



ADMINISTRATIVE REGISTER OF KENTUCKY

The submission deadline for this edition of the *Administrative Register of Kentucky* was noon, January 15, 2021.

MEETING NOTICES

The **Administrative Regulation Review Subcommittee** is **tentatively** scheduled to meet on February 8, 2021, at 10:00 a.m. in room 149 Capitol Annex.

ARRS Tentative Agenda - **1523** [Online agenda updated as needed](#)

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

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**Administrative Regulation Review Subcommittee
TENTATIVE Meeting Agenda
Monday, February 8, 2021 at 10:00 a.m.
Annex Room 149**



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

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201 KAR 009:280. Interpretation and application of KRS 311.901(1) and KRS 311.903(4).

Board of Social Work

201 KAR 023:070. Qualifying education and clinical practice experience under supervision.

Board of Licensed Diabetes Educators

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TOURISM, ARTS, AND HERITAGE CABINET

Department of Fish and Wildlife Resources

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301 KAR 002:221 & E. Waterfowl seasons and limits. ("E" expires 07-27-2021)

GENERAL GOVERNMENT CABINET

Department of Agriculture

Regulation and Inspection; Motor Fuel

302 KAR 079:011. Motor fuel quality testing and inspection program.

302 KAR 079:012. Motor fuel quality standards and specifications.

JUSTICE AND PUBLIC SAFETY CABINET

Department of Corrections

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501 KAR 006:080 & E. Department of Corrections manuals. ("E" expires 07-30-2021)

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Department of Vehicle Regulation

Motor Carriers

601 KAR 001:113. Transportation Network Company.

Certification of Title

601 KAR 023:030. Motor vehicle speed title process expectations.

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Department of Workplace Standards

Occupational Safety and Health

803 KAR 002:010. Board procedures.

Department of Workers' Claims

Workers' Claims

803 KAR 025:092. Workers' compensation pharmacy fee schedule.

803 KAR 025:170. Filing of claims information with the Office of Workers' Claims.

803 KAR 025:175. Filing of insurance coverage and notice of policy change or termination.

803 KAR 025:185. Procedure for E-mail notification of cancellation or removal of location of specific workers' compensation coverage.

PUBLIC PROTECTION CABINET

Department of Insurance

Agents, Consultants, Solicitors, and Adjustors

806 KAR 009:025. Licensing process. (Amended After Comments)

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. (Amended After Comments)

Horse Racing Commission

General

810 KAR 002:020. Thoroughbred and flat racing officials.

Flat and Steeplechase Racing

810 KAR 004:010. Horses.

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810 KAR 004:030. Entries, subscriptions, and declarations.

Medication Guidelines

810 KAR 008:060. Post-race sampling and testing procedures.

Department of Housing, Buildings and Construction

Plumbing

815 KAR 020:150. Inspections and tests. (Deferred from January)

CABINET FOR HEALTH AND FAMILY SERVICES

Office of the Secretary

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900 KAR 011:011. Repeal of 900 KAR 011:010.

Department for Public Health

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902 KAR 010:010. Public restrooms.

902 KAR 010:110. Issuance of on-site sewage disposal system permits.

902 KAR 010:131. Repeal of 902 KAR 010:060 and 902 KAR 010:130.

902 KAR 010:140. On-site sewage disposal system installer certification program standards.

902 KAR 010:150. Domestic septage disposal site approval procedures.

902 KAR 010:160. Domestic septage disposal site operation.

902 KAR 010:170. Septic tank servicing.

Department for Behavioral Health, Developmental and Intellectual Disabilities

Mental Health

908 KAR 002:270. Community behavioral health training.

Department for Community Based Services

Supplemental Nutrition Assistance Program

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

Department for Community Based Services

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922 KAR 002:230. Director's Credential.

922 KAR 002:240. Kentucky Early Care and Education Trainer's Credential and training approval.

922 KAR 002:250. Commonwealth Child Care Credential.

3. REGULATIONS REMOVED FROM FEBRUARY'S AGENDA

STATE BOARD OF ELECTIONS

Forms and Procedures

031 KAR 004:194E. Procedures for November 3, 2020 elections. ("E" expires 07-30-2021) (Withdrawn by agency, 1-15-2021)

TRANSPORTATION CABINET

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)

LABOR CABINET

Department of Workers' Claims

Workers' Claims

803 KAR 025:091. Workers' compensation hospital fee schedule. (Amended After Comments) (Deferred from February)

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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)

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

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CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Health Services and Facilities

902 KAR 020:160 & E. Chemical dependency treatment services and facility specifications. ("E" expires 08-10-2021) (Comments Received; SOC ext. due 02-15-2021)

902 KAR 020:440 & E. Facilities specifications, operation and services; residential crisis stabilization units. ("E" expires 08-10-2021) (Comments Received; SOC ext. due 02-15-2021)

Department for Public Health

Food and Cosmetics

902 KAR 045:190. Hemp-derived cannabidiol products and labeling requirements. (Comments Received; SOC ext., due 02-15-2021)

Department for Medicaid Services

Behavioral Health

907 KAR 015:070 & E. Coverage provisions and requirements regarding services provided by residential crisis stabilization units. ("E" expires 08-10-2021) (Comments Received; SOC ext., due 02-15-2021)

907 KAR 015:080 & E. Coverage provisions and requirements regarding chemical dependency treatment center services. ("E" expires 08-10-2021) (Comments Received; SOC ext., due 02-15-2021)

Department for Behavioral Health, Developmental and Intellectual Disabilities

Daycare

922 KAR 002:120. Child-care center health and safety standards. (Comments Received; SOC ext., due 02-15-2021)

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
803 KAR 2:320E

On January 9, 2017, the United States Department of Labor, Occupational Safety and Health Administration published an Occupational Exposure to Beryllium and Beryllium Compounds final rule that established health standards for beryllium exposure in general industry codified in 29 Code of Federal Regulations (C.F.R.) 1910.1024. Kentucky adopted the rule. On July 14, 2020, OSHA published a final rule that clarified certain provisions and simplified, or improved, compliance with 29 C.F.R. 1910.1024. The final rule is deregulatory action. The changes maintain safety and health protections for workers and enhance worker protections by ensuring the standard is well understood. The final rule enhances employee safety by revising provisions that may be misinterpreted. The majority of the changes clarify certain provisions and simplify, or improve, employer compliance with 29 C.F.R. 1910.1024.

This emergency administrative regulation amends 803 KAR 2:320, Toxic and Hazardous Substances and adopts OSHA's July 14, 2020 final rule. It is necessary to promulgate this emergency regulation 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. 29 C.F.R. 1953.5 mandates state adoption of OSHA's July 14, 2020 Occupational Exposure to Beryllium and Beryllium Compounds final rule within six (6) months of its July 14, 2020 publication in the Federal Register. Therefore, Kentucky must adopt the rule no later than February 14, 2021 to ensure the state program is at least as effective as OSHA. This emergency administrative regulation will be replaced by an ordinary administrative regulation, which is being filed simultaneously with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor
 LARRY ROBERTS, Chairman

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(Emergency Amendment)

803 KAR 2:320E. Toxic and hazardous substances.

EFFECTIVE: January 13, 2021

RELATES TO: KRS 338.015, 338.031, 29 C.F.R. 1910.134, 1910.141, 1910.1000-1910.1450

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

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. 29 C.F.R. 1910.1000 to 1910.1450 establish federal requirements relating to toxic and hazardous substances. This administrative regulation establishes the toxic and hazardous substances standards enforced by the Department of Workplace Standards in ~~the area of~~ general industry.

Section 1. Definitions. (1) "Absolute filter" means a filter capable of retaining 99.97 percent of a mono disperse aerosol of three-tenths (0.3) mu particles.

(2) "Area director" means Director, Division of Occupational Safety and Health Compliance, Kentucky Labor Cabinet.

(3) "Authorized employee" means an employee whose duties require the employee to be in the regulated area and who has been specifically assigned to that area by the employer.

(4) "Clean change room" means a room where employees put on clean clothing or protective equipment in an environment free of 4,4'-Methylene bis (2-chloroaniline).

(5) "Closed system" means an operation involving 4,4'-Methylene bis (2-chloroaniline) if containment prevents the release of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, nonregulated areas, or the external environment.

(6) "Decontamination" means the inactivation of 4,4'-Methylene bis (2-chloroaniline) or its safe disposal.

(7) "Director" means the Director, National Institute for Occupational Safety and Health, or any person directed by the director or the Secretary of Health, Education, and Welfare to act for the director.

(8) "Disposal" means the safe removal of 4,4'-Methylene bis (2-chloroaniline) from the work environment.

(9) "Emergency" means an unforeseen circumstance or set of circumstances resulting in the release of 4,4'-Methylene bis (2-chloroaniline) that may result in exposure to or contact with 4,4'-Methylene bis (2-chloroaniline).

(10) "Employee" is defined by KRS 338.015(2).

(11) "Employer" is defined by KRS 338.015(1).

(12) "External environment" means any environment external to regulated and nonregulated areas.

(13) "Isolated system" means a fully enclosed structure, other than the vessel of containment, of 4,4'-Methylene bis (2-chloroaniline), which is impervious to the passage of entry of 4,4'-Methylene bis (2-chloroaniline), and which would prevent the entry of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, or the external environment, if leakage or spillage from the vessel of containment occurs.

(14) "Laboratory type hood" means a device:

(a) Enclosed on three (3) sides with the top and bottom designed and maintained to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute; and

(b) Designed, constructed, and maintained so that an operation involving 4,4'-Methylene bis (2-chloroaniline) within the hood does not require the insertion of any portion of an employee's body other than hands and arms.

(15) "National consensus standard" is defined by KRS 338.015(9).

(16) "Nonregulated area" means any area under the control of the employer where entry and exit is neither restricted nor controlled.

(17) "Open-vessel system" means an operation involving 4,4'-Methylene bis (2-chloroaniline) in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, nonregulated areas, or the external environment.

(18) "Protective clothing" means clothing designed to protect an employee against contact with or exposure to 4,4'-Methylene bis (2-chloroaniline).

(19) "Regulated area" means an area where entry and exit is restricted and controlled.

(20) "Standard" means "occupational safety and health standards" as defined by KRS 338.015(3).

Section 2. 4,4'-Methylene bis (2-chloroaniline). (1) Scope and application.

(a) This section shall apply to any area in which 4,4'-Methylene bis (2-chloroaniline), Chemical Abstracts Service Registry Number

101144, is manufactured, processed, repackaged, released, handled, or stored. This section shall not apply to trans-shipment in sealed containers, except for the labeling requirements under subsection (4)(b), (c), and (d) of this section.

(b) This section shall not apply to solid or liquid mixtures containing less than one and zero-tenths (1.0) percent by weight of 4,4'-Methylene bis (2-chloroaniline).

(2) Requirements for areas containing 4,4'-Methylene bis (2-chloroaniline). A regulated area shall be established by an employer where 4,4'-Methylene bis (2-chloroaniline) is manufactured, processed, used, repackaged, released, handled, and stored. Those areas shall be controlled in accordance with the requirements for the following category or categories describing the operations involved:

(a) Isolated systems. Employees working with 4,4'-Methylene bis (2-chloroaniline) within an isolated system such as a "glove box" shall wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated with the isolated system.

(b) Closed system operation. Within regulated areas if 4,4'-Methylene bis (2-chloroaniline) is stored in a sealed container, or contained in a closed system including piping systems, with any sample ports or openings closed while 4,4'-Methylene bis (2-chloroaniline) is contained within:

1. Access shall be restricted to authorized employees only; and
2. Employees shall be required to wash hands, forearms, face, and neck upon each exit from the regulated areas, close to the point of exit and before engaging in other activities.

(c) Open vessel system operations. Open vessel system operations shall be prohibited.

(d) Transfer from a closed system, charging or discharging point operations, or otherwise opening a closed system. In operations involving a "laboratory type hood," or in locations where 4,4'-Methylene bis (2-chloroaniline) is contained in an otherwise "closed system," but is transferred, charged, or discharged into other normally closed containers, the provisions of this paragraph shall apply.

1. Access shall be restricted to authorized employees only.
2. Each operation shall be provided with continuous local exhaust ventilation so that air movement shall always be from ordinary work areas to the operation.

- a. Exhaust air shall not be discharged to regulated areas, nonregulated areas, or the external environment unless it is decontaminated.

- b. Clean make-up air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.

3. Employees shall be provided with, and required to wear, clean, full body protective clothing (smocks, coveralls, or long-sleeved shirt and pants), shoe covers, and gloves prior to entering the regulated area.

4. Employees engaged in 4,4'-Methylene bis (2-chloroaniline) handling operations shall be provided with and required to wear and use a half-face, filter-type respirator for dusts, mists, and fumes, in accordance with 29 C.F.R. 1910.134. A respirator affording a higher level of protection may be substituted.

5. Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal. The contents of the impervious containers shall be identified, as required under subsection (4)(b), (c), and (d) of this section.

6. Employees shall be required to wash hands, forearms, face, and neck on each exit from the regulated area, close to the point of exit, and before engaging in other activities.

7. Employees shall be required to shower after the last exit of the day.

8. Drinking fountains shall be prohibited in the regulated area.

(e) Maintenance and decontamination activities. In cleanup of leaks or spills, maintenance or repair operations on contaminated systems or equipment, or any operations involving work in an area where direct contact with 4,4'-Methylene bis (2-chloroaniline) could result, each authorized employee entering that area shall be:

1. Provided with and required to wear clean, impervious garments, including gloves, boots, and continuous-air supplied hood in accordance with 29 C.F.R. 1910.134;

2. Decontaminated before removing the protective garments and hood; and

3. Required to shower upon removing the protective garments and hood.

(f) Laboratory activities. The requirements of this paragraph shall apply to research and quality control activities involving the use of 4,4'-Methylene bis (2-chloroaniline).

1. Mechanical pipetting aids shall be used for all pipetting procedures.

2. Experiments, procedures, and equipment that could produce aerosols shall be confined to laboratory-type hoods or glove boxes.

3. Surfaces on which 4,4'-Methylene bis (2-chloroaniline) is handled shall be protected from contamination.

4. a. Contaminated wastes and animal carcasses shall be collected in impervious containers that are closed and decontaminated prior to removal from the work area.

- b. The wastes and carcasses shall be incinerated so that no carcinogenic products are released.

5. All other forms of 4,4'-Methylene bis (2-chloroaniline) shall be inactivated prior to disposal.

6. Employees engaged in animal support activities shall be:

- a. Provided with and required to wear, a complete protective clothing change, clean each day, including coveralls or pants and shirt, foot covers, head covers, gloves, and appropriate respiratory protective equipment or devices;

- b. Required, prior to each exit from a regulated area, to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal. The contents of the impervious containers shall be identified as required under subsection (4)(b), (c), and (d) of this section;

- c. Required to wash hands, forearms, face, and neck upon each exit from the regulated area close to the point of exit and before engaging in other activities; and

- d. Required to shower after the last exit of the day.

7. Employees, except for those engaged in animal support activities, each day shall be:

- a. Provided with and required to wear a clean change of appropriate laboratory clothing, such as a solid front gown, surgical scrub suit, or fully buttoned laboratory coat;

- b. Required, prior to each exit from a regulated area, to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal. The contents of the impervious containers shall be identified as required under subsection (4)(b), (c), and (d) of this section; and

- c. Required to wash hands, forearms, face, and neck upon each exit from the regulated area close to the point of exit and before engaging in other activities.

8. Air pressure in laboratory areas and animal rooms where 4,4'-Methylene bis (2-chloroaniline) is handled and bioassay studies are performed shall be negative in relation to the pressure in the surrounding area. Exhaust air shall not be discharged to regulated areas, nonregulated areas, or the external environment unless it is decontaminated.

9. There shall not be a connection between regulated areas and any other areas through the ventilation system.

10. A current inventory of 4,4'-Methylene bis (2-chloroaniline) shall be maintained.

11. Ventilated apparatus such as laboratory type hoods, shall be tested at least semi-annually or immediately after ventilation modification of maintenance operations, by personnel fully qualified to certify correct containment and operation.

(g) Premixed solutions. If 4,4'-Methylene bis (2-chloroaniline) is present only in a single solution at a temperature not exceeding 120 degrees Celsius, the establishment of a regulated area shall not be required, except:

1. Only authorized employees shall be permitted to handle the

materials;

2. Each day employees shall be provided with and required to wear a clean change of protective clothing (smocks, coveralls, or long-sleeved shirts and pants), gloves, and other protective garments and equipment necessary to prevent contact with the solution in the process used;

3. Employees shall be required to remove and leave protective clothing and equipment if leaving the work area at the end of the work day or if solution is spilled on the clothing or equipment. Used clothing and equipment shall be placed in impervious containers for decontamination or disposal. The contents of the impervious containers shall be identified, as required under subsection (4)(b), (c), and (d) of this section;

4. Employees shall be required to wash hands and face after removing protective clothing and equipment and before engaging in other activities;

5. Employees assigned to work covered by this paragraph shall be deemed to be working in regulated areas for the purposes of subsection (4)(a), (b), and (c) of this section; and

6. Work areas where solution may be spilled shall be:

- a. Covered daily or after any spill with a clean covering; and
- b. Cleaned thoroughly daily and after any spill.

(3) General regulated area requirements.

(a) Employee identification.

1. A daily roster of employees entering regulated areas shall be established and maintained.

2. The rosters or a summary of the rosters shall be retained for a period of twenty (20) years.

3. The rosters or summaries shall be provided upon request to authorized representatives of the assistant secretary and the director.

4. If the employer ceases business without a successor, rosters shall be forwarded by registered mail to the director.

(b) Emergencies. In an emergency, immediate measures, including the requirements of this paragraph, shall be implemented.

1. The potentially affected area shall be evacuated as soon as the emergency is determined.

2. Hazardous conditions created by the emergency shall be eliminated and the potentially affected area shall be decontaminated prior to the resumption of normal operations.

3. a. Special medical surveillance by a physician shall be instituted within twenty-four (24) hours for employees present in the potentially affected area at the time of the emergency.

b. A report of the medical surveillance and any treatment shall be included in the incident report, in accordance with subsection (5)(b) of this section.

4. If an employee has a known contact with 4,4'-Methylene bis (2-chloroaniline), the employee shall be required to shower as soon as possible, unless contraindicated by physical injuries.

5. An incident report on the emergency shall be reported as provided in subsection (5)(b) of this section.

(c) Hygiene facilities and practices.

