 KAR 5:056 by removing regulatory uncertainty related to the legal challenge to Section 3(5), and ensures customers continue to receive adequate, efficient and reasonable service through the utilities' timely recovery of volatile costs for fuel from diverse sources.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The regulation will affect regulated electric generation and distribution utilities in the Commonwealth of which there are approximately 25.

(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 amendment of the regulation will remove regulatory uncertainty related to the legal challenge to Section 3(5) and allow the regulated entities certainty in their fuel procurement practices. The commission does not anticipate the regulated entities having to take additional actions to comply with the amendments.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Zero Dollars; no fiscal impact.

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3): The amendment resolves regulatory uncertainty, and thereby should ease compliance, which should ease the burden on the regulated entities while allowing the commission to maintain its oversight of fuel adjustment clauses.

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

(a) Initially: Zero Dollars; no fiscal impact.

(b) On a continuing basis: Zero Dollars; no fiscal impact.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The commission does not anticipate this amendment increasing its enforcement cost. The commission currently funds enforcement of this regulation through its general operating budget funded through annual assessments paid by regulated utilities pursuant to KRS 278.130, *et. seq.*, and this amendment has no effect on that 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 fiscal impact.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees are established and existing fees will not be affected.

(9) TIERING: Is tiering applied? Tiering is not applied to this regulation, because it would not be appropriate. This regulation simply creates a mechanism by which fluctuations in fuel costs incurred by each utility may be passed through to customer bills in a timely manner. Although the utilities to which this regulation applies vary in size and location, they function in a similar manner. Moreover, the amounts that are flowed through the fuel adjustment clauses, whether they result in increases or decreases in customer bills, will vary based on the size of the utility. The commission's review of the fuel adjustment clauses of smaller utilities will be less burdensome by virtue of the fact that there is less to review. However, while the total amounts flowed through the fuel adjustment clauses vary based on the size of the utility, the fuel costs will make up approximately the same percentage of the utilities expense and their customer bills regardless of the size of the utility, so there would be no basis for reviewing the amounts passed through fuel adjustment clauses more or less frequently based on the size of the utility.

#### 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? No impact.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 278.040

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Zero Dollars; no fiscal impact.

(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? Zero Dollars; no fiscal impact.

(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? Zero Dollars; no fiscal impact.

(c) How much will it cost to administer this program for the first year? Zero Dollars; no fiscal impact.

(d) How much will it cost to administer this program for subsequent years? Zero Dollars; no fiscal impact.

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: None.

(2) State compliance standards: N/A

(3) Minimum or uniform standards contained in the federal mandate: N/A

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? N/A

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

**CABINET FOR HEALTH AND FAMILY SERVICES**

**Department for Public Health**

**Division of Public Health Protection and Safety**

**(Amendment)**

**902 KAR 45:160. Kentucky food and cosmetic processing, packaging, storage, and distribution operations.**

RELATES TO: KRS 13B, 194A.005, 217.005 - 217.205, 271.215, 217.290 - 217.390, 217.990 - 217.992, 318.130, 21 C.F.R. Part 1, 7, 70, 73, 74, 81, 82, 100 - 102, 104 - 107, 108 Subpart B, 109, 113, 114, 117, 120, 123, 129, 130, 133, 135 - 137, 139, 145, 146, 150, 152, 155, 156, 158, 160, 161, 163 - 166, 168, 169, 170, 172 - 178, 180 - 189, 21 U.S.C. 321, 343-345, 373, 374, 374a

STATUTORY AUTHORITY: KRS 194A.050(1), 211.090(3), 211.180(1), 217.125(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) and 217.125(1) authorize the Cabinet for Health and Family Services to promulgate administrative regulations for the efficient administration and enforcement of KRS 217.005 to 217.215. The secretary is authorized to promulgate administrative regulations consistent with those promulgated under the federal act and the Fair Packaging and Labeling Act ~~to regulate food processing, packaging, storage, and distribution operations~~. This administrative regulation establishes procedures and requirements for food and cosmetic processing, packaging, storage, and distribution operations for the purpose of protecting public health.

Section 1. Definitions. (1) "Adulterated" is defined by KRS 217.025.

(2) "Cabinet" is defined by KRS 194A.005(1).

(3) "Food processing establishment" is defined by KRS 217.015(20).

(4) "Food storage warehouse" is defined by KRS 217.015(22).

(5) "Imminent health hazard" is defined by KRS 217.015(24).

(6) "Misbranded" is defined by KRS 217.035.

(7) "No Action Indicated" or "NAI" means a plant inspection classification that indicates the firm has no violating condition or that only a minor violation was noted at the time of inspection.

(8) "Official Action Indicated" or "OAI" means a plant inspection classification that indicates a condition noted during the inspection was significant enough to pose an imminent health hazard or was an uncorrected VAI condition on a previous inspection.

(9) "Plant" means a food processing establishment, cosmetic processing establishment, or a food storage warehouse.

(10) "Ready-to-eat" means food that is in a form that is edible without washing, cooking, or additional preparation by the food plant or the consumer to achieve food safety, and is expected to be consumed in that form.

(11) "Specialized processes" means foods processed under 21 C.F.R. Parts 113, 114, 120, and 123.

(12) "State Plumbing Code" means the code established by KRS Chapter 318 and 815 KAR Chapter 20.

(13) ~~(14)~~ "Voluntary Action Indicated" or "VAI" means a plant inspection classification that indicates a condition was noted during the inspection that is in violation of this administrative regulation but was not significant enough to pose an imminent health hazard.

Section 2. Applicability. (1) Except as provided in subsection (2) of this section, a plant shall comply with the following federal requirements:

(a) 21 U.S.C. 373, Records;

(b) 21 C.F.R. 1.20 - 1.24, General labeling requirements;

(c) 21 C.F.R. 7.1 - 7.13, General ~~[enforcement policy]~~ provisions;

(d) 21 C.F.R. 7.40 - 7.59, Food recalls provisions;

(e) 21 C.F.R. 70.20 - 70.25, Packaging and labeling requirements;

(f) 21 C.F.R. 73.1 - 73.615, Listing of food color additives exempt from certification;

(g) 21 C.F.R. 74.101 - 74.706, Listing of food color additives subject to certification;

(h) 21 C.F.R. Part 81, General specifications and general restrictions for provisional color additives for use in foods, drugs, and cosmetics;

(i) 21 C.F.R. 82.3 - 82.706, Listing of certified provisionally listed food colors and specifications;

(j) 21 C.F.R. 100.155, Salt and iodized salt;

(k) 21 C.F.R. Part 101, Food labeling;

(l) 21 C.F.R. Part 102, Common or usual name for ~~nonstandardized~~[non-standardized] foods;

(m) 21 C.F.R. Part 104, Nutritional quality guidelines for foods;

(n) 21 C.F.R. Part 105, Foods for special dietary use;

(o) 21 C.F.R. Part 106, Infant formula quality control procedures;

(p) 21 C.F.R. Part 107, Infant formula;

(q) 21 C.F.R. 108 Subpart B, Specific requirements and conditions for exemption from or compliance with an emergency permit;

(r) 21 C.F.R. Part 109, Unavoidable contaminants in food for human consumption and food packaging materials;

(s) 21 C.F.R. Part 113, Low acid foods;

(t) 21 C.F.R. Part 114, Acidified foods;

(u) 21 C.F.R. Part 117, Hazard analysis and critical control point (HACCP) systems;

(v) 21 C.F.R. Part 120, Hazard analysis and critical control point (HACCP) systems;

(w) 21 C.F.R. Part 123, Fish and fishery products;

(x) 21 C.F.R. Part 129, Processing and bottling of bottled drinking water;

(y) 21 C.F.R. Part 130, Food standards general;

(z) 21 C.F.R. 133.10, 133.124, 133.125, 133.167 - 133.169, 133.171, 133.173 - 133.176, 133.179 - 133.180, Cheeses and related cheese products;

(aa) 21 C.F.R. Part 135, Frozen desserts;

(bb) 21 C.F.R. Part 136, Bakery products;

(cc) 21 C.F.R. Part 137, Cereal flours and related products;

(dd) 21 C.F.R. Part 139, Macaroni and noodle products;

(ee) 21 C.F.R. Part 145, Canned fruits;

(ff) 21 C.F.R. Part 146, Canned fruit juices;

(gg) 21 C.F.R. Part 150, Fruit butters, jellies, preserves, and related products;

(hh) 21 C.F.R. Part 152, Fruit pies;

(ii) 21 C.F.R. Part 155, Canned vegetables;

(jj) 21 C.F.R. Part 156, Vegetable juices;

(kk) 21 C.F.R. Part 158, Frozen vegetables;

(ll) 21 C.F.R. Part 160, Eggs and egg product;

(mm) 21 C.F.R. Part 161, Fish and shellfish;

(nn) 21 C.F.R. Part 163, Cacao products;

(oo) 21 C.F.R. Part 164, Tree nut and peanut products;

(pp) 21 C.F.R. Part 165, Beverages;

(qq) 21 C.F.R. Part 166, Margarine;

(rr) 21 C.F.R. Part 168, Sweeteners and table syrups;

(ss) 21 C.F.R. Part 169, Food dressings and flavorings;

(tt) 21 C.F.R. Part 170, Food additives;

(uu) 21 C.F.R. Part 172, Food additives permitted for direct addition to food for human consumption;

(vv) 21 C.F.R. Part 173, Secondary direct food additives permitted in food for human consumption;

(ww) 21 C.F.R. Part 174, Indirect food additives: general;

- (xx) 21 C.F.R. Part 175, Indirect food additives: adhesives and components of coatings;
  - (yy) 21 C.F.R. Part 176, Indirect food additives: paper and paperboard components;
  - (zz) 21 C.F.R. Part 177, Indirect food additives: polymers;
  - (aaa) 21 C.F.R. Part 178, Indirect food additives: adjuvants, production aids, and sanitizers;
  - (bbb) 21 C.F.R. Part 180, Food additives permitted in food or in contact with food on an interim basis pending additional study;
  - (ccc) 21 C.F.R. Part 181, Prior sanctioned food ingredients;
  - (ddd) 21 C.F.R. Part 182, Substances generally recognized as safe;
  - (eee) 21 C.F.R. Part 184, Direct food substances affirmed as generally recognized as safe;
  - (fff) 21 C.F.R. Part 186, Indirect food substances affirmed as generally recognized as safe;
  - (ggg) 21 C.F.R. Part 189, Substances prohibited from use in human food; and
  - (hhh) 21 U.S.C. 321, 343 to 345, 374, 374a, Nutritional and food allergen labeling requirements.
- (2) The following federal regulations shall not apply:
- (a) 21 C.F.R. 101.69;
  - (b) 21 C.F.R. 101.108;
  - (c) 21 C.F.R. 102.19;
  - (d) 21 C.F.R. 106.120;
  - (e) 21 C.F.R. 107.200 - 107.280;
  - (f) 21 C.F.R. 120.14;
  - (g) 21 C.F.R. 123.12;
  - (h) 21 C.F.R. 130.5 - 130.6;
  - (i) 21 C.F.R. 130.17;
  - (j) 21 C.F.R. 170.6;
  - (k) 21 C.F.R. 170.15; and
  - (l) 21 C.F.R. 170.17.

Section 3. Permits. (1) Before operating, a food or cosmetic manufacturing or processing plant, [food] packaging plant, [food] storage warehouse, or [food] distribution warehouse shall obtain a permit from the cabinet in accordance with KRS 217.125.

(2) Application for a permit shall be made on a [Form] DFS-260, Application for Permit to Operate a Food Plant or Cosmetic Manufacturing Plant, and shall be submitted to the cabinet with the annual fee established by 902 KAR 45:180~~[440]~~.

(3) A permit for food or cosmetic manufacturing or processing plant, [food] packaging, [food] storage, or [food] distribution shall only be issued:

- (a) In the name of the applicant;
  - (b) For the location identified in the application; and
  - (c) For a firm that is in compliance with this administrative regulation and KRS 217.005 - 217.215.
- (4) A permit shall:
- (a) Be posted in a conspicuous place in the firm;
  - (b) Expire on December 31 of each year; and
  - (c) Be renewed in accordance with KRS 217.125(12) [and] by submitting the form and fee required by subsection (2) of this section.

(5) Failure to apply for or renew a permit to operate a food or cosmetic manufacturing or processing plant, packaging plant, storage warehouse, or distribution warehouse[plant] shall result in the cabinet issuing a Food or Cosmetic Manufacturing Plant Enforcement Notice (DFS-263) to cease operation.

(6) Food processing plants shall be classified by the highest risk level of the food processed.

(a) A high risk food plant:  
1. Is engaged in international, interstate, statewide, or regional distribution; and

2. Uses one (1) or all of the following manufacturing processes:  
a. Time and temperature controlled foods that are ready-to-eat;  
b. High risk foods that are considered ready-to-eat; or  
c. Foods that require specialized processes to decrease risk potential.

(b) A medium risk food plant processes foods that are either ready-to-eat foods or potentially hazardous foods, but not both.

(c) A low risk food plant processes foods that are not time and

temperature controlled.

Section 4. Plan Review. (1) Approval shall be obtained from the cabinet or its local health department agent prior to beginning work, if:

- (a) A plant is constructed, remodeled, or altered;
  - (b) A plant's plumbing is relocated;
  - (c) Additional plumbing is added to a plant; or
  - (d) An existing structure is converted for use as a plant.
- (2) To obtain approval, an applicant shall submit plans and specifications for the construction, remodeling, or alteration to the local health department in the county in which the construction, remodeling, or alteration will take place.
- (3) Plans shall be prepared to show:
- (a) Equipment layout;
  - (b) Size;
  - (c) Location and type of facilities; and
  - (d) Plumbing riser diagram.

Section 5. Construction and Maintenance. (1) The floor of the [food] preparation, [food] storage, and utensil washing area, walk-in refrigerator, dressing room, locker room, toilet room, and vestibule shall be:

- (a) Smooth;
  - (b) Durable;
  - (c) Non-absorbent; and
  - (d) Easily cleaned.
- (2) Floors shall be cleaned and maintained.
- (3) A juncture of a wall with a floor shall be covered and sealed.
- (4) The juncture between the wall and floor shall be tight-fitting.
- (5)(a) A floor drain shall be provided in a floor that is water flushed for cleaning or that receives discharge of water or other fluid waste from equipment.

(b) Floors shall be graded to drain all parts of the floor.

(6) Drip or condensate from fixtures, ducts, and pipes shall not contaminate food, food-contact surfaces, or food-packaging materials.

(7) Mats shall be:

- (a) Non-absorbent;
- (b) Slip resistant; and
- (c) Easily cleaned.

(8) Mats shall not be used as storage racks.

(9) Exposed utility service lines and pipes shall be installed to prevent tripping hazards and cleaning obstructions.

(10) Walls and ceilings, including doors, windows, skylights, and similar closures, shall be maintained in good repair.

(11) Walls and ceilings of all [food] preparation and warewashing[ware-washing] areas shall be:

- (a) Smooth;
  - (b) Non-absorbent; and
  - (c) Easily cleaned.
- (12) Studs, joists, and rafters shall not be exposed in:
- (a) Walk-in-refrigerators;
  - (b) [Food] Preparation areas; and
  - (c) Warewashing[Ware-washing] areas.

(13) Doors shall be:

- (a) Solid;
- (b) Tight-fitting; and
- (c) Closed, except during cleaning or maintenance.

(14) Light fixtures, vent covers, wall-mounted fans, and similar equipment attached to walls or ceilings shall be kept clean and maintained in good repair.

(15) Aisles and working spaces shall be:

- (a) Unobstructed; and
- (b) Of a width to permit employees to perform their duties and protect against contaminating food, cosmetics, or [food-contact] surfaces with clothing or by personal contact.

(16) Lighting shall be provided in:

- (a) Hand washing[Hand-washing] areas;
- (b) Dressing and locker rooms;
- (c) Toilet rooms;
- (d) Areas where food or cosmetics are[is] examined,

processed, or stored; and

(e) Areas where equipment or utensils are cleaned.

(17) Lighting, glass fixtures, and skylights suspended over exposed ~~[food or food]~~ packaging materials shall be made of safety glass or otherwise shielded to protect against ~~[food]~~ contamination in case of breakage.

(18) Ventilation or exhaust control equipment shall be provided to minimize odors or vapors in areas where odors or vapors may contaminate food.

(19) Fans and other air-blowing equipment shall be located and operated in a manner that minimizes the potential for contaminating food, food-packaging materials, and food-contact surfaces.

(20) Protection against pests shall be provided.

Section 6. Water Supply. (1) The water supply shall be:

(a) Potable;

(b) Of sufficient quantity to meet plant needs; and

(c) From an approved public water system, if available.

(2) If a public water system is not available, the supply for the plant shall be approved pursuant to 401 KAR Chapters 8 and 11.

(3) If a community public water system later becomes available and has the capacity to serve the facility, connections may be made to it. The non-community water supply shall then be discontinued and inactivated.

(4) Hot and cold running water under pressure shall be provided in all areas where it is needed for:

(a) Processing food or cosmetics;

(b) Cleaning equipment, utensils, and ~~[food]~~-packaging materials; and

(c) Employee sanitary facilities.

(5) Bottled water plants shall have their water supply system designed, approved, and operated in accordance with 401 KAR 8:700.

Section 7. Plumbing. (1) All plumbing shall comply with the minimum fixture requirements, and be sized, installed, and maintained in accordance with the State Plumbing Code.

(2) All utensils used in food or cosmetic processing that are not a part of a clean-in-place operation shall be washed, rinsed, and sanitized in:

(a) A permanently plumbed three (3) compartment sink; or

(b) A commercial dishwasher installed and operated in compliance with the State Plumbing Code and the manufacturer's instructions.

(3) If a three (3) compartment sink is utilized, the sink compartments shall be large enough to permit the accommodation of the equipment and utensils and each compartment of the sink shall be supplied with hot and cold potable running water under pressure.

(4) Clean-in-place equipment shall be cleaned or sanitized according to manufacturer instructions and industry best practices for the commodity being processed.

(5) Written sanitation procedures shall be maintained for each type of clean-in-place equipment.

(6) A service sink or curbed cleaning facility with a drain that allows for disposal of mop and cleaning solution water shall be provided.

(7) A person, firm, or corporation shall not construct, install, or alter any plumbing without having procured a plumbing construction permit from the Department of Housing, Buildings and Construction, under KRS Chapter 318.

Section 8. Sewage Disposal. (1) All sewage shall be disposed of into a public sewerage system, if available.

(2) If a public sewerage system is not available, disposal shall be made into a private system designed, constructed, and operated pursuant to the requirements of 401 KAR Chapter 5 or 902 KAR 10:085.

(3) If a public sewerage system becomes available, connection shall be made and the private sewerage system shall be discontinued.

Section 9. Toilet Facilities. Toilet facilities shall meet the fixture and construction requirements of KRS Chapter 318 and the State Plumbing Code.

Section 10. Hand Washing Facilities. (1) Hand washing~~[Hand-washing]~~ facilities shall be installed in accordance with KRS Chapter 318 and the State Plumbing Code where:

(a) Food or cosmetic are[is] prepared;

(b) Utensils are washed; and

(c) Sanitary practices require employees to wash and sanitize their hands.

(2) All hand washing facilities shall be provided with:

(a) Soap;

(b) Disposable hand drying towels or mechanical hand drying devices; and

(c) Non-absorbent waste receptacles.

(3) Hand sanitizer shall not be used instead of hand washing.

(4) Lavatories used for hand washing shall not be used for food or cosmetic preparation or for washing equipment or utensils.

(5) Lavatories, soap dispensers, and hand drying devices shall be kept clean and maintained.

Section 11. Food Transportation. (1) Vehicles used for the transportation of food shall be maintained and loaded in a manner to prevent cross-contamination of food.

(2) Vehicles that transport refrigerated food shall be capable of maintaining:

(a) Frozen food in a frozen state; and

(b) Refrigerated foods at forty-five (45) degrees Fahrenheit or below.

Section 12. Inspection Frequencies. (1) The cabinet shall assign an inspection frequency to each food processing~~[manufacturing]~~ plant based upon the degree of risk associated with the commodity processed, packaged, stored, or distributed by the plant.

(2) The cabinet shall assign the inspection frequencies as follows:

(a) High risk food plants shall be inspected no less than once every 1,080 days;

(b) Medium risk food plants shall be inspected no less than once every 1,260 days; and

(c) Low risk food plants shall be inspected no less than once every 1,440 days.

(3) Cosmetic manufacturing plants shall be inspected no less than once every 1,440 days.

(4) The cabinet shall conduct additional inspections as necessary for enforcement pursuant to this administrative regulation.

Section 13. Violations. (1) If a plant has committed a violation of this administrative regulation, an opportunity to correct the violation shall be provided in accordance with the following classifications:

(a) NAI - No changes in the inspection frequency are warranted under this classification;

(b) VAI - A follow-up inspection is warranted within a period of time not to exceed ninety (90) days to determine if the violation causing this classification has been corrected; or

(c) OAI - A follow-up inspection shall be conducted within a period of time not to exceed forty-five (45) days to determine if the violation causing the classification has been corrected. A plant may also be classified as OAI if it continually fails to correct a violation previously classified under a VAI designation or if an imminent health hazard is noted during an inspection.

(2) Upon completion of the inspection, a recommended classification of NAI, VAI, or OAI and the timeframe for correction of the violation shall be specified on a DFS-220, Food or Cosmetic Plant Inspection Report.