1. Storage or consumption of food, storage or use of containers of beverages, storage or consumption of beverages, storage or application of cosmetics, smoking, storage of smoking materials, tobacco products or other products for chewing, or the chewing of those products, shall be prohibited in regulated areas.

2. If employees are required by this section to wash, washing facilities shall be provided in accordance with 29 C.F.R. 1910.141.

3. If employees are required by this section to shower, facilities shall be provided in accordance with 29 C.F.R. 1910.141(d)(3).

4. If employees wear protective clothing and equipment, clean change rooms shall be provided, in accordance with 29 C.F.R. 1910.141(e), for the number of employees required to change clothes.

5. If toilets are located in regulated areas, the toilets shall be in a separate room.

(d) Contamination control.

1. Regulated areas, except for outdoor systems, shall be maintained under pressure negative with respect to nonregulated areas.

a. Local exhaust ventilation may be used to satisfy this

requirement.

b. Clean make-up air in equal volume shall replace air removed.

2. Any equipment, material, or other item taken or removed from a regulated area shall be done so in a manner that does not cause contamination in nonregulated areas or the external environment.

3. Decontamination procedures shall be established and implemented to remove 4,4'-Methylene bis (2-chloroaniline) from the surface of materials, equipment, and the decontamination facility.

4. Dry sweeping and dry mopping shall be prohibited.

(4) Signs, information, and training.

(a) Signs.

1. Entrance to regulated areas shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT
Authorized Personnel Only
2. Entrances to regulated areas containing operations established in subsection (2)(e) of this section shall be posted with signs bearing the legend:
Cancer-Suspect Agent Exposed In this Area
Impervious Suit Including Gloves, Boots, and Air-Supplied Hood Required At All Times
Authorized Personnel Only

3. Appropriate signs and instructions shall be posted at the entrance to, and exit from, regulated areas, informing employees of the procedures that shall be followed in entering and leaving a regulated area.

(b) Container labeling. Containers shall be labeled in accordance with the requirements of 29 C.F.R. 1910.1200.

(c) Lettering.

1. Lettering on signs and instructions required by paragraph (a) of this subsection shall be a minimum letter height of two (2) inches.

2. Labels on containers required by paragraph (b) of this subsection shall:

a. Not be less than one-half (1/2) the size of the largest lettering on the package, up to a maximum required size of one (1) inch in height; and

b. Not use less than eight (8) point type.

(d) Prohibited statements. A statement shall not appear on or near any required sign, label, or instruction that contradicts or detracts from the effect of any required warning, information, or instruction.

(e) Training and indoctrination.

1. Each employee, prior to being authorized to enter a regulated area, shall receive a training and indoctrination program including:

a. The nature of the carcinogenic hazards of 4,4'-Methylene bis (2-chloroaniline), including local and systemic toxicity;

b. The specific nature of the operation involving 4,4'-Methylene bis (2-chloroaniline) that could result in exposure;

c. The purpose for and application of the medical surveillance program, including, as appropriate, methods of self-examination;

d. The purpose for and application of decontamination practices and procedures;

e. The purpose for and significance of emergency practices and procedures;

f. The employee's specific role in emergency procedures;

g. Specific information to aid the employee in recognition and evaluation of conditions and situations that may result in the release of 4,4'-Methylene bis (2-chloroaniline); and

h. The purpose for and application of specific first-aid procedures and practices.

2. Each employee shall receive a review of this section at the employee's first training and indoctrination program and annually thereafter.

3. Specific emergency procedures shall be prescribed and posted, and employees shall be familiarized with their terms and rehearsed in their application.

4. All materials relating to the program shall be provided if requested by authorized representatives of the assistant secretary and the director.

(5) Reports.

(a) Operations. Not later than March 1 of each year, the information required by this paragraph shall be reported in writing by the employer to the nearest Area Director. Any change in the reported information shall be reported in writing within fifteen (15) calendar days of the change. The report shall contain the following information:

1. A brief description and in-plant location of the areas regulated and the address of each regulated area;

2. The names and other identifying information as to the presence of 4,4'-Methylene bis (2-chloroaniline) in each regulated area;

3. The number of employees in each regulated area, during normal operations including maintenance activities; and

4. The manner in which 4,4'-Methylene bis (2-chloroaniline) is present in each regulated area, such as whether it is manufactured, processed, used, repackaged, released, stored, or otherwise handled.

(b) Incidents. Incidents that result in the release of 4,4'-Methylene bis (2-chloroaniline) into any area where employees may be exposed shall be reported in accordance with this paragraph.

1. A report of the incident and the facts obtainable at that time, including a report on any medical treatment of affected employees, shall be made within twenty-four (24) hours to the nearest Area Director.

2. A written report shall be filed with the nearest Area Director within fifteen (15) calendar days of the initial report and shall include:

a. A specification of the amount of material released, the amount of time involved, and an explanation of the procedure used in determining this figure;

b. A description of the area involved, and the extent of known and possible employee and area contamination;

c. A report of any medical treatment of affected employees and any medical surveillance program implemented; and

d. An analysis of the steps to be taken, with specific completion dates, to avoid further similar release.

(6) Medical surveillance. At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to enter regulated areas, and for authorized employees.

(a) Examinations.

1. Before an employee is assigned to enter a regulated area, a preassignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family and occupational background, including genetic and environmental factors.

2. Authorized employees shall be provided with periodic physical examinations at least annually, following the preassignment examination.

3. In all physical examinations, the examining physician shall consider whether there exist conditions of increased risk, including reduced immunological competence, current treatment with steroids of cytotoxic agents, pregnancy, and cigarette smoking.

(b) Records.

1. Employers of employees examined pursuant to this subsection shall maintain complete and accurate records of all medical examinations. Records shall be maintained for the duration of the employee's employment. If the employee's employment is terminated, including by retirement or death, or if the employer ceases business without a successor; records, or notarized true copies thereof, shall be forwarded by registered mail to the director.

2. Records required by this paragraph shall be provided if requested by authorized representatives of the assistant secretary or the director. If requested by an employee or former employee,

the records shall be provided to a physician designated by the employee or to a new employer.

3. Any physician who conducts a medical examination required by this subsection shall furnish to the employer a statement of the employee's suitability for employment in the specific exposure.

Section 3. Laboratory Activities. The requirements of this section shall apply to research and quality control activities involving the use of chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016.

(1) Mechanical pipetting aids shall be used for all pipetting procedures.

(2) Experiments, procedures, and equipment which could produce aerosols shall be confined to laboratory-type hoods or glove boxes.

(3) Surfaces on which chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016 are handled shall be protected from contamination.

(4) Contaminated wastes and animal carcasses shall be collected in impervious containers that are closed and decontaminated prior to removal from the work area. The wastes and carcasses shall be incinerated so that carcinogenic products shall not be released.

(5) All other forms of chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016 shall be inactivated prior to disposal.

(6) Laboratory vacuum systems shall be protected with high-efficiency scrubbers or with disposal absolute filters.

(7) Employees engaged in animal support activities shall be:

(a) Provided with and required to wear, a complete protective clothing change, clean each day, including coveralls, or pants and shirt, foot covers, head covers, gloves, and appropriate respiratory protective equipment or devices;

(b) 1. Required, prior to each exit from a regulated area, to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal; and

2. The contents of the impervious containers shall be identified as required under Section 2(4)(b), (c), and (d) of this administrative regulation;

(c) Required to wash hands, forearms, face, and neck upon each exit from the regulated area close to point of exit, and before engaging in other activities; and

(d) Required to shower after the last exit of the day.

(8) Employees, except for those engaged only in animal support activities, each day shall be:

(a) Provided with and required to wear a clean change of appropriate laboratory clothing, such as a solid front gown, surgical scrub suit, or fully buttoned laboratory coat;

(b) 1. Required, prior to each exit from a regulated area, to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal; and

2. The contents of the impervious containers shall be identified as required under Section 2(4)(b), (c), and (d) of this administrative regulation; and

(c) Required to wash hands, forearms, face, and neck upon each exit from the regulated area close to point of exit, and before engaging in other activities.

(9) Air pressure in laboratory areas, and animal rooms where chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016 are handled and bioassay studies are performed shall be negative in relation to the pressure in surrounding areas. Exhaust air shall not be discharged to regulated areas, nonregulated areas, or the external environment unless it is decontaminated.

(10) There shall not be a connection between regulated areas and any other areas through the ventilation system.

(11) A current inventory of chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016 shall be maintained.

(12) Ventilated apparatus such as laboratory-type hoods shall be tested at least semi-annually or immediately after ventilation modification or maintenance operations, by personnel fully

qualified to certify correct containment and operation.

Section 4. Access to Exposure or Medical Records. (1) The language relating to the access to exposure or medical records in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1910.1020(e)(1)(i).

(2) If an employee or designated representative requests access to an exposure or medical record, the employer shall assure that access is provided in a reasonable time, place, and manner, but not longer than fifteen (15) days after the request for access is made unless sufficient reason is given why that time is unreasonable or impractical.

(3) The language relating to the access to exposure or medical records in subsection (4) of this section shall apply in lieu of 29 C.F.R. 1910.1020(e)(1)(iii).

(4) If an employee or designated representative requests a copy of a record, the employer shall, except as specified in 29 C.F.R. 1910.1020(e)(1)(v) of this section, within the period of time previously specified assure that either:

(a) A copy of the record is provided without cost to the employee or representative;

(b) The necessary mechanical copying facilities (e.g., photocopying) are made available without cost to the employee or representative for copying the record; or

(c) The record is loaned to the employee or representative for a reasonable time to enable a copy to be made.

Section 5. (1) The language relating to gloves in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1910.1030(d)(3)(ix).

(2) Gloves shall be worn if it can be reasonably anticipated that the employees may have hand contact with blood, other potentially infectious materials, mucous membranes, and nonintact skin if performing vascular access procedures or if handling or touching contaminated items or surfaces.

Section 6. Except as modified by Sections 1 through 5 of this emergency administrative regulation, general industry shall comply with 29 C.F.R. Subpart Z, Toxic and Hazardous Substances, [the following federal requirements] published by the Office of the Federal Register, National Archives and Records Services, General Services Administration and the revisions to 29 C.F.R. 1910.1024 published in the July 14, 2020 Federal Register, Volume 85, Number 135:

(1) 29 C.F.R. 1910.1000–1910.1450; and

(2) The revisions to 29 C.F.R. 1910.1001, 29 C.F.R. 1910.1018, 29 C.F.R. 1910.1027, 29 C.F.R. 1910.1029, 29 C.F.R. 1910.1043, and 29 C.F.R. 1910.45 as published in the May 14, 2019 Federal Register, Volume 84, Number 93.

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: December 22, 2020

FILED WITH LRC: January 13, 2021 at 1:52 p.m.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Work-place Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2, effective since February 12, 1996, retains requirements for employees with occupational exposure to 4,4'-Methylenedibis(2-Chloroaniline). Section 3, also effective since February 12, 1996, retains requirements associated with research and quality control laboratory activities involving the use of the chemicals covered by 29 C.F.R. 1910.1003-1016. Section 4, effective since July 17, 1997, retains requirements related to access to exposure or medical records. Section 5, effective since October 7, 1992, retains requirements involving glove use related to 29 C.F.R. 1910.1030. Section 6 requires employers to comply

with the requirements of 29 C.F.R. Parts 1910.1000-1910.1450 and the amendments to 29 C.F.R. 1910.1024, published in the July 14, 2020 Federal Register, Volume 85, Number 135. On July 14, 2020, OSHA published a final rule that clarified certain provisions and simplified, or improved, compliance with 29 C.F.R. 1910.1024, Beryllium. The final rule is deregulatory action. The changes maintain safety and health protections for workers and enhance worker protections by ensuring the standard is well understood. The final rule enhances employee safety by revising provisions that may be misinterpreted. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations.

(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. 29 C.F.R. 1953.5 mandates state adoption of OSHA's July 14, 2020 Occupational Exposure to Beryllium and Beryllium Compounds final rule within six (6) months of its July 14, 2020 publication in the Federal Register. Therefore, Kentucky must adopt the rule no later than February 14, 2021 to ensure the state program is at least as effective as OSHA.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky OSH Standards Board to promulgate OSH administrative regulations. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5.

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

(a) How the amendment will change this existing administrative regulation: The amendment enhances employee safety by revising provisions that may be misinterpreted. The majority of the changes clarify certain provisions and simplify, or improve, employer compliance with 29 C.F.R. 1910.1024, Beryllium. The final rule is deregulatory action. The changes maintain safety and health protections for workers and enhance worker protections by ensuring the standard is well understood. The final rule enhances employee safety by revising provisions that may be misinterpreted. The majority of the changes clarify certain provisions and simplify, or improve, employer compliance with 29 C.F.R. 1910.1024. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as OSHA. 29 C.F.R. 1953.5 mandates state adoption of OSHA's July 14, 2020 Occupational Exposure to Beryllium and Beryllium Compounds final rule within six (6) months of its July 14, 2020 publication in the Federal Register. Therefore, Kentucky must adopt the rule no later than February 14, 2021 to ensure the state program is 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 Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal

requirements. This regulation complies and conforms with the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides all a clear understanding of the requirements. This amendment promotes employee health and safety throughout Kentucky and ensures the state is as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects employers in the Commonwealth engaged in all general industry activities covered by KRS Chapter 338.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are imposed and no immediate action is required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes employee health and safety throughout Kentucky and 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 are 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. 29 C.F.R. 1953.5 mandates adoption of OSHA's July 14, 2020 Occupational Exposure to Beryllium and Beryllium Compounds final rule within six (6) months of its July 14, 2020 publication in the Federal Register. Therefore, Kentucky must adopt the final rule or develop an equivalent standard no later than February 14, 2021 to ensure the state program is at least as effective as OSHA.

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? Yes.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Section 1 of this emergency administrative regulation defines terms not found in the federal standard. Section 2, effective since February 12, 1996, retains requirements related to 4,4'-Methylene bis (2-chloroaniline). Section 3, also effective since February 12, 1996, retains requirements associated with research and quality control laboratory activities involving the use of the chemicals covered by 29 C.F.R. 1910.1003-1016 that are different from OSHA. Section 4, effective since July 17, 1997, retains requirements related to access to exposure or medical records that are different from OSHA. Section 5, effective since October 7, 1992, retains requirements related to glove use as it applies to 29 C.F.R. 1910.1030 that are different from OSHA. Section 6 requires employers to comply with the requirements of 29 C.F.R. Parts 1910.1000-1910.1450 and the amendments to 29 C.F.R. 1910.1024, published in the July 14, 2020 Federal Register, Volume 85, Number 135. The final rule is deregulatory action. The changes maintain safety and health protections for workers and enhance worker protections by ensuring the standard is well understood. The final rule enhances employee safety by revising provisions that may be misinterpreted.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects any unit, part, or division of local government covered by KRS 338 and engaged in any general industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

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

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

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

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

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: This amendment does not impose any additional requirements or expenditures to the employer.

**STATEMENT OF EMERGENCY
902 KAR 2:211E**

This emergency administrative regulation is being promulgated to establish actions that the Department for Public Health may take in response to a declared national or state emergency. These actions include enhancing prevention of the spread of the infectious disease COVID-19 by wearing a face covering in public, subject to certain exceptions. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)1. and 4. to meet an imminent threat to public health, safety and welfare, and to protect human health. This emergency administrative regulation will not be replaced by an ordinary administrative regulation as these measures are in direct response to the declared state public health emergency.

This emergency administrative regulation differs from the previously filed emergency administrative regulation on this same subject, 902 KAR 2:210E, in multiple ways. (1) In Section 2(2), a requirement was added to require a person to cover their nose and mouth with a face covering if the person is inside, or waiting in line to enter, any gym, fitness studio, or any other indoor exercise or sports facility, including while actively engaged in exercise. (2) In Section 2(3)(a), an exemption was added to exempt from the requirement to wear a face covering a child who is younger than first grade while in attendance at a child care facility. (3) In Section 2(3)(c), a clarification was made that a person who is deaf or hard of hearing is exempt from wearing a face covering when the person is actively communicating. (4) In Section 2(3)(j), an exemption was added for a person who is exempt from wearing a face covering under guidance provided by the Kentucky High School Athletics Association or under guidance for athletic activities at an institution of higher education. (5) Section 2(3) will no longer include exemptions from wearing face coverings for a person actively engaged in exercise in a gym or indoor facility or for a person actively participating in athletic practice, scrimmage, or competition permitted under separate Healthy at Work requirements or guidance. (6) The citation form required by Section 3 of this administrative regulation has been incorporated by reference. (7) Changes were made to comply with the drafting and formatting requirements of KRS Chapter 13A.

ERIC C. FRIEDLANDER, Secretary
ANDY BESHEAR, Governor

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

902 KAR 2:211E. Covering the face in response to declared national or state public health emergency.

EFFECTIVE: January 5, 2021

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

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

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

Section 1. Definition. "Face covering" means a material that covers the nose and mouth and that:

(1)(a) Is secured to the head with ties, straps, or loops over the ears; or

- (b) Is wrapped around the lower face;
- (2) May be made of a variety of materials, including cotton, silk, or linen;
- (3) Shall have two (2) or more layers; and
- (4) Shall be factory-made, homemade, or improvised from household items such as a scarf, bandana, or t-shirt.

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

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

- (a) Is inside, or waiting in line to enter, any:
 - 1. Retail establishment;
 - 2. Grocery store;
 - 3. Pharmacy;
 - 4. Hair salon or barbershop;
 - 5. Nail salon or spa;
 - 6. Tattoo parlor;
 - 7. Child care facility;
 - 8. Restaurant or bar, if not seated and consuming food or beverage;
 - 9. Gym, fitness studio, or any other indoor exercise or sports facility, including while actively engaged in exercise;
 - 10. Health care setting; or
 - 11. Other indoor public space in which it is difficult to maintain a physical distance of at least six (6) feet from all individuals who are not members of that person's household;
- (b)1. Is waiting for or riding on public transportation or paratransit;
- 2. Is riding in a taxi, private car service, or ride-sharing vehicle; or
- 3. Is driving a vehicle described in subparagraph 1. or 2. of this paragraph while a customer is present; or

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

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

- (a)1. Except as provided in subparagraph 2. of this paragraph, a child who is age 5 or younger; or
- 2. A child who is younger than first grade while in attendance at a child care facility;
- (b) A person with disability, or a physical or mental impairment, that prevents the person from safely wearing a face covering;
- (c) Deaf or hard of hearing and is actively communicating, or the person is actively communicating with a person who is deaf or hard of hearing, if the individual is able to maintain a safe distance of six (6) feet from all individuals who are not members of that person's household;
- (d) Engaged in work that a state or federal regulator has concluded would make wearing a face covering a risk to the employee's health or safety;

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

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

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

(h)1. Giving a speech or broadcast to an audience; and

2. Able to maintain a safe distance of six (6) feet from all individuals who are not members of the person's household;

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

(j) Exempt from wearing a face covering under guidance provided by the Kentucky High School Athletics Association or under guidance for athletic activities at an institution of higher

education; or

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

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

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

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

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

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

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

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

(4) A local health department shall issue a COVID-19 Face Covering Citation for non-compliance with an applicable executive order and this administrative regulation.