(3) If, during a follow-up inspection, the violation noted on the previous inspection has not been corrected within the timeframe

specified by the cabinet, the cabinet shall:

- (a) Extend the timeframe for corrective action if the cabinet determines that progress towards compliance has been made; or
- (b) Initiate enforcement provisions pursuant to Section 17 of this administrative regulation.

Section 14. Food or Cosmetic Plant Environmental Sampling. The cabinet shall collect an environmental sample in an area of the plant as necessary for the enforcement of this administrative regulation.

Section 15. Examination and Detention of Foods and Cosmetics. (1) The cabinet shall examine and collect samples of food or cosmetic as often as necessary for the enforcement of this administrative regulation.

(2) If a food or cosmetic is considered to be adulterated or misbranded, DFS-265, Food or Cosmetic Plant Quarantine-[Final Disposition Report], shall be issued to the permit holder or person in charge pursuant to KRS 217.115.

Section 16. Imminent Health Hazard and Notification Requirements. (1) The permit holder shall take immediate steps to correct conditions that have caused an imminent health hazard.

(2)(a) The permit holder shall notify the cabinet within twenty-four (24) hours of the knowledge of an imminent health hazard that cannot be controlled by immediate corrective action or if food, food contact equipment, [or] food packaging, cosmetic, or cosmetic packaging has become contaminated because of an imminent health hazard.

(b) Written notification to the cabinet shall be made by:

- 1. Email to CHFSDPHENV@KY.gov; or
- 2. Fax to 502-696-1882.

(3) If the cabinet has evidence that a plant has failed to act to correct an imminent health hazard, enforcement provisions shall be initiated pursuant to Section 17 of this administrative regulation.

Section 17. Enforcement Provisions. (1) If the cabinet has substantial reason to believe that a permit holder has failed to act to correct an imminent health hazard or if the permit holder or an authorized agent has interfered with the cabinet in the performance of its duties after its agents have duly and officially identified themselves, the cabinet shall immediately notify the permit holder using the DFS-263, Food or Cosmetic Plant Enforcement Notice and:

- (a) Suspend the permit without a conference; or
- (b) Suspend that portion of the plant operation affected by the imminent health hazard without a conference.

(2) If a permit suspension is due to an imminent health hazard, the permit holder may request a conference on a DFS-267, Request for Conference. A conference shall be granted as soon as practical, not to exceed seven (7) days from the receipt of the Request for Conference.

(3) In all other instances of violation of this administrative regulation, the cabinet shall serve the permit holder with a written notice specifying the violation and afford the holder an opportunity to correct.

(4) If a permit holder or operator has failed to comply with an OAI inspection notice within the timeframe granted, the cabinet shall issue a Notice of Intent to Suspend Permit on a DFS-263, Food or Cosmetic Plant Enforcement Notice.

(5) When a Notice of Intent to Suspend Permit is issued, the permit holder or operator shall be notified in writing that the permit shall be suspended at the end of ten (10) days following service of the notice, unless a written request for a conference is filed with the cabinet by the permit holder within the ten (10) day period.

(6) Any person whose permit has been suspended may make application on a[Form] DFS-269, Application for Reinstatement, for a re-inspection for the purpose of reinstatement of the permit. Within seven (7) days following receipt of a written request, including a statement signed by the applicant that in his opinion the condition causing suspension of the permit has been corrected, the cabinet shall make an inspection, and if the inspection reveals that the condition causing suspension of the permit has been corrected,

the permit shall be reinstated.

(7) For a plant that has had a suspended permit two (2) or more times within a five (5) year period, the cabinet shall initiate permit revocation proceedings. Prior to this action, the cabinet shall notify the permit holder in writing on a DFS-263, Food or Cosmetic Plant Enforcement Notice, stating the reasons for which the permit revocation is being sought and advising that the permit shall be permanently revoked at the end of ten (10) days following service of the notice, unless a request for an administrative hearing is filed with the cabinet pursuant to KRS Chapter 13B by the permit holder within the ten (10) day period.

(8) Notice provided for under this administrative regulation shall be deemed to have been properly served if:

- (a) A copy of the inspection report or other notice has been delivered personally to the permit holder; or
- (b) The notice has been sent by registered or certified mail, return receipt.

Section 18. Administrative Conferences. An administrative conference shall be conducted pursuant to 902 KAR 1:400.

Section 19. Administrative Hearings. An administrative hearing shall be conducted pursuant to KRS Chapter 13B.

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

- (a) "DFS-220, Food or Cosmetic Plant Inspection Report", 8/20[05/48];
- (b) "DFS-260, Application for Permit to Operate a Food Plant or Cosmetic Manufacturing Plant", 8/20[05/48];
- (c) "DFS-263, Food or Cosmetic Plant Enforcement Notice", 8/20[05/48];
- (d) "DFS-265, Food or Cosmetic Plant Quarantine-[Final Disposition Report]", 8/20[05/48];
- (e) "DFS-267, Request for Conference", 8/20[05/18]; and
- (f) "DFS-269, Application for Reinstatement", 8/20[05/48].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Cabinet for Health and Family Services, Department for Public Health, Division of Public Health Protection and Safety, Food Safety Branch, 275 East Main Street, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m.

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

APPROVED BY AGENCY: December 4, 2020 at 9:28 a.m.

FILED WITH LRC: December 11, 2020 at 9:28 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 22, 2021, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by February 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 virtually 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 February 28, 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: Julie Brooks or Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes procedures and requirements for food processing, packaging, storage, and distribution operations for the purpose of protecting public health.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure food processing and packaging activities, food storage and distribution facilities, and all other entities engaged in the manufacture and storage of food and food products are properly permitted, and facilities are constructed in a manner that protects public health.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 217.125(2) prohibits a person from operating a food processing establishment, food storage warehouse, salvage distributor or salvage processing plant without obtaining an annual permit to operate from the cabinet. This administrative regulation incorporates the application form, outlines the inspection criteria, and incorporates the inspection form.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will ensure all food processing facilities, including facilities for food packaging materials, and food storage facilities are properly permitted and inspected.

(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 cross reference citation for the food and cosmetic processing establishment fee schedule, adds requirements for cosmetic manufacturing facilities, and updates the material incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: The fee schedule for food processing establishments was promulgated under a new administrative regulation, 902 KAR 45:180. The amendment to this administrative regulation is necessary to ensure the correct cross reference for the fees is listed. The incorporated by reference materials were updated to include reference to cosmetic manufacturing plants.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 217.125 authorizes the cabinet to promulgate regulations consistent with those promulgated under the federal act and the Fair Packaging and Labeling Act. Regulations promulgated may require permits to operate and include the provisions for regulating the issuance, suspension, and reinstatement of permits. KRS 211.180(1) authorizes the cabinet to regulate the safety of cosmetics. This administrative regulation establishes the permitting and inspection process for food processing plants, and adopts the federal standards by reference, and makes reference to include cosmetic manufacturing plants.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will ensure all food processing plants, food storage warehouses, salvage distributors or salvage processing plants, and cosmetic manufacturing plants are properly permitted and inspected. The permitting and inspection process will help to ensure the safety of manufactured food and food products, and cosmetics.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 1,072 food processing plants and seventy-seven (77) cosmetic manufacturers registered with the department.

(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: Food processing plants, food storage

warehouses, salvage distributors or salvage processing plants, and cosmetic manufacturing plants are required to be in compliance with the applicable federal standards. Owners will need to be aware of the updated application form and submit the correct version of the form when renewing the application.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities 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): All regulated entities will be able to ensure the food and food products have been properly inspected and are safe for human consumption. Cosmetic manufacturers will be able to ensure their products have been properly inspected and are safe for human usage.

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

(a) Initially: This is an ongoing program, there are no initial costs associated with this amendment.

(b) On a continuing basis: The Food Manufacturing Program within the Food Safety Branch costs approximately \$1,080,000 each year.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Food Manufacturing Program is funded through a mix of state and federal funds, and revenue received from the fees established in 902 KAR 45:180.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. While food processing establishments are ranked based on the risk level of the foods processed, the provisions of this administrative regulation are applied equally to all establishments.

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 Food Safety Branch within the Department for Public Health will be impacted by this amendment.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 211.090(3), 211.180(1), and 217.125(1).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. 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 Food Manufacturing Program within the Food Safety Branch costs approximately \$1,080,000 each year.

(d) How much will it cost to administer this program for subsequent years? The Food Manufacturing Program within the Food Safety Branch will continue to cost approximately \$1,080,000 each year.

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

Revenues (+/-):

Expenditures (+/-):  
Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal Food, Drug, and Cosmetic Act; 21 U.S.C. 321, 343-345, 373, 374, 374a; and 21 C.F.R.

2. State compliance standards. This administrative regulation adopts the federal requirements for food processing, packaging, storage, and distribution operations. The Food Safety Branch in the Department for Public Health is directed by the federal Food and Drug Administration (FDA) on which code of federal regulation to adopt to be in full compliance with the FDA food manufacturing standards.

3. Minimum or uniform standards contained in the federal mandate. KRS 217.125(1) authorizes the cabinet to promulgate regulations consistent with those promulgated under the federal act and the Fair Packaging and Labeling Act.

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. There are no different, stricter, or additional responsibilities or requirements.

**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Department for Public Health**  
**Division of Public Health Protection and Safety**  
**(Amendment)**

**902 KAR 95:040. Radon Contractor**  
**Registration[Certification] Program.**

RELATES TO: KRS Chapter 13B, 211.180(1)(a), 211.9101, 211.9107, 211.3113, 211.9119 [-211.9135]

STATUTORY AUTHORITY: KRS 194A.050(1), 211.090(3), 211.9109, 211.9111, 211.9115, 211.9121, 211.9125[211.9127], 211.9135(3)

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. KRS 211.9135(3) requires the cabinet to promulgate administrative regulations to administer, coordinate, and enforce KRS 211.9101 to 211.9135. This administrative regulation establishes requirements for the registration[certification] of an individual or laboratory to perform radon measurement, radon mitigation, or laboratory analysis.

Section 1. Registration[Definitions. (1) "AARST" means the American Association of Radon Scientists and Technologists.

(2) "ANSI" means the American National Standards Institute.

(3) "ASTM" means the American Society for Testing and Materials International.

(4) "Mitigation system" is defined by KRS 211.9101(21).

(5) "NRPP" means the National Radon Proficiency Program.

(6) "NRSB" means the National Radon Safety Board.

(7) "Pecuries per liter" or "pCi/L" means a unit of radioactivity corresponding to one (1) decay every twenty-seven (27) seconds in a volume of one (1) liter, or 0.037 decays per second in every liter of air.

Section 2. Certification Requirements. (1) A person seeking registration[shall be eligible to be certified] as a radon measurement contractor or a radon mitigation contractor shall submit[if the individual:

(a) Submits] to the cabinet:

(a)[4.] A completed DFS-375, Application for Registration[Certification] for Radon Contractors and Laboratories;

(b)[2. Verification of completion of a cabinet-approved course and exam pursuant to Section 5(3) of this administrative regulation;

3.] The fee established in Section 2(2)[3(2)] of this administrative regulation; and

(c)[4. A quality control program plan that meets the requirements established in Section 4(1) or (2) of this administrative regulation; and

5.] Evidence of financial responsibility in accordance with KRS 211.9109 (1)(b)[(f)] or 211.9111(1)(b)[(f)]; and

(b) Adheres to the requirements established in KRS 211.9123 if the individual is a non-resident of Kentucky].

(2) A radon laboratory seeking registration shall submit[be eligible for certification if the entity:

(a) Employs a minimum of one (1) individual who is a Kentucky certified radon measurement contractor;

(b) submits] to the cabinet:

(a)[4.] A completed DFS-375, Application for Registration[Certification] for Radon Contractors and Laboratories;

(b)[2.] The fee established in Section 2(2)[3(2)] of this administrative regulation; and

(c) Evidence of financial responsibility in accordance with KRS 211.9115(2)(b)[3. A quality control program plan as established in Section 4(3) of this administrative regulation; and

(e) Adheres to the requirements established in KRS 211.9123 if the entity is a non-resident analytical laboratory that is seeking reciprocity].

(3) A contractor with a dual certification as a radon measurement contractor and a radon mitigation contractor shall submit[:

(a) maintain] a separate registration[certificate] for each discipline.

(4)(a) All potential registrants as a radon measurement or radon mitigation contractor shall have a background check performed by:

1. The Administrative Office of the Courts; and

2. The Division of Protection and Permanency within the Cabinet for Health and Family Services.

(b) The required background check results shall be submitted directly to the cabinet.

(c) The cabinet shall review the Kentucky Sex Offender Registry prior to the registration of a radon measurement or radon mitigation contractor.

(d) In accordance with KRS 211.9125(1)(a) the cabinet may refuse or revoke a registration based on the results of the background check[-; and

(b) Adhere to the limitations established in KRS 211.9117(1) and (2).

(4) Only radon measurements performed by a certified radon measurement contractor shall be reported or disclosed to another party].

(5) A registered[certified] radon measurement contractor employee working exclusively for a registered[certified] radon laboratory shall not be required to meet:

(a) The insurance [and quality control program] requirements established in subsection (1) of this section; and

(b) The background check requirements established in subsection (4) of this section.

Section 2[3]. Schedule of Fees. (1) The fees required by subsection (2) of this section shall be:

(a) Nonrefundable;

(b) Submitted with an application for initial registration or registration[certification or certification] renewal; and

(c) Made payable to the Kentucky State Treasurer.

(2)(a) The fee for initial registration[certification] shall be \$500[250].

(b) The biennial[annual] renewal fee shall be \$500[250].

(c) [The annual fee for reciprocity meeting the requirements of KRS 211.9123 shall be \$250.

(d) The fee for a duplicate certificate shall be twenty (20) dollars.

(e) The fee for late renewal shall be \$500[400].

(d)[(f)] The [annual] fee for inactive registration[certification] status shall be \$200[400].

Section 3. Registration Renewal. (1) Each registration shall be renewed every odd-numbered year.

(2) An individual seeking registration renewal shall submit to the cabinet:

(a) A completed renewal application on DFS-375, Application for Registration for Radon Contractors and Laboratories;

(b) Proof of compliance with a proficiency program in accordance with KRS 211.9109(2)(a) or 211.9111(2)(a);

(c) The background checks required under Section 1(4) of this administrative regulation;

(d) The fee established in Section 2 of this administrative regulation; and

(e) Evidence of financial responsibility in accordance with KRS 211.9109(2)(b) or 211.9111(2)(b).

(3) A laboratory seeking registration renewal shall submit to the cabinet:

(a) A completed renewal application on DFS-375, Application for Registration for Radon Contractors and Laboratories;

(b) Proof of compliance with a proficiency program in accordance with KRS 211.9115(2)(a);

(c) The fee established in Section 2 of this administrative regulation; and

(d) Evidence of financial responsibility in accordance with KRS 211.9115(2)(b).

(4) A registration not renewed within thirty (30) days after the renewal date shall lapse and may only be reinstated:

(a) By meeting the requirements of subsections (2) or (3) of this section; and

(b) Payment of the late renewal fee required by Section 2(2)(c) of this administrative regulation.

Section 4. [Quality Control Program Plan and Standard Operating Procedures. (1) A person certified as a radon measurement contractor shall submit for cabinet approval a quality control program plan that includes:

(a) A statement committing to provide quality work;

(b) A listing of personnel and personnel qualifications and training;

(c) A description of types of radon measurements performed and other related services offered;

(d) A description of measurement types and devices the measurement contractor will utilize in conducting measurements;

(e) A statement of compliance with cabinet-approved standard operating procedures pursuant to Section 5(3) of this administrative regulation; and

(f) The location where records are retained in accordance with KRS 211.9131(3).

(2) A person certified as a radon mitigation contractor shall submit to the cabinet a quality control program plan that includes:

(a) A statement committing to provide quality work;

(b) A listing of personnel and personnel qualifications and training;

(c) A description of all types of radon mitigation methods performed and other related services offered;

(d) A description of diagnostic testing methods utilized in designing mitigation systems; and

(e) A statement of compliance with cabinet-approved standard operating procedures pursuant to Section 5(3) of this administrative regulation.

(3) A certified radon laboratory shall submit to the cabinet a quality control program plan that includes:

(a) A statement committing to provide quality work;

(b) A listing of personnel and personnel qualifications and training;

(c) A description of laboratory services performed and other related services offered;

(d) Documentation of enrollment and good standing within an independent laboratory accreditation program; and

(e) A requirement that all radon laboratory analyses shall be conducted in compliance with applicable state and federal laws.

(4) A mitigation system shall achieve a radon level below the U.S. Environmental Protection Agency's action level of four and zero-tenths (4.0) picocuries per liter for all post mitigation testing.

(5) Failure to achieve a reduction below the EPA's action level of four and zero-tenths (4.0) picocuries per liter shall require additional radon mitigation and testing until the level is as low as reasonably achievable (ALARA).

(6) Prior to mitigation, educational material about radon levels shall be provided to the client.

(7) Upon modification to a component of the quality control program plan, the radon measurement or mitigation contractor shall resubmit the plan to the cabinet.

(8) If a deviation from cabinet-approved standard operating procedures occurs, the radon measurement or mitigation contractor shall document the reason for the deviation in the inspection report provided to the client.

Section 5. Training and Continuing Education Requirements.

(1) Continuing Education:

(a) Measurement contractors shall acquire eight (8) hours of continuing education credits per year.

(b) Mitigation contractors shall acquire eight (8) hours of continuing education credits per year.

(c) A certified person shall be responsible for submitting proof of continuing education in accordance with KRS 211.9109, 211.9111, 211.9115, or 211.9127.

(d) A person dually certified as a radon measurement and mitigation contractor shall acquire sixteen (16) hours of continuing educational credits per year.

(e) Continuing education units shall be obtained from a cabinet-approved course in accordance with subsection (3) of this section.

(2) Certification Courses:

(a) Measurement contractor initial certification courses shall be a minimum of sixteen (16) hours of in-person instruction.

(b) Mitigation contractor initial certification courses shall:

1. Be a minimum of sixteen (16) hours of in-person instruction; and

2. Include an additional four (4) hours of hands-on field work at a mitigation site.

(3) A radon training course, exam, or standard operating procedure shall be cabinet-approved if issued by the:

(a) AARST;

(b) ANSI;

(c) ASTM;

(d) NRPP; or

(e) NRSB.

Section 6. Renewal of Certification. (1) Each annual certification shall expire on June 30.

(2) A person seeking renewal of certification shall:

(a) Meet the requirements in accordance with Section 2 of this administrative regulation; and

(b) Submit to the cabinet a minimum of thirty (30) calendar days prior to certification expiration:

1. A completed renewal application on DFS-375, Application for Certification for Radon Contractors and Laboratories;

2. The fee established in Section 3 of this administrative regulation;

3. Proof of fulfillment of continuing education requirements as established in Section 5(1) of this administrative regulation;

4. An updated quality control program plan that meets the applicable requirements established in Section 4 of this administrative regulation; and

5. Evidence of financial responsibility in accordance with KRS 211.9109(1)(f) or 211.9111(1)(f).

(3) A certification not renewed within thirty (30) days after the renewal date shall pay a late renewal fee as established in Section 3(2)(e) of this administrative regulation.

(4) A certification not renewed within ninety (90) days after the renewal date shall lapse and may only be reinstated in accordance with KRS 211.9121(3).

Section 7.] Termination of Registration[Certification] and Inactive Registration[Certification]. (1) A registered[certified] radon measurement contractor or radon mitigation contractor shall notify



the cabinet in writing upon electing to terminate registration[certification].

(2) A person previously registered with[certified by] the cabinet and not engaged in radon measurement or mitigation in the Commonwealth but desiring to maintain registration[certification] may request and be granted inactive status.

(a) If inactive status is granted, the person shall[:

1-] pay the registration[certification] fee established in Section 2(2)(d)[3(2)(f)] of this administrative regulation[; and

2- Be exempt from the continuing education requirements].

(b) A registered[certified] radon measurement contractor or radon mitigation contractor on inactive status may petition the cabinet for renewal of active registration[certification]. If a registered[certified] radon measurement contractor or radon mitigation contractor on inactive status wishes to renew active registration[certification], the petitioner shall meet the requirements of this administrative regulation.

Section 5[8]. Registration[Certification] Denial, Suspension, or Revocation. A registration[certification] shall be subject to denial, suspension, or revocation in accordance with KRS 211.9125.

Section 6[9]. Reporting Requirements. (1) A person, business entity, or analytical laboratory shall submit a report to the cabinet on an annual basis for each[a semi-annual basis after a]:

(a) Radon measurement activity [or radon progeny test];

(b) Radon mitigation activity; or

(c) Laboratory analysis[Modification to any component of the radon contractor's quality control program plan; or

(d) Request from the cabinet].

(2) The result of each measurement activity conducted shall include:

(a) The location of the building;

(b) The result of the measurement in picocuries per liter (pCi/L) of radon gas;

(c) The start and end date of the measurement activity;

(d) The type of measurement activity conducted;

(e) The registrant responsible for supervising the measurement; and

(f) The type of building measured, including the foundation type.

(3) The result of each mitigation activity conducted shall include:

(a) The location of the building;

(b) The result of the post-mitigation measurement in picocuries per liter (pCi/L) of radon gas;

(c) The date of the mitigation activity;

(d) The type of mitigation conducted;

(e) The registrant responsible for supervising the mitigation; and

(f) The type of building mitigated, including the foundation type.

(4) The result of each laboratory analysis conducted shall include:

(a) The location of the building;

(b) The result of the measurement in picocuries per liter (pCi/L) of radon gas;

(c) The date of the measurement activity and laboratory analysis;

(d) The type of laboratory analysis conducted;

(e) The registrant responsible for supervising the measurement and laboratory analysis; and

(f) The type of building measured, including the foundation type[The report shall include the:

(a) ZIP Code or location of the building; and

(b) Results of tests performed.

(3) The results for each measurement conducted shall include the:

(a) Results of the test or tests in picocuries per liter (pCi/L) of radon gas;

(b) Date on which the test or tests were conducted; and

(c) Type of structure measured].

Section 7[10]. Administrative Hearings. A person, business

entity, or analytical laboratory shall be afforded an opportunity for an administrative hearing in accordance with KRS Chapter 13B.

Section 8[14]. Penalties. The cabinet may assess civil penalties in accordance with KRS 211.9125 against any individual in violation of any cabinet administrative regulation pertaining to radon measurement, mitigation, or laboratory analysis.

Section 9[12]. Incorporation by Reference. (1)"DFS-375, Application for Registration[Certification] for Radon Contractors and Laboratories", 7/2020[8/2017], 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: December 4, 2020

FILED WITH LRC: December 9, 2020 at 2:52 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 22, 2021, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by February 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 virtually 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 February 28, 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: Julie Brooks or Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the registration process for an individual or laboratory to perform radon measurement, radon mitigation, or laboratory analysis.

(b) The necessity of this administrative regulation: KRS 211.9109 requires a radon measurement contractor to register with the cabinet, KRS 211.9111 requires a radon mitigation contractor to register with the cabinet, and KRS 211.9115 requires a laboratory performing radon analysis to register with the cabinet. This administrative regulation is necessary to ensure individuals or business entities engaged in radon measurement, mitigation or laboratory analysis are properly registered with the cabinet.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.9107 prohibits a person or business entity from conducting radon measurement, mitigation, or laboratory analysis without the appropriate certification. Certification is issued by a proficiency program as defined by KRS 211.9101(22).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation ensures individuals or business entities engaged in radon measurement, mitigation, or laboratory analysis are properly certified and registered with the cabinet. Part of the registration process is to ensure the individual or business entity

maintains general liability insurance sufficient to meet the requirements of KRS 211.9113.

(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 registration process to a biennial registration, adds the requirement that an individual seeking registration submit a background check before registration is granted, removes the continuing education requirements as those requirements will be met through the national certification process with an approved proficiency program, removes the requirements for a registrant to submit a quality control program, updates the reporting requirements, and updates the material incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to address changes in the authorizing statutes, KRS 211.9101 to 211.9135. House bill 420 from the 2019 legislative session revised the certification requirements for radon measurement, radon mitigation, and radon laboratory analysis by requiring individuals and business entities engaged in these activities to meet the requirements of a national proficiency program. The annual certification requirement was revised to a biennial registration. The requirement for submitting documentation of a cabinet-approved course and exam, continuing education requirements, and a quality control plan were removed from the authorizing statutes. The requirement to submit a background check is necessary for compliance with KRS 211.9125.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment to this administrative regulation ensures the registration process meets the requirements of the authorizing statutes by reflecting a biennial registration, removing the requirement to submit proof of continuing education, removing the requirement to submit a quality control plan, and requiring the submission of background checks as part of the registration process.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will ensure individuals or business entities engaged in radon measurement, mitigation, or laboratory analysis are meeting the national proficiency program standards, are registered with the cabinet, and have sufficient general liability insurance.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment to this administrative regulation will impact eighty-five (85) professionals registered with the National Radon Proficiency Program (NRPP), and twenty-three (23) professionals registered with the National Radon Safety Board (NRSB). Thirty-four (34) individuals have dual certification as both a radon measurement professional and a radon mitigation professional. There are five (5) persons in Kentucky that are listed as accredited radon laboratories.

(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: Individuals and business entities seeking registration with the cabinet must submit the required background checks prior to registration being granted, and must maintain certification through either the National Radon Proficiency Program or the National Radon Safety Board. Both proficiency programs require continuing education credits as part of the certification renewal process. Individuals and business entities engaged in radon measurement, mitigation, or laboratory analysis will need to be aware of the change in the registration process.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the identities identified in question (3): Individuals seeking registration would be required to pay \$500 biennial registration costs and will be required to pay the costs associated with the required background checks.

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

and laboratory contractors will be required to register with the state on a biennial basis and will not be required to submit proof of continuing education credits. This will result in a reduction in paperwork for contractors. By obtaining background checks as part of the registration process the cabinet will be able to implement the requirements of KRS 211.9125.

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

(a) Initially: The initial costs associated with the development of a data systems for the registration of radon professionals and laboratories is approximately \$140,000. The program costs associated with monitoring the registration process is approximately \$111,000 per year.

(b) On a continuing basis: The ongoing costs associated with monitoring the registration process is approximately \$111,000 per year.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding for this administrative regulation comes from the fees collected as part of the certification process and from state general fund dollars.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: Because the registration has been changed to a biennial registration an increase in the fee is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. The change to a biennial registration process will decrease the yearly revenue received from the fees by half; therefore, the cabinet is proposing to increase the registration fee to \$500.

(9) TIERING: Is tiering applied? Tiering is not applied. This administrative regulation impacts all radon contractors for measurement, mitigation, or laboratory analysis equally.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the local health departments who participate in the radon program 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(1), 211.090(3), and 211.9101 to KRS 211.9135.

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 approximately \$56,000 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 approximately \$56,000 on a biennial basis.

(c) How much will it cost to administer this program for the first year? It will cost approximately \$251,000 to implement this program in the first year.

(d) How much will it cost to administer this program for subsequent years? It will cost approximately \$111,000 to implement 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:

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

**921 KAR 3:010. Definitions.**

RELATES TO: 7 C.F.R. 271.2, 273.1, 273.4, 273.5, 273.6, 273.7, 273.11, 273.16, 273.18, 274, 7 U.S.C. 2012u(t)(4), 8 U.S.C. 1101, 38 U.S.C., 42 U.S.C. 301-306, 401-433, 601-679, 1201-1206, 1351-1355, 1381-1385, 1396, 45 U.S.C. 231(a) to (v), Pub.L. 110-234

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

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. 7 C.F.R. 271.4 requires the cabinet to administer the Supplemental Nutrition Assistance Program (SNAP) within the state. This administrative regulation sets forth definitions of terms used in 921 KAR Chapter 3.

Section 1. Definitions. (1) "Agency error" means an overissuance of SNAP benefits caused by an action or failure to take an action by the cabinet.

(2) "Allotment" is defined by 7 C.F.R. 271.2.

(3) "Application" means an "application form", as defined by 7 C.F.R. 271.2, that is used to apply for SNAP and that is completed by:

- (a) A household member; or
- (b) An authorized representative.

(4) "Authorized representative" means an individual designated by a household member to act on behalf of the household in one (1) or all of the following capacities:

- (a) Making application for the program;
- (b) Obtaining the EBT card; or ~~and~~
- (c) Using the EBT card.

(5) "Benefits" means the value of SNAP provided to a household by means of an EBT access device.

(6) "Boarder" means an individual to whom a household furnishes lodging and meals for reasonable compensation.

(7) "Cabinet" means the Cabinet for Health and Family Services or its designee.

(8) "Certification" means the action necessary to determine eligibility of a household including:

- (a) Interview;
- (b) Verification; and
- (c) Decision.

(9) "Disabled [Disability]" means, in accordance with 7 C.F.R. 271.2:

- (a) An individual who receives:
  - 1. Supplemental Security Income (SSI) or presumptive SSI under 42 U.S.C. 1381 to 1385;
  - 2. Disability or blindness payments under:
    - a. 42 U.S.C. 301 to 306;
    - b. 42 U.S.C. 401 to 433;
    - c. 42 U.S.C. 1201 to 1206;
    - d. 42 U.S.C. 1351 to 1355; or
    - e. 42 U.S.C. 1381 to 1385;
  - 3. Optional or mandatory state supplementation;
  - 4. Disability retirement benefits:
    - a. From a federal, state, or local government agency; and
    - b. Resulting from a disability considered permanent under 42 U.S.C. 421(i); or
  - 5. Annuity payments under:
    - a. 45 U.S.C. 231(a) to (v);
    - b. Is determined to qualify for Medicare by the Railroad Retirement Board; and
    - c. Has a disability based upon the criteria used under 42

U.S.C. 1381 to 1385;

(b) A veteran with a service connected or nonservice connected disability rated by the Veteran's Administration or paid as total (100 percent) by the Veteran's Administration under Title 38 of the United States Code;

(c) A veteran considered by the Veteran's Administration to be in need of regular aid and attendance or permanently housebound under Title 38 of the United States Code;

(d) A surviving spouse of a veteran and considered by the Veteran's Administration to be in need of regular aid and attendance or permanently housebound;

(e) A surviving child of a veteran and considered by the Veteran's Administration to be permanently incapable of self-support under Title 38 of the United States Code;

(f) A surviving spouse or surviving child of a veteran and considered by the Veteran's Administration to be entitled to:

- 1. Compensation for a service-connected death;
- 2. Pension benefits for a nonservice-connected death under Title 38 of the United States Code; and
- 3. Has a disability considered permanent under 42 U.S.C. 421(i);

(g) An individual in receipt of disability related medical assistance under 42 U.S.C. 1396;

(h) An individual who is certified to receive, but not yet receiving SSI or Social Security disability payments; or

(i) An individual who is currently having his entire SSI or Social Security disability benefit check recouped to recover a prior overpayment.

(10) "Drug addiction or alcoholic treatment program" means "drug addiction or alcoholic treatment and rehabilitation program" as defined by 7 C.F.R. 271.2.

(11) "Elderly" means, in accordance with 7 C.F.R. 271.2, an individual who is:

- (a) Age sixty (60) or older; or
- (b) Fifty-nine (59) years of age at the time of application, but shall turn age sixty (60) before the end of month of application.

(12) "Electronic benefit transfer" or "EBT" means a computer-based electronic benefit transfer system or access device in which an eligible household's benefit authorization is received from a central computer through a point of sale terminal.

(13) "Employment and Training Program" or "E&T":

- (a) Is defined by 7 C.F.R. 271.2; and
- (b) Means the program established in ~~[pursuant to]~~ 921 KAR 3:042.

(14) "Entitlement" means the amount of SNAP benefits that a household would receive if every disqualified household member participates.

(15) "Excluded household member" means an individual residing with a household, but excluded when determining the household's size in accordance with the provisions of 921 KAR 3:035, Section 5(3) and (4).

(16) "Expungement" means the removal of benefits from a household's EBT account if, pursuant to 921 KAR 3:045:

- (a) The ~~[the]~~ household has not accessed the account for nine (9) consecutive months; or
- (b) The cabinet verifies that all household members are deceased~~[365 days]~~.

(17) "Federal fiscal year" means a period of twelve (12) calendar months beginning with each October 1 and ending with September 30 of the following calendar year.

(18) "FNS" means the Food and Nutrition Service of the United States Department of Agriculture in accordance with 7 C.F.R. 271.2.

(19) "Group living arrangement" is defined by 7 C.F.R. 271.2.

(20) "Head of household" means the person in whose name the application for participation is made as:

- (a) Having primary financial responsibility for the household;
- (b) Being an adult parent of a child of any age and living in the household; or
- (c) Being an adult having parental control over a child under the age of eighteen (18) and living in the household.

(21) "Homeless" means "homeless individual" as defined by 7 C.F.R. 271.2.

(22) "Household" means:

(a) An individual who:

1. Lives alone; or

2. While living with others, customarily purchases and prepares meals for home consumption separate from others; or

(b) A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

(23) "Inadvertent household error" means an overissuance resulting from a misunderstanding or unintended error on the part of the household.

(24) "Institution of higher education" means any institution providing post high school education, which normally requires a high school diploma or equivalency certificate for a student to enroll, such as a:

(a) College;

(b) University; and

(c) Vocational or technical school.

(25) "Intentional program violation" or "IPV" is defined by 7 C.F.R. 273.16(c).

(26) "Kentucky Transitional Assistance Program" or "K[-]TAP", means the [a] program established in [pursuant to] 921 KAR 2:006.

(27) "Medicaid" means medical assistance under 42 U.S.C. 1396 in accordance with 7 C.F.R. 271.2.

(28) "Nonhousehold member" means an individual residing with a household, but not considered a household member in determining the household's eligibility or allotment.

(29) "Overissuance" is defined by 7 U.S.C. 271.2.

(30) "Public assistance" or "PA" means any of the programs authorized under 42 U.S.C. 601 to 679 in accordance with 7 C.F.R. 271.2, including:

(a) Old age assistance;

(b) K[-]TAP;

(c) Aid to the blind;

(d) Aid to the persons who have a permanent and total disability; and

(e) Aid to aged, blind, or persons with a disability.

(31) "Quality control review" is defined by 7 C.F.R. 271.2.

(32) "Recipient claim" means an amount owed to the cabinet because a household:

(a) Received an overissuance; or

(b) Trafficked SNAP benefits.

(33) "Restoration of benefits" means the provision of SNAP benefits that are owed to a household that received less SNAP benefits than it was entitled to receive during the month pursuant to 921 KAR 3:050, Section 10.

(34) "Self-employment income" means income from a business enterprise from which no taxes are withheld prior to receipt of the income by the individual.

(35) "Shelter for battered women and children" is defined by 7 C.F.R. 271.2.

(36) "Sponsor" means a person who executed an affidavit of support or similar agreement on behalf of an immigrant [alien] as a condition of the immigrant's [alien's] entry or admission into the United States as a permanent resident.

(37) "Sponsored immigrant [alien]" means an immigrant [alien] lawfully admitted for permanent residence as an immigrant as defined under 8 U.S.C. 1101.

(38) "Spouse" means either of two (2) individuals who:

(a) Would be defined as married to each other under applicable state law; or

(b) Are living together and are holding themselves out to the community as husband and wife by representing themselves as such to relatives, friends, neighbors, or trades people.

(39) "Striker" means anyone involved in a strike or other concerted stoppage of work by employees.

(40) "Supplemental Nutrition Assistance Program" or "SNAP":

(a) Is defined by 7 U.S.C. 2012(t)(4); and

(b) Means the program formerly known as the Food Stamp Program in accordance with Pub.L. 110-234, Section 4001.

(41) "Supplemental Security Income" or "SSI" is defined by 7 C.F.R. 271.2.

(42) "Thrifty food plan" is defined by 7 C.F.R. 271.2.

(43) "Trafficking" is defined by 7 C.F.R. 271.2.

MARTA MIRANDA-STRAUB, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: November 24, 2020

FILED WITH LRC: December 8, 2020 at 9:43 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 22, 2021, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by February 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 virtually 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 February 28, 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 provides definitions of terms used in the Supplemental Nutrition Assistance Program (SNAP), as established in Chapter 3 of Title 921 of the Kentucky Administrative Regulations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide the definitions of terms used in the SNAP, as established in Chapter 3 of Title 921 of the Kentucky Administrative Regulations.

(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 defining terms used throughout Title 921 of the Kentucky Administrative Regulations Chapter 3 in the establishment of the SNAP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides for the effective administration of the statutes by providing defined terms for administrative regulations governing SNAP.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation amendment reflects federal Agricultural Improvement Act of 2018 changes in the definition of the term "expungement," shortening the SNAP EBT funds inactivity timeframe from 12 months to 9 months. This amendment also replaces the term "alien" with "immigrant" when referring to sponsored immigrants, consistent with guidance from the Department of Homeland Security, the Immigration and Nationality Act, and the U.S. Citizenship and Immigration Services Systematic Alien Verification for Entitlements (SAVE) sponsorship initiative, and makes other technical corrections necessary for compliance with KRS Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to be in compliance with recently passed federal legislation and federal guidance.

(c) How the amendment conforms to the content of the

authorizing statutes: The amendment conforms to the content of the authorizing statutes by updating terminology used in Chapter 3 of Title 921 of the Kentucky Administrative Regulations applicable to the SNAP.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assists in the effective administration of the statutes by conforming to federal rules and guidance.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of August 2020, 277,311 households received SNAP benefits, but this administrative regulation only affects the terms of the program.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will require no new action on the part of SNAP applicants or recipients as it only defines the terms of the program.

(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 definition amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There is no benefit for the affected entities; the amendment is to conform definitions to federal rules and guidance.

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

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

(b) On a continuing basis: There are no ongoing costs associated with this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There are no costs associated with this administrative regulation; however, SNAP benefits are 100% federally funded. Administrative functions are funded at a 50% state and 50% federal match rate. The funding for SNAP has been appropriated in the enacted budget.

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

(8) State whether or not this administrative regulation establishes 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 only defines programmatic terms.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Agricultural Improvement Act of 2018, 7 C.F.R. 271.4

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

3. Minimum or uniform standards contained in the federal mandate. 7 C.F.R. 271.4

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. This administrative regulation only defines programmatic terms.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those

required by the federal mandate.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, Department for Community Based Services, will be impacted by this administrative regulation as the department 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), 7 C.F.R. 271.4.

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

(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 during the first year.

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

(c) How much will it cost to administer this program for the first year? No new or additional costs are necessary to administer this program in the first year.

(d) How much will it cost to administer this program for subsequent years? No new or additional costs are necessary to administer this program in any 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 Family Support (Amendment)

#### 921 KAR 3:045. Issuance procedures.

RELATES TO: 7 C.F.R. 274.2, 274.4, 274.5, 274.6

STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. 271.4, 274.1

NECESSITY, FUNCTION, AND CONFORMITY: ~~[7 C.F.R. 271.4 requires the Cabinet for Health and Family Services to administer a Supplemental Nutrition Assistance Program (SNAP) within the state.]~~ KRS 194A.050(1) requires the secretary 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 [it's] programs. 7 C.F.R. 271.4 delegates the authority to Kentucky and requires the state agency to be responsible for the administration of the Supplemental Nutrition Assistance Program (SNAP) within the state. The cabinet shall follow procedures established in 7 C.F.R. 274.1 in the operation of an electronic benefit transfer or "EBT" system. This administrative regulation establishes issuance procedures used by the cabinet in the administration of SNAP.

Section 1. Basic Issuance Requirements. (1) The cabinet shall be responsible for the timely and accurate issuance of benefits to eligible households.

(2) In issuing benefits, the cabinet shall ensure [insure] that:

(a) Only certified households receive benefits;

(b) Program benefits shall be distributed in the correct amounts; and

(c) Benefit issuance and reconciliation activities shall be properly conducted and accurately reported to the Food and Nutrition Service (FNS).

(3) The cabinet shall advise the recipient at time of application that:

(a) Unused benefits shall be expunged in accordance with Section 6 of this administrative regulation; and

(b) Expunged benefits shall be:

1. Applied for benefit overpayments in accordance with 921 KAR 3:050; or

2. Returned to the FNS of the U.S. Department of Agriculture.

(4) The cabinet shall maintain issuance records for a period of three (3) years from the month of origin.

Section 2. Benefit Delivery. (1) Benefits shall be provided to an eligible household through an EBT system.

(2) An EBT card and instructions for use shall be mailed:

(a) Directly to each eligible household; or

(b) To the local office for pick up, if requested by the household.

Section 3. Benefit Availability. (1) Benefits shall be available to a household the day after an approval is processed, if the case is a:

(a) New application;

(b) Reapplication; or

(c) Recertification that is:

1. Initiated after the 15th day of the month; and

2. Approved during the benefit month.

(2) An ongoing case shall have benefits credited to the EBT account and available to the household within the first nineteen (19) days of the benefit month.

Section 4. EBT Card Replacement. (1) The cabinet shall provide a replacement EBT card to a household within five (5) days, if the EBT card is reported:

(a) Lost;

(b) Stolen; or

(c) Damaged.

(2) An EBT card shall be deactivated if a household reports the need for card replacement.

Section 5. Benefit Replacement. (1) After the household receives an EBT card, if the EBT card is lost or stolen and the EBT account is reduced, the cabinet shall not provide replacement benefits.

(2) If food purchased with SNAP benefits is destroyed in a household misfortune, the cabinet shall provide replacement benefits if:

(a) The loss is reported:

1. Orally or in writing; and

2. Within ten (10) days of the household misfortune; and

(b) A household member or authorized representative signs a statement attesting to the loss.

(3) If the household is eligible for replacement benefits, the replacement shall equal:

(a) The amount of the loss to the household, not to exceed the maximum of one (1) month's benefits for the household requesting replacement; or

(b) Up to the full value of the benefits, if the replacement includes restored benefits.

(4) The cabinet shall not provide a replacement due to a household misfortune if:

(a) A disaster declaration has been issued by FNS; and

(b) The household is eligible for disaster SNAP benefits.

(5) There shall not be a limit on the number of benefit replacements for food:

(a) Purchased with SNAP benefits; and

(b) Destroyed in a household misfortune.

(6) If available documentation indicates that a household's request for benefit replacement appears fraudulent, the cabinet

shall:

(a) 1. Deny the replacement; or

2. Delay the replacement; and

(b) Inform the household:

1. Of its right to a fair hearing to contest the denial or delay of a replacement; and

2. That a replacement shall not be made while the denial or delay is being appealed.

Section 6. Account Inactivity. (1) If an EBT account has not been debited in nine (9) [twelve (12)] consecutive months, the cabinet shall:

(a) Expunge a monthly benefit on a monthly basis as each individual benefit month reaches a date that is nine (9) [twelve (12)] months in the past; and

(b) Notify the household in writing at least thirty (30) days in advance of the expungement:

1. That the household's EBT account has not been debited in the last nine (9) [twelve (12)] months; and

2. Of the amount of SNAP benefits that will be [have been] expunged.

(2) If a recipient debits the EBT account, the expungement process shall cease.