Section 4. Effective Date. (1) 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).

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

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

Section 6. Incorporation by Reference. (1) "COVID-19 Face Covering Citation", January 2021, 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.

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

APPROVED BY AGENCY: January 4, 2020

FILED WITH LRC: January 5, 2021 at 8:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 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 March 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 March 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact: person Julie Brooks or Donna Little

(1) Provide a brief summary of:

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

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

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

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

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This is a statewide administrative regulation that could potentially affect the entire population of the Commonwealth. This administrative regulation also impacts all Kentucky businesses, organizations and governments.

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

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: Citizens of the Commonwealth will be required to wear face coverings in certain places and venues to

prevent the spread of COVID-19. A business or other public-facing entity shall not permit an individual on the premises who is not wearing a face covering and who is not subject to any exemption.

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

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

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

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

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

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the Cabinet for Health and Family Services, and all state or local governments that are public-facing or that regulate businesses or public-facing entities.

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

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

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY 921 KAR 3:025E

This emergency administrative regulation is necessary in order to immediately comply with the expansion of student eligibility in the Supplemental Nutrition Assistance Program (SNAP), as mandated by the SNAP provisions of the federal Consolidated Appropriations Act of 2021. The provisions must be implemented by January 16, 2021, to comply with federal law. This amendment is deemed to be an emergency pursuant to KRS 13A.190(1)(a) 3., to meet a federal deadline for promulgation of an administration regulation established by federal law. This amendment expands student eligibility criteria for SNAP by incorporating provisions for eligibility established by Pub. L. 116-260, the Consolidated Appropriations Act of 2021. This new eligibility is in effect from January 16, 2021, until thirty (30) days past the end of the COVID-19 public health emergency, but this amendment must be in place on or before January 16, 2021, pursuant to federal guidance received from the United States Department of Agriculture dated December 31, 2020. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation. Pursuant to KRS 13A.190(6)(f), this administrative regulation differs from the previously filed emergency administrative regulation with the same number and title and governing the same subject matter in that this amendment solely expands student eligibility for SNAP, as required by the Consolidated Appropriations Act of 2021.

ANDY BESHEAR, Governor

ERIC C. FRIEDLANDER, Secretary

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

921 KAR 3:025E. Technical requirements.

EFFECTIVE: January 15, 2021

RELATES TO: KRS 205.2005, 7 C.F.R. Parts 271-285, 273.4, 273.5, 273.7, 273.11, 45 C.F.R. 261.2, 7 U.S.C. 2011, 2014, 2015(d), 20 U.S.C. 28 Part F, Pub. L. 116-260 Section 702(e)

STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. 271.4, Part 272, Part 273

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 a Supplemental Nutrition Assistance Program (SNAP) within the state. 7 C.F.R. Parts 272 and 273 establish requirements for the cabinet to participate in the SNAP. In addition, 7 U.S.C. 2014 establishes that an otherwise-qualified alien who is blind or receiving a disability benefit, who has lived in the United States for at least five (5) years, or who is under eighteen (18) years of age shall be eligible to participate in SNAP regardless of the date he entered the United States. This administrative regulation establishes the technical eligibility requirements used by the cabinet in the administration of SNAP. Pursuant to Section 702(e) of Pub. L. 116-260, the Consolidated Appropriations Act of 2021, SNAP eligibility was temporarily expanded for qualifying students.

Section 1. Definitions. (1) "Exempt" means excused by the department from participation in the Supplemental Nutrition Assistance Program Employment and Training Program (E&T).

(2) "Qualified alien" is defined by 7 C.F.R. 273.4.

(3) "Student" means a person who is between the ages of eighteen (18) and forty-nine (49), physically and mentally fit, and enrolled at least half-time in an institution of higher education.

Section 2. Technical Eligibility. In accordance with 7 C.F.R. Parts 271 through 285 promulgated by the Food and Nutrition Service (FNS), of the United States Department of Agriculture, the cabinet shall utilize national uniform requirements of technical eligibility for SNAP.

Section 3. Technical Eligibility Criteria. Technical eligibility requirements shall apply to all households and consist of the criteria established in this section.

(1) Residency. A household:

(a) Shall reside in the county in which the household receives benefits; and

(b) May apply for benefits in any county in accordance with 921 KAR 3:030, Section 3.

(2) Identity.

(a) The applicant's identity shall be verified; and

(b) If an authorized representative applies for the household, the applicant's and the authorized representative's identities shall be verified.

(3) Citizenship and alien status.

(a) An individual shall satisfy the citizenship and alien status requirement if the individual is a:

1. Citizen of the United States;
2. U.S. noncitizen national; or
3. Qualified alien who is lawfully residing in Kentucky.

(b) Except as provided in paragraph (c) of this subsection, an individual whose status is questionable shall be ineligible to participate until verified.

(c) An individual whose status is pending verification from a federal agency shall be eligible to participate for up to six (6) months from the date of the original request for verification.

(d) A single household member shall attest in writing to the citizenship or alien status requirements as established in 921 KAR 3:030 for each household member.

(4) Household size. If information is obtained by the Department for Community Based Services (DCBS) that household size differs from the household's stated size, the size of household shall be verified through readily available documentary evidence or through a collateral contact.

(5) Students. A student shall be ineligible to participate unless the student is:

(a)1. Engaged in paid employment for an average of twenty (20) hours per week; or

2. If self-employed, employed for an average of twenty (20) hours per week and receiving weekly earnings at least equal to the federal minimum wage multiplied by twenty (20) hours;

(b) Participating in a state or federally financed work study program during the regular school year;

(c) Responsible for the care of a dependent household member under the age of six (6);

(d) Responsible for the care of a dependent household member who has reached the age of six (6), but is under age twelve (12) and for whom the cabinet has determined that adequate child care is not available to enable the individual to attend class and to satisfy the work requirements of paragraphs (a) or (b) of this subsection;

(e) Receiving benefits from the Kentucky Transitional Assistance Program (K-TAP);

(f) Assigned to or placed in an institution of higher learning through a program pursuant to:

1. 7 C.F.R. 273.5(a);
2. 45 C.F.R. 261.2; or
3. 19 U.S.C. 2296;

(g) Enrolled in an institution of higher learning as a result of participation in a work incentive program pursuant to 42 U.S.C. 681;

(h) Enrolled in an institution of higher learning as a result of participation in E&T in accordance with 921 KAR 3:042; [or]

(i) A single parent with responsibility for the care of a dependent household member under age twelve (12); or

(j) Enrolled at least half-time in an institution of higher education and:

1. Eligible to participate in a state or federally financed work

study program during the regular school year; or

2. Has an expected family contribution of \$0 in the current academic year pursuant to 20 U.S.C. 28 Part F.

(6) Social Security number (SSN).

(a) Households applying for or participating in SNAP shall comply with SSN requirements by providing the SSN of each household member or applying for a number prior to certification.

(b) Failure to comply without good cause shall be determined for each household member and shall result in an individual's disqualification from participation in SNAP until this requirement is met.

(7) Work registration. All household members, unless exempt, shall be required to comply with the work registration requirements established in Section 4 of this administrative regulation.

(8) Work requirement.

(a) Except for individuals who may be eligible for up to three (3) additional months in accordance with paragraph (e) of this subsection, an individual shall not be eligible to participate in SNAP as a member of a household if the individual received SNAP for more than three (3) countable months during any three (3) year period, during which the individual did not:

1. Work eighty (80) hours or more per month;

2. Participate in and comply with the requirements of the E&T component pursuant to 7 U.S.C. 2015(d) for twenty (20) hours or more per week;

3. Participate in and comply with the requirements of a program pursuant to:

- a. 7 C.F.R. 273.5(a); or
- b. 19 U.S.C. 2296;

4. Participate in and comply with the requirements established in 921 KAR 3:042; or

5. Receive SNAP benefits pursuant to paragraph (b), (c), or (d) of this subsection.

(b) Paragraph (a) of this subsection shall not apply to an individual if the individual is:

1. Under eighteen (18) or fifty (50) years of age or older;

2. Physically or mentally unfit for employment as determined by the cabinet;

3. A parent or other adult member of a household containing a dependent child under the age of eighteen (18);

4. Exempt from work registration pursuant to Section 4(4) of this administrative regulation; or

5. Pregnant.

(c) Paragraph (a) of this subsection shall not apply if, pursuant to an approved waiver by FNS, the county or area in which the individual resides:

1. Has an unemployment rate of over ten (10) percent; or

2. Does not have a sufficient number of jobs to provide employment.

(d) Subsequent eligibility.

1. An individual denied eligibility pursuant to paragraph (a) of this subsection shall regain eligibility to participate in SNAP if, during a thirty (30) day period, the individual meets one of the conditions of paragraph (a)1. through 4. of this subsection, or the individual was not meeting the work requirements in accordance with paragraph (b) of this subsection.

2. An individual who regains eligibility pursuant to subparagraph 1. of this paragraph shall remain eligible as long as the individual meets the requirements of subparagraph 1. of this paragraph.

(e) Loss of employment or training.

1. An individual who regains eligibility pursuant to paragraph (d)1. of this subsection and who no longer meets the requirements of paragraph (a)1. through 4. of this subsection shall remain eligible for a consecutive three (3) month period, beginning on the date the individual first notifies the cabinet that the individual no longer meets the requirements of paragraph (a)1. through 4. of this subsection.

2. An individual shall not receive benefits pursuant to subparagraph 1. of this paragraph for more than a single three (3) month period in any three (3) year period.

(f) If the individual does not meet all other technical and financial eligibility criteria pursuant to 7 U.S.C. 2011, nothing in this

section shall make an individual eligible for SNAP benefits.

(9) Quality control. Refusal to cooperate in completing a quality control review shall result in termination of the participating household's benefits.

(10) Drug felons. An individual convicted under federal or state law of an offense classified as a felony by the law of the jurisdiction involved and that has an element of possession, use, or distribution of a controlled substance as defined in 21 U.S.C. 862(a), may remain eligible for SNAP benefits if the individual meets the requirements established in KRS 205.2005.

Section 4. Work Registration. (1) Unless a household member is exempt from work requirements as established in subsection (4) of this section, a household member shall register for work:

- (a) At the time of initial application for SNAP; and
- (b) Every twelve (12) months following the initial application.

(2) Work registration shall be completed by the:

- (a) Member required to register; or
- (b) Person making application for the household.

(3) Unless otherwise exempt, a household member excluded from the SNAP case shall register for work during periods of disqualification. An excluded person shall be an:

- (a) Ineligible alien; or
- (b) Individual disqualified for:
 - 1. Refusing to provide or apply for a Social Security number; or
 - 2. An intentional program violation.

(4) An individual meeting the criteria of 7 C.F.R. 273.7(b)(1) shall be exempt from work registration requirements.

(5) A household member who loses exemption status due to a change in circumstances shall register for work in accordance with 7 C.F.R. 273.7(b)(2).

(6) After registering for work, a nonexempt household member shall:

- (a) Respond to a cabinet request for additional information regarding employment status or availability for work;
- (b) In accordance with 7 C.F.R. 273.7(a)(1)(vi), accept a bona fide offer of suitable employment pursuant to 7 C.F.R. 273.7(h), at a wage not lower than the state or federal minimum wage; or
- (c) In accordance with 7 C.F.R. 273.7(a)(1)(ii), participate in the E&T Program if assigned by the cabinet.

(7) A household member making a joint application for SSI and SNAP in accordance with 921 KAR 3:035 shall have work requirements waived in accordance with 7 C.F.R. 273.7(a)(6).

(8) The cabinet's E&T worker shall explain to the SNAP applicant the:

- (a) Work requirements for each nonexempt household member;
- (b) Rights and responsibilities of the work-registered household members; and
- (c) Consequences of failing to comply.

Section 5. Determining Good Cause. (1) A determination of good cause shall be undertaken if a:

(a) Work registrant has failed to comply with work registration requirements as established in Section 4 of this administrative regulation; or

(b) Household member has, pursuant to Section 7 of this administrative regulation, voluntarily:

- 1. Quit a job; or
- 2. Reduced the household member's work effort.

(2) In accordance with 7 C.F.R. 273.7(i)(2), good cause shall be granted for circumstances beyond the control of the individual, such as:

- (a) Illness of the individual;
 - (b) Illness of another household member requiring the presence of the individual;
 - (c) A household emergency;
 - (d) Unavailability of transportation; or
 - (e) Lack of adequate care for a child who is six (6) to twelve (12) years of age for whom the individual is responsible.
- (3) Good cause for leaving employment shall be granted if:
- (a) A circumstance established in subsection (2) of this section exists;

(b) The employment became unsuitable in accordance with 7 C.F.R. 273.7(h); or

(c) A circumstance established in 7 C.F.R. 273.7(i)(3) exists.

Section 6. Disqualification. (1) A participant shall be disqualified from the receipt of SNAP benefits if the participant:

(a) Fails to comply with the work registration requirements; or

(b) Is determined to have voluntarily, without good cause, quit a job or reduced the work effort as established in Section 5 of this administrative regulation.

(2) An individual disqualified from participation in SNAP shall be ineligible to receive SNAP benefits until the latter of the:

- (a) Date the individual complies; or
- (b) Lapse of the following time periods:
 - 1. Two (2) months for the first violation;
 - 2. Four (4) months for the second violation; or
 - 3. Six (6) months for the third or a subsequent violation.
- (3) Ineligibility shall continue until the ineligible member:
 - (a) Becomes exempt from the work registration; or
 - (b) 1. Serves the disqualification period established in subsection (2)(b) of this section; and
 - 2. Complies with the work registration requirements.
- (4) A disqualified household member who joins a new household shall:

(a) Remain ineligible for the remainder of the disqualification period established in subsection (2)(b) of this section;

(b) Have income and resources counted with the income and resources of the new household; and

(c) Not be included in the household size in the determination of the SNAP allotment.

Section 7. Disqualification for Voluntary Quit or Reduction in Work Effort. (1) Within thirty (30) days prior to application for SNAP or any time after application, an individual shall not be eligible to participate in SNAP if the individual voluntarily, without good cause:

- (a) Quits a job:
 - 1. Of thirty (30) hours or more per week; and
 - 2. With weekly earnings at least equal to the federal minimum wage times thirty (30) hours; or
- (b) Reduces the individual's work effort:
 - 1. To less than thirty (30) hours per week; and
 - 2. So that after the reduction, weekly earnings are less than the federal minimum wage times thirty (30) hours.

(2) The cabinet shall impose a disqualification period established in Section 6(2)(b) of this administrative regulation on an individual meeting subsection (1)(a) or (1)(b) of this section.

Section 8. Curing Disqualification for Voluntary Quit or Reduction in Work Effort. (1) Eligibility and participation may be reestablished by:

(a) Securing new employment with salary or hours comparable to the job quit;

(b) Increasing the number of hours worked to the amount worked prior to the work effort reduction and disqualification; or

(c) Serving the minimum period of disqualification imposed pursuant to Section 6(2)(b) of this administrative regulation.

(2) If the individual applies again and is determined to be eligible, an individual may reestablish participation in SNAP.

(3) If an individual becomes exempt from work registration, the disqualification period shall end, and the individual shall be eligible to apply to participate in SNAP.

Section 9. Hearing Process. If aggrieved by a cabinet action or inaction that affects participation, a SNAP participant may request a hearing in accordance with 921 KAR 3:070.

Section 10. This administrative regulation was found deficient by the Interim Joint Committee on Health, Welfare, and Family Services on September 23, 2020.

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

APPROVED BY AGENCY: January 13, 2021

FILED WITH LRC: January 15, 2021 at 8:00 a.m.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Laura Begin or Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the technical requirements to receive Supplemental Nutrition Assistance Program (SNAP) benefits.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the technical requirements for eligibility for SNAP

(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 technical requirements for SNAP eligibility.

(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 technical requirements 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: This amendment expands student eligibility criteria for SNAP by incorporating provisions for eligibility established by Pub. L. 116-260, the Consolidated Appropriations Act of 2021. The new provisions will allow students who are eligible to participate in a federal or state funded work study or whose expected family financial contribution is zero (as determined by the higher education facility per part F of Title IV of the Higher Education Act of 1965) to also be eligible students for SNAP technical requirements. This new eligibility is in effect from January 16, 2021, until thirty (30) days past the end of the COVID-19 public health emergency, but this amendment must be in place on or before January 16, 2021, pursuant to federal guidance received from the United States Department of Agriculture dated December 31, 2020.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with a change in eligibility in federal law.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment will assist in the effective administration of the statutes governing SNAP by complying with federal law.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes governing SNAP by incorporating additional student eligibility criteria as mandated in the Consolidated Appropriations Act of 2021.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: SNAP recipients who are enrolled at least part-time in higher education and are eligible to participate in a federal or state funded work study, or whose expected family financial contribution to education costs is zero, will be eligible to participate in SNAP if all other technical requirements are met.

(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 student will be required to obtain proof of eligibility from the institution of higher education.

(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 costs to the effected entities, as this information is provided to each student.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Students meeting the new criteria will be eligible to receive SNAP benefits if all other technical requirements are met.

(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 program cost for system changes to accommodate the new eligibility.

(b) On a continuing basis: No ongoing costs are anticipated.

(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 by the U.S. Department of Agriculture. Program administrative costs are funded 50% federal and 50% state and have 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 are no increases in fees or funding required with this amendment

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

(9) TIERING: Is tiering applied? Tiering is not applied as this administrative regulatory amendment will be applied in a like manner on a statewide basis.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 271.4, 272, 273, Pub. L. 116-260

2. State compliance standards. KRS 194A.050(1), 205.2005

3. Minimum or uniform standards contained in the federal mandate. 7 C.F.R. 271.4, 272, 273

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation will 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 Department for Community Based Services will be impacted by the administrative regulation amendment

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Pub. L. 116-260, the Consolidated Appropriations Act.

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

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

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(c) How much will it cost to administer this program for the first year? This amendment does not affect the cost of administering the SNAP program. There will be a one-time agency cost for design changes to the web-based eligibility system used for SNAP. This is estimated to be less than \$200,000.