(3) When the cabinet receives an official death notice or confirms a death match from an official source for all household members [a SNAP single-person household], the cabinet shall expunge the remaining benefit amount in accordance with 7 C.F.R. 274.2(i)(4)[correspondence from the United States Department of Agriculture dated August 23, 2017].

(4) Expunged benefits shall not be retrieved.[

~~Section 7. Incorporation by Reference. (1) The "Correspondence from United States Department of Agriculture dated August 23, 2017", 8/23/2017, 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: December 4, 2020

FILED WITH LRC: December 8, 2020 at 9:43 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on February 22, 2021, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by February 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 virtually 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 February 28, 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 issuance procedures for the Supplemental Nutrition Assistance Program (SNAP).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish uniform standards for the issuance of SNAP benefits.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes through its establishment of SNAP issuance procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes by establishing the requirements for SNAP issuance in accordance with 7 C.F.R. 271.4.

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation amendment decreases the period of time for which a SNAP EBT card may remain inactive before SNAP benefits are expunged. The federal Agricultural Improvement Act of 2018 (Public Law 115-334) amended this time period from twelve (12) consecutive months to nine (9) consecutive months, requires a notice of expungement action to be sent at least 30 days in advance, and requires expungement if the agency verifies that all household members are deceased.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with federal SNAP amendments passed in the Agricultural Improvement Act of 2018.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by adopting the new federally-required time period for expungement of inactive SNAP benefits.

(d) How the amendment will assist in the effective administration of the statutes: The amendment assists in the effective administration of the statutes by reducing the time period prior to inactive SNAP benefit expungement.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All SNAP households will be affected by this administrative regulation amendment, as they will not be able to maintain inactive funds past nine consecutive months. There were 6,355 SNAP expungements for the month of November 2020. There are rolling expungements every month for funds inactive for the timeframe specified in administrative regulation; therefore, this number remains similar month to month.

(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 required action on the part of SNAP recipients but if accounts are inactive for nine consecutive months, SNAP benefits will begin to be expunged from the account.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There is no benefit to SNAP recipients.

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

(a) Initially: There will be an initial system design expense. Administrative SNAP functions are funded at a 50% state and 50% federal match rate. The cabinet will utilize these administrative funds to administer the program in the first year. Costs will be within available appropriations. The funding has been appropriated in the enacted budget.

(b) On a continuing basis: There are no ongoing expenses

associated with this amendment.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is anticipated 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 amendment does not establish or increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied as the administrative regulation amendment will be applied to all SNAP recipients.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 271.4, 274.1

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

3. Minimum or uniform standards contained in the federal mandate. 7 C.F.R. 271.4 delegates the authority to Kentucky and requires the state agency to be responsible for the administration of the Supplemental Nutrition Assistance Program (SNAP) within the state. The cabinet is required to follow the procedures established in 7 C.F.R. 274.1 in the operation of an electronic benefit transfer (or EBT) system.

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 standards, or additional or different responsibilities than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter standards, or additional or different responsibilities than those required by the federal mandate.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services is impacted by this administrative regulation. The Department for Community Based Services, Division of Family Support, 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); 7 C.F.R. 271.4, 274.1.

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

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

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

(c) How much will it cost to administer this program for the first year? There will be an initial system design expense. Administrative SNAP functions are funded at a 50% state and 50% federal match rate. The cabinet will utilize these administrative funds to administer the program in the first year. Other than the

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initial system design expense, there will be no other costs as the cabinet is already mandated to expunge benefits.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:



NEW ADMINISTRATIVE REGULATIONS

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

**BOARDS AND COMMISSIONS**  
**Kentucky Board of Social Work**  
**(New Administrative Regulation)**

**201 KAR 23:150. Complaint procedure, disciplinary action, and reconsideration.**

RELATES TO: KRS 335.030, 335.070(1)(a), (2), (3), (4), (5), (6), (7), (8), 335.150, 335.155

STATUTORY AUTHORITY: KRS 335.070(3), 335.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.070(1)(a) authorizes the board to regulate the practice of social work and enforce the provisions of KRS 335.010 to 335.160 and 335.990. KRS 335.070(3) authorizes the board to promulgate and enforce reasonable administrative regulations to carry out the provisions of KRS 335.010 to 335.160 and 335.990. KRS 335.070(2) and KRS 335.150 requires the board to regulate the conduct of licensees, to investigate alleged violations, to promote the efficient and fair conduct of disciplinary proceedings and take appropriate action. This administrative regulation establishes the procedures to be followed in handling formal and informal disciplinary proceedings before the board in the imposition of sanctions and disciplinary action of a licensee or applicant in violation of KRS 335.030 or KRS 335.150.

Section 1. Complaint. (1) A complaint may be initiated by:

- (a) An individual;
  - (b) An individual who is authorized to act on the behalf of an employer of a licensee or applicant;
  - (c) A government agency; or
  - (d) The board.
- (2) A complaint shall be:
- (a) Made by a complainant in writing to the board on a Kentucky Board of Social Work Complaint Form along with an Authorization for Release of Medical Records Form (if applicable); and
  - (b) Received in the board office by mail, hand delivery, or by an online complaint submitted through the board's website.

(3) The board may conduct an investigation on its own initiative without receipt of a written complaint if the board has reasonable cause to believe that there may be a violation of KRS 335.010 to 335.160 or the administrative regulations of the board.

(4) A certified copy of a court record for conviction of a misdemeanor or felony shall be considered a complaint against a licensee or temporary permit holder.

(5) Redaction.

(a) Upon recommendation of the complaint committee and consent by majority vote of the board, the board may direct that a complaint be redacted of personal names, identification numbers, and contact information.

(b) The board shall keep the original complaint free of redactions and store the document in the complaint case file.

(c) The board shall send a redacted copy of a complaint to the respondent to meet the requirements of Section (3)(1) of this administrative regulation. The original complaint that is free of redactions may be viewed by the respondent upon written request submitted to the board but shall not be released to the respondent or the public until final disposition of the matter.

Section 2. Notice to Respondent. (1) The board shall notify a respondent in writing of the receipt of a complaint and send a copy of the complaint to the respondent at his or her mailing address or electronic mail address provided the board.

(a) The board may keep the complainant's name confidential until completion of the investigation, if any.

(b) A respondent shall file a response to a complaint with the board within twenty (20) days after receipt of notice of the complaint.

(c) Failure of a respondent to file a timely response to the complaint shall constitute a violation of a board order or administrative regulation and shall be grounds for disciplinary action under KRS 335.150(1)(f).

(2) Request for extension of time.

(a) A respondent or his or her legal representative may request an extension of time or additional time to file a response by submitting a written request to the board on or before the expiration of the twenty (20) day due date in subsection (3)(b).

Section 3. Recommendations of Complaint Committee. (1) Based on consideration of the complaint and the response, the complaint committee may:

(a) Recommend that a complaint be dismissed and the matter closed where:

- 1. The board lacks jurisdiction over the person named in the complaint;
- 2. There is insufficient evidence to support the complaint;
- 3. There are no violations of laws, rules and regulations governing the practice of social work; or
- 4. The conduct complained of does not warrant disciplinary or other remedial action.

5. Upon reaching a decision to dismiss a complaint, the board shall notify the respondent and complainant of the disposition of the matter in writing, by personal service, regular mail, or electronic mail address provided to the board.

6. Dismissal of a complaint shall be a final board action and shall not be subject to further investigation by the board or appeal under KRS 335.155.

(b) Recommend further investigation of the complaint. If the board approves an investigation, the board may be assisted by board staff, an agent of the board, the Office of the Attorney General, or other appropriate local, state, or federal agency.

(c) Refer the complaint to another committee of the board.

(d) Request an Authorization for Release of Medical Records Form from a party.

(e) Resolve the complaint through informal proceedings pursuant to KRS 335.150(4).

1. At any time during the complaint process, the board may authorize the board attorney or executive director of the board to enter into discussions or negotiations with a respondent and his or her attorney, if any, for the purpose of settling and informally dispensing with the complaint.

2. An agreed order or assurance of voluntary compliance shall be approved a majority vote of the board and signed by the chairperson of the board, the respondent, and the respondent's attorney, if any. Copies shall be placed in the licensee's file and provided to the complainant.

3. The board may employ mediation as a method of resolving the matter informally.

4. A mediated agreement shall be handled in the same manner as an agreed order in subsection 1 of this section.

(f) Issue a formal complaint and provide notice of hearing to the respondent in accordance with KRS Chapter 13B and KRS 335.155.

(g) Refer the matter to another government agency.

(h) Initiate a proceeding in its own name in Franklin Circuit Court to restrain and enjoin a violation in accordance with KRS 335.160.

(2) A complaint committee member having a conflict of interest shall disclose the existence of the conflict to the complaint committee and may be excused by the board.

Section 4. Board Action upon Recommendation of Complaint Committee. (1) The board shall review the committee's recommendations and shall approve or reject by majority vote the recommendations in whole or in part.

(2) A board member having a known conflict of interest shall disclose the existence of the conflict in writing to the board and may be excused, if warranted.

Section 5. Motion to Reconsider. (1) A respondent may file a motion to reconsider, modify, or reverse the final disposition of a disciplinary hearing to the board.

(2) The motion to reconsider shall provide evidence of the following:

(a) Grounds and reasons for reconsideration, modification, or reversal;

(b) Rehabilitation or restitution, if applicable; and

(c) Status of probation, parole, or supervision by any state or federal government agency or board.

(3) The complaint committee shall consider any such motion to reconsider at the next regularly scheduled committee meeting and any change in disposition shall be approved by a majority vote of the board.

(4) The board shall notify a respondent and complainant of the disposition of the reconsideration in writing, by personal service, by the regular mail, or electronic mail address provided to the board.

(5) The board shall consider no more than one (1) motion to reconsider from a respondent in a final matter.

Section 6. Unlicensed Practice. (1) If the complaint committee concludes that a complaint is substantiated to show that a person is practicing social work without a license, the committee shall prepare a letter signed by the board chair or an authorized representative to notify the person of the committee's belief that the person is practicing without a license and request that the person voluntarily cease the practice without a license.

(2) Penalty. Any person who shall be found by the board, after hearing or by agreed order, to have unlawfully engaged in the practice of social work shall be subject to a fine to be imposed by the board not to exceed \$250 per day of unlicensed practice, and not to exceed the total sum of \$2,500.

(3) The board may forward the complaint to the appropriate county attorney or Commonwealth's attorney with a request that appropriate action be taken in accordance with KRS 335.990.

(4) The board may initiate an action for injunctive relief in Franklin Circuit Court to restrain and enjoin violations in accordance with KRS 335.160.

Section 7. Incapacity of Respondent. (1) If the board receives a complaint alleging that a licensee or an applicant has been legally declared mentally incompetent or may be mentally incapable of providing social work services in a competent, safe, ethical, or professional manner, the board shall follow the procedures established in this administrative regulation;

(2) The board may order the licensee or applicant to submit to an examination by a psychologist, physician, or certified alcohol and drug counselor designated by the board to determine whether the licensee or applicant is capable of providing social work services in a competent, safe, ethical, or professional manner in accordance with KRS 335.010 to 335.16 and the administrative regulations as established by 201 KAR Chapter 23.

(3) The board shall pay the cost for an examination initiated and recommended by the board. The respondent shall the cost of the examination if he or she seeks an independent examination.

Section 8. Emergency Action. Nothing in this administrative regulation shall be construed to prevent the board from taking emergency action if authorized by KRS 13B.125.

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

(a) "KY Board of Social Work Complaint Form", 12/2020; and

(b) "Authorization for Release of Medical Records", 12/2020.

(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, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m., subject to COVID-10 restrictions.

JAY MILLER, Board Chairperson

APPROVED BY AGENCY: December 15, 2020

FILED WITH LRC: December 15, 2020 at 9:53 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held virtually by Zoom on Feb. 22, 2021, at 9:00 a.m. ET, at the Kentucky Board of Social Work, 125 Holmes Street, Suite 310, Frankfort, Kentucky 40601. A link to the virtual Zoom meeting shall be posted to the board's website at bsw.ky.gov and on the Facebook Page. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received within five days of the hearing 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 the end of day (11:59 p.m.), on Feb. 28, 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: Florence Huffman, Executive Director, Kentucky Board of Social Work, 125 Holmes Street, Suite 310, Frankfort, Kentucky 40601. main line (502) 564-2350, direct line (502) 782-2856, and email [florence.huffman@ky.gov](mailto:florence.huffman@ky.gov).

#### REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Florence Huffman

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for receiving and processing complaints against individuals regarding the practice of social work. The regulation sets the complaint procedures, hearing and appeal procedures, and reconsideration procedure for board disciplinary actions.

(b) The necessity of this administrative regulation: The regulation is necessary to establish uniform procedures for receiving and processing complaints. The regulation is necessary to establish a hearing and appeal and reconsideration procedure for board disciplinary actions.

(c) How does this administrative regulation conform to the content of the authorizing statutes? KRS Chapter 335 requires the board to enforce the provisions of the chapter. KRS 335.070 and 335.150 require the board to investigate allegations brought to its attention and prosecute violations of the chapter.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will inform licensees and the public of the complaint procedures and hearing process for complaints.

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

How the amendment will change this existing administrative regulation: This is a new administrative regulation. The regulation will create a uniform procedure for hearing and processing complaints and reconsidering the disposition of complaints. The regulation will allow the board to recover costs associated with disciplinary actions.

(b) The necessity of the amendment to this administrative regulation: The regulation is necessary to create uniform procedures for complaints and reconsiderations. The regulation is necessary to help the board recover the costs of processing complaints.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 335.070 and 335.150 require the board to enforce the provisions of KRS Chapter 335. KRS 335.070(1) allows the board to take disciplinary action against licensees that violate the terms of the statute and impose disciplinary fines and conditions.

(d) How the amendment will assist in the effective administration of the statutes: The regulation will create uniform procedures for complaints and reconsiderations. This regulation will protect individuals that file complaints by creating a process to protect confidential information.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: An estimated 650 persons will seek licensure within the next fiscal year, this regulation will also continue as new applicants seek licensure from the board.

(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 administrative regulation requires licensees to comply with the complaint procedures. This administrative regulation will allow the board to recover costs and fees in disciplinary actions and protect confidential information submitted by individual complainants as needed.

(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 additional costs to licensees to comply with this regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees and the public will benefit from uniform complaint procedures and a method to request that the board reconsider disciplinary actions. Individuals that file complaints will have confidential information protected by the board. The board can recover licensee fees used in the complaint process.

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

(a) Initially: The annual budget of this board for FY21 is \$425,300. It will not cost the administrative body any additional funds to implement this administrative regulation.

(b) On a continuing basis: The estimated budget for the board is in excess of \$426,000. It will not cost the administrative body any additional funds to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded solely by fees paid by the licensees and applicants.

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

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

(9) TIERING: Is tiering applied? No. Tiering is not necessary because the procedures for filing and reviewing complaints in this regulation will be applied to all individuals 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? Kentucky Board of Social Work is an administrative body created by KRS 335.030. The board does not anticipate that this regulation will impact state or local government.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.050, KRS 335.070(1); KRS 335.150; KRS 335.160.

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. 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? No additional cost.

(d) How much will it cost to administer this program for subsequent years? No additional cost.

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

Revenues (+/-): N/A

Expenditures (+/-): N/A

Other Explanation: N/A

#### DEPARTMENT OF AGRICULTURE Office of the Commissioner (New Administrative Regulation)

#### 302 KAR 4:010. Renewable Chemical Production Program.

RELATES TO: KRS Chapter 246

STATUTORY AUTHORITY: KRS 246.700(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 246.700(1)(a) requires the Department of Agriculture to promulgate administrative regulations to create and administer a renewable chemical production program. KRS 246.700 requires the department to cooperate with the Department of Revenue to authorize tax credits for eligible companies producing renewable chemicals. This administrative regulation establishes requirements for renewable chemicals, creation of jobs or investment of new capital related to renewable chemical production, and reporting requirements for eligible companies.

#### Section 1. Definitions.

(1) "Base employment" means the number of full-time employees employed on the day prior to the work start date of the new employees filling the earliest new jobs identified on the application. For applications from businesses involved in mergers, acquisitions, or federal tax identification number changes, base employment may be adjusted by the department;

(2) "Biobased content percentage" means, with respect to any renewable chemical, the amount, expressed as a percentage, of renewable organic material present as determined by testing representative samples using the American Society for Testing and Materials standard D6866.

(3) "Biomass feedstock" means agricultural crop and process residues, wood and forest residues, energy crops, sugar, polysaccharide, crude glycerin, lignin, fat, grease, or oil derived from a plant or animal, or a protein capable of being converted to a building block chemical by means of a biological or chemical conversion process.

(4) "Building block chemical" means a molecule converted from biomass feedstock as a first product or a secondarily derived product that can be further refined into a higher-value chemical, material, or consumer product. "Building block chemical" includes but is not limited to high-purity glycerol, oleic acid, lauric acid, methanoic or formic acid, arabinic acid, erythronic acid, glyceric acid, glycolic acid, lactic acid, 3-hydroxypropionate, propionic acid, malonic acid, serine, succinic acid, fumaric acid, malic acid, aspartic acid, 3-hydroxybutyrolactone, acetoin, threonine, itaconic acid, furfural, levulinic acid, glutamic acid, xylonic acid, xylaric acid, xylitol, arabitol, citric acid, aconitic acid, 5-hydroxymethylfurfural, lysine, gluconic acid, glucaric acid, sorbitol, gallic acid, ferulic acid, hydroxyalkanoic acids, 1 nonfuel butanol, nonfuel ethanol, biomass derived carbons, bio-oil, or constituent polymer repeating units, or such additional molecules as may be approved by the department after a request and review process;

(5) "Commissioner" means the Commissioner of Agriculture;  
 (6) "Crude glycerin" means glycerin with a purity level below ninety-five percent;

(7) "Department" means the Kentucky Department of Agriculture;

(8) "Food additive" means a building block chemical that is not primarily consumed as food but which, when combined with other components, improves the taste, appearance, odor, texture, or nutritional content of food. The Department, in its discretion, shall determine whether or not a building block chemical is primarily consumed as food.

(9) "Full-time employee" means a person employed for at least an average of thirty-five (35) hours per week and subject to the state tax imposed by KRS 141.020;

(10) "High-purity glycerol" means glycerol with a purity level of ninety-five percent or higher.

(11) "New Jobs" means at least two (2) positions added for the purpose of producing renewable chemicals that are filled by a full-time employee and that increases the total employment of the eligible business above its base employment;

(12) "Renewable Chemical" means a building block chemical with a biobased content percentage of at least 50 percent. "Renewable chemical" does not include a chemical sold or used for the production of food, feed, or fuel. "Renewable chemical" includes cellulosic ethanol, starch ethanol, or other ethanol derived from biomass feedstock, fatty acid methyl esters, or butanol, but only to the extent that such molecules are produced and sold for uses other than food, feed, or fuel. "Renewable chemical" also includes a building block chemical that can be a food additive as long as the building block chemical is not primarily consumed as food and is also sold for uses other than food. "Renewable chemical" also includes supplements, vitamins, nutraceuticals, and pharmaceuticals, but only to the extent that such molecules do not provide caloric value so as to be considered sustenance as food or feed;

(13) "Substantial Amount of New Capital" means the investment, after July 1, 2020, by an eligible business of at least five thousand (\$5000) in tangible capital assets used directly in the production of renewable chemicals.

(14) "Sugar" means the organic compounds produced from dedicated crops as well as derived from starches, cellulose, and hemicelluloses, including: glucose, fructose, xylose, arabinose, lactose, and sucrose.

(15) "Date of Eligibility" means the date that a business first qualified as an eligible business by organizing, expanding, or locating in Kentucky on or after July 1, 2020 and:

(a) Filling new jobs; or

(b) Acquiring tangible capital assets as a result of substantial new capital investment.

(16) "Preliminary Tax Credit" means the dollar amount of tax credit certified by the department for an eligible business.

Section 2. Tax Credit Rate Calculation. An eligible business may be approved for a preliminary tax credit calculated in an amount equal to the product of five cents (\$0.05) multiplied by the number of pounds in molecular weight of renewable chemicals produced in this state by the eligible business. This credit may be retroactive to July 1, 2020 with consent of the Kentucky Revenue Cabinet.

### Section 3. Full-Time Employee Requirements.

(1) A business shall employ at least two (2) full-time employees over the base employment to meet the eligibility requirement for creating new jobs.

(2) If a full-time employee filling a new job ceases to be employed by the eligible business for any reason, the employee shall be replaced within forty-five (45) days of the employee's termination date in order for the eligible business to maintain the new job for the required period of time. The business shall notify the department within 5 days after the termination date of the need to replace the terminated employee. The business shall notify the department within 5 days after a replacement employee has been hired.

(3) All paid hours (work hours and paid leave hours) should be included when calculating the average hours worked per week to determine if an employee meets the 35-hour minimum requirement to qualify as full-time.

### Section 4. Program Applications.

(1) Applications for preliminary tax credits shall be filed with the department by the 15th day of the 1st month following the close of the preceding calendar year.

(2) Upon receipt of an incomplete application or an application without the correct fee, the department shall notify the applicant of the need for additional information or payment. The department shall consider the application abandoned if the department does not receive the required information or payment within thirty (30) days after notification of the deficiency. The thirty (30) day period shall begin on the date the notification is issued by the department.

Section 5. Required Agreement. An eligible businesses shall enter into an agreement with the department to submit all information and reports necessary for the department to determine its date of eligibility, the amount of preliminary tax credit for which the business is eligible, and compliance for each year, including information on required creation or maintenance of new jobs or investment of a substantial amount of new capital.

### Section 6. Requests for Eligibility of Additional Molecules and Review.

(1) The department may, after review, add additional eligible molecules to the definition of "building block chemical" upon written request by a producer of a molecule not currently included in the definition of building block chemical.

(2) The department shall accept for review requests for approval of additional molecules on a continuous basis.

(3) The department, before approval of any request for an additional building block molecule, shall convene a committee to review the request and determine whether a requested molecule meets the definition of building block chemical and the criteria for an eligible renewable chemical. The committee shall consist of:

(a) The Director, or their designee, from the University of Kentucky Center for Applied Energy Research;

(b) The Director, or their designee, from the Conn Center for Renewable Energy Research at University of Louisville; and

(c) An employee of the department, appointed by the Commissioner.

(4) Upon approval by the committee, the department shall deem the approved molecule as included in the definition of a building block chemical.

(5) The producer of a disapproved molecule shall be allowed to appeal the decision of the committee.

Section 7. Compliance Cost Fee. A non-refundable compliance cost fee of five hundred dollars (\$500) shall be submitted with all applications for preliminary tax credits for eligible renewable chemical production.

### Section 8. Appeal.

(1) Appeals related to the department's decisions on authorizing additional building block chemicals 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 eligible business seeking or receiving a tax credit for production of renewable chemicals.

(5) The members of the administrative panel shall determine if the department's action being appealed 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 appellant 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 shall be allowed an opportunity to present

arguments for reversing the department's action.

(9) A representative of the department shall be allowed an opportunity to present arguments for affirming the department's action.

(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 action of the department.

(12) Appeals of the panel shall be in accordance with KRS 13B.

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

(1) "Renewable Chemical Production Program Tax Credit Application", (2020)".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, 105 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. RYAN QUARLES, Commissioner

APPROVED BY AGENCY: December 14, 2020

FILED WITH LRC: December 15, 2020 at 9:17

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 23, 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 February 28, 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) 782-0284, fax (502) 564-2133, email clint.quarles@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Clint Quarles, Staff Attorney

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes rules for application for the tax credit.

(b) The necessity of this administrative regulation: This regulation is necessary to establish application rules for the chemical tax credit.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 246.700 tasked the KDA with rule creation and application for the credit.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in effective administration by making rules clear for application for the credit.

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

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

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

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

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

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

and perhaps 5 applicants in the near term.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities will be required to follow the individual regulatory instructions in the administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): A 500 dollar application fee is required of each applicant.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Administrative ease on behalf of the KDA and clear guidance for entities. The entities will also have a useful tax credit.

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

(a) Initially: Costs for postage and office materials, and other workload cannot be determined at this time, and approximately 2 weeks annually for 2 persons would be our maximum guess.

(b) On a continuing basis: Costs for postage and office materials, and other workload cannot be determined at this time, and approximately 2 weeks annually for 2 persons would be our maximum guess.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: the KDA general fund, and application fees.

(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: Yes, fees are allowed by statute, and this filing allows for a 500 dollar application fee.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Yes, fees are allowed by statute, and this filing allows for a 500 dollar application fee.

(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 246.700

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is generated, other than the application fee.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is generated, other than the application fee.

(c) How much will it cost to administer this program for the first year? Costs for postage and office materials, and other workload cannot be determined at this time, and approximately 2 weeks annually for 2 persons would be our maximum guess.

(d) How much will it cost to administer this program for subsequent years? Costs for postage and office materials, and other workload cannot be determined at this time, and approximately 2 weeks annually for 2 persons would be our maximum guess.

Note: If specific dollar estimates cannot be determined, provide

a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): \$500 per application.

Expenditures (+/-): Approximately 2 weeks annually for 2 persons would be our maximum guess.

Other Explanation:

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

**704 KAR 8:110. Kentucky Academic Standards for World Language.**

RELATES TO: KRS 156.070, 156.160, 158.645, 158.6451, 158.6453(18), 160.290

STATUTORY AUTHORITY: 156.070, 156.160, 158.6453(18)

NECESSITY, FUNCTION, AND CONFORMITY: 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 156.160 requires the Kentucky Board of Education to establish courses of study for the different grades and kinds of common schools, with the courses of study to comply with the expected goals, outcomes, and assessment strategies developed under KRS 158.645, 158.6451, and 158.6453. KRS 158.6453(18) requires the Kentucky Department of Education to implement a process for the review and revision of academic standards with the advice of a review committee. KRS 160.290 authorizes local boards of education to provide for courses and other services for students consistent with the administrative regulations of the Kentucky Board of Education. This administrative regulation incorporates by reference the Kentucky Academic Standards for World Language, which contain the general courses of study and academic content standards of world language for use in Kentucky's common schools.

Section 1. Public schools offering a world language course or program shall meet the minimum content requirements established in the Kentucky Academic Standards for World Language.

Section 2. Incorporation by Reference.

(1) The "Kentucky Academic Standards for World Language", December 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, 8:00 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).

JASON GLASS, Commissioner

LU YOUNG, Chair

APPROVED BY AGENCY: December 10, 2020

FILED WITH LRC: December 14, 2020 at 12:24 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on February 22, 2021 at 10 a.m. in the State Board Room, 5th Floor, 300 Sower Blvd., Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five (5) working days prior to this hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted

through February 28, 2021.

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

**REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT**

Contact Person: Todd G. Allen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the minimum World Language content standards for use in Kentucky's common schools.

(b) The necessity of this administrative regulation: KRS 156.160 requires the Kentucky Board of Education to establish courses of study for the different grades and kinds of common schools, with the courses of study to comply with the expected goals, outcomes, and assessment strategies developed under KRS 158.645, 158.6451, and 158.6453. This administrative regulation incorporates by reference the Kentucky Academic Standards for World Language, which contain the general courses of study and academic content standards of world language for use in Kentucky's common schools.

(c) How this administrative regulation conforms to the content of the authorizing statutes: 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 158.6453(18) requires the Kentucky Department of Education to implement a process for the review and revision of academic standards with the advice of a review committee. KRS 160.290 authorizes local boards of education to provide for courses and other services for students consistent with the administrative regulations of the Kentucky Board of Education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation incorporates by reference the Kentucky Academic Standards for World Language, which contain the general courses of study and academic content standards of world language for use in Kentucky's common schools pursuant to KRS 158.6451.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will require local education agencies to conform to the contents of the academic standards incorporated by reference in this regulation.

Therefore, those affected by this regulation include: all public schools, school districts, and the KDE as it is tasked with providing standards implementation guidance and support.

(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 administrative regulation will require local education agencies to conform courses and programs to the contents of the Kentucky Academic Standards for World Language, incorporated by reference in this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Local education agencies may have additional costs associated with standards-aligned professional learning to build educator capacity and the purchase of standards-aligned instructional resources needed for implementation and instruction. Also, the KDE will be impacted by staff time to answer questions and provide guidance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Kentucky Academic Standards for World Language established in this administrative regulation provide the legal basis for equitable access to grade-level, high quality learning experiences for students enrolled in world language programs and courses across the state. The standards outline the minimum learning requirements and establish a statewide baseline for what Kentucky students should know and be able to do in world language courses. Local school and district implementation of the Kentucky Academic Standards ensures equitable access to learning for all students.

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

(a) Initially: Local school and district budgets may be impacted by the need for standards-aligned professional learning to support effective implementation and build educator knowledge and capacity around the standards. Local school and district budgets also may be impacted by the need for high-quality standards-aligned instructional resources to support effective implementation and instruction. KDE staff time will be impacted by the need for implementation guidance and answering questions from the field. KDE will utilize existing staff in order to administer implementation. Academic Program Consultants from the Division of Program Standards will be required to aid local education agencies in the implementation of this regulation. Compensation for these staff members is \$60,000. It is anticipated that, in the first year of this change, those staff members may have to devote 25% of their job duties to the implementation of this regulation. As such, KDE anticipates that, while there is no additional budget, the cost in existing staff time for the implementation of this regulation will be \$15,000 in the first year.

(b) On a continuing basis: Local school and district budgets may be impacted by the need for high-quality standards-aligned instructional resources to support effective implementation and instruction. KDE staff time will continue to be impacted by the need for implementation guidance and answering questions from the field. Yet, the KDE anticipates that, after a year of implementation of this regulation, that the staff time required to administer this regulation will decrease substantially as the local education agencies will become accustomed to the use of these standards.

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

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate for this administrative regulation because the administrative regulations applies equally to all schools and local education agencies.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Local education agencies and the Kentucky Department of Education.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 156.070(1) requires the Kentucky Board of Education to manage and control the common schools and all programs operated in the schools. KRS 156.160 requires the Kentucky Board of Education to establish courses of study for the different grades and kinds of common schools, with the courses of study to comply with the expected goals, outcomes, and assessment strategies developed under KRS 158.645, 158.6451, and 158.6453. KRS 158.6453(18) requires the Kentucky Department of Education to implement a process for the review and revision of academic standards with the advice of a review committee. KRS 160.290

authorizes local boards of education to provide for courses and other services for students consistent with the administrative regulations of the Kentucky Board of Education. This administrative regulation incorporates by reference the Kentucky Academic Standards for World Language, which contain the general courses of study and academic content standards of world language for use in Kentucky's common schools.

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

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue.

(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.

(c) How much will it cost to administer this program for the first year? Local school and district budgets may be impacted by the need for standards-aligned professional learning to support effective implementation and build educator knowledge and capacity around the standards. Local school and district budgets also may be impacted by the need for high-quality standards-aligned instructional resources to support effective implementation and instruction. KDE staff time will be impacted by the need for implementation guidance and answering questions from the field. KDE will utilize existing staff in order to administer implementation. Academic Program Consultants from the Division of Program Standards will be required to aid local education agencies in the implementation of this regulation. Compensation for these staff members is \$60,000. It is anticipated that, in the first year of this change, those staff members may have to devote 25% of their job duties to the implementation of this regulation. As such, KDE anticipates that, while there is no additional budget, the cost in existing staff time for the implementation of this regulation will be \$15,000 in the first year.

(d) How much will it cost to administer this program for subsequent years? Local school and district budgets may be impacted by the need for high-quality standards-aligned instructional resources to support effective implementation and instruction. KDE staff time will continue to be impacted by the need for implementation guidance and answering questions from the field. Yet, the KDE anticipates that, after a year of implementation of this regulation, that the staff time required to administer this regulation will decrease substantially as the local education agencies will become accustomed to the use of these standards.

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

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

#### LABOR CABINET

##### Department of Workplace Standards Division of Occupational Safety and Health Compliance Division of Occupational Safety and Health Education and Training (Repealer)

**803 KAR 2:096. Repeal of 803 KAR 2:095 and 803 KAR 2:430.**

RELATES TO: KRS 338.015

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal

standards. This administrative regulation repeals 803 KAR 2:095 and 803 KAR 2:430.

Section 1. The following administrative regulations are hereby repealed:

- (1) 803 KAR 2:095, Trade secrets; and
- (2) 803 KAR 2:430, Appendix A to 29 Code of Federal Regulations Part 1926.

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: December 8, 2020

FILED WITH LRC: December 10, 2020 at 11:54 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 23, 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/83618567636?pwd=a2FuQnRFeXNNNE5wQjB5QnJDK1lTd099>, password 224995, 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 February 28, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email [Robin.Maples@ky.gov](mailto: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 repeals 803 KAR 2:095 related to the use of trade secrets, which restates KRS 338:171. Section 2 of this regulation repeals 803 KAR 2:430, which is an unnecessary informational appendix.

(b) The necessity of this administrative regulation: 803 KAR 2:096 is necessary to repeal 803 KAR 2:095 which restates KRS 338:171. This regulation is also necessary to repeal 803 KAR 2:430, which is an unnecessary informational appendix.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 13A.120(2)(e) establishes that an administrative body shall not promulgate administrative regulations when a statute prescribes the same or similar procedure for the matter regulated. 803 KAR 2:095 restates language contained in KRS 338:171. 803 KAR 2:430 is an unnecessary informational appendix.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Not applicable.

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

(a) How the amendment will change this existing administrative regulation: This is not an amendment, but a repeal of two (2) administrative regulations.

(b) The necessity of the amendment to this administrative regulation: 803 KAR 2:096 is necessary to repeal 803 KAR 2:095 which restates KRS 338:171. This regulation is also necessary to repeal 803 KAR 2:430, which is an unnecessary informational appendix.

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

authorizing statutes of KRS 338.051 and 338.061.

(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: This repeal affects all employers in the Commonwealth engaged in general industry and construction activities covered by KRS Chapter 338.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This administrative regulation repeals 803 KAR 2:095, which restates language found in KRS 338:171. The regulation also repeals 803 KAR 2:430, which is an unnecessary informational appendix.

(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.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): There are no compliance requirements associated with this repeal.

(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 related to this repeal.

(b) On a continuing basis: There is no continuing cost to the OSH Program related to this repeal.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement this repeal.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This repeal 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. KRS 13A.120(2)(e) states that an administrative body shall not promulgate administrative regulations when a statute prescribes the same or similar procedure for the matter regulated. 803 KAR 2:095 restates language found in KRS 338:171. 803 KAR 2:430 is an unnecessary informational appendix.

3. Minimum or uniform standards contained in the federal mandate. KRS 13A.120(2)(e) states that an administrative body shall not promulgate administrative regulations when a statute prescribes the same or similar procedure for the matter regulated. 803 KAR 2:095 restates language found in KRS 338:171. 803 KAR 2:430 is an unnecessary informational appendix.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Not applicable.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Not applicable.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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



regulation affects any unit, part, or division of local government covered by KRS Chapter 338 and engaged in general industry and construction activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13A.120(2)(e), 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 repeal.

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

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: This repeal does not impose any additional requirements or expenditures to the employer.

**LABOR CABINET**  
**Department of Workers' Claims**  
**(New Administrative Regulation)**

**803 KAR 25:300. Mediation program.**

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.276

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.276(2) provides that the Commissioner of the Department of Workers' Claims shall promulgate administrative regulations necessary to establish and implement a mediation program, which shall prescribe the qualifications and duties of mediators; a process for the designation of mediators; procedures for the conduct of mediation proceedings; and the issues which shall be subject to mediation. This administrative regulation establishes a mediation program for mediation of disputes as to the entitlement to compensation under KRS Chapter 342.

**Section 1. Definitions.**

(1) "Administrative law judge" or "ALJ" is defined in 803 KAR 25:010 Section 1(1).

(2) "Calendar day" means all days in a month, including Saturday, Sunday and any day which is a legal holiday.

(3) "Mediation" as used in this regulation means a process where a third party facilitates discussion among the parties in an effort to resolve disputes regarding entitlement to the compensation provided in KRS Chapter 342.

**Section 2. Qualifications and Duties of Mediators.**

(1) A mediator shall be an administrative law judge.

(2) A mediator shall not conduct the mediation of a claim, or any of the issues involving a claim, presently assigned to him or her as an administrative law judge.

(3) The mediator shall:

(a) explain the mediation process to the parties at the beginning of the session;

(b) conduct the mediation in a fair and unbiased manner; and

(c) maintain the confidentiality of the mediation.

**Section 3. Process for Designation of Mediators. The chief**

administrative law judge shall designate one or more administrative law judges to serve as a mediator on a rotating basis consistent with this regulation.

**Section 4. Procedures for Conduct of Mediation Proceedings.**

(1) At any time after the claim has been initiated with the Department of Workers' Claims, any party may file a motion with the administrative law judge to have the claim, or any part of the claim, referred to mediation under the program outlined in this regulation. The motion shall identify the issues to be mediated.

(2) An opposing party shall have seven (7) calendar days to file a response to the motion seeking mediation.

(3) The administrative law judge shall either grant or deny the motion within ten (10) calendar days of the filing of the motion to refer to mediation.

(4) The parties may file a joint motion to refer to mediation. The administrative law judge shall order that the claim or parts of the claim be referred to mediation within seven (7) calendar days of the filing of the joint motion.

(5) The administrative law judge may refer a claim or part of a claim to mediation sua sponte at any time after being assigned the claim.

(6) Upon the referral, the administrative law judge or the mediator shall confer with the parties for the purpose of scheduling the mediation. The mediator shall issue a mediation order within seven (7) calendar days of the referral which shall include:

(a) the date, time, allotted time, location of the mediation and whether the mediation shall be conducted in person, by telephone, or by video conferencing technology;

(b) the required attendees of the mediation; and

(c) the issue(s) to be mediated.

(7) Except by agreement of the parties or by order of the mediator, all counsel of record and all parties shall attend the mediation.

(a) An insured party shall be deemed to have appeared by the physical presence of a representative of the insurance carrier, other than defense counsel, with full settlement authority.

(b) A public entity shall be deemed to have appeared by the physical presence of a representative with full authority to negotiate on behalf of the entity and to recommend settlement to the appropriate decision-making body of the entity.

(c) An entity other than a public entity or an insurance carrier for an insured party shall be deemed to appear by the physical presence of a representative, other than the party's counsel of record, who has full authority to settle without further consultation or approval.

(d) The requirement to physically attend the mediation may be modified to telephonic attendance or attendance by video conference technology by stipulation of the parties or by order of the mediator.

(8) Parties entering into mediation shall be prepared to mediate the disputed issues listed in the mediation order and shall mediate all issues listed in good faith.

(9) Mediation shall be confidential and considered as settlement negotiations for purposes of KRE 408.

(10) The mediator shall conduct the mediation in accordance with Section 2(3) of this regulation.

(11) If the parties are able to reach a settlement of all disputed issues, the mediator shall issue a "Notice of Settlement at Mediation" within seven (7) calendar days after the mediation stating that all claims have been resolved. The "Notice of Settlement at Mediation" shall be filed with the Department of Workers' Claims and served on all parties.

(12) If the parties are unable to reach a settlement of any disputed issues, the mediator shall issue a written "Notice of No Settlement at Mediation" within seven (7) calendar days after the mediation stating that no disputes have been resolved. The "Notice of No Settlement at Mediation" shall be filed with the Department of Workers' Claims and served on all parties.

(13) If the parties are able to reach a partial settlement of the disputed issues, the mediator shall issue a written "Notice of Partial Settlement at Mediation" setting forth all the resolved issues and unresolved issues within seven (7) calendar days after the

mediation. The “Notice of Partial Settlement at Mediation” shall be filed with the Department of Workers’ Claims and served on all parties.

#### Section 5. Issues Subject to Mediation.

(1) All issues arising from disputes as to the entitlement to benefits under KRS Chapter 342 shall be subject to mediation under this regulation if so ordered by an administrative law judge.

(2) Nothing in this regulation shall prevent the parties from using a private mediator at their own cost to resolve disputes as to the entitlement to benefits under KRS Chapter 342.

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: December 9, 2020

FILED WITH LRC: December 9, 2020 at 1:39 p.m.

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held at the Department of Workers’ Claims on February 23, 2021 at 10:00 a.m. (ET) to receive comment regarding the proposed new regulation, Mediation Program, 803 KAR 25:300. 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. Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend no later than five (5) workdays prior to the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through February 28, 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 a program to mediate disputes as to the entitlement to compensation under KRS Chapter 342.

(b) The necessity of this administrative regulation: KRS 342.276(2) mandates that the Commissioner of the Department of Workers’ Claims promulgate administrative regulations necessary to establish and implement a mediation program, which shall prescribe the qualifications and duties of mediators; a process for the designation of mediators; procedures for the conduct of mediation proceedings; and the issues which shall be subject to mediation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 342.276(2) mandates that the Commissioner of the Department of Workers’ Claims promulgate administrative regulations necessary to establish and implement a mediation program, which shall prescribe the qualifications and duties of mediators; a process for the designation of mediators; procedures for the conduct of mediation proceedings; and the issues which shall be subject to mediation. This regulation establishes a mediation program as prescribed by KRS 342.276(2).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation adopts a program for mediation of disputes as to the entitlement to compensation under KRS Chapter 342. The mediation program will provide injured employees, physicians and

medical providers providing services to injured workers pursuant to KRS Chapter 342, insurance carriers, self-insurance groups, self-insured employers, insured employers, and third party administrators an opportunity for a quickly negotiated resolution of claims under this chapter.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All injured employees, physicians and medical providers providing services to injured workers pursuant to KRS Chapter 342, insurance carriers, self-insurance groups, self-insured employers, insured employers, and third party administrators.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: When the administrative law judge refers the parties to mediation by order, the parties will participate in a mediation session in an effort to resolve all or part of their claims.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost is assessed to any party to participate in a mediation session ordered by an ALJ.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The mediation program will provide injured employees, physicians and medical providers providing services to injured workers pursuant to KRS Chapter 342, insurance carriers, self-insurance groups, self-insured employers, insured employers, and third party administrators an opportunity for a quickly negotiated resolution of claims under this chapter.

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

(a) Initially: None

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Workers’ Claims normal budget is the source of funding.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied; the regulation applies to all parties equally.

#### FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Workers’ Claims and all agencies or departments of government with employees.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 342.276(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

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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? 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: None.