(d) How much will it cost to administer this program for subsequent years? This amendment does not affect the on-going cost of administering the SNAP 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

BOARDS AND COMMISSIONS
Kentucky Board of Medical Licensure
(As Amended at ARRS, January 13, 2021)

201 KAR 9:081. Disciplinary proceedings.

RELATES TO: KRS 218A.205, 311.530-311.620, 311.840-311.862, 311.990

STATUTORY AUTHORITY: KRS 218A.205(3)(~~c~~)(d), (e), (~~f~~), (5), (~~6~~), 311.565(1)(a), (i), 311.595, 311.597, 311.601, 311.842(1), 311.850

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(a) and (i) and KRS 311.842(1) authorize the board to promulgate administrative regulations to regulate the conduct of licensees and to promote the efficient and fair conduct of disciplinary proceedings. KRS 311.595 and 311.597 authorize disciplinary action against licensees for specified offenses. KRS 311.850 authorizes disciplinary action against physician assistant licensees. KRS 218A.205(3)(~~c~~)(d), [~~and~~](e), and (f) require the board to promulgate an administrative regulation establishing procedures for disciplinary action against [a] licensees who are authorized to prescribe controlled substances, including the enforcement of licensure standards to restrict the practice of a licensee or an applicant engaged in improper conduct. KRS 218A.205(~~6~~)(~~5~~) authorizes the board to allow by administrative regulation an anonymous complaint or grievance. KRS 311.601 authorizes the board to adopt administrative regulations to effectuate and implement the provisions of KRS 311.550 to 311.620 in regard to physicians, and KRS 311.842(1) authorizes the board to adopt administrative regulations to license and regulate the practice of physician assistants in regard to KRS 311.840 to 311.862. This administrative regulation establishes the procedures to be followed in handling formal and informal disciplinary proceedings before the board, to conduct the proceedings with due regard for the rights and privileges of all affected parties.

Section 1. Definitions. [(4)] "Act" means the Kentucky Medical and Osteopathic Practice Act, KRS 311.550 to 311.620.].

(1) "Applicant" means a person who is applying for an initial license or applying to reregister an inactive license to practice medicine or osteopathy or to practice as a physician assistant in the Commonwealth of Kentucky.

(2)(~~2~~) "Board" is defined by KRS 311.550(1).

(3)(~~2~~)(~~3~~) "Charge" is defined by KRS 311.550(14).

(4)(~~3~~)(~~4~~) "Complaint" is defined by KRS 311.550(15).

(5)(~~4~~)(~~5~~) "Executive director" is defined by KRS 311.550(4).

(6)(~~5~~)(~~6~~) "General counsel" is defined by KRS 311.550(5).

(7)(~~6~~)(~~7~~) "Grievance" is defined by KRS 311.550(13).

(8)(~~7~~)(~~8~~) "Hearing officer" means the person designated and given authority by the board to preside over all proceedings pursuant to the issuance of any complaint or show cause order.

(9) "License" means a license to practice medicine or osteopathy or to practice as a physician assistant.

(10) "Licensee" means a person licensed by the board to practice medicine or osteopathy or a person licensed by the board to practice as a physician assistant in the Commonwealth of Kentucky.

(11)(~~8~~)(~~9~~) "Relating to a controlled substance" means any conviction or plea to a criminal charge, regardless of adjudication or the title of the offense named in the plea or judgment of conviction, that is determined from all available facts to have been based upon or resulted from, in whole or part, an allegation of conduct involving the improper, inappropriate, or illegal use, possession, transfer, prescribing, or dispensing of a controlled substance.

(12)(~~9~~)(~~10~~) "Relating to prescribing or dispensing or

administering a controlled substance" means any conviction or plea to a criminal charge, regardless of adjudication or the title of the offense named in the plea or judgment of conviction, that is determined from all available facts to have been based upon or resulted from, in whole or part, an allegation of conduct involving the improper, inappropriate, or illegal prescribing,[or] dispensing, or administering of a controlled substance.

(13)(~~10~~)(~~11~~) "Show cause order" means an order issued pursuant to KRS 311.572.].

(11) "License" means a license to practice medicine or osteopathy or to practice as a physician assistant.

(12) "Licensee" means a person licensed by the board to practice medicine or osteopathy or a person licensed by the board to practice as a physician assistant in the Commonwealth of Kentucky.

(13) "Applicant" means a person who is applying for an initial license or applying to reregister an inactive license to practice medicine or osteopathy or to practice as a physician assistant in the Commonwealth of Kentucky.].

Section 2. Reception of Grievances; Investigations. (1)(a) A grievance may be submitted by any individual, organization, or entity.

(b)1. The board shall provide a copy of the Information on Filing a Grievance, the Consumer's Guide to the KBML, the Grievance Form, and the Waiver of Privilege, Agreement to Release Records to a party who wants to register a grievance against a licensee [physician].

2. Each grievance shall be filed on the Grievance Form; and

a. Include the name and address of the party filing the grievance; or

b. Be filed anonymously, subject to paragraph (d) of this subsection.

(c) A board member or employee may initiate a grievance by providing a written memorandum to the executive director.

(d) If the board receives an anonymous grievance, an investigation shall be conducted if the grievance is accompanied by sufficient corroborating evidence as would allow the board to believe, based upon a totality of the circumstances, that a reasonable probability exists that the grievance is meritorious.

(2)(a) The board shall initiate each investigation pertaining to prescribing or dispensing or administering of a controlled substance within seventy-two (72) hours of the date of receipt of the grievance.

(b) Except as provided by subsection (1)(d) of this section, each grievance shall be investigated as necessary and as promptly as possible, and presented to the inquiry panel for review.

(c) An investigation pertaining to prescribing or dispensing or administering of a controlled substance shall be presented to the inquiry panel within 120 days of the date of receipt of the grievance unless the circumstances of a particular grievance make it impossible to timely present the grievance to the inquiry panel.

(d)1. The executive director may hold an investigation pertaining to prescribing or dispensing or administering of a controlled substance in abeyance for a reasonable period of time in order to permit a law enforcement agency to perform or complete essential investigative tasks, following a request by the requesting law enforcement agency.

2. If an investigation pertaining to prescribing or dispensing or administering of a controlled substance is not presented to the inquiry panel within 120 days of the date of receipt of the grievance, the investigative report shall plainly state the circumstances of that particular grievance or investigation that made timely presentation to the inquiry panel impossible.

(e) The inquiry panel or executive director shall have the authority to direct any investigation and shall possess any and all powers possessed by the board in regard to investigations as

provided by KRS 311.591, ~~and~~ 311.605, and 311.850(2).

(f) The inquiry panel shall further be empowered to request the attendance of any person at any meeting of the inquiry panel in regard to the investigation of any grievance or consideration of any disciplinary matter.

(g) The failure, without good cause, of any licensee [physician licensed to practice medicine or osteopathy by the board] to appear before the inquiry panel when requested shall be considered unprofessional conduct in violation of KRS 311.595(9) and 311.850(1)(s).

(3) The inquiry panel shall be empowered to request compliance with the reporting requirements of KRS 311.605 or 311.606 and may pursue an investigation, on its own initiative, in regard to an act of noncompliance or any other perceived violation of board statutes [the Act].

Section 3. Reports and Recommendations; Petitions. (1) If the inquiry panel determines that a grievance warrants the issuance of a complaint against a licensee [physician], the inquiry panel shall cause a complaint to be prepared.

(2) If the panel chair determines that a grievance warrants the issuance of a complaint against a licensee [physician] and circumstances do not allow the timely presentation of the grievance to the inquiry panel, the panel chair shall cause a complaint to be prepared.

(3) If the inquiry panel determines that a disciplinary matter warrants the issuance of a show cause order against a licensee [physician], the inquiry panel shall cause a proposed order to be prepared.

(4) The board may issue a show cause order against a licensee [physician] in regard to any application for licensure, obtaining, retaining, or reobtaining licensure.

Section 4. Complaints. The complaint issued by an inquiry panel shall:

(1) Be signed and dated;

(2) Be styled in regard to the matter of the license to practice in the Commonwealth of Kentucky held by the named licensee [physician] and designated with an appropriate case number; and

(3) Set forth:

(a) The board's jurisdiction in regard to the subject matter of the complaint; and

(b) In numerical paragraphs, sufficient information to apprise the named licensee [physician] of the general nature of the charges.

Section 5. Show Cause Orders. The show cause order shall:

(1) Be signed and dated by an officer of the board;

(2) Be styled in regard to the license, application for license, or application for renewal, registration, or reregistration of a license to practice in the Commonwealth of Kentucky held by or submitted by the named licensee [physician], appropriately, and designated with an appropriate order number;

(3) Set forth:

(a) The board's jurisdiction in regard to the subject matter of the order; and

(b) In numerical paragraphs, the information which the board accepts to be true and the statutory basis for the board's finding that grounds exist for the discipline of the named licensee's [physician's] license; and

(4) Direct the named licensee [physician] to show cause why disciplinary action should not be taken in view of the matters expressed in the order.

Section 6. Orders to Respond. Upon issuance of a complaint, the inquiry panel shall notify the charged licensee [physician] that:

(1) A response is due within thirty (30) days after receiving notice of the complaint; and

(2) Failure to respond within that time period may be taken by the board as an admission of the charges.

Section 7. Notice and Service of Process. Each notice shall be issued as required by KRS 13B.050.

Section 8. Proceedings Pursuant to the Issuance of a Complaint or Show Cause Order. (1) Appointment of hearing officer. The board shall appoint a hearing officer in accordance with KRS 13B.030 and 13B.040.

(2) Appointment of the prosecuting attorney. The board's general counsel or assistant general counsel shall act as the prosecuting attorney in regard to any disciplinary proceeding, unless the board appoints a special prosecuting attorney. The prosecuting attorney shall not participate in any deliberations of the board pursuant to the issuance of a complaint, show cause order, or order of temporary discipline.

(3) Appointment of advisory counsel. The board may appoint a representative of the Attorney General's office, the board's general counsel, or other attorney to act as advisory counsel to the board in regard to any deliberations of the board pursuant to the issuance of a complaint, show cause order, or order of temporary discipline.

(4) The provisions of KRS Chapter 13B shall govern the conduct of each proceeding.

Section 9. Mandatory Reporting; [Mandatory] Disciplinary Sanctions; Emergency Action; Expedited Proceedings. (1)(a) Except as provided by KRS 431.073 ~~(7)(6)~~ and 533.258(2), every applicant [for initial licensing to practice medicine or osteopathy within the Commonwealth of Kentucky] shall report upon the applicant's initial application;

~~1.(f)~~ Any criminal conviction sustained or any plea of guilt, plea of nolo contendere, or Alford plea the applicant has entered to criminal charges in any state, regardless of adjudication;

~~2.(iii)~~ (b) Every applicant for initial licensing to practice medicine or osteopathy within the Commonwealth of Kentucky shall report upon the applicant's initial application any disciplinary action taken or sanction imposed upon the applicant's license to practice [medicine or osteopathy] in any state, to include surrendering or placing the applicant's license in an inactive or retirement status to resolve a pending investigation by the licensing authority; and

~~3.(iii)~~ (c) Every applicant for initial licensing to practice medicine or osteopathy within the Commonwealth of Kentucky shall report upon the applicant's initial application if the applicant is currently under investigation by the licensing authority of any other state for possible violations of the licensing or regulatory statutes of that state.

(b) Failure to report a criminal conviction or plea, or action taken by another licensing board, as required of an applicant by paragraphs (a) ~~1.(subparagraphs (i))~~ through 3. of this subsection ~~(iii)~~, shall constitute a violation of the operative licensing statutes and may be grounds for denial of a license.

(c) Upon a finding by the board that the applicant committed a violation, the board shall consider and give weight to the legislative intent expressed in KRS 218A.205(3)(f) when exercising its discretion whether to deny or grant the license or to grant the license subject to terms of restriction or limitation.

(d) If an applicant reports being the subject of a pending criminal investigation or of a pending investigation by a state licensing authority, the board shall defer any action upon that application until it has received official notice that the criminal or state licensing investigation has been completed and official notice of what action was taken as a result of the investigation.

~~(2)(a)~~ (d) Every licensee [person licensed to practice medicine or osteopathy within the Commonwealth of Kentucky] shall report to the board:

~~1.(f)~~ any criminal conviction or plea of guilt, nolo contendere, or Alford plea to any criminal charges, regardless of adjudication, within ten (10) days of the entry of judgment of conviction or the entry of the plea, entered into in any state. As part of this reporting, the licensee shall provide a copy of the judgment of conviction or plea documents.

~~2.(iii)~~ (e) Every person licensed to practice medicine or osteopathy within the Commonwealth of Kentucky shall report to the board within ten (10) days of receipt, notice of any disciplinary action taken or sanction imposed upon the person's license in any state, including surrendering a license or placing a license into

inactive or retired status to resolve a pending licensing investigation, within ten (10) days. As part of this reporting requirement, the licensee shall provide a copy of the order issued by or entered into with the other licensing board.].

(f)1. Failure to report a criminal conviction or plea, or action taken by another licensing board, as required of an applicant by paragraphs (a) through (c) of this subsection, shall constitute a violation of KRS 311.595(9) and (12).

2. Upon a finding by the board that the applicant committed a violation, the appropriate panel:

a. Shall impose a fine of up to \$5,000 and the appropriate sanction mandated by subsection (2), (3), or (4) of this section; and

b. May impose any other additional sanction authorized by KRS 311.595, including denial of the application or revocation of the license previously issued based upon the incomplete information.].

(b) [(g)4.] Failure to report a criminal conviction or plea, or action taken by another licensing board as required of a licensee by paragraphs (a)1. and 2. of this subsection[subparagraphs (i) through (ii)] paragraphs (d) and (e) of this subsection], shall constitute a violation of the operative licensing statutes and may be grounds for discipline of a license [KRS 311.595(9) and (12)].

(c) [2.] Upon a finding by the board that the licensee committed a violation, the appropriate panel shall consider and give weight to the legislative intent expressed in KRS 218A.205(3)(f) when exercising its discretion whether to impose discipline, including up to indefinite restriction or revocation, against the licensee.];

a. Shall impose a fine of up to \$5,000 and the appropriate sanction mandated by subsection (2), (3), or (4) of this section; and

b. May impose any other additional sanction authorized by KRS 311.595 based upon all of the information available to the panel when it takes action.

(2)(a) If an initial applicant reports being the subject of a pending criminal investigation or of a pending investigation by a state licensing authority, the board shall defer any action upon that initial application until it has received official notice that the criminal or state licensing investigation has been completed and official notice of what action was taken as a result of the investigation.

(b)1. If an initial applicant has been convicted of a felony offense or entered a plea of guilt, an Alford plea, or a plea of nolo contendere to any felony charge relating to a controlled substance, regardless of adjudication, in any state, the board shall exercise its normal discretion to grant or deny the application based upon all available facts.

2. Except as provided in paragraph 3 of this paragraph, if the board decides to grant a license to the initial applicant, the board:

a. Shall, at a minimum, permanently ban the applicant from prescribing or dispensing controlled substances as an express condition of granting the license; and

b. May impose any other conditions in addition to that permanent ban as express conditions of granting the license.

3. If the board learns from any source that an initial applicant has been convicted of or entered a plea of guilt, an Alford plea, or a plea of nolo contendere to any Class D felony offense relating to a controlled substance, and successfully participated in and completed a diversion program and had the case dismissed and the record of that offense expunged, then the board may, in its discretion, grant a license to the initial applicant contingent upon the applicant entering into an agreed order with terms and conditions deemed appropriate by the board as necessary for carrying out a minimum five (5) year period of probation.

(c) 1. Except as provided in subparagraph 2. of this paragraph, if a licensee has been convicted of or entered a plea of guilt, an Alford plea, or a plea of nolo contendere to any felony offense relating to a controlled substance, regardless of adjudication in any state, the appropriate panel:

a. Shall, at a minimum, permanently ban the licensee from prescribing or dispensing controlled substances as a disciplinary sanction; and

b. In addition to the permanent ban, may take any other disciplinary action authorized by KRS 311.595, including revocation, against the licensee.

2. If a licensee has been convicted of or entered a plea of guilt,

an Alford plea, or a plea of nolo contendere to any Class D felony offense relating to a controlled substance, and successfully participated in and completed a diversion program and had the case dismissed and the record of that offense expunged, then the appropriate panel may, in its discretion, reinstate the licensee's prescribing or dispensing privileges contingent upon the licensee entering into an agreed order with terms and conditions deemed appropriate by the panel as necessary for carrying out a minimum five (5) year period of probation.

(3)(a)1. If an initial applicant has been convicted of a misdemeanor offense relating to prescribing or dispensing a controlled substance or entered a plea of guilt, an Alford plea, or plea of nolo contendere to a misdemeanor charge relating to prescribing or dispensing a controlled substance, regardless of adjudication, in any state, the board shall exercise its normal discretion to grant or deny the application based upon all available information.

2. If the board decides to grant the application, the board:

a. Shall, at a minimum, ban the applicant from prescribing or dispensing controlled substances for a period of two (2) to five (5) years as an express condition of granting the license; and

b. May impose any other conditions in addition to that ban as express conditions of granting the license.

(b) If a licensee has been convicted of or entered a plea of guilt, an Alford plea, or a plea of nolo contendere to a misdemeanor offense relating to prescribing or dispensing a controlled substance, regardless of adjudication in any state, the appropriate panel:

1. Shall, at a minimum, ban the licensee from prescribing or dispensing controlled substances for a period of two (2) to five (5) years as a disciplinary sanction; and

2. In addition to the two (2) to five (5) year ban, may take any other disciplinary action authorized by KRS 311.595, including revocation, against the licensee.

(4)(a)1. If an initial applicant has surrendered the applicant's professional license or placed that license into an inactive or retired status to resolve a pending licensing investigation, the board shall not grant a license to that initial applicant, unless the licensing authority of that state has subsequently reissued or reinstated the license.

2. If the licensing authority of the state has subsequently reissued or reinstated the license, the board shall exercise its normal discretion in determining whether to grant or deny the application based upon the available facts.

(b) If an initial applicant has had a disciplinary action taken against or sanction imposed upon the applicant's license to practice medicine or osteopathy in any state, the board:

1.a. Shall, at a minimum, impose the same substantive sanctions imposed by the other state as an express condition of granting the license; and

b. May impose additional sanctions as an express condition of granting the license; or

2. Shall deny the application based upon the facts available at the time.

(c) If a licensee has had disciplinary action taken against or sanctions imposed upon the licensee's license to practice medicine or osteopathy in any state, the appropriate panel:

1. Shall, at a minimum, impose the same substantive sanctions, up to and including permanent revocation or surrender, as a disciplinary sanction against the licensee's Kentucky license; and

2. In addition to those minimum sanctions, may take any other disciplinary action authorized by KRS 311.595, including revocation, against the licensee.].