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE**  
**Minutes of December 3, 2020**

**Call to Order and Roll Call**

The December meeting of the Administrative Regulation Review Subcommittee was held on Thursday, December 3, 2020 at 1 p.m. In Room 149 of the Capitol Annex. Representative Hale, Co-Chair, called the meeting to order, the roll call was taken. The minutes from the November 2020 meeting were approved.

**Present were:**

**Members:** Senators Julie Raque Adams, Alice Forgy Kerr, Reginald Thomas, and Stephen West. Representatives Deanna Frazier, David Hale, and Marylou Marzian.

**LRC Staff:** Stacy Auterson, Emily Caudill, Ange Darnell, Emily Harkenrider, Karen Howard, and Carrie Nichols.

**Guests:** Alan Harrison, UK Feed and Milk Programs; Sharron Burton, Personnel Cabinet; Justin McNeil, Kentucky Retirement Systems; Eden Davis, Larry Hadley, Board of Pharmacy; Carson Kerr, Jonathan Shrewsbury, Board of Optometric Examiners; Christopher Hunt, Mason McNulty, Board of Barbering; Jessica Estes, Morgan Ransdell, Board of Nursing; David Trimble, Board of Chiropractic Examiners; Bryan Morrow, Board of Licensure for Pastoral Counselors; Leah Boggs, Kevin Winstead, Office of Claims and Appeals; DJ Wasson, Department of Insurance; Marc Guiloil, Chad Thompson, Jennifer Wolsing, Horse Racing Commission; Julie Brooks, Donna Little, Kelli Rodman; Department of Public Health; Patti Clark, Stephanie Craycraft, Justin Dearing, Phyllis Millspaugh, Department for Behavioral Health, Developmental and Intellectual Disabilities; Rachel Ratliff, Department for Community Based Services; Joel Thornbury, Shannon Stiglitz, Kentucky Pharmacists Association; Robert Heleringer, Attorney.

**The Administrative Regulation Review Subcommittee met on Thursday, December 3, 2020, and submits this report:**

**Administrative Regulations Reviewed by the Subcommittee:**

**UNIVERSITY OF KENTUCKY: Agriculture Experiment Station: Milk and Cream**

12 KAR 5:010. Licenses. G. Alan Harrison, director, Milk Program, represented the Agriculture Experiment Station.

In response to a question by Co-Chair West, Mr. Harrison stated that many of the amendments to these administrative regulations were related to administrative regulation sunset prevention. These administrative regulations had not been revised in over twenty (20) years. References were updated, and changes were made to ensure that dairy producers were properly paid. In addition these administrative regulations governed milk testers and sampler-weighers. Coronavirus (Covid-19) had caused the agency to reduce inspections.

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.

12 KAR 5:020. Testing.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 7 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

12 KAR 5:030. Test samples.

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

12 KAR 5:040. Sampling and weighing.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

12 KAR 5:050. Inspections.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND

CONFORMITY paragraph and Sections 1 through 3 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 2 to clarify standards for the grading scale for sampler-weigher evaluations. Without objection, and with agreement of the agency, the amendments were approved.

12 KAR 5:060. Purchases from farm bulk tanks.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3, and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

12 KAR 5:070. Uniform standards for payment.

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

**PERSONNEL CABINET: Office of the Secretary: Personnel Cabinet, Classified**

101 KAR 2:210 & E. 2021 Plan Year Handbook for the Public Employee Health Insurance Program. Sharron Burton, deputy commissioner, represented the cabinet.

In response to a question by Co-Chair West, Ms. Burton stated that the Kentucky Public Employee Health Insurance Program Benefit Selection Guide was not ready for publishing each year until August or September, which did not leave enough time for the administrative regulation to become effective by January 1 of each year; therefore, the agency usually filed this as an emergency and ordinary administrative regulation each year. Additionally, the guide needed to be distributed to employees in October, which further limited the time for amending this administrative regulation.

**FINANCE AND ADMINISTRATION CABINET: Kentucky Retirement Systems: General Rules**

105 KAR 1:149. Quasi-governmental employer cessation window. Justin McNeil, staff attorney, represented the systems.

In response to a question by Co-Chair Hale, Mr. McNeil stated that the agency amendment represented a technical correction.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, and 4 to correct the date for the employer cessation window to April 1, 2020. Without objection,

and with agreement of the agency, the amendments were approved.

#### **BOARDS AND COMMISSIONS: Board of Pharmacy**

201 KAR 2:050. Licenses and Permits; Fees. Eden Davis, general counsel, and Larry Hadley, executive director, represented the board.

201 KAR 2:105. Requirements for wholesalers, medical gas wholesalers, wholesale distributors, and virtual wholesale distributors.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Sections 1 through 3, 5, and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A; (2) to amend Section 1 to: (a) add a definition for “component”, “illegitimate product”, and “product”; and (b) clarify the definition for “suspect product”; (3) to amend Section 5(3) and (4) to clarify that these requirements shall be for a company that handles prescription drugs and drug-related devices exempt from the Drug Supply Chain Security Act (DSCSA); and (4) to amend Section 5(3)(b) to require records to be readily retrievable within forty-eight (48) hours.

201 KAR 2:106. Licensed or permitted facility closures.

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 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 2:225. Special limited pharmacy permit – medical gas.

In response to a question by Representative Marzian, Mr. Hadley stated that this administrative regulation applied primarily to prescription oxygen for patients who used oxygen at home. It was possible that dental offices might also use oxygen.

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

201 KAR 2:240. Special limited pharmacy permit - Charitable.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 2:320. Requirements for manufacturers and virtual manufacturers.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to: (a) add a definition for “illegitimate product”, and “product”; and (b) clarify the definition of “suspect product”; (2) to amend Section 5(3) and (4) to clarify that these requirements shall be for a company that handles prescription drugs and drug-related devices exempt from the Drug Supply Chain Security Act (DSCSA); (3) to amend Section 5(3)(b) to require records to be readily retrievable within forty-eight (48) hours; and (4) to amend the TITLE; the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; and Sections 1 through 5, 7, and 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Board of Optometric Examiners**

201 KAR 5:140. Dispensing. Carson Kerr, executive director, and Dr. Jonathan Shrewsbury, president, represented the board. Joel Thornbury, president, Kentucky Pharmacists Association, and Shannon Stiglitz, senior vice president of government affairs,

Kentucky Retail Federation, for which the Kentucky Pharmacists Association is an affiliate.

In response to questions by Co-Chair Hale, Mr. Kerr stated that this administrative regulation codified provisions for optometrists to dispense medication that an optometrist is statutorily authorized to prescribe. This administrative regulation did not expand the scope of practice for optometrists or authorize the dispensing of controlled substances. KRS Chapter 217 and KRS 320.240 authorized this administrative regulation. The board received public comments, responded to those comments, and did not amend this administrative regulation in response to those comments. Dr. Shrewsbury stated that this administrative regulation did not change the board's scope of practice.

In response to a question by Co-Chair Hale, Mr. Thornbury stated that the Board of Optometric Examiners was attempting to dispense medications. KRS 217.015 defined who a practitioner was. KRS 320.240 did not establish that optometrists may dispense medications; it uses “prescribe” and “administer.” Removing the pharmacists from this process was dangerous. Some patients saw multiple optometrists. The triage process was not always as thorough as that of the patient's pharmacist. Pharmacies were required to be inspected. This administrative regulation would result in the storage of medications at optometrists' offices, which would need to be inspected.

Ms. Stiglitz stated that KRS Chapter 320 did not reference “dispensing.” Advanced Practice Registered Nurses and physicians' assistants sought specific statutory authority beyond what was in KRS Chapter 217 at the time to authorize dispensing of non-controlled medications under certain conditions. The Board of Optometric Examiners should seek similar specific authority from the General Assembly. It seemed that the General Assembly had encouraged well-regulated dispensing in Kentucky. By the board's reasoning, any mid-level profession could assert authority if the action was not expressly prohibited by statute. A recent Supreme Court decision regarding horse racing opined that agencies were prohibited from claiming authority beyond the agency's enabling statutes. This decision was intended for all state agencies.

In response to questions by Representative Marzian, Ms. Stiglitz clarified that a mid-level professional could not dispense without prescriptive authority.

In response to a question by Co-Chair West, Mr. Kerr stated that the most common types of medications optometrists would be dispensing were eye drops and eye gels. Dr. Shrewsbury stated that optometrists had had the authority to dispense for a long time. The current problem related to wholesale medication companies that, because of coronavirus (Covid-19) and cost issues, were often unable to supply pharmacies with optometric medications in a timely fashion. KRS Chapters 217 and 320 already authorized optometrists to dispense, and this administrative regulation would actually limit dispensing by clarifying provisions.

In response to a question by Senator Thomas, Ms. Stiglitz stated that, while optometrists had statutory authority to prescribe and administer medications, “dispensing” was specifically defined by statute as a distinct act from prescribing or administering. Including dispensing with prescribing and administering would nullify the pharmacy statutes.

In response to a question by Representative Frazier, Mr. Kerr and Dr. Shrewsbury stated that the board would provide this subcommittee with information regarding how other states managed this issue. Ms. Stiglitz stated that many other states had specific, limited statutory authority for the provisions for optometrists dispensing medication. Ms. Stiglitz asked if the board would be willing to defer consideration of this administrative regulation to the January 2021 meeting of this subcommittee.

In response to questions by Representative Marzian, Mr. Kerr stated that deferral of this administrative regulation would require repromulgation by the agency. This was an emergent or urgent case situation, especially in rural areas. The decision in the *Family Trust Foundation of Kentucky, Incorporated v. Commonwealth of Kentucky Horse Racing Commission* determined that KRS 320.240(7) established the sole authority to determine what constituted the practice of optometry. Mr. Thornbury stated that, as

a rural practitioner, patients' health was paramount. Pharmacists would locate needed medications and served as a check and balance to protect patient health.

Co-Chair West stated that, if this administrative regulation proceeded to the second committee or committees, there would be another chance for further discussion with stakeholders. The Interim Joint Committee or Standing Committees on Health, Welfare, and Family Services were authorized to make amendments if necessary and might be better equipped to address the specific stakeholder concerns regarding this administrative regulation.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO and the NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2 through 4 and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Board of Barbering**

201 KAR 14:035. Public identification of and access to barber shops and schools. Christopher Hunt, attorney, and Mason McNulty, administrator, represented the board.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO 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.

201 KAR 14:070. Shop license applications.

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.

201 KAR 14:095. Accredited school.

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.

201 KAR 14:100. School advertising.

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 requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 14:105. Barbering school enrollment and postgraduate requirements.

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

201 KAR 14:130. School fees for services.

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.

201 KAR 14:135. School attendance hours.

In response to a question by Co-Chair West, Mr. Hunt stated that the board had received requests to allow additional hours of attendance per week in order for students to finish the program more quickly. Additional hours were not added to the total required.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND

CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 14:140. School license.

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 requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Board of Nursing**

201 KAR 20:320. Standards for curriculum of prelicensure registered nurse and practical nurse programs. Dr. Jessica Estes, executive director, and Morgan Ransdell, general counsel, represented the board.

201 KAR 20:390. Nursing Incentive Scholarship Fund.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 6, and 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Board of Chiropractic Examiners**

201 KAR 21:001. Definitions for 201 KAR Chapter 021. David Trimble, counsel, represented the board.

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

201 KAR 21:015. Code of ethical conduct and standards of practice.

In response to questions by Co-Chair West, Mr. Trimble stated that once information was received by the board regarding a settlement over \$10,000, the matter would be remanded to the board's Complaint Committee to determine if more investigation was warranted. The matter would be kept confidential and would not become public unless the matter became a disciplinary issue, which would be addressed in a hearing in accordance with KRS Chapter 13B. Additionally, these matters were already reported to a federal data bank. The board did not believe that this would have a chilling effect on settlements.

Senator Thomas stated that there were civil settlements that remained confidential. If these settlements were not publicly disclosed, there would not seem to be concern of a chilling effect. A motion was made and seconded to approve the following amendments: to amend Sections 1 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 21:025. Board, officers, duties, and compensation.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 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.

201 KAR 21:045. Specialties.

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, 3, and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 21:051. Board hearings.

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.

201 KAR 21:052. Appeal of denial of license.

201 KAR 21:053. Appeal of revocation of probation.

201 KAR 21:055. Colleges and universities; accreditation, approval.

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

201 KAR 21:061. Repeal of 201 KAR 021:060.

201 KAR 21:065. Professional advertising; seventy-two (72) hour right of restriction.

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

201 KAR 21:075. Peer review committee procedures and fees.

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

201 KAR 21:085. Preceptorship Program.

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

#### **Board of Licensure for Pastoral Counselors**

201 KAR 38:070. Renewal of licenses and continuing education. Bryan Morrow, attorney, represented the board.

#### **PUBLIC PROTECTION CABINET: Office of the Secretary: Tax Appeals**

802 KAR 1:010 & E. Tax appeal procedures. Leah Boggs, executive advisor, and Kevin Winstead, general counsel, represented the office.

In response to a question by Co-Chair Hale, Mr. Winstead stated that these administrative regulations were necessary to implement the reorganization Executive Order that abolished the Kentucky Claims Commission and established the Office of Claims and Appeals in its place and established three (3) separate boards attached to the office. This would streamline processes and address a backlog of about 150 existing tax appeals cases.

In response to questions by Co-Chair West, Mr. Winstead stated these administrative regulations were filed on an emergency basis because the three (3) boards needed provisions in place to be able to function. Waiting on ordinary administrative regulations would leave the boards unable to move forward on the tax appeal backlog and would create additional backlog. These boards all addressed topics that directly related to public health, safety, or welfare. Ms. Boggs stated that the office had statutory authority to promulgate administrative regulations. The Executive Order established the new office and boards. Legislative action to ratify the Executive Order would be taken up during the next Regular Session of the General Assembly of Kentucky. Mr. Winstead stated that this was the normal reorganization process.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 through 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.

#### **Negligence Claims**

802 KAR 2:010 & E. Negligence claims before the Board of Claims.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 3, 6, 7, 10, and 15 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Crime Victims Claims**

802 KAR 3:010 & E. Crime victims compensation.

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

#### **PUBLIC PROTECTION CABINET: Department of Insurance: Agents, Consultants, Solicitors, and Adjustors**

806 KAR 9:030. Adjuster licensing restrictions. DJ Wasson, deputy commissioner, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, and 4 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

806 KAR 9:190. Disclosure requirements for financial institutions authorized to engage in insurance agency activities.

A motion was made and seconded to approve the following amendments: to amend Section 2 to: (1) cross reference the disclosure form in 806 KAR 3:210 that may be used to provide the disclosure required under KRS 304.9-135(2)(c); and (2) comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

806 KAR 9:370. Preneed funeral agent license.

In response to questions by Co-Chair Hale, Ms. Wasson stated that this administrative regulation created a limited agent license for pre-need insurance policies sold to pay for funeral expenses. The \$25,000 limit was the standard for a pre-need policy. The limit would prevent agents from selling full life insurance policies or annuities for other purposes without a standard license.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1, 3, and 4 through 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

#### **Trade Practices and Frauds**

806 KAR 12:170. Life insurance disclosures.

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

#### **Insurance Premium Finance Companies**

806 KAR 30:010. Application for license procedures.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE, the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs, and Sections 1 through 4 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to add a Section 5 for material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

806 KAR 30:070. Books and records subject to inspection.

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

the amendments were approved.

**Liability Self-insurance Groups**

806 KAR 46:040. Forms for application and financial statements.

**Workers' Compensation Self-insured Groups**

806 KAR 52:010. Forms for application, security deposits and financial statements.

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.

**CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Vital Statistics**

901 KAR 5:120. Abortion reporting. Julie Brooks, regulation coordinator, represented the department.

In response to questions by Representative Marzian, Ms. Brooks stated that the cost of \$48,000 was for reports and came through the Office of Vital Statistics.

A motion was made and seconded to approve the following amendments: to amend Sections 2 and 5 and the material incorporated by reference to require additional information in accordance with KRS 213.101 and KRS Chapter 311. Without objection, and with agreement of the agency, the amendments were approved.

**Communicable Diseases**

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

**Local Health Departments**

902 KAR 8:160 & E. Local health department operations requirements.

A motion was made and seconded to approve the following amendment: to amend Section 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendment was approved.

902 KAR 8:170 & E. Local health department financial management requirements.

In response to a question by Co-Chair West, Ms. Brooks stated that this administrative regulation clarified the distinction between personal service contracts and other types of contracting. A personal service contract was used in situations in which positions could not be filled through a standard, open register.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 1, 2, 7, and 9 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Sanitation**

902 KAR 10:030. Registered environmental health specialists and sanitarians. Patti Clark, program manager; Justin Dearing, program administrator; and Phyllis Millsbaugh, assistant director, represented the department.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph and Sections 3, 4, 6 through 8, and 10 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

**Milk and Milk Products**

902 KAR 50:040. Hauler requirements.

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 9 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to amend Section 5 to require all Grade A bulk tank raw milk to be

collected at least every seventy-two (72) hours rather than every forty-eight (48) hours. Without objection, and with agreement of the agency, the amendments were approved.

**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.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 7, and 12 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 2 to reference the administrative regulation for licensing for Alcohol and Other Drug Prevention agencies (AODP), 908 KAR 1:370. Without objection, and with agreement of the agency, the amendments were approved.

**Child Welfare**

922 KAR 1:450 & E. Eligibility confirmation for tuition waiver. Mary Carpenter, assistant director, and Rachel Ratliff, regulation coordinator, represented the department.

922 KAR 1:520 & E. Supplements to per diem rates.

**Other Business:** Staff read a resolution adjourning this subcommittee in honor of Representative Tommy Turner upon his retirement from the General Assembly. A motion was made and seconded to approve the resolution. Without objection, the resolution was approved. Co-Chair Hale stated that Representative Turner was more than a colleague; he was a great friend and an advocate for sportsmen throughout the Commonwealth. He would be missed.

**The following administrative regulations were deferred or removed from the December 3, 2020, subcommittee agenda:**

**BOARDS AND COMMISSIONS: 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.

#### **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.

#### **LABOR CABINET: Department of Workers' Claims**

803 KAR 25:091. Workers' compensation hospital fee schedule.

#### **PUBLIC PROTECTION CABINET: Department of Insurance: Agents, Consultants, Solicitors, and Adjustors**

806 KAR 9:025. Licensing process.

806 KAR 9:360. Pharmacy benefit manager license.

#### **Trade Practices and Frauds**

806 KAR 12:120. Suitability in annuity transactions.

806 KAR 12:150. Annuity disclosures.

#### **Horse Racing Commission: Thoroughbred Racing**

810 KAR 1:001. Definitions for 810 KAR Chapter 001.

810 KAR 1:011. Pari-mutuel wagering.

810 KAR 1:120. Exotic wagering.

#### **Harness Racing**

811 KAR 1:005. Definitions.

811 KAR 1:125. Pari-mutuel wagering.

811 KAR 1:250. Exotic wagering.

#### **Quarter Horse, Paint Horse, Appaloosa, and Arabian Racing**

811 KAR 2:010. Definitions.

811 KAR 2:060. Pari-mutuel wagering.

811 KAR 2:120. Kentucky Horse Breeders' Incentive Fund.

811 KAR 2:160. Exotic wagering.

#### **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 Hale, Ms. Wolsing stated that this administrative regulation established financial responsibility requirements, which protected businesses in the horse racing industry from insolvent or recalcitrant debtors. The original version of these provisions required that there be an unsatisfied, unappealable, and final judgment to ensure that there was no dispute regarding whether or not a debt was owed. A court determination concluded that the previous version of this administrative regulation did not include debts arising from non-licensed businesses in the horse racing industry. The commission believed that there was no reason to exclude non-licensed businesses related to the horse racing industry. In the past nine (9) years, almost half of the financial responsibility complaints received by the commission pertained to non-licensed businesses, such as feed and supply businesses, boarding services, and transportation entities. After the November meeting of this subcommittee, the commission developed an agency amendment to address the concerns expressed at that meeting. The agency amendment proposed to use standards from New York for consistency with other racing states, which took a broad view related to financial responsibility. The proposed agency amendment also eliminated concerns that the commission could revoke or suspend a license if the licensee was making payments toward the debt pursuant to an agreed payment plan. This proposal would not lead to a litigation glut because New York did not encounter a glut using the same language.

In response to a question by Co-Chair Hale, 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. The proposed agency amendment further expanded the list of entities to which a licensee might owe a debt that would indicate financial irresponsibility to virtually anyone anywhere. A person who was already in debt needed gainful employment to pay outstanding debts, and these requirements could deny employment due to lack of licensure. The requirements were not specific enough. A yard sale dispute could even become part of this matter. The important licensees, such as wealthy well-known owners, would not be included as financially irresponsible even though many of them had financial disputes. This was retaliation against a former client. This would turn the commission into a collection agency. This proposed agency amendment was worse than the previous administrative regulation. The debts that were considered financial irresponsibility should only include debts between licensees.

Co-Chair Hale clarified that this subcommittee did not reject this administrative regulation at the November meeting. This administrative regulation was deferred, with agreement from the agency, at that meeting.

Senator Thomas stated that he informally checked with the Kentucky Bar Association, who stated that the bar could take disciplinary action in a matter of financial irresponsibility between licensees after a judgment if restitution was still not taking place. Disciplinary action could include disbarment. This type of situation, like matters addressed by this administrative regulation, did seem like financial irresponsibility. The proposed agency amendment seemed appropriate, especially given that the language was the same as that used in New York.