(d) 1. [(H)](5)(a)] Failure to report a criminal conviction, a plea, or a disciplinary sanction by another licensing board as required by this section shall constitute a violation of law which constitutes an immediate danger to the public health, safety, or welfare [; for purposes of KRS 311.592 and 13B.126].

2. [(H)](b)] If the board or one (1) of its panels learns that a licensee has suffered a qualifying criminal conviction or disciplinary sanction and has failed to report it as required by this section, the panel or its chair may immediately issue an emergency order

appropriately suspending or restricting the licensee in accordance with this section.

3. [(iii)](e) If an emergency order is issued and an emergency hearing is conducted pursuant to KRS 13B.125(3), the hearing officer shall not modify or amend the scope of the emergency order if there is substantial evidence to support the finding that the licensee failed to report a qualifying criminal conviction or disciplinary sanction as required by this section.

(e) 1. [(i)](6)(a) If the only violation charged in a complaint against the licensee is a criminal conviction or disciplinary sanction described in this section, and the conviction or disciplinary action may be proved by accompanying official certification, the board shall take appropriate steps to expedite the resolution of that complaint.

2. [(ii)](b) Following receipt of the licensee's response to the complaint, board counsel shall promptly file a motion for summary disposition on the ground that no genuine issues of material fact are in dispute, pursuant to KRS 13B.090(2).

3. [(iii)](c) The licensee shall file a response to the motion for summary disposition within twenty (20) days of receipt of the motion.

a. [1.] The licensee shall not re-litigate either the criminal conviction or disciplinary sanction.

b. [2.] The licensee may offer as defense that the certification of the document is fraudulent.

4. a. [(iv)](d) [1.] The hearing officer shall issue a ruling upon the motion as soon as possible but no later than thirty (30) days after the motion is submitted for decision.

b. [2.] If the hearing officer issues a recommended order, the recommended order shall be presented to the board's hearing panel at its next meeting for resolution and imposition of the sanction permitted [required] by this section.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Information on Filing a Grievance", January 2013;
- (b) "Consumer's Guide to the KBML", January 2013;
- (c) "Grievance Form", January 2013; and
- (d) "Waiver of Privilege, Agreement to Release Records", January 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, Monday through Friday, 8:00 a.m. to 4:30 p.m.

CONTACT PERSON: Leanne K. Diakov, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7943, fax (502) 429-7118, email Leanne.Diakov@ky.gov.

BOARDS AND COMMISSIONS

Board of Architects

(As Amended at ARRS, January 13, 2021)

201 KAR 19:215. Accredited schools and colleges.

RELATES TO: KRS 323.050

STATUTORY AUTHORITY: KRS 323.050, 323.210

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.050(2) requires an applicant for examination to hold a professional degree in architecture accredited by the National Accrediting Board (NAAB), or its equivalent as determined by administrative regulations promulgated by the board. KRS 323.210(2) authorizes the board to promulgate administrative regulations necessary to carry out and implement KRS Chapter 323. This administrative regulation defines accredited schools of architecture.

Section 1. Accredited Schools and Colleges. **[2.]** Schools and colleges of architecture that have professional degree programs meeting the requirements of the National Architectural Accrediting Board (NAAB) shall constitute the list of accredited programs of the

schools and colleges.

CONTACT PERSON: Cordelia Harbut, Executive Director, Kentucky Board of Architects, 155 E Main Street, Suite 300, Lexington, Kentucky 40507, phone (859) 246-2069, fax (859) 346-2431, email boa.irc@ky.gov.

BOARDS AND COMMISSIONS

Board of Architects

(As Amended at ARRS, January 13, 2021)

201 KAR 19:220. Application for examination.

RELATES TO: KRS 323.050, 323.215

STATUTORY AUTHORITY: KRS 323.210(1)(b), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.210(1)(b), (2) requires the board to promulgate administrative regulations governing the contents and conduct of examinations, the method and time for filing applications, and the time within which an applicant shall be examined after his or her application has been filed. This administrative regulation establishes **[prescribes]** the application process for the examination.

Section 1. Application for Examination and Registration.

(1) Each applicant shall:

(a) Submit a notarized**[an]** Application for Architect Registration Examination with a two (2) inch by two (2) inch passport photo; and

(b) Comply with the requirements of KRS 323.050 through 323.090 and 201 KAR Chapter 19**[the administrative regulations promulgated by the board]**.

(2) The requirements for an applicant are summarized in the**[the]** Information and Instructions for Applicants for the Architects Registration Examination**[the]**.

Section 2. Examination Applications. An Application for admission to the Architect Registration Examination **[ARE]** shall be accompanied by the payment of the application fee**[fees]** established in 201 KAR 19:255.

Section 3. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Architect Registration Examination", November 2020**[June—2019]** Edition, Kentucky Board of Architects; and

(b) "Information and Instructions for Applicants for the Architects Registration Examination", June 2019 Edition**[July]**, Kentucky Board of Architects.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Architects, 155 East Main Street, Suite 300, Lexington, Kentucky 40507, Monday through Friday, 8 a.m. to 4 p.m.

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BOARDS AND COMMISSIONS

Board of Architects

(As Amended at ARRS, January 13, 2021)

201 KAR 19:225. Examinations required; general provisions.

RELATES TO: KRS 323.050, 323.215

STATUTORY AUTHORITY: KRS 323.210(1)(b), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.210(1)(b), (2) requires the board to promulgate administrative regulations governing the contents and conduct of examinations, the method and time for filing applications, and the time within

which an applicant shall be examined after his or her application has been filed. This administrative regulation specifies the examination required by the board, and establishes general provisions relating to the administration of the examination.

Section 1. Examination Definition; Administration.

(1) Each applicant for licensure shall successfully complete the Architect Registration Examination (ARE), which is developed and graded by the National Council of Architectural Registration Boards (NCARB).

(2) The board shall designate each testing service consultant who shall administer the examination in accordance with the agreement between the consultant and NCARB.

(3) The examination sites and schedules shall be as designated by the testing service and agreed to by NCARB.

Section 2. Conditions of Examination.

(1) Grading of the examination shall be in accordance with the national grading procedure administered by NCARB.

(2) The board shall adopt the scoring procedures recommended by NCARB.

(3) Information pertaining to the subject matter of the examination shall not be given to an applicant in advance, except as specifically authorized by the board.

(4) The board may approve transfer credits for each part of the examination passed prior to the 1983 ARE. Information as to transfer credits shall be provided, if appropriate, to an applicant who requests an Application for Architect Registration Examination, as incorporated by reference in 201 KAR 19:220[form].

Section 3. (1) An applicant who has passed all divisions of the ARE by January 1, 2006, regardless of the time taken, has passed the examination.

(2) Five (5) Year Rolling Clock: For all initial candidates for licensure, a passing grade for any division of the ARE shall be valid for an initial period of five (5) years, plus any extension granted under NCARB's rolling clock extension policy, after which time the division shall expire unless the candidate has completed the ARE.

(3) Applicants for licensure that completed the ARE:

(a) Prior to January 1, 2006, will not have any divisions governed by the five (5) year rolling clock;

(b) Prior to July 1, 2014, will have only divisions passed after January 1, 2006, governed by the five (5) year rolling clock; and

(c) On July 1, 2014 or later, will have all divisions governed by the five (5) year rolling clock[An applicant who has passed one (1) or more, but not all divisions of the ARE by January 1, 2006, shall have five (5) years to pass all remaining divisions.

(a) A passing grade for any remaining division shall be valid for five (5) years, after which time the division shall be retaken if the remaining divisions have not been passed.

(b) The five (5) year period shall commence after January 1, 2006, on the date when the passed division is administered.

(c) Divisions passed before January 1, 2006 shall not have to be retaken].

(4)[(3)] An applicant who has not passed any division of the ARE by January 1, 2006 shall be governed by the five (5) year requirement, which shall commence on the date when the first passed division is administered.

Section 4. Applicant Notice. Each applicant who has applied and is[been deemed] eligible to take the examination shall be notified of the examination sites and the procedures to make the appointments with the testing service centers to take the examination divisions of his or her choosing. Special instructions and limitations shall be issued to each applicant.

Section 5. Transfer of Scores.

(1) The board, upon proper Application for Architect Registration Examination, as incorporated by reference in 201 KAR 19:220, may accept passing scores achieved on divisions of

the ARE administered and attested to by another NCARB member board under the terms of Section 3 of this administrative regulation.

(2) The board, upon written request[proper application and payment of the applicable fee], may forward the grades achieved by an applicant in the various divisions of the examination given under the board's jurisdiction to any other duly constituted architectural registration board and to NCARB for use in evaluating the applicant's eligibility for NCARB certification. The applicant shall state his or her reason for requesting transfer. The transfer shall terminate the applicant's application pending before the board.

Section 6. Conditions of Examination.

(1) Upon allegation of misbehavior on the part of an applicant in connection with taking the examination, the board shall investigate the allegation and take appropriate action including suspending or revoking test taking privileges and the cancellation of test scores.

(2) Misbehavior shall include:

(a) Falsifying information on the examination application;

(b) Cheating on the examination;

(c) A violation of examination guidelines; or

(d) A violation of a confidentiality agreement with respect to the examination.

CONTACT PERSON: Cordelia Harbut, Executive Director, Kentucky Board of Architects, 155 E Main Street, Suite 300, Lexington, Kentucky 40507, phone (859) 246-2069, fax (859) 346-2431, email boa.irc@ky.gov

BOARDS AND COMMISSIONS

Board of Architects

(As Amended at ARRS, January 13, 2021)

201 KAR 19:230. Reexamination; reconsideration.

RELATES TO: KRS 323.090, 323.210

STATUTORY AUTHORITY: KRS 323.210(1)(b), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.210(1)(b), (2) requires the board to promulgate administrative regulations governing the contents and conduct of examinations, the method and time for filing applications, and the time within which an applicant shall be examined after his or her application has been filed. This administrative regulation prescribes conditions for reexamination and reconsideration of applications.

Section 1. Reexamination Applicants. An applicant who failed to successfully complete the examination under the provisions of KRS 323.090 and 201 KAR 19:225:

(1) Shall be considered a new applicant for the examination; and

(2) Shall submit a new Application for Architect Registration Examination, as incorporated by reference in 201 KAR 19:220, and processing fee as established in 201 KAR 19:255, Section 2(2).

Section 2. Reconsideration of Applicants who were Denied Admission to Examination.

(1) An applicant whose original Application for Architect Registration Examination for admission to the examination was denied may request reconsideration by letter to the board with evidence that he or she has made up the deficiencies which caused the denial. A formal application or application fees shall not be required for this request if it is made within a period of three (3) years from the date denied.

(2) After three (3) years a new Application for Architect Registration Examination shall be submitted containing relative information on training and experience subsequent to the original application.

CONTACT PERSON: Cordelia Harbut, Executive Director, Kentucky Board of Architects, 155 E Main Street, Suite 300, Lexington, Kentucky 40507, phone (859) 246-2069, fax (859) 346-2431, email boa.irc@ky.gov.

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BOARDS AND COMMISSIONS
Board of Architects
(As Amended at ARRS, January 13, 2021)

201 KAR 19:235. Reciprocity; registration without examination.

RELATES TO: KRS 323.060, 323.210

STATUTORY AUTHORITY: KRS 323.210

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.210(2) requires the board to promulgate administrative regulations necessary to carry out the purposes of KRS Chapter 323. This administrative regulation establishes general requirements for~~To define basis and rules for registration of~~ nonresident architects.

Section 1. General Requirements of Nonresident Architects.

(1) ~~A~~ nonresident ~~architect~~~~[architects]~~ shall be fully registered in Kentucky before ~~he or she practices~~~~[they practice]~~ architecture in the Commonwealth. Any nonresident architect who desires registration in Kentucky, and whose state of residence grants reciprocal licensing privileges satisfactory to this board pursuant to KRS 323.060, may apply for a license in Kentucky.

(2) He ~~or she~~ shall make an application through the National Council of Architectural Registration Boards, 1401 H ST NW #500, Washington, DC 20005, using the Uniform Application for Architect Registration, NCARB Form 308 and obtain NCARB certification.

(3) An NCARB record plus certification shall provide all, or most of the information needed in applying for registration.

Section 2. Review of Applications. Registration by reciprocity shall be based upon equivalent examinations, experience, character, and education requirements. An application received through the National Council of Architectural Registration Boards shall be accepted for review to determine if the qualifications for licensing by examination were, in the opinion of the board, equal to those prescribed in Kentucky.

Section 3. Additional Provisions. The board may~~[, in its discretion]~~:

(1) Call for a personal interview ~~of~~ any applicant whose record is not sufficiently clear as to his ~~or her~~ technical, ethical, ~~or~~~~[and]~~ moral qualifications, for further evaluation~~[judgment thereon]~~.

(2) Grant registration without examination to any architect whose application shows him ~~or her~~ to be so qualified and so fitted to practice architecture that his ~~or her~~ services will, in the opinion of this board, be a valuable asset to both the Commonwealth of Kentucky, and the profession of architecture.

(3) ~~[In any case]~~ The board reserves ~~[unto itself alone]~~ the right of the decision to grant or deny registration by reciprocity to any applicant.

Section 4. Incorporation by Reference. (1) "Uniform Application for Architect Registration, NCARB Form 308" 1/2021, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Architects, 155 East Main Street, Suite 300, Lexington, Kentucky 40507, Monday through Friday, 8 a.m. to 4 p.m.

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BOARDS AND COMMISSIONS
Board of Architects
(As Amended at ARRS, January 13, 2021)

201 KAR 19:240. Resident licensed in another state; reciprocity.

RELATES TO: KRS 323.060

STATUTORY AUTHORITY: KRS 323.210

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.210(2) authorizes the board to promulgate administrative regulations necessary to carry out the purposes of KRS Chapter 323. This administrative regulation establishes requirements for licensure~~[To further relate registration]~~ through reciprocity.

Section 1. Residents Licensed in other States but not in Kentucky. A resident of Kentucky who is licensed in another state, but not in Kentucky who wishes to obtain a license by reciprocity shall follow the same procedure and meet the same standards as required for nonresident architects as established in 201 KAR 19:235, Section 1.

CONTACT PERSON: Cordelia Harbut, Executive Director, Kentucky Board of Architects, 155 E Main Street, Suite 300, Lexington, Kentucky 40507, phone (859) 246-2069, fax (859) 346-2431, email boa.irc@ky.gov.

BOARDS AND COMMISSIONS
Board of Architects
(As Amended at ARRS, January 13, 2021)

201 KAR 19:245. Duplicate certificates.

RELATES TO: KRS 323.100, 323.210(2), (5), (7)

STATUTORY AUTHORITY: KRS 323.210(2), (5), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.210(2) authorizes the board to promulgate administrative regulations necessary to carry out the purposes of KRS Chapter 323. KRS 323.210(5) and (7) authorize the board to promulgate administrative regulations to establish rules for the use of seals and signatures in electronic transactions and to assess reasonable administrative fees for copies of mailing lists, duplicate forms, and other media consistent with KRS 61.870 to 61.884. KRS 323.100 specifies the form of the license issued by the board. This administrative regulation provides the basis for issuing duplicate certificates.

Section 1. Request and Conditions. An architect who is registered in the Commonwealth of Kentucky may secure a duplicate certificate by requesting a duplicate certificate from the board~~[and accompanying this request with the fee established by 201 KAR 19:255, Section 2(11)]~~.

CONTACT PERSON: Cordelia Harbut, Executive Director, Kentucky Board of Architects, 155 E Main Street, Suite 300, Lexington, Kentucky 40507, phone (859) 246-2069, fax (859) 346-2431, email boa.irc@ky.gov.

BOARDS AND COMMISSIONS
Board of Architects
(As Amended at ARRS, January 13, 2021)

201 KAR 19:250. Temporary licensing not permitted.

RELATES TO: KRS 323.020

STATUTORY AUTHORITY: KRS 323.210

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.210(2) authorizes the board to promulgate administrative regulations necessary to carry out the purposes of KRS Chapter 323. This administrative regulation with prohibits

temporary licensure of nonresident licensed architects~~[To further define requirements for license]~~.

Section 1. Temporary Licensing: Temporary registration, licenses, or permits **shall**~~[will]~~ not be granted.

CONTACT PERSON: Cordelia Harbut, Executive Director, Kentucky Board of Architects, 155 E Main Street, Suite 300, Lexington, Kentucky 40507, phone (859) 246-2069, fax (859) 346-2431, email boa.irc@ky.gov.

**BOARDS AND COMMISSIONS
Board of Architects
(As Amended at ARRS, January 13, 2021)**

201 KAR 19:255. Fees.

RELATES TO: KRS 323.080, 323.110

STATUTORY AUTHORITY: KRS 323.080, 323.210(1)(b), (2), (3)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.080, 323.210(1)(b), (2), (3)(b) require the board to promulgate administrative regulations establishing fees for services. This administrative regulation establishes the deadline for paying the renewal fee and a fee schedule.

Section 1. License Renewal.

(1) The renewal fee shall be due and paid before the first day of the year designated as the licensee's renewal period. Except as provided in subsection (3) of this section, a licensee failing to pay the renewal fee on or before the 30th day of August, of that designated year, **or** who has not voluntarily surrendered his **or her** registration by that date, shall be guilty of violation of **KRS 323.110**~~[the law]~~ and his or her license shall be automatically revoked.

(2)(a) Except as provided by paragraph (b) of this subsection, a license shall be renewed, restored, or reinstated by July 1 of each calendar year.

(b) A license issued between January 1 and June 30 of a calendar year shall not be renewed until the following July 1.

(3)(a) During a period of active military duty, a licensee in the military may, upon written **request**~~[application]~~ to the board, be excused from paying the renewal fee until the military service is terminated and the licensee wishes to resume practice.

(b) An identification card or renewal certificate shall be issued upon notification of the licensee's return from duty and payment of the current renewal fee.

(4)(a) An architect whose license has **expired or has** been revoked for failure to pay the renewal fee, who wishes to have his or her license reinstated, shall make a written request giving the reason why the licensee neither surrendered his **or her** registration nor paid the fee within the time prescribed by **subsection (1) of this section**~~[law]~~.

(b) Upon payment of the prescribed fees and acceptance by the board, the license shall be reinstated.