In response to a question by Senator Thomas, Mr. Heleringer stated that the example of Kentucky Bar Association was commensurate with the current version of this administrative regulation, which addressed financial matters between licensees. The proposed agency amendment would include non-licensed entities. If the commission wished to include entities such as

breeders, those could be included specifically in the body of this administrative regulation. Specificity was needed.

Senator Adams stated that, while she typically supported administrative regulations from the commission, this seemed punitive and the result of a specific situation. It seemed like overreach. Senator Adams requested to be recorded as voting in opposition to this administrative regulation. In response, Ms. Wolsing stated that the commission, previous to the court determination, considered financial responsibility requirements to relate to non-licensed, horse-racing related entities. The commission intended to include those non-licensed, horse-racing related entities as part of this updated administrative regulation.

In response to questions by Co-Chair West, Ms. Wolsing stated that the commission, in the past nine (9) years, had received a total of seventy-nine (79) verified financial responsibility complaints, over forty-eight (48) percent of which related to non-licensed entities. The commission averaged ten (10) to twelve (12) financial irresponsibility complaints per year. Prior to the court determination, the commission interpreted this administrative regulation to apply to licensed and non-licensed occupations. This updated administrative regulation would clarify the commission's original intent. Co-Chair West stated that administrative regulations should be more specific, not less. This seemed overly broad. Ms. Wolsing responded that this administrative regulation established that this is based on a final, unappealable judgment; therefore, things like yard sales would not be included.

In response to a question by Co-Chair Hale, Mr. Thompson stated that there was no retaliatory intent with regard to this administrative regulation; however, this proposed revision was in response to that decision in order to clarify the matter. For two (2) years there were no payments made regarding the judgement in question. Payments only began after the case was domesticated. That type of situation seemed to signify bad faith of the person seeking licensure.

In response to a question by Representative Marzian, Ms. Wolsing stated that the commission preferred not to include specifically in the administrative regulation the types of non-licensed entities that might be related to the horse-racing industry because the court decision indicated that this administrative regulation could not be used against all unlicensed occupations. Additionally, the commission was afraid that some entities would be inadvertently left off the list.

In response to a question by Senator Adams and Representative Marzian, Ms. Wolsing stated that this administrative regulation applied to entities with a final, unappealable judgement that was brought to the attention of the commission. Generally, a non-horse-racing-related entity would not be bringing a case to the commission.

In response to a question by Co-Chair Hale, Mr. Heleringer stated that his client consented to the agreed order to make monthly payments and was making those payments when the court made its determination. There was no driving need for this change until the court determination was made. This administrative regulation was overly broad and would result in the commission becoming a collection agency. The commission would be open to a glut of litigation. Banks, credit card agencies, and similar entities would be aware of this change and would use it as an enforcement mechanism. This would not be applied to, for example, influential and famous horse breeders. Instead, less powerful licenses would be impacted and might lose employment if licensure was revoked or suspended.

In response to a question by Senator Adams, Ms. Wolsing agreed to defer consideration of this administrative regulation to the January 2021 meeting of this subcommittee. A motion was made and seconded to defer consideration of this administrative regulation to the January 2021 meeting of this subcommittee. Without objection, and with agreement of the agency, this administrative regulation was deferred.

**CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Communicable Diseases**

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

**Food and Cosmetics**

902 KAR 45:180. Permits and fees for food manufacturing plants, food storage warehouses, salvage processors and distributors, cosmetic manufacturers, and certificate of free sale.

**Department for Community Based Services: Supplemental Nutrition Assistance Program**

921 KAR 3:035 & E. Certification process.

921 KAR 3:042. Supplemental Nutrition Assistance Program Employment and Training Program.

**Child Welfare**

922 KAR 1:500. Educational and training vouchers.

**Daycare**

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

**The subcommittee adjourned at 3 p.m. The next meeting of this subcommittee is tentatively scheduled for January 12, 2021, 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 LICENSING, OCCUPATIONS,  
AND ADMINISTRATIVE REGULATIONS  
Meeting of December 14, 2020**

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Licensing, Occupations, and Administrative Regulations for its meeting of December 14, 2020, having been referred to the Committee on December 2, 2020, pursuant to KRS 13A.290(6):

804 KAR 004:415

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:

804 KAR 004:415

**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 December 14, 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 December 15, 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 December 15, 2020, having been referred to the Committee on December 2, 2020, pursuant to KRS 13A.290(6):

December 2, 2020

201 KAR 020:085

201 KAR 020:161

201 KAR 035:040

902 KAR 002:020 & E

902 KAR 004:030

902 KAR 045:110

902 KAR 050:050

902 KAR 050:071

902 KAR 050:080

902 KAR 050:090

902 KAR 050:120

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the December 15, 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 47<sup>th</sup> year of the *Administrative Register of Kentucky*, from July 2020 through June 2021.

### **Locator Index - Effective Dates**

**G - 2**

Lists all administrative regulations published or continuing through the KRS Chapter 13A review process during this Register year. It also lists the page number on which each regulation is published, the effective date of the regulation after it has completed the review process, and other actions that may affect the regulation. NOTE: Regulations listed with a “45 Ky.R.” or “46 Ky.R.” notation are regulations that were originally published in previous years’ issues of the Administrative Register of Kentucky but had not yet gone into effect when the last Register year ended.

### **KRS Index**

**G - 13**

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**

**G - 23**

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**

**G - 24**

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**

**G - 25**

A general index of administrative regulations published during this Register year, and is mainly broken down by agency.

## LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	Ky.R. & Page No.	Effective Date	Regulation Number	Ky.R. & Page No.	Effective Date
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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
Replaced	47 Ky.R. 517	12-1-2020
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 002:410E	47 Ky.R. 1343	11-23-2020
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
Replaced	1039	12-2-2020
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
Replaced	47 Ky.R. 546	12-1-2020
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
Withdrawn		12-10-2020
922 KAR 002:410E	47 Ky.R. 1345	12-10-2020
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	
As Amended	47 Ky.R. 514	
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

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Regulation Number	46 Ky.R. Page No.	Effective Date	Regulation Number	46 Ky.R. Page No.	Effective Date
012 KAR 001:130			Amended	46 Ky.R. 2487	
Amended	47 Ky.R. 97		As Amended	2880	9-1-2020
As Amended	700	11-18-2020	016 KAR 009:010		
012 KAR 001:140			Amended	47 Ky.R. 359	
Amended	47 Ky.R. 98		As Amended	940	
As Amended	701	11-18-2020	016 KAR 009:060		
012 KAR 001:155			Amended	46 Ky.R. 2100	
Amended	47 Ky.R. 100		As Amended	2598	6-30-2020
As Amended	701	11-18-2020	016 KAR 009:071(r)	46 Ky.R. 2160	6-30-2020
012 KAR 001:160			017 KAR 001:030	46 Ky.R. 3061	
Amended	47 Ky.R. 102		As Amended	47 Ky.R. 521	11-19-2020
As Amended	702	11-18-2020	017 KAR 001:040	47 Ky.R. 597	
012 KAR 001:170			As Amended	1188	
Amended	47 Ky.R. 103		017 KAR 003:050	47 Ky.R. 598	
As Amended	702	11-18-2020	As Amended	1188	
012 KAR 001:175			017 KAR 004:030	47 Ky.R. 601	
Amended	47 Ky.R. 105		As Amended	1191	
As Amended	704	11-18-2020	017 KAR 004:040	47 Ky.R. 603	
012 KAR 004:075	47 Ky.R. 224		As Amended	1191	
As Amended	934	11-18-2020	017 KAR 005:020	47 Ky.R. 605	
012 KAR 004:080			As Amended	1192	
Amended	47 Ky.R. 106		030 KAR 008:005	46 Ky.R. 2349	
Am Comments	734		Am Comments	2963	
As Amended	934	11-18-2020	As Amended	47 Ky.R. 35	8-20-2020
012 KAR 004:091	47 Ky.R. 225	11-18-2020	031 KAR 004:120		
012 KAR 004:100			Amended	45 Ky.R. 2152	
Amended	47 Ky.R. 108	11-18-2020	045 KAR 001:050		
012 KAR 004:110			Amended	47 Ky.R. 552	
Amended	47 Ky.R. 110	11-18-2020	101 KAR 002:210		
012 KAR 004:130			Amended	47 Ky.R. 751	
Amended	47 Ky.R. 114		101 KAR 001:325	46 Ky.R. 2290	9-1-2020
As Amended	935	11-18-2020	101 KAR 002:120		
012 KAR 004:140			Amended	46 Ky.R. 1915	
Amended	47 Ky.R. 116		As Amended	2686	6-2-2020
As Amended	936	11-18-2020	101 KAR 006:010	47 Ky.R. 472	
012 KAR 004:170			102 KAR 001:125		
Amended	47 Ky.R. 118		Amended	46 Ky.R. 1585	
As Amended	937	11-18-2020	As Amended	2223	
012 KAR 005:010			As Amended	2389	6-2-2020
Amended	47 Ky.R. 740		102 KAR 001:340		
As Amended	1351		Amended	47 Ky.R. 360	
012 KAR 005:020			As Amended	1193	
Amended	47 Ky.R. 741		103 KAR 002:005		
As Amended	1252		Amended	46 Ky.R. 2104	
012 KAR 005:030			As Amended	2601	6-30-2020
Amended	47 Ky.R. 744		103 KAR 026:080		
As Amended	1353		Amended	46 Ky.R. 1919	6-2-2020
012 KAR 005:040			103 KAR 026:110		
Amended	47 Ky.R. 745		Amended	46 Ky.R. 1282	4-1-2020
As Amended	1353		103 KAR 026:120		
012 KAR 005:050			Amended	46 Ky.R. 1920	
Amended	47 Ky.R. 747		As Amended	2389	6-2-2020
As Amended	1355		103 KAR 027:020		
012 KAR 005:060			Amended	46 Ky.R. 1922	
Amended	47 Ky.R. 749		As Amended	2390	6-2-2020
As Amended	1356		103 KAR 027:080		
012 KAR 005:070			Amended	46 Ky.R. 1284	4-1-2020
Amended	47 Ky.R. 750		103 KAR 027:100		
As Amended	1356		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	12-1-2020	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

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103 KAR 043:101(r)	46 Ky.R. 1996	6-2-2020	Amended	47 Ky.R. 1057	
105 KAR 001:149	46 Ky.R. 1997		201 KAR 009:280	47 Ky.R. 1312	
As Amended	2391	6-2-2020	201 KAR 009:360	47 Ky.R. 473	
Amended	47 Ky.R. 753		As Amended	948	11-19-2020
As Amended	1357		201 KAR 012:030	46 Ky.R. 2298	
105 KAR 001:250			As Amended	2884	
Amended	46 Ky.R. 1925		As Amended	47 Ky.R. 522	7-30-2020
As Amended	2395	6-2-2020	201 KAR 012:060	46 Ky.R. 2302	
105 KAR 001:445	46 Ky.R. 2001		As Amended	2887	7-30-2020
As Amended	2396	6-2-2020	201 KAR 012:082	46 Ky.R. 2303	
201 KAR 002:050	46 Ky.R. 2682		As Amended	2888	7-30-2020
201 KAR 002:095			201 KAR 012:100		
Amended	45 Ky.R. 3405		Amended	46 Ky.R. 2489	
As Amended	46 Ky.R. 2881	7-3-2020	As Amended	2891	7-30-2020
201 KAR 002:105			201 KAR 012:140	46 Ky.R. 2307	
Amended	47 Ky.R. 119		As Amended	2894	7-30-2020
Am Comments	985		201 KAR 012:260	46 Ky.R. 2308	
As Amended	1361		As Amended	2895	7-30-2020
201 KAR 002:106			201 KAR 014:035		
Amended	47 Ky.R. 123		Amendment	47 Ky.R. 758	
As Amended	1364		As Amended	1371	
201 KAR 002:175	46 Ky.R. 2683		201 KAR 014:070		
As Amended	47 Ky.R. 41	7-29-2020	Amendment	47 Ky.R. 760	
201 KAR 002:225			As Amended	1371	
Amended	47 Ky.R. 362		201 KAR 014:095		
As Amended	1366		Amendment	47 Ky.R. 761	
201 KAR 002:230	46 Ky.R. 2292		As Amended	1371	
As Amended	47 Ky.R. 41	7-29-2020	201 KAR 014:100		
Am Comments	988		Amendment	47 Ky.R. 762	
201 KAR 002:240			As Amended	1371	
Amended	47 Ky.R. 125		201 KAR 014:105		
As Amended	1367		Amendment	47 Ky.R. 764	
201 KAR 002:311	46 Ky.R. 3063		As Amended	1372	
Am Comments	47 Ky.R. 735		201 KAR 014:130		
As Amended	941	11-19-2020	Amendment	47 Ky.R. 765	
201 KAR 002:320			As Amended	1372	
Amended	47 Ky.R. 127		201 KAR 014:135		
As Amended	1367		Amendment	47 Ky.R. 767	
201 KAR 002:380			As Amended	1373	
Amended	47 Ky.R. 1422		201 KAR 014:140		
201 KAR 005:140	47 Ky.R. 606		Amendment	47 Ky.R. 768	
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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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160.1591	701 KAR 008:020	189A.220	601 KAR 002:232
160.1592	701 KAR 008:020	189A.240	601 KAR 002:232
160.1593	701 KAR 008:020	189A.250	601 KAR 002:232
160.1594	701 KAR 008:020	189A.340	601 KAR 002:231
160.1595	701 KAR 008:020		601 KAR 002:232
160.1596	701 KAR 008:020	189A.345	601 KAR 002:231
160.1597	701 KAR 008:020		601 KAR 002:232
160.1598	701 KAR 008:020	189A.350	601 KAR 002:232
160.1599	701 KAR 008:020	189A.370	601 KAR 002:232
160.290	702 KAR 001:190E	189A.400	601 KAR 002:232
	704 KAR 003:303	189A.410	601 KAR 002:232
	704 KAR 008:090	189A.420	601 KAR 002:232
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	704 KAR 008:110	194A.005	902 KAR 045:160
160.346	703 KAR 005:280		908 KAR 001:400
160.380	702 KAR 007:065		922 KAR 001:330
160.445	702 KAR 007:065	194A.010	921 KAR 004:116
160.470	702 KAR 003:270E	194A.030	902 KAR 004:110
160.476	702 KAR 003:270E	194A.050	900 KAR 011:011
161.011	702 KAR 005:080		902 KAR 004:030
161.020	016 KAR 003:090		902 KAR 010:030
161.027	016 KAR 003:090		921 KAR 004:116
161.028	016 KAR 003:090		922 KAR 001:330
	016 KAR 009:010	194A.060	910 KAR 001:151
161.030	016 KAR 003:090		922 KAR 006:010
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161.048	016 KAR 009:010	194A.070	908 KAR 001:400
161.141	701 KAR 008:020		921 KAR 004:116
161.152	702 KAR 001:190E	194A.700	910 KAR 001:151
161.200	702 KAR 007:125E	196	501 KAR 006:080
161.220	102 KAR 001:340		501 KAR 006:120
164.001	922 KAR 001:450	197	501 KAR 006:080
164.2847	922 KAR 001:450		501 KAR 006:120
	922 KAR 001:500	197.010	500 KAR 006:220
164.505	017 KAR 001:040	198B.060	815 KAR 035:015
164.507	017 KAR 001:040	198B.090	815 KAR 035:015
164.512	017 KAR 001:040	198B.260	902 KAR 020:160
164.515	017 KAR 001:040	199.011	922 KAR 001:520

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	922 KAR 002:410E	211.357	902 KAR 010:110
	922 KAR 002:450E	211.360	902 KAR 010:110
199.570	922 KAR 001:450		902 KAR 010:150
199.894	922 KAR 002:120		902 KAR 010:160
	922 KAR 002:230	211.370	902 KAR 010:110
	922 KAR 002:410E	211.375	902 KAR 010:110
	922 KAR 002:450E	211.380	902 KAR 010:110
199.8951	922 KAR 002:120	211.840-211.852	902 KAR 100:012
199.896	922 KAR 002:120	211.9101	902 KAR 095:040
	922 KAR 002:230	211.9107	902 KAR 095:040
	922 KAR 002:240	211.9119	902 KAR 095:040
	922 KAR 002:410E	211.970	902 KAR 010:010
199.8941	922 KAR 002:250		902 KAR 010:110
199.8962	922 KAR 002:120		902 KAR 010:140
	922 KAR 002:450E		902 KAR 010:150
199.8982	922 KAR 002:240		902 KAR 010:160
199.898	922 KAR 002:120		902 KAR 010:170
200.115	922 KAR 001:520	211.972	902 KAR 010:160
200.503	902 KAR 020:440		902 KAR 010:170
200.700	902 KAR 004:140E	211.974	902 KAR 010:150
202A.011	922 KAR 001:330		902 KAR 010:160
202A.241	902 KAR 020:160		902 KAR 010:170
204.1-050	806 KAR 009:370	211.976	902 KAR 010:110
205.010	910 KAR 001:151		902 KAR 010:150
205.201	910 KAR 001:151		902 KAR 010:160
205.203	910 KAR 001:151	211.981	902 KAR 010:150
205.204	910 KAR 001:151		902 KAR 010:160
205.455	910 KAR 001:151		902 KAR 010:170
205.460	910 KAR 001:151	211.990	902 KAR 010:010
205.465	910 KAR 001:151		902 KAR 010:110
205.520	907 KAR 003:250		902 KAR 010:140
	907 KAR 015:070E		902 KAR 100:012
	907 KAR 015:080	211.995	902 KAR 010:170
205.560	907 KAR 001:604	212.025	902 KAR 008:170
205.5605	907 KAR 003:250	212.120	902 KAR 008:170
205.5606	907 KAR 003:250	212.230	902 KAR 008:160
205.5607	907 KAR 003:250	212.240	902 KAR 008:160
205.622	907 KAR 015:080	212.245	902 KAR 008:160
205.6312	907 KAR 001:604		902 KAR 008:170
205.6485	907 KAR 001:604	212.890	902 KAR 008:160
205.712	601 KAR 002:232		902 KAR 008:170
205.8451	907 KAR 001:604	213.101	901 KAR 005:120
205.950	910 KAR 001:151	213.106	901 KAR 005:120
205.955	910 KAR 001:151	214.010	902 KAR 002:020
209.030	908 KAR 001:400		902 KAR 002:210E
	910 KAR 001:151		902 KAR 002:220
210.005	902 KAR 020:160	214.020	902 KAR 002:220
	902 KAR 020:440	214.036	922 KAR 001:330
210.053	908 KAR 002:270	214.155	902 KAR 004:030
210.290	910 KAR 002:060	214.610	201 KAR 009:360
210.366	201 KAR 038:070	214.620	201 KAR 009:360
211.015	902 KAR 010:140	214.645	902 KAR 002:020
211.090	902 KAR 004:140E		902 KAR 002:210E
	902 KAR 010:030	215.520	902 KAR 002:020
211.180	902 KAR 002:020	216.787	910 KAR 001:151
	902 KAR 004:140E	216B.010	902 KAR 020:160
	902 KAR 008:170	216B.010-216B.130	900 KAR 005:020
	902 KAR 095:040	216B.015	802 KAR 003:010
211.360	902 KAR 010:140		902 KAR 002:020
211.375	902 KAR 010:140		902 KAR 020:160
211.684	922 KAR 001:330	216B.050	902 KAR 020:440
211.689	902 KAR 004:140E	216B.105	803 KAR 025:091
211.090	902 KAR 004:030		902 KAR 020:160
	902 KAR 004:110		902 KAR 020:440
	902 KAR 050:050	216B.400	802 KAR 003:010
	902 KAR 050:090	216B.990	902 KAR 020:160
211.1751	902 KAR 008:160	217	922 KAR 002:120
211.180	902 KAR 002:210E	217.005-217.205	902 KAR 045:160
	902 KAR 004:030	217.005-217.215	902 KAR 050:032
	902 KAR 004:110	217.015	201 KAR 002:225
211.220	902 KAR 010:160		201 KAR 005:140
211.3103	902 KAR 095:040		902 KAR 045:110
211.350	815 KAR 035:015		902 KAR 045:180