(5)(a) The application for license renewal **on the Annual Renewal Notice and Invoice** shall include a signed affidavit that the licensee has not been in violation of the professional practice standards stated in 201 KAR 19:260.

(b) Failure to sign the affidavit shall be cause for the renewal application to be rejected.

Section 2. Fee Schedule.

(1) Application for **admission to the** Architect Registration Examination - \$100.

(2) Reapplication for admission to the Architect Registration Examination after original application has expired - \$100.

(3) For a license certificate after passing of examination - twenty-five (25) dollars.

(4) Application for restoration of a voluntarily surrendered license - \$150.

(5) Application for a license by reciprocity with another state or

country - \$200.

(6) Application for reinstatement of license revoked **or expired** for failure to pay renewal fee, or suspended by the board; renewal fees from date of revocation plus - \$150.

(7)(a) Annual renewal fee for a license renewal submitted and received before July 1: \$125.

(b) Annual renewal fee for a license renewal submitted and received on or after July 1 and before August 1: \$150.

(c) Annual renewal fee for a license renewal submitted and received on or after August 1 and before August 30: \$175.

(8) Annual renewal fee for an emeritus architect: fifty (50) dollars.

(9) Certifying the active license of a registrant to the licensing agency of another jurisdiction: twenty-five (25) dollars.

(10) ~~[Administrative fee of twenty-five (25) dollars for failure to notify the board of change of an address, telephone number, email address or employment within thirty (30) days of the change.]~~

~~(11) Administrative fee of twenty-five (25) dollars for duplicate documents, including renewal forms, wallet cards, or wall certificates.~~

~~(12)(a) A fee shall not be refunded.~~

(b) Each payment shall be by:

1. Check made payable to "Kentucky State Treasurer~~[,]~~";

2. Credit card; or

3. Debit card

~~(c) Each check shall be certified except those for the renewal fee.]~~

Section 3. Charges for Examination. (1) An applicant shall register with and pay the cost of taking the examination directly to the designated testing service.

(2) The examination fee shall be paid each time the examinations are taken and shall not be refunded.

Section 4. Incorporation by Reference. (1) "Annual Renewal Notice and Invoice", 2020 Edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Architects, 155 East Main Street, Suite 300, Lexington, Kentucky 40507, Monday through Friday, 8 a.m. to 4 p.m.

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**BOARDS AND COMMISSIONS
Board of Architects
(As Amended at ARRS, January 13, 2021)**

201 KAR 19:260. Professional practice standards; violations, penalties.

RELATES TO: KRS 323.095, 323.120, **323.130**

STATUTORY AUTHORITY: KRS 323.210(2), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.210(2) and (3) **authorize**~~[authorizes]~~ the board to establish administrative regulations relating to architecture and continuing education requirements. This administrative regulation establishes **what constitutes unprofessional practice**, penalties for unprofessional practice, and **further defines gross incompetence, gross negligence, unprofessional conduct, and fraudulent or dishonest practice**~~[the failure to comply with continuing education requirements]~~.

Section 1. Unprofessional Practice, Penalties, and Procedure.

(1) The following shall constitute unprofessional practice:

(a) Gross incompetence or negligence;

(b) Unprofessional conduct or conduct tending to bring the profession into disrepute;

- (c) Conviction of a felony;
- (d) Fraudulent or dishonest architectural practice;
- (e) Use of false evidence or misrepresentation in an:
 1. Application for licensing; or
 2. License renewal application;
- (f) Signing or affixing a seal to a plan, print, specifications for a building, or report which have not been prepared by the architect or an employee under the architect's[his] supervision; and
- (g) Failure to comply with continuing education requirements in 201 KAR 19:087.

(2) The following penalties may be imposed on an architect for unprofessional practice:

- (a) Refusal of to grant a license;
- (b) Refusal to renew or reissue a license;
- (c) Private or public reprimand;
- (d) Imposition of probation;
- (e) Suspension of a license; and
- (f) Revocation of a license.

(3) The procedure for imposing a penalty on an architect shall be conducted in accordance with KRS Chapter 13B and KRS 323.130.

Section 2. Gross Incompetence and Gross Negligence Defined. The following acts or omissions by an architect shall [be deemed to be] gross incompetence or gross negligence within the meaning of the law:

- (1) Willfully failing to use reasonable care and diligence in the architect's[his] professional practice, resulting in a building or structure being improperly constructed to the detriment of the occupants; and;
- (2) Willfully failing to use reasonable care and diligence in preparing drawings, specifications, and other documents relating to the design and construction of buildings for the protection of a client in all relationships as agent of the client.

Section 3. Unprofessional Conduct Defined. The following acts by an architect shall be [deemed to be] "unprofessional conduct":

- (1) Accepting compensation for architectural services from any entity other than the architect's[his] client or employer; ;
- (2) Offering or making a payment or gift to a government official (whether elected or appointed) with the intent to influence the official judgment in connection with a prospective or existing project in which the architect has an interest in providing architectural services; ;
- (3)(a) Offering or making a payment or gift, as an individual architect or as a participating member of a partnership or corporation, to an elected governmental official, candidate for governmental office, or the campaign of a candidate for governmental office, if[when] the payment or gift is a violation of federal or state campaign finance laws or administrative regulations; ;
- (b) Entering a plea of guilty or an "Alford" plea to, or having been found guilty of, or having been convicted of, a felony or misdemeanor involving the violation of federal or state campaign finance laws, and the time for appeal has lapsed or the judgment or conviction has been affirmed on appeal, irrespective of an order granting probation following the conviction, suspending imposition of sentence shall be conclusive proof of a violation of this section, and a certified copy of the judgment or order shall constitute sufficient proof of a violation; ;
- (4) Offering or making any gifts, except gifts of nominal value (including, for example, reasonable entertainment and hospitality), with the intent to influence the judgment of an existing or prospective client in connection with a project in which the architect has an interest; ;
- (5) Having a financial interest in the manufacture, sale, or installation of any component or process used in a project for which he or she is the architect unless the client has been advised and has waived any objection; ;
- (6) Publicly endorsing a product, system, or service, or permitting the use of the architect's[his] name or photograph to imply endorsement of a product, system, or service not designed or developed by him or her; or

(7)(a) Using paid advertising on behalf of himself or herself, his or her partner, associate, or any other architect affiliated with the architect's[him or his] firm, that contains a statement or claim which is false or tends to be misleading, deceptive, or unfair, or which makes material claims of superiority which cannot be substantiated rather than being designed to inform the public. ;

~~(b) Advertising may include the name of the architect or firm, address, telephone number, a statement of the fields of practice, and a statement of the geographical area where services are rendered, and cost of services.~~

~~(c) An architect or architectural firm which advertises a fee for a specific service and accepts employment for that service shall perform for the amount stated, and a statement to that effect shall be included in every advertisement.~~

~~(d) Advertisements may be by newspaper or magazine advertisements, radio or television announcements, display advertisements in the city or telephone directories.~~

Section 4. Fraudulent or Dishonest Practice Defined. The following practices by an architect shall be [deemed to be] "fraudulent or dishonest practice" within the meaning of the law:

- (1) Making an untrue or deceitful statement in an application for examination or registration, or in an application for license renewal or in any other statements or representations to the board; ;
- (2) Affixing the architect's[his] seal to a drawing:
 - (a) For which he or she was not:
 1. The author; or
 2. In charge of preparing the plan; or
 - (b) Which was not prepared under his or her supervision; ;
 - (3) Bribing a person who may influence the selection of an architect; ;
 - (4) Willfully misleading or defrauding a person employing him or her as an architect; ;
 - (5) Willful violation of:
 - (a) A Kentucky or other state law relating to the practice of architecture; or
 - (b) 201 KAR Chapter 19[An administrative regulation promulgated by the board]; or;
 - (6) Using, or attempting to use, or practicing under, a license that has been suspended or revoked or which has not been renewed as required by KRS Chapter 323 and 201 KAR Chapter 19[law and the administrative regulations of the board].

Section 5. Registration while Working for Others. (1) Without affecting the status of his or her registration, an architect may work as an employee of:

- (a) Another architect; or
- (b) A firm, if his or her duties are nonarchitectural.
- (2) If an architect works as an architect for or with a nonarchitect or corporation not under the control of architects:
 - (a) He or she shall maintain:
 1. Free and unbiased judgment;
 2. Unrestrained use of his or her professional prerogatives and services to clients; and
 - (b) The terms of his or her employment shall permit full compliance with the:
 1. Obligations of practice; and
 2. 201 KAR Chapter 19[Administrative regulations].

Section 6. Office Staffing. An office maintained for the preparation of drawings, specifications, reports and other professional work shall have a regularly employed architect duly registered with this board, in full authority and responsible charge, having direct knowledge and supervisory control of all work.

Section 7. Advertising.

(1) Advertising may include the name of the architect or firm, address, telephone number, a statement of the fields of practice, and a statement of the geographical area where services are rendered, and cost of services.

(2) An architect or architectural firm which advertises a fee for a specific service and accepts employment for that service

shall perform for the amount stated, and a statement to that effect shall be included in every advertisement.

(3) Advertisements may be made by:

(a) Newspaper or magazine advertisements;

(b) Radio or television announcements;

(c) Display advertisements in the city or telephone directories; or

(d) Internet or other advertisements offered through other electronic means.

CONTACT PERSON: Cordelia Harbut, Executive Director, Kentucky Board of Architects, 155 E Main Street, Suite 300, Lexington, Kentucky 40507, phone (859) 246-2069, fax (859) 346-2431, email boa.irc@ky.gov.

BOARDS AND COMMISSIONS

Board of Architects

(As Amended at ARRS, January 13, 2021)

201 KAR 19:265. Individual seals; office titles.

RELATES TO: KRS 323.095

STATUTORY AUTHORITY: KRS 323.210

NECESSITY, FUNCTION, AND CONFORMITY: KRS

323.210(2) authorizes the board to promulgate administrative regulations necessary to carry out the purposes of KRS Chapter 323. KRS 323.210(5) authorizes the board to promulgate administrative regulations to establish rules for the use of seals and signatures in electronic transactions. This administrative regulation establishes requirements for architects to use a seal on all documents and prescribes the dimensions and design of the seal. To describe the required seal acceptable to the board.

Section 1. Individual Seals Required. Each architect registered for practice within the Commonwealth of Kentucky shall sign, date, and imprint with the architect's[his] seal all documents prepared by the architect[him] or under architect's[his] supervision, and shall secure and use for this purpose a seal of the following design:

(1) Two (2) concentric circles;

(a) The outer circle to be one and nine-sixteenths (1 9/16) inches in diameter and the inner circle to one (1) inch in diameter;[-]

(b) The upper portion of the annular space between the two (2) circles shall bear the name of the registrant;[-]

(c) The lower portion of the annular space shall bear the word "Architect~~[-]~~;and[-]

(d) The space enclosed by the inner circle shall be divided into an upper and lower half;[-]

1. The upper portion shall consist of three (3) lines, the word "Registered," then the abbreviation "No.," and then the number of the certificate of the registrant;and[-]

2. The lower portion shall contain, in three (3) lines, the words "Commonwealth of Kentucky."

(2) It shall be permissible to combine the names and registration numbers of two (2) or more registered architects from the same office on one (1) seal. The names of any persons who are not registered architects on any such combination shall not be permitted.

(3) It shall be made clear, by proper use of seal that only those who are licensed architects in Kentucky are in charge and fully responsible for the work involved.

(4) Examples of permissible seals may be found in the Sample Forms of the Prescribed Seal that contains examples of three (3) versions of the prescribed seal sample, including a partnership, an individual, and a firm version.

Section 2. Office and Firm Names.

(1)(a) Title blocks and firm names used in connection with the practice of architecture in this state shall not:

1. Be misleading; or

2. [nor] Infer that unlicensed persons are architects;[-] and

(b) Only those registered to practice in Kentucky shall be ~~[so]~~ designated as architects.

(2) A firm name may be used without all members being registered if those architects who are licensed in Kentucky have the title "architect" applied only to them in subheadings or subtitles in defining the practice of the firm. Examples:

(a) SMITH, JONES, MILLER & MOORE Albert Smith, Architect ~~(If[Where] Smith, [and] Jones, Miller, and Moore are all[both] architects in their own state, but only Albert Smith is licensed in Kentucky and is fully responsible for work in this state); [or]~~

(b) SMITH, JONES, MILLER & MOORE, Inc. Architects and Engineers Albert Smith, Architect Carl Miller, Mech. Engr. Robert Jones, Architect John Moore, Struct. Engr.

~~(If[Where] all are licensed in Kentucky in the professions indicated); or~~

(c) STATEWIDE STUDIOS, Inc. Roy Jones, Architect John Davis, Mech. Engr. Carl Smith, Architect Alan Moore, Manager

~~(If[Where] Jones and Smith are both licensed in Kentucky and the firm has other members they wish to include in their office title).~~

Section 3. Incorporation by Reference. (1) "Sample Forms of the Prescribed Seal", November 2020 Edition, is[are] incorporated by reference.

(2) This material[and] may be inspected, copied, or obtained, subject to applicable copyright law, at[from] the Kentucky Board of Architects, 155 East Main Street, Suite 300, Lexington, Kentucky 40507, Monday through Friday, 8 a.m. to 4 p.m.

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BOARDS AND COMMISSIONS

Board of Architects

(As Amended at ARRS, January 13, 2021)

201 KAR 19:270. Plans and specifications standards.

RELATES TO: KRS 323.020

STATUTORY AUTHORITY: KRS 323.210

NECESSITY, FUNCTION, AND CONFORMITY: KRS

323.210(2) authorizes the board to promulgate administrative regulations necessary to carry out the purposes of KRS Chapter 323. This administrative regulation establishes standards to safeguard the public against misrepresentations and requires projects meet the requirements of governmental agencies. To define minimum standards of documents prepared by architects.

Section 1. Standards Required.

(1) All plans and specifications and other documents prepared for use within the Commonwealth of Kentucky shall be of a standard sufficient to safeguard the public against misrepresentations and shall show and describe all essential parts of the design, details, and materials necessary.

(2) Each project shall[must] meet the requirements of the city, county, state, and federal agencies having jurisdiction, including, agencies such as[but not limited to], the following:

(a) Department of Housing, Buildings and Construction;[-]

(b) Local City and County Building Departments;[-]

(c) Local County Health Departments, and the Kentucky Department for Human Resource Administration[Resources];[-]

(d) Local Department of Education (For tax supported schools, grades 1 - 12);[-]

(e) Kentucky[Bureau of Environmental Quality,] Department for [Natural Resources and] Environmental Protection (if impoundment, diversion, or pollution is involved); and[-]

(f) Kentucky Energy and Environment Cabinet Division for Air Quality[of Air Pollution, Department for Natural Resources

and Environmental Protection].

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BOARDS AND COMMISSIONS
Board of Architects
(As Amended at ARRS, January 13, 2021)

201 KAR 19:275. Use of title "architect".

RELATES TO: KRS 323.010, 323.230
STATUTORY AUTHORITY: KRS 323.210
NECESSITY, FUNCTION, AND CONFORMITY: **KRS 323.210(2) authorizes the board to promulgate administrative regulations necessary to carry out the purposes of KRS Chapter 323. This administrative regulation establishes requirements that relate[Relates] to the use of the title of "Architect."**

Section 1. Individuals only are Licensed. Registration is of individuals only. No corporation, association, or partnership may be registered as **an architect[such]**. The word "architect" may be used to apply only to the names of individuals registered under the provisions of KRS Chapter 323.

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BOARDS AND COMMISSIONS
Board of Architects
(As Amended at ARRS, January 13, 2021)

201 KAR 19:410. Accredited schools and colleges for certified interior designers.

RELATES TO: KRS 323.406(1), 323.408, 323.410
STATUTORY AUTHORITY: KRS 323.210(2), 323.406
NECESSITY, FUNCTION, AND CONFORMITY: **KRS 323.210(2) authorizes the board to promulgate administrative regulations necessary to carry out the purposes of KRS Chapter 323. KRS 323.406(1) authorizes the board to promulgate administrative regulations to establish educational criteria for those persons seeking certification as a certified interior designer. This administrative regulation establishes the list of programs from which degrees and education meet the criteria for certification.**

Section 1. Definitions.

- (1) "Board" is defined **by[as]** KRS 323.010(1) and 323.400(1).
- (2) "CIDA" means the Council for Interior Design Certification which was formerly known as the Foundation for Interior Design Education Research (FIDER).
- (3) "NAAB" means the National Architectural Accrediting Board.

Section 2. (1) Schools and colleges of interior design that have professional degree programs accredited by CIDA or NAAB shall constitute the list of accredited programs.

(2) Education from a program of study on interior design other than a **CIDA[CITA]** or NAAB accredited degree program shall be obtained from a school accredited by a regional accrediting agency recognized by the U.S. Department of Education.

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BOARDS AND COMMISSIONS
Board of Architects

(As Amended at ARRS, January 13, 2021)

201 KAR 19:415. Application for certification as an interior designer.

RELATES TO: KRS 323.400, 323.408(4), 323.410
STATUTORY AUTHORITY: KRS 323.210(2), 323.406
NECESSITY, FUNCTION, AND CONFORMITY: **KRS 323.210(2) authorizes the board to promulgate administrative regulations necessary to carry out the purposes of KRS Chapter 323. KRS 323.406 authorizes the board to promulgate administrative regulations necessary to implement KRS 323.400 to 323.416. This administrative regulation establishes the procedures for the filing and processing of an application for certification as an interior designer.**

Section 1. Application for Certification. Each applicant shall:

- (1) Submit a **notarized Application for [Certified] Interior Designer Certification with a two (2) inch by two (2) inch passport photo[Design Application Form, 1-03]**.
- (2) Comply with the requirements of KRS 323.400 through 323.416 and **201 KAR Chapter 19[the administrative regulations promulgated by the board]**; and
- (3) Submit **applicable initial application and certification fees as** established in 201 KAR 19:440.

Section 2. Incorporation by Reference. (1) "Application for Interior Designer Certification", **November 2020[July 2019]** Edition is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Architects, 155 East Main Street, Suite 300, Lexington, Kentucky 40507, Monday through Friday, 8 a.m. to 4 p.m.

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BOARDS AND COMMISSIONS
Board of Architects
(As Amended at ARRS, January 13, 2021)

201 KAR 19:420. Qualifications for certification.

RELATES TO: KRS **323.010**, 323.400, 323.406(1), 323.408, 323.410(1), (3), ~~**4)**~~
STATUTORY AUTHORITY: KRS 323.210(2), 323.406(1), **323.410**

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 323.210(2) authorizes the board to promulgate administrative regulations necessary to carry out the purposes of KRS Chapter 323. KRS 323.406(1) authorizes the board to establish criteria of education, experience, and testing for those persons seeking certification as a certified interior designer that are reasonable and necessary. KRS 323.410(1)(c) requires the board issue a certificate as a certified interior designer to persons who meet the standards of education, experience, and testing established by the board. This administrative regulation establishes the requirements for obtaining certification as a certified interior designer.**

Section 1. Definitions.

- (1) "Board" is defined **by[as]** KRS 323.010(1) and 323.400(1).
- (2) "CIDA" means the Council for Interior Design Certification which was formerly known as the Foundation for Interior Design Education Research (FIDER).
- (3) "NAAB" means the National Architectural Accrediting Board.

Section 2. Accredited Degrees.

(1) The board shall determine if an applicant's education and experience in the field of interior design are sufficient to establish eligibility for certification.

(2) The board shall certify an applicant who has obtained:

- (a) A four (4) or five (5) year professional accredited degree;
- (b) At least two (2) years of acceptable full-time employment in the performance of interior design services, in accordance with Section 3 of this administrative regulation; and
- (c) A passing score on the NCIDQ examination.

Section 3. Degrees from Programs Not Accredited by CIDA or NAAB.

(1)(a) In lieu of the education and experience requirements of Section ~~2(1)~~(2)(a) and (b) of this administrative regulation, the board may ~~find~~~~deem~~ an applicant eligible for certification if, prior to January 1, 2012, the applicant:

1. Has received a degree from a program not accredited by CIDA or NAAB; and

2. Otherwise meets the requirements of this section.

(b) An applicant seeking to qualify under this section shall obtain a passing score on the NCIDQ examination.

(2) To qualify under this section, the applicant shall be a graduate of a nonaccredited program of:

(a) Five (5) years or more which included at least 150 semester credits, of which ninety (90) or more are interior design related, or 225 quarter credits, of which 135 or more are interior design related, and who has completed at least two (2) years of acceptable interior design experience;

(b) Four (4) years or more which included at least 120 semester credits, of which sixty (60) or more are interior design related, or 180 quarter credits, of which ninety (90) or more are interior design related, and who has completed at least three (3) years of acceptable interior design experience;

(c) Three (3) years or more which included at least sixty (60) semester credits of interior design related coursework, or ninety (90) quarter credits of interior design related coursework, and who has completed at least four (4) years of acceptable interior design experience; or

(d) Two (2) years or more which included at least forty (40) semester credits of interior design related coursework, or sixty (60) quarter credits of interior design related coursework, and who has completed five (5) years of acceptable interior design experience.

(3) The experience required by subsection (2) of this section shall meet the criteria established in this section~~[3 of this administrative regulation]~~.

Section 4. (1) Full-time employment shall include at least thirty-five (35) hours per week in the performance of interior design services.

(2) To be ~~deemed~~ acceptable, experience shall be obtained under the supervision of:

(a) An interior designer who has passed the NCIDQ examination;

(b) A licensed architect; or

(c) An interior designer who is licensed, certified, or registered by a state or provincial regulatory agency.

Section 5. The board shall certify any architect licensed in the Commonwealth of Kentucky upon application and payment of the fee prescribed in 201 KAR 19:440, Section 1(3).

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BOARDS AND COMMISSIONS

Board of Architects

(As Amended at ARRS, January 13, 2021)

201 KAR 19:425. ~~[Limited period of]~~ Certification under education and~~[by prior]~~ experience criteria.

RELATES TO: KRS 323.400, 323.410

STATUTORY AUTHORITY: KRS 323.210(2), 323.406(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.210(2) authorizes the board to promulgate administrative regulations necessary to carry out the purposes of KRS Chapter 323. KRS 323.406(1) and (3) authorize the board to promulgate administrative regulations to establish criteria for education and experience~~[KRS 323.410(3) provides that for a period of two (2) years after July 15, 2002, the board may issue a certificate as a certified interior designer to persons who meet the alternative criteria identified in that statutory provision]~~. This administrative regulation establishes the experience and education criteria for qualifying under KRS ~~323.406(1)~~~~[323.410(3)]~~.

Section 1. (1) An applicant who seeks to qualify for certification under the ~~[alternative]~~ criteria of KRS 323.410(3) shall meet the statutory requirements of education and experience of KRS ~~323.406(1)~~~~[323.410]~~.

(2) The board shall evaluate experience as follows:

(a) 1600 hours of full-time employment equals one (1) year of experience.

(b) A minimum of thirty-five (35) hours per week is considered full-time employment.

(c) Experience shall be demonstrated in at least five (5) of the following nine (9) categories:

1. Analysis of a client's needs, goals, and life safety requirements for the interior space of a structure;

2. Integration of findings with knowledge of interior design;

3. Formulation of preliminary design concepts that are appropriate, functional, and aesthetic;

4. Development and presentation of final design recommendations through presentation media;

5. Preparation of working drawings and specifications for nonloadbearing interior construction, materials, finishes, space planning, furnishings, fixtures, and equipment;

6. Collaboration with professional services of other licensed practitioners in the technical areas of mechanical, electrical, and load-bearing design required for regulatory approval;

7. Preparation and administration of bids and contract documents as the client's agent;

8. Review and evaluation of design solutions during implementation and upon completion; and

9. Teaching full time in an interior design program accredited by the U.S. Department of Education.

(3) One (1) year of interior design education shall be documented by the successful completion of a minimum of either:

(a) Twenty (20) semester hours of interior design related coursework; or

(b) Thirty (30) quarter credits of interior design related coursework.

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BOARDS AND COMMISSIONS

Board of Architects

(As Amended at ARRS, January 13, 2021)

201 KAR 19:430. Certification by persons credentialed in other jurisdictions.

RELATES TO: KRS 323.400, ~~323.402~~~~[232.402]~~, 323.408,

323.410

STATUTORY AUTHORITY: KRS 323.210(2), 323.406(1)

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 323.210(2) authorizes the board to promulgate administrative regulations necessary to carry out the purposes of KRS Chapter 323. KRS 323.406(1) authorizes the board to promulgate administrative regulations that establish criteria of education, experience, and testing for those persons seeking certification as an interior designer.** KRS 323.410(3)(4) requires the board to issue a certificate to a person credentialed as an interior designer under the laws of other jurisdictions **subject to the criteria imposed by KRS 323.410(1).** This administrative regulation establishes the requirements for obtaining certification under the conditions identified in KRS 323.410(3)(4).

Section 1. An interior designer credentialed in another jurisdiction shall obtain certification in Kentucky before using the title "Certified Interior Designer", in this jurisdiction, in accordance with KRS **323.402[232.402]**.

Section 2. An applicant credentialed as an interior designer in another jurisdiction shall provide documentation demonstrating that the standards for certification in the jurisdiction of **the applicant's[their]** original certification met the requirements of KRS 323.410(1) and 201 KAR 19:420 at the time of the certification.

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BOARDS AND COMMISSIONS

Board of Architects

(As Amended at ARRS, January 13, 2021)

201 KAR 19:435. Certification renewal.

RELATES TO: KRS 323.400, 323.406, 323.416

STATUTORY AUTHORITY: KRS 323.210(2), 323.406(3), **323.416**

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 323.210(2) authorizes the board to promulgate administrative regulations necessary to carry out the purposes of KRS Chapter 323.** KRS 323.406(3) authorizes the board to promulgate administrative regulations to establish a renewal process for certifications that have expired. KRS 323.416 requires the board to establish forms upon which applicants for renewal may demonstrate completion of the renewal requirements. This administrative regulation establishes the process for renewing a certification.

Section 1. Certification Renewal. (1)(a) A certificate holder shall renew a certificate before October 1 of each calendar year.

(b) A certificate issued between April 1 and September 30 shall not require renewal until October 1 of the following year.

(2) A certificate holder seeking renewal shall submit:

(a) A completed Certification Renewal Application Form, incorporated in 201 KAR 19:445, Section **6[7]**(1); and

(b) The appropriate renewal fee established in 201 KAR **19:f.440**.

(3)(a) During a period of active military duty, a certified interior designer in military service may, upon written **request[application]** to the board, be excused from paying the renewal fee until his or her active military service is terminated.

(b) The board shall issue a renewal certificate upon:

1. Notification of the applicant's return from active duty; and

2. Payment of the renewal fee for the then-current renewal cycle.

(4) The board shall revoke the certificate of a holder who has:

(a) Failed to pay the renewal fee on or before the 30th of November of the renewal period; and

(b) Not requested that his or her certification be placed on inactive status.

(5) A certified interior designer whose certificate has been revoked for failure to pay the renewal fee shall:

(a) Submit a completed application for reinstatement of certification **on the Reactivation of Kentucky Certificate form**;

(b) Pay the fees for all outstanding renewal periods occurring since the certificate was revoked, including the renewal period for which the certificate was revoked;

(c) **[Pay the reinstatement fees prescribed by 201 KAR 19:440, Section 1(6);**

(d)] Make a written statement of the reason he or she did not:

1. Place his or her certificate on inactive status; or

2. Pay the renewal fee within the time prescribed; **and**

(d)[(e)] Include a signed affidavit that the certificate holder has not been in violation of the requirements of KRS 323.400 through 323.416 or 201 KAR Chapter 19; **and**

(f) File an Interior Design Continuing Education Annual Report Form, incorporated in 201 KAR 19:440].

Section 2. Inactive Status.

(1) The board shall grant inactive status to a certificate holder who:

(a)] requests inactive status; **and**

(b) Pays the fee required by 201 KAR 19:440, Section 1(7)].

(2) While on inactive status, the certificate holder shall not use the title "Certified Interior Designer".

(3) A certificate holder on inactive status who seeks to become reactivated shall complete at least twelve (12) hours of continuing education, in compliance with 201 KAR 19:445 for each year the certificate has been inactive.

(4) A certificate holder who has been on inactive status for more than seven (7) consecutive years, and who seeks reactivation, shall pass the NCIDQ examination.

Section 3. Incorporation by Reference. (1) "Reactivation of Kentucky Certificate", November 2020 Edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Architects, 155 East Main Street, Suite 300, Lexington, Kentucky 40507, Monday through Friday 8 a.m. to 4 p.m.

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BOARDS AND COMMISSIONS

Board of Architects

(As Amended at ARRS, January 13, 2021)

201 KAR 19:440. Fees for certification of interior designers.

RELATES TO: KRS 323.400-323.416

STATUTORY AUTHORITY: KRS 323.210(2), 323.406(2)

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 323.210(2) authorizes the board to promulgate administrative regulations necessary to carry out the purposes of KRS Chapter 323.** KRS 323.406(2) authorizes the board to promulgate administrative regulations to establish an initial certification fee and a renewal fee for certified interior designers. KRS 323.416(1) requires the board to establish forms upon which applicants for renewal may demonstrate completion of the renewal requirements. This administrative regulation establishes the fees related to certified interior designers.

Section 1. Fee Schedule.

(1) The initial certification application fee for a qualified person, not a licensed architect, shall be \$100.

(2) The fee for initial certification, including a certificate, shall

be \$250.

(3) The fee for initial certification for a licensed architect, including a certificate, shall be \$150.

(4) ~~[The initial certification application fee for a person subject to 201 KAR 19:430 as an interior designer credentialed in another jurisdiction, including a certificate, shall be \$400.~~

~~(5)] The fee for certification renewal shall be \$200. [~~

~~(6) The fee for application for reinstatement of certificate that has been revoked for failure to pay the renewal fee or that has been suspended by the board under KRS 323.412 shall be \$150 plus all renewal fees from date of revocation or suspension.~~

~~(7) The annual fee for inactive status shall be twenty-five (25) dollars.~~

~~(8) The fee to reactivate an inactive certificate shall be \$150.~~

~~(9) The fee for a duplicate certificate shall be twenty-five (25) dollars.]~~

Section 2. (1) Each payment shall be by check made payable to "Kentucky State Treasurer".

(2) Fees shall not be refundable.

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BOARDS AND COMMISSIONS

Board of Architects

(As Amended at ARRS, January 13, 2021)

201 KAR 19:445. Continuing education.

RELATES TO: KRS 323.400-323.416

STATUTORY AUTHORITY: KRS 323.210(2), **323.416**

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 323.210(2) authorizes the board to promulgate administrative regulations necessary to carry out the purposes of KRS Chapter 323.** KRS 323.416(1) requires certificate holders to meet continuing education requirements in order to renew certification. KRS 323.416(2) mandates certain topics to be covered. This administrative regulation establishes the requirements for continuing education.

Section 1. Definitions. (1) "Elective topic" means a topic that is related to interior design.

(2) "Professional development unit" or "PDU" means a:

(a) Unit equal to fifty (50) minutes clock time for classroom education; or

(b) Customary time of completion prescribed by a vendor, if the board finds the time to be reasonable.

(3) "Relevant topic" means an area focused on the health, safety, and welfare of the public.

(4) "Self-directed activity" means:

(a) An unstructured self-study visit to an interior design significant site;

(b) A service to the public which uses the certified interior designer's expertise as an interior designer; or

(c) A business practice course related to new technology relevant to interior design, and, offered by a person qualified by education or experience.

(5) "Structured activity" means a relevant:

(a) College or university sponsored course;

(b) Seminar;

(c) Tutorial;

(d) Short course; or

(e) Professional or technical organization sponsored:

1. Program;

2. Course;

3. Self-study course; or

4. Monograph.

Section 2. Exemptions. An interior designer certified in Kentucky shall, in order to obtain annual certification renewal:

(1) Comply with this administrative regulation unless exempt because he or she is:

(a) A first-time certificate holder by examination or reciprocity;

(b) A civilian who serves on active duty in the United States Armed Forces for a period of time exceeding ninety (90) consecutive days during the annual report period;

(c) Certified from another jurisdiction that has a required continuing education program, if that jurisdiction accepts Kentucky requirements to satisfy its continuing education requirements and the certificate holder certifies that all requirements for current continuing education compliance and certification have been met in that jurisdiction;

(d) Is also a licensed architect who has met the requirements of 201 KAR 19:087; or

(e) Is on inactive status.

(2) A hardship case may be considered by the board.

Section 3. Requirements.

(1) A certified Kentucky interior designer shall:

(a) Obtain a total of twelve (12) PDU's per year, as required by KRS 323.416(1); and

(b) Report the PDU credits as a condition for certification renewal.

(2) The twelve (12) hours of continuing education shall be satisfied during the period beginning October 1 and ending September 30 of the following year.

(3) At least eight (8) PDU's shall consist of structured activities, addressing the following relevant topics:

(a) Codes, statutes, and administrative regulations related to the built environment;

(b) Environmental issues;

(c) Professional and ethical business practices;

(d) State certification law;

(e) Design proficiency;

(f) New technology, including construction:

1. Material;

2. Methods;

3. Systems; or

4. Concepts.

(g) Interface, other than normal day-to-day contact, with a member of another design discipline, including an:

1. Architect;

2. Planner;

3. Consultant;

4. Financier; or

5. Consultant.

(h) Legal aspects, including:

1. Contract documents;

2. Insurance;

3. Bonds; and

4. Project administration.

(i) Specialization in:

1. Preservation;

2. Adaptive reuse; or

3. A building type.

(j) Study or consultation opportunity.

(4) A maximum of four (4) PDU's may consist of self-directed activities, addressing the following elective topics:

(a) Business or practice efficiency;

(b) Business development;

(c) Personal skills;

(d) New skills; or

(e) General education.

Section 4. Reporting and Recordkeeping. (1) A certificate holder seeking certificate renewal shall submit to the board:

(a) A Certification Renewal Application Form, including a list of PDUs completed; and

(b) The renewal fee **as established in 201 KAR 19:440.**

(2) An incomplete submission shall be returned to the certificate holder.

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(3) The board shall review a random sample of annual reports, composed of up to ten (10) percent of the number of issued certificates, to ensure accuracy and compliance.

(4) The certificate holder shall:

(a) Retain proof of participation in continuing education activities;

(b) Retain a record for continuing education for a period of two (2) years from the date of submission of the annual report to the board; and

(c) Furnish copies or continuing education records on the request of the board for audit purposes.

(5) Proof of participation in continuing education activities shall include:

(a) A log showing the:

1. Activity claimed;
2. Sponsoring organization;
3. Location;
4. Duration; and
5. Date of activity;

(b) An attendance certificate;

(c) A signed attendance receipt;

(d) A paid receipt;

(e) A list of attendees signed by a person in charge of the activity; or

(f) Similar documentation.

(6) If continuing education credit is disallowed, the certificate holder shall have 180 calendar days after notification to:

(a) Substantiate the original claim; or

(b) Earn other continuing education credit to meet the minimum requirements.

Section 5. Noncompliance and Sanctions. Failure to fulfill the continuing education requirements or file the required annual report, properly completed and signed, shall result in nonrenewal of the interior designer's certification.

Section 6. Incorporation by Reference. (1) "Certification Renewal Application Form," November 2020[2003] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the offices of the Kentucky Board of Architects, 155 East Main Street, Suite 300, Lexington, Kentucky 40507, Monday through Friday, 8 a.m. to 4 p.m.

CONTACT PERSON: Cordelia Harbut, Executive Director, Kentucky Board of Architects, 155 E Main Street, Suite 300, Lexington, Kentucky 40507, phone (859) 246-2069, fax (859) 346-2431, email boa.irc@ky.gov.

BOARDS AND COMMISSIONS

Board of Architects

(As Amended at ARRS, January 13, 2021)

201 KAR 19:450. Signature of documents by certified interior designers; use of title.

RELATES TO: KRS 323.402, 323.406(4), 323.408(3), 323.414(1)

STATUTORY AUTHORITY: KRS 323.210(2), 323.402, 323.406(4), 323.408(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.210(2) authorizes the board to promulgate administrative regulations necessary to carry out the purposes of KRS Chapter 323. KRS 323.402 prohibits persons who are not certified by the board from using the title "certified interior designer." KRS 323.406(4) authorizes the board to promulgate administrative regulations to establish a process regarding the use of a certified interior designer's signature and certificate number, and KRS 323.408(3) requires the board to enforce the requirement that a certified interior designer include the certified interior designer's certificate number on all business and advertising documents[their proper usage]. This administrative regulation

establishes the requirements for use of the certified interior designer's signature and certificate number.

Section 1. Certification shall be granted for individuals only. A corporation, association, or partnership shall not be certified as an interior designer.