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	902 KAR 050:010		902 KAR 010:036
217.025	902 KAR 050:031	223.060	902 KAR 010:030
	902 KAR 045:110	223.080	902 KAR 010:030
	902 KAR 045:180	223.990	902 KAR 010:030
	902 KAR 045:190	224.10-100	401 KAR 060:005
	902 KAR 050:010		401 KAR 061:036
	902 KAR 050:033		401 KAR 063:002
217.035	902 KAR 050:090	224.20-100	401 KAR 060:005
	902 KAR 045:110		401 KAR 061:036
	902 KAR 045:180		401 KAR 063:002
	902 KAR 045:190	224.20-110	401 KAR 060:005
	902 KAR 050:010		401 KAR 061:036
	902 KAR 050:080		401 KAR 063:002
217.037	902 KAR 045:110	224.20-120	401 KAR 060:005
	902 KAR 045:180		401 KAR 061:036
	902 KAR 045:190		401 KAR 063:002
	902 KAR 050:080	227.450	815 KAR 035:015
217.045	902 KAR 050:033	227.480	815 KAR 035:015
217.085	902 KAR 045:110	227.489	815 KAR 035:015
	902 KAR 045:180	227.491	815 KAR 035:015
217.095	902 KAR 045:110	227.492	815 KAR 035:015
	902 KAR 045:180	227.495	815 KAR 035:015
217.125	902 KAR 045:110	230	810 KAR 001:001
217.155	902 KAR 045:110	230.215	810 KAR 002:020
	902 KAR 045:180		810 KAR 003:020
	902 KAR 045:190		810 KAR 004:010
217.182	201 KAR 005:140		810 KAR 004:030
217.215	902 KAR 045:160		810 KAR 008:060
217.290-217.390	902 KAR 045:160		811 KAR 001:005
217.811	902 KAR 045:110		811 KAR 001:125
217.990-217.992	902 KAR 045:160		811 KAR 002:010
217B	302 KAR 050:021	230.225	811 KAR 002:120
	302 KAR 050:045	230.240	810 KAR 002:020
	302 KAR 050:056		810 KAR 004:030
217C	902 KAR 050:120		810 KAR 008:060
217C.010-217C.990	902 KAR 050:032	230.260	810 KAR 002:260
	902 KAR 050:033		810 KAR 003:020
	902 KAR 050:040		810 KAR 004:030
217C.010	902 KAR 050:031		810 KAR 008:060
	902 KAR 050:050	230.265	810 KAR 008:060
217C.020	902 KAR 050:031	230.280	810 KAR 003:020
217C.030	902 KAR 050:010	230.290	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	230.300	810 KAR 001:011
	902 KAR 050:071		810 KAR 001:120
	902 KAR 050:080		810 KAR 003:020
	902 KAR 050:090		811 KAR 001:125
217C.070	902 KAR 050:050		811 KAR 001:250
217C.100	902 KAR 050:031		811 KAR 002:060
	902 KAR 050:090		811 KAR 002:160
217C.990	902 KAR 050:031	230.310	810 KAR 003:020
	902 KAR 050:050		810 KAR 004:030
	902 KAR 050:080	230.320	810 KAR 003:020
218A.172	201 KAR 009:260		810 KAR 004:030
218A.202	201 KAR 009:230		810 KAR 008:060
	902 KAR 020:160	230.330	810 KAR 003:020
218A.205	201 KAR 009:081		811 KAR 002:120
	201 KAR 009:200	230.361	810 KAR 001:011
	201 KAR 009:210		810 KAR 001:120
	201 KAR 009:240		811 KAR 001:005
	201 KAR 009:260		811 KAR 001:125
	201 KAR 009:270		811 KAR 001:250
	201 KAR 009:360		811 KAR 002:010
	201 KAR 020:161		811 KAR 002:060
	201 KAR 025:011		811 KAR 002:160
	201 KAR 025:021	230.3615	810 KAR 001:011
	201 KAR 025:031		810 KAR 001:120
222.005	908 KAR 001:400		811 KAR 001:125
222.211	908 KAR 001:381		811 KAR 002:060
222.221	908 KAR 001:400	230.370	810 KAR 001:011
223.010	902 KAR 010:030		810 KAR 001:120
223.020	902 KAR 010:030		811 KAR 001:125

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	811 KAR 001:250	257.080	302 KAR 022:150
	811 KAR 002:060	257.990	302 KAR 022:150
	811 KAR 002:160	258.005	902 KAR 008:160
230.398	810 KAR 001:011	258.065	902 KAR 002:020
	810 KAR 001:120	258.990	902 KAR 002:020
	811 KAR 001:125	260	302 KAR 050:013
	811 KAR 001:250		302 KAR 060:010
	811 KAR 002:060	260.775-260.845	012 KAR 005:010
	811 KAR 002:160		012 KAR 005:020
230.750	810 KAR 001:011		012 KAR 005:030
	810 KAR 001:120		012 KAR 005:040
	811 KAR 001:125		012 KAR 005:050
	811 KAR 001:250		012 KAR 005:060
	811 KAR 002:060		012 KAR 005:070
	811 KAR 002:160	260.813	902 KAR 050:050
230.804	811 KAR 002:120	260.850-260.869	302 KAR 050:021
238.545	820 KAR 001:050		302 KAR 050:031
238.550	820 KAR 001:050		302 KAR 050:045
243.027	804 KAR 004:415		302 KAR 050:056
243.028	804 KAR 004:415		302 KAR 050:080
243.029	804 KAR 004:415	260.992	012 KAR 005:010
243.030	804 KAR 004:415		012 KAR 005:020
244.050	804 KAR 004:415		012 KAR 005:030
244.440	804 KAR 004:415		012 KAR 005:040
244.585	804 KAR 004:415		012 KAR 005:050
246	302 KAR 004:010		012 KAR 005:060
246.030	302 KAR 022:150		012 KAR 005:070
247.4453	902 KAR 050:010	273.401	739 KAR 002:050
247.453	902 KAR 050:010	273.405-273.453	922 KAR 006:010
250.021	012 KAR 001:116	278	807 KAR 005:056
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	012 KAR 001:155	281.600	601 KAR 001:113
250.031	012 KAR 001:116	281.630	601 KAR 001:113
	012 KAR 001:140	281.6301	601 KAR 001:113
250.041	012 KAR 001:116	281.631	601 KAR 001:113
	012 KAR 001:140	281.640	601 KAR 001:113
250.051	012 KAR 001:116	281.650	601 KAR 001:113
	012 KAR 001:140	281.655	601 KAR 001:113
250.061	012 KAR 001:116	281.656	601 KAR 001:113
	012 KAR 001:140	281.990	601 KAR 001:113
250.071	012 KAR 001:116	281A.170-281A.175	702 KAR 005:080
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250.081	012 KAR 001:116	304.1-010	806 KAR 012:010
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	012 KAR 001:125		806 KAR 013:020
	012 KAR 001:130	304.1-040	806 KAR 012:120
	012 KAR 001:140		806 KAR 012:180
	012 KAR 001:160	304.1-050	806 KAR 003:170
	012 KAR 001:170		806 KAR 009:360
	012 KAR 001:175		806 KAR 012:020
250.091	012 KAR 001:116		806 KAR 046:040
	012 KAR 001:140	304.1-070	806 KAR 010:030
250.101	012 KAR 001:116	304.2-065	806 KAR 003:170
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250.111	012 KAR 001:116	304.2-140	806 KAR 047:010
	012 KAR 001:140	304.2-150	806 KAR 038:100
	012 KAR 001:155	304.2-210-304.2-290	806 KAR 003:170
250.366	012 KAR 004:075	304.2-250	806 KAR 038:100
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	012 KAR 004:100	304.2-290	806 KAR 006:010
	012 KAR 004:130	304.2-310	806 KAR 009:360
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250.371-250.451	012 KAR 004:080	304.3-070	601 KAR 001:113
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250.371-250.461	012 KAR 004:075	304.3-125	806 KAR 003:170
250.391	012 KAR 004:130	304.3-240	806 KAR 003:170
250.396	012 KAR 004:130		806 KAR 006:100
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250.401	012 KAR 004:130	304.3-241	806 KAR 003:170
250.406	012 KAR 004:110	304.4-010	806 KAR 002:095
250.411	012 KAR 004:170		806 KAR 009:025
257.020	302 KAR 022:150		806 KAR 009:370
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304.6-155	806 KAR 006:100	304.30-060	806 KAR 030:070
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304.9-020	806 KAR 009:030	304.38-070	806 KAR 038:100
	806 KAR 009:370	304.38A-080	806 KAR 038:100
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	806 KAR 012:180	304.39-020	601 KAR 001:113
304.9-040	806 KAR 012:120	304.39-040	601 KAR 001:113
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304.9-260	806 KAR 009:025	304.48-020	806 KAR 046:040
	806 KAR 009:370	304.48-050	806 KAR 046:040
304.9-270	806 KAR 009:025	304.48-070	806 KAR 046:040
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304.10-030	806 KAR 010:030	304.50-060	806 KAR 003:170
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304.12-010	806 KAR 012:010		902 KAR 020:440
	806 KAR 012:020		907 KAR 015:080
	806 KAR 012:120	309.085	201 KAR 035:040
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	806 KAR 012:180	309.337	201 KAR 045:130
304.12-020	806 KAR 012:010	309.339	201 KAR 045:130
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	806 KAR 012:180	311.420	201 KAR 025:011
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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
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304.13-051	806 KAR 013:020		201 KAR 009:210
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304.14-180	806 KAR 012:020		201 KAR 009:360
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	201 KAR 009:210	312.200	201 KAR 021:075
	902 KAR 002:020		201 KAR 021:095
	902 KAR 020:160	312.991	201 KAR 021:065
311.591	201 KAR 009:240	312.200	201 KAR 021:001
311.592	201 KAR 009:230	314.011	201 KAR 020:161
	201 KAR 009:240		201 KAR 020:320
311.593	201 KAR 009:240		201 KAR 020:390
311.595	201 KAR 009:016		902 KAR 020:160
	201 KAR 009:200		922 KAR 002:120
	201 KAR 009:210	314.021	201 KAR 020:320
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	901 KAR 005:120	314.027	201 KAR 020:390
311.597	201 KAR 009:016	314.031	201 KAR 020:161
	201 KAR 009:230	314.041	201 KAR 020:085
311.601	201 KAR 009:360		201 KAR 020:320
311.646	922 KAR 002:120	314.042	902 KAR 020:160
311.720	901 KAR 005:120		902 KAR 020:440
	902 KAR 004:110	314.051	201 KAR 020:085
311.725	902 KAR 004:110	314.071	201 KAR 020:085
311.774	901 KAR 005:120		201 KAR 020:161
311.781	901 KAR 005:120	314.073	201 KAR 020:085
311.782	901 KAR 005:120	314.091	201 KAR 020:161
311.783	901 KAR 005:120	314.107	201 KAR 020:161
311.840-311.862	201 KAR 009:081	314.111	201 KAR 020:320
	201 KAR 009:260	314.131	201 KAR 020:320
	201 KAR 009:270	314.475	201 KAR 020:161
	902 KAR 020:160	314.991	201 KAR 020:161
311.842	201 KAR 009:016	315.010	201 KAR 002:105
	201 KAR 009:200		201 KAR 002:225
	201 KAR 009:230		201 KAR 002:320
	201 KAR 009:360		201 KAR 002:380
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	201 KAR 009:210		201 KAR 002:320
	201 KAR 009:230		201 KAR 002:410E
	201 KAR 009:360	315.035	201 KAR 002:106
311.852	201 KAR 009:230		201 KAR 002:225
	201 KAR 009:240		201 KAR 002:240
	201 KAR 009:360	315.036	201 KAR 002:106
311.901	201 KAR 009:280		201 KAR 002:320
311.903	201 KAR 009:280	315.050	201 KAR 002:410E
311.990	201 KAR 009:081	315.065	201 KAR 002:410E
	201 KAR 009:260	315.135	201 KAR 002:410E
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312.015	201 KAR 021:001		201 KAR 002:311
312.019	201 KAR 021:015		201 KAR 002:320
	201 KAR 021:025		201 KAR 002:380
	201 KAR 021:045	315.205	201 KAR 002:410E
	201 KAR 021:055	315.500	201 KAR 002:410E
	201 KAR 021:061	315.340	201 KAR 002:106
	201 KAR 021:065	315.342	201 KAR 002:106
	201 KAR 021:085	315.350	201 KAR 002:105
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	201 KAR 021:065	315.351	201 KAR 002:106
312.055	201 KAR 021:025	315.400	201 KAR 002:320
312.085	201 KAR 021:041	315.402	201 KAR 002:105
	201 KAR 021:042		201 KAR 002:106
	201 KAR 021:055	315.404	201 KAR 002:320
312.095	201 KAR 021:085	315.406	201 KAR 002:105
	201 KAR 021:041	315.4102	201 KAR 002:106
	201 KAR 021:042	317.400	201 KAR 014:035
312.145	201 KAR 021:041	317.410	201 KAR 014:035
	201 KAR 021:042		201 KAR 014:100
312.150	201 KAR 021:051		201 KAR 014:105
	201 KAR 021:052		201 KAR 014:130
	201 KAR 021:053	317.440	201 KAR 014:035
312.160	201 KAR 021:051		201 KAR 014:095
312.163	201 KAR 021:051		201 KAR 014:100
	201 KAR 021:053		201 KAR 014:105
312.175	201 KAR 021:041		201 KAR 014:130
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	201 KAR 021:095		201 KAR 014:140

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	201 KAR 014:105	324A.030	201 KAR 030:190
	201 KAR 014:135	324A.035	201 KAR 030:040
	201 KAR 014:140		201 KAR 030:190
317.540	201 KAR 014:135	324A.040	201 KAR 030:190
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318.130	815 KAR 020:150	324A.052	201 KAR 030:190
	902 KAR 045:160	324A.065	201 KAR 030:190
318.134	815 KAR 020:150	324A.075	201 KAR 030:190
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318.160	815 KAR 020:150	327.300	201 KAR 022:170
318.170	815 KAR 020:150	333.020	902 KAR 002:020
319.050	902 KAR 020:160	333.130	902 KAR 002:020
	902 KAR 020:440		902 KAR 002:190E
319.056	902 KAR 020:160		902 KAR 002:210E
	902 KAR 020:440	334A.020	907 KAR 001:604
319.064	902 KAR 020:160	335.010	201 KAR 023:070
	902 KAR 020:440	335.030	201 KAR 023:150
319A.010	907 KAR 001:604	335.070	201 KAR 023:150
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320.210	201 KAR 005:140		902 KAR 020:440
	902 KAR 020:160	335.100	201 KAR 023:070
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	201 KAR 019:270		902 KAR 020:160
323.050	201 KAR 019:215		902 KAR 020:440
	201 KAR 019:220	335.305	201 KAR 032:110
	201 KAR 019:225	335.310	201 KAR 032:110
323.060	201 KAR 019:235	335.320	201 KAR 032:035
	201 KAR 019:240		201 KAR 032:110
323.080	201 KAR 019:255	335.325	201 KAR 032:110
323.090	201 KAR 019:230	335.330	201 KAR 032:035
323.095	201 KAR 019:260	335.332	201 KAR 032:035
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323.110	201 KAR 019:255	335.500	902 KAR 020:160
323.120	201 KAR 019:260		902 KAR 020:440
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	201 KAR 019:225		803 KAR 002:314
323.230	201 KAR 019:275		803 KAR 002:413
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	201 KAR 019:445	338.021	803 KAR 002:050
323.400	201 KAR 019:415	338.051	803 KAR 002:010
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	201 KAR 019:435		803 KAR 002:240
323.402	201 KAR 019:430	338.131	803 KAR 002:100
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323.406	201 KAR 019:410	338.991	803 KAR 002:080
	201 KAR 019:420		803 KAR 002:115
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	201 KAR 019:450	342.020	803 KAR 025:089
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323.410	201 KAR 019:410	342.035	803 KAR 025:089
	201 KAR 019:415		803 KAR 025:091
	201 KAR 019:420	342.038	803 KAR 025:170
	201 KAR 019:425	342.039	803 KAR 025:170
	201 KAR 019:430	342.260	803 KAR 025:185
323.412	201 KAR 019:455	342.267	803 KAR 025:240



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	803 KAR 025:185		401 KAR 063:002
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	302 KAR 079:012		902 KAR 020:440
365	601 KAR 001:113		907 KAR 001:604
381.780	902 KAR 010:010		907 KAR 015:080
387.010	910 KAR 002:060		922 KAR 002:240
387.510	910 KAR 002:060	45 C.F.R.	806 KAR 009:360
387.760	910 KAR 002:060		902 KAR 020:160
424.110-424.150	902 KAR 008:170		902 KAR 020:440
431.600	922 KAR 001:330		907 KAR 003:250
439	501 KAR 006:080		921 KAR 004:116
	501 KAR 006:120		922 KAR 001:500
439.3401	902 KAR 020:440		922 KAR 002:120
503.110	922 KAR 001:330		922 KAR 002:410E
508.125	922 KAR 001:330		922 KAR 002:450E
523.100	902 KAR 100:012		922 KAR 006:010
527.070	922 KAR 002:120	49 C.F.R.	702 KAR 005:080
529.010	922 KAR 001:330		922 KAR 002:120
532.045	922 KAR 001:330	57 C.F.R.	601 KAR 002:231
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600.010	922 KAR 001:330		302 KAR 050:031
600.020	922 KAR 001:330		302 KAR 050:045
	922 KAR 001:520		302 KAR 050:056
605.090	922 KAR 001:330		302 KAR 050:080
605.120	922 KAR 001:520		921 KAR 003:010
605.130	922 KAR 001:330		921 KAR 003:020
605.150	922 KAR 001:330		921 KAR 003:030
610.010	922 KAR 001:330		921 KAR 003:035
610.110	922 KAR 001:500		921 KAR 003:042
	922 KAR 001:520	8 U.S.C.	921 KAR 003:010
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620.070	922 KAR 001:330		806 KAR 003:170
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620.140	922 KAR 001:500		703 KAR 005:280
	922 KAR 001:520		902 KAR 020:160
620.180	922 KAR 001:330		922 KAR 001:500
620.350	922 KAR 001:330		922 KAR 002:120
620.990	922 KAR 001:330	21 U.S.C.	902 KAR 045:160
2 C.F.R.	902 KAR 008:170		907 KAR 015:070E
7 C.F.R.	902 KAR 050:010		907 KAR 015:080
	902 KAR 050:032	26 U.S.C.	105 KAR 001:149
	902 KAR 050:031		806 KAR 012:120
	902 KAR 050:050		806 KAR 012:150
	921 KAR 003:010		806 KAR 012:180
	921 KAR 003:020	29 U.S.C.	806 KAR 012:120
	921 KAR 003:030		806 KAR 012:150
	921 KAR 003:035		806 KAR 012:180
	921 KAR 003:045		902 KAR 020:160
	922 KAR 002:120		921 KAR 003:020
9 C.F.R.	302 KAR 022:150	31 U.S.C.	045 KAR 001:050
12 C.F.R.	201 KAR 030:040	38 U.S.C.	017 KAR 004:040
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	806 KAR 012:180		921 KAR 003:020
16 C.F.R.	302 KAR 079:011	41 U.S.C.	017 KAR 003:050
	302 KAR 079:012	42 U.S.C.	201 KAR 002:410E
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21 C.F.R.	302 KAR 060:010		401 KAR 061:036
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	902 KAR 050:010		902 KAR 020:160
	902 KAR 050:080		902 KAR 020:440
29 C.F.R.	803 KAR 002:021		907 KAR 001:604
	803 KAR 002:314		907 KAR 003:250
	803 KAR 002:413		907 KAR 015:070E
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40 C.F.R.	302 KAR 079:011		921 KAR 003:010
	302 KAR 079:012		921 KAR 003:020

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			921 KAR 003:035
			921 KAR 004:116
			922 KAR 001:330
			922 KAR 001:500
			922 KAR 001:520
			922 KAR 002:120
			922 KAR 006:010
45 U.S.C.			921 KAR 003:010
52 U.S.C.			921 KAR 003:030
45.237 - 45.241			922 KAR 001:565
45A			601 KAR 002:030E
			702 KAR 003:130
44 C.F.R.			201 KAR 011:121
31 U.S.C.			045 KAR 001:050
Pub.L. 104-191			902 KAR 030:010E
			920 KAR 001:070
EO 2020-253			800 KAR 001:010

## 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
016 KAR 003:080	12-04-2020	To be amended, filing deadline 06-06-22
017 KAR 003:020	08-07-2020	Remain As Is
201 KAR 037:010	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
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
803 KAR 002:419	10-01-2020	To be amended, filing deadline 04-01-22
910 KAR 001:190	12-11-2020	To be amended, filing deadline 06-11-22
922 KAR 001:130	09-04-2020	Remain As Is
922 KAR 001:450	10-02-2020	Remain As Is

## TECHNICAL AMENDMENT INDEX

The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments made during the 47<sup>th</sup> 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>.

Regulation Number		Date Corrected	Regulation Number	Date Corrected
201 KAR 006:020		11-09-2020		
201 KAR 006:040		11-09-2020		
201 KAR 006:050		11-09-2020		
201 KAR 006:050		11-09-2020		
201 KAR 017:011		10-16-2020		
201 KAR 017:012		10-16-2020		
201 KAR 017:030		10-16-2020		
201 KAR 017:032		10-16-2020		
201 KAR 017:034		10-16-2020		
201 KAR 017:036		10-16-2020		
201 KAR 028:060		10-16-2020		
201 KAR 028:170		10-16-2020		
201 KAR 028:200		10-16-2020		
201 KAR 044:090		10-16-2020		
201 KAR 044:100		10-16-2020		
201 KAR 044:120		10-16-2020		
201 KAR 045:110		10-16-2020		
201 KAR 045:120		10-16-2020		
201 KAR 045:150		10-16-2020		
201 KAR 045:170		10-16-2020		
201 KAR 045:180		10-16-2020		
201 KAR 047:010		10-16-2000		
702 KAR 003:270E		09-23-2020		
702 KAR 007:125E		09-23-2020		
815 KAR 002:020		05-29-2020		
815 KAR 004:025		05-29-2020		
815 KAR 007:070		05-29-2020		
815 KAR 007:125		07-17-2020		
815 KAR 008:010		05-29-2020		
815 KAR 010:060		05-29-2020		
815 KAR 015:025		05-29-2020		
815 KAR 025:020		05-29-2020		
815 KAR 030:060		05-29-2020		
902 KAR 050:160	‡	12-03-2020		
908 KAR 001:370		10-28-2020		
921 KAR 001:380		11-02-2020		

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910 KAR 002:060. Guardianship Trust Fund

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