Section 2. Office and Firm Names. (1) A title block or firm name used in connection with the title of "certified interior designer" in this state shall:

(a) Not be misleading;

(b) Not infer that an uncertified person is a "certified interior designer"; and

(c) Designate as a "certified interior designer" only a person certified in Kentucky as an interior designer; and

(d) Include the certificate number of the certified interior designer if used in business or as a form of advertising.

(2) A firm name may be used without all members being certified if those certified interior designers who are certified in Kentucky have the title "certified interior designer" applied only to them in subheadings or subtitles in defining the services of the firm. Examples:

(a) If[Where] Smith and Jones are both certified interior designers in their own state, but only Albert Smith is certified in Kentucky and is fully responsible for work done in Kentucky: SMITH, JONES, MILLER & MOORE Albert Smith, certified interior designer

(b) If[Where] each member is certified or licensed in Kentucky in the profession indicated:

SMITH, JONES, MILLER & MOORE, Inc. Architects and Engineers and Certified Interior Designers

Albert Smith, Certified Interior Designer, Carl Miller, Mech. Engr. Robert Jones, Architect John Moore, Struct. Engr.

(c) If[Where] Jones and Smith are both certified in Kentucky and the firm has other members included in their office title:

STATEWIDE STUDIOS, Inc. Roy Jones, Certified Interior Designer, John Davis, Mech. Engr. Carl Smith, Certified Interior Designer, Alan Moore, Manager

Section 3. A certified interior designer who is certified by the Kentucky Board of Architects shall:

(1) Sign and affix his or her certification number to all documents prepared:

(a) By him or her; or

(b) Under his or her supervision; and

(2) Clearly identify himself or herself as a certified interior designer by including the title or its abbreviation on the document in association with his or her signature.

CONTACT PERSON: Cordelia Harbut, Executive Director, Kentucky Board of Architects, 155 E Main Street, Suite 300, Lexington, Kentucky 40507, phone (859) 246-2069, fax (859) 346-2431, email boa.irc@ky.gov.

BOARDS AND COMMISSIONS

Board of Architects

(As Amended at ARRS, January 13, 2021)

201 KAR 19:455. Misconduct[Unprofessional conduct].

RELATES TO: KRS 323.408(1), 323.412

STATUTORY AUTHORITY: KRS 323.210(2), 323.406, 323.408(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.210(2) authorizes the board to promulgate administrative regulations necessary to carry out the purposes of KRS Chapter 323. KRS 323.406(4) authorizes the board to promulgate administrative regulations to establish a process regarding the use of a certified interior designer's signature. KRS 323.408(1) requires the board to administer and enforce the laws governing certified interior designers. This administrative regulation establishes what constitutes misconduct, and fraudulent or dishonest activity[a

~~code of professional conduct~~] for certified interior designers.

Section 1. ~~Misconduct~~~~[Unprofessional—Conduct]~~. The following acts by a certified interior designer shall be "~~misconduct~~~~[unprofessional conduct]~~":

(1) Accepting compensation for interior design services from an entity other than his or her client or employer, unless the client or employer has notice and has waived objection;~~;~~~~]~~

(2) Offering or making a payment or gift to a government official, whether elected or appointed, with the intent to influence official judgment in connection with a prospective or existing project;~~;~~~~]~~

(3) Offering or making a payment or gift, as an individual certified interior designer or as a participating member of a partnership or corporation, to an elected governmental official, candidate for governmental office, or the campaign of a candidate for governmental office, ~~if~~~~[when]~~ the payment or gift is a violation of federal or state campaign finance law;~~;~~~~]~~

(4) Having a court judgment entered, as described at KRS 323.412;~~;~~~~]~~

(5) Offering or making a gift, except a gift of nominal value, including, for example, reasonable entertainment and hospitality, with the intent to influence the judgment of an existing or prospective client in connection with a project in which the certified interior designer has an interest;~~;~~~~]~~

(6) Having a financial interest in the manufacture, sale, or installation of a component or process used in a project for which he or she is the certified interior designer, unless the client has been advised and has waived objection;~~;~~~~]~~

(7) Publicly endorsing a product, system, or service, or permitting the use of his or her name or photograph to imply endorsement of a product, system, or service not designed or developed by him or her;~~;~~~~and~~~~;~~~~]~~

(8) Claiming to be the author of a plan, print, building specification, or report, or affixing his or her name to a drawing, which has not been prepared by the certified interior designer or an employee under the supervision of the certified interior designer.

Section 2. Fraudulent or Dishonest Activity. In addition to the prohibitions in KRS 323.412, the following practices by a certified interior designer shall be ~~[deemed to be]~~ "fraudulent or dishonest behavior":

(1) Making untrue or deceitful statements or representations to the board;~~;~~~~]~~

(2) Bribing a person who may influence the selection of a certified interior designer;~~;~~~~]~~

(3) Willfully misleading or defrauding a person employing him or her as a certified interior designer;~~;~~~~]~~

(4) Willful violation of:

(a) A Kentucky or other state law relating to the title of certified interior designer; or

(b) An administrative regulation promulgated by the board;~~;~~~~and~~~~;~~~~]~~

(5) Using, or attempting to use, or working under, a certificate that has been suspended or revoked or which has not been renewed as required by law.

CONTACT PERSON: Cordelia Harbut, Executive Director, Kentucky Board of Architects, 155 E Main Street, Suite 300, Lexington, Kentucky 40507, phone (859) 246-2069, fax (859) 346-2431, email boa.irc@ky.gov.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, January 13, 2021)

701 KAR 5:150. Nontraditional instruction program.

RELATES TO: KRS 158.070
STATUTORY AUTHORITY: KRS 156.029, 156.070, 156.160, 158.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.029(7) requires the Kentucky Board of Education (KBE) to adopt policies and administrative regulations by which the Kentucky Department of Education (department) shall be governed 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 which are within the administrative responsibility of the department. KRS 158.070 requires the KBE to promulgate an administrative regulation to prescribe the conditions and procedures for local education agencies (districts) to be approved for the nontraditional instruction program. This administrative regulation establishes the requirements and approval process for districts to be approved for the nontraditional instruction program.

Section 1. Definitions. (1) ~~["Certified employee" means an employee of a local school district who is required to have a certification for his position pursuant to KRS 161.020.~~

~~—(2) "Comprehensive District Improvement Plan" shall have the same meaning as defined in 703 KAR 5:225, Section 1(3).~~

~~(2) [(3)] "Instructional delivery method" means the delivery system and instructional techniques [to be] used in meeting the learning needs of students regardless of their physical location.~~

~~(3) [(4)] [(3)] "Minimum school term" or "school term" is defined in KRS 158.070(1)(b).~~

~~(4) [(5)] [(4)] "Nontraditional instruction day" means a day during the school term that a local school district is closed for health or safety reasons that is approved by the commissioner, pursuant to KRS 158.070(9), to be the equivalent to a student attendance day.~~

~~(5) [(6)] [(5)] "Nontraditional instruction plan" means the strategy approved by the commissioner and implemented by a local school district to ensure instruction on nontraditional instruction days is a continuation of learning that is occurring on regular student attendance days as required by KRS 158.070(9).~~

~~(6) [(7)] [(6)] "Professional learning plan" means the strategy implemented to ensure staff in a local school district acquire, enhance, and refine the knowledge, skills, practices, and dispositions necessary to create and support high levels of learning for all students.~~

~~(7) [(8)] [(7)] "Student attendance day" is defined in KRS 158.070(1)(e).~~

Section 2. ~~Nontraditional Instruction Plan. [Initial Application Process:] (1) [Using the Nontraditional Instruction Program Initial Application, a] A district seeking commissioner approval, pursuant to KRS 158.070, of a nontraditional instruction plan shall annually incorporate if [submitting] [such] within the Comprehensive District Improvement Plan [a nontraditional instruction plan to be approved by the commissioner].~~

~~(2) A nontraditional instruction plan incorporated within the Comprehensive District Improvement Plan shall [include]:~~

~~(a) Provide an overview of the district's vision for ensuring a continuation of learning when implementing nontraditional instruction;~~

~~(b) Describe in detail:~~

~~1. How instruction shall be delivered for students in nontraditional settings;~~

~~2. The steps the district shall take to ensure a continuation of learning occurs for students in nontraditional settings;~~

~~3. How, if at all and to the extent permitted by applicable statutes and administrative regulations, the district shall ensure a continuation of learning occurs for those students utilizing, for any reason, nontraditional instruction during time periods when the district may be offering and providing in-person instruction to other students;~~

~~4. How the district shall ensure a continuation of learning for students with Individual Education Plans in nontraditional settings;~~

~~5. Additional efforts that may be necessary to ensure a continuation of learning for other special populations of students in nontraditional settings;~~

~~6. How the district has coordinated or will coordinate with other~~

educational entities to ensure a continuation of learning for students in nontraditional settings;

7. How teachers shall instruct, support, and communicate with students in order to ensure academic progress as well as promote social and emotional ~~well-being~~**[wellbeing]** for students in nontraditional settings;

8. The professional learning activities the district shall provide certified staff to ensure they have the skills necessary to provide a continuation of learning for students in nontraditional settings;

9. How the district shall deploy all staff when school is closed to in-person instruction;

10. The partnerships the district has established with other community agencies to increase opportunities for a continuation of learning for students in nontraditional settings; and

11. The district's communication plan for parents, students, and community members for students in nontraditional settings;

(c) Explain how the nontraditional instruction plan relates to district goals; and~~A description of the instructional delivery methods, including the use of technology, to be used on nontraditional instruction days;~~

~~(b) A description of how the district will provide access to online resources, if used, and equitable instructional materials for students who do not have access to the internet and for students needing to access information differently;~~

~~(c) A description of how the district shall ensure a continuation of learning from regular student attendance days will occur on nontraditional instruction days;~~

~~(d) A description of how the district will ensure implementation of Individual Education Programs for students with disabilities, including how an Admissions and Release Committee will be involved in planning for and making decisions related to the participation and needs of students with disabilities, on nontraditional instruction days;~~

~~(e) A description of how the district will ensure implementation of other student-specific educational plans, including Program Service Plans for English Learners, 504 Plans, and Gifted Student Service Plans for students identified as gifted and talented, on nontraditional instruction days;~~

~~(f) A description of how student participation will be measured and how evidence of student learning will be gathered on nontraditional instruction days;~~

~~(g) A description of how each job category within the district will fulfill contractual obligations on nontraditional instruction days and how employee participation will be verified on nontraditional instruction days;~~

~~(h) An explanation of the professional learning plan the district will implement to ensure certified employees have the knowledge and capacity to provide instruction on nontraditional instruction days;~~

~~(i) A description of education agencies that are external to the district but have students of the district in attendance on a part-time or full-time basis and the considerations on nontraditional instruction days that will need to be agreed upon between the district and those external education agencies;~~

~~(j) A description of stakeholder involvement in developing and implementing nontraditional instruction days;~~

~~(k) A description of how the district will relay information about nontraditional instruction days to students and families; and~~

~~(l) (d) Provide other [Other] evidence deemed necessary by the department to effectively review and approve or deny a district's nontraditional instruction plan.~~

~~(3) [(2)] The department shall provide technical assistance, upon request, to districts prior to the incorporation [submission] of [the] a nontraditional instruction plan within the Comprehensive District Improvement Plan [Nontraditional Instruction Program Initial Application].~~

~~(4) [(3)] A district shall submit the nontraditional instruction plan to the department by May 1 [an application at least 120 days prior to the beginning of a school term to have the application considered] for implementation at the beginning of the upcoming school term.~~

~~(5) [(4) A committee designated by the] The commissioner or his **designee[designee(s)]** shall review and [recommend the commissioner] approve or deny a completed nontraditional~~

instruction plan [Nontraditional Instruction Program Initial Application] within forty-five (45) days from receipt [of the completed application].]

~~(5) Within thirty (30) days from receipt of the recommendation from the committee designated pursuant to subsection (4) of this section, the commissioner shall approve or deny a completed Nontraditional Instruction Program Initial Application. The Commissioner may initially approve a district to participate in the NONTRADITIONAL instruction program for up to two (2) years.]~~

~~(6)(a) A district approved to participate in the nontraditional instruction program may amend its nontraditional instruction plan [Nontraditional Instruction Program Initial Application] as needed at any time by submitting a written amendment request to the department.~~

~~(b) The amendment request shall contain a description of the amendment, proposed timeline for implementation, and justification for the request.~~

~~(c) [A committee designated pursuant to subsection (4) of this section] The Commissioner or his **designee[designee(s)]** shall review the amended nontraditional instruction plan [Nontraditional Instruction Program Initial Application] and [recommend the commissioner] approve or deny **it[such]** within forty-five (45) days of the amendment submission.]~~

~~(d) Within thirty (30) days from receipt of the recommendation from the committee designated pursuant to subsection (4) of this section, the commissioner shall approve or deny an amended Nontraditional Instruction Program Initial Application. An amended Nontraditional Instruction Program Initial Application approved by the commissioner shall be in effect for the remainder of the initial period of approval pursuant to subsection (5) of this section.]~~

Section 3. [Renewal Application Process. (1) At the end of the term of approval, a district that has used at least one (1) nontraditional instruction day during the term of approval shall be eligible to complete the renewal application process. A district not eligible to complete the renewal application process shall be eligible to apply using the Nontraditional Instruction Program Initial Application and in compliance with Section 2 of this administrative regulation.

(2) Using the Nontraditional Instruction Program Renewal Application, a returning district submitting a nontraditional instruction plan to be approved for renewal by the commissioner shall include:

(a) A description of the nontraditional instruction program that includes:

1. Revisions to the district's nontraditional instruction program that are being proposed for the program to grow in rigor and efficacy;

2. Program adjustments that are being proposed to improve the program for stakeholders; and

3. Any changes being proposed related to how the district handles food service staff and costs on nontraditional instruction days.

(b) Other evidence deemed necessary by the department to effectively review and approve or deny a district's nontraditional instruction plan.

(3) The department shall provide technical assistance, upon request, to districts prior to submission of the Nontraditional Instruction Program Renewal Application.

(4) A district shall submit an application at least 120 days prior to the beginning of a school term to have the application considered for implementation at the beginning of the upcoming school term.

(5) A committee designated by the commissioner shall review and recommend the commissioner approve or deny a completed Nontraditional Instruction Program Renewal Application within forty-five (45) days from receipt of the completed application.

(6) Within thirty (30) days from receipt of the recommendation from the committee designated pursuant to subsection (5) of this section, the commissioner shall approve or deny a completed Nontraditional Instruction Program Renewal Application. At renewal, the commissioner may approve a district to participate in the nontraditional instruction program for up to four (4) years. (7)

(a) A district approved to participate in the nontraditional instruction program may amend its Nontraditional Instruction Program Renewal Application as needed at any time by submitting a written amendment request to the department.

(b) The amendment request shall contain a description of the amendment, proposed timeline for implementation, and justification for the request.

(c) A committee designated pursuant to subsection (5) of this section shall review the amended Nontraditional Instruction Program Renewal Application and recommend the commissioner approve or deny such within forty-five (45) days of the amendment submission.

(d) Within thirty (30) days from receipt of the recommendation from the committee designated pursuant to subsection (4) of this section, the commissioner shall approve or deny an amended Nontraditional Instruction Program Renewal Application. An amended Nontraditional Instruction Program Renewal Application approved by the commissioner shall be in effect for the remainder of the renewal period of approval pursuant to subsection (6) of this section.

Section 4. Use of Nontraditional Instruction Days. (1) ~~If/Once~~ a district is approved by the commissioner or his ~~designee/designee(s)~~ [has approved a district] to participate in the nontraditional instruction program, the district may apply for and the commissioner may approve the use of nontraditional instruction days on days when the district is closed for health or safety reasons pursuant to KRS 158.070.

(2) ~~Pursuant to KRS 158.070, the district may apply for and the commissioner may approve up to the equivalent of ten (10) student attendance days per school year in nontraditional instruction days for the district.~~

(3) The district shall seek approval from the commissioner to use one (1) or more nontraditional instruction days by submitting a request and appropriate supplemental documentation, as required by the department, to the department within thirty (30) days following the ~~day/day(s)~~ the district was closed for health or safety reasons.

(3) [(4)] The commissioner shall approve or deny a district's use of one (1) or more nontraditional instruction days within thirty (30) days from receipt of the district's request and appropriate supplemental documentation, as required by the department. A request to use ~~[(1)]~~ one (1) or more nontraditional instruction days shall be denied by the commissioner if the district fails to supply clear evidence demonstrating a continuation of learning from regular student attendance days occurs on nontraditional instruction days. Clear evidence may include:

- (a) Examples of student work;
- (b) Lesson plans; or
- (c) Curriculum maps.

Section 4. [5.] Monitoring and Revocation of Nontraditional Instruction Programs. (1) At the conclusion ~~[of the first school term of implementation of the approved Nontraditional Instruction Program Application and at the end]~~ of each school term ~~[thereafter for the entirety of the approval status]~~, a district approved by the commissioner or his ~~designee/designee(s)~~ to participate in the nontraditional instruction program may receive an annual site visit from a review team selected and trained by the department. The purpose of the site visit is to monitor the district's progress in implementing the approved nontraditional instruction plan [Nontraditional Instruction Program Application].

(2) If a site visit is conducted by the department, the site visit shall:

- (a) Be made following adequate advanced notice to the district; and
- (b) Include the gathering of information through the examination of records related to the district's implementation of the approved nontraditional instruction plan [Nontraditional Instruction Program Application], including ~~[renewals and]~~ amendments if applicable, and through interviews with district leadership, staff, and students as well as other stakeholders.

(3) In addition to any site visit that may be conducted pursuant

to subsections (1) and (2) of this section ~~[of this administrative regulation]~~, a district approved by the commissioner or his ~~designee/designee(s)~~ to participate in the nontraditional instruction program shall, upon request, make the following available for inspection by the department:

(a) Documentation of the instructional delivery methods used on nontraditional instruction days; (b) Evidence demonstrating the district provides access on nontraditional instruction days to online resources, if used, and equitable instructional materials for students who do not have access to the internet and for students needing to access information differently;

(c) Clear evidence demonstrating a continuation of learning from regular student attendance days occurs on nontraditional instruction days. Clear evidence may include:

- 1. Examples of student work;
- 2. Lesson plans; or
- 3. Curriculum maps.

(d) Evidence demonstrating the district ensures implementation of Individual Education Programs for students with disabilities, including the involvement of the Admissions and Release Committee in planning for and making decisions related to the participation and needs of students with disabilities, on nontraditional instruction days;

(e) Evidence demonstrating the district ensures implementation of other student-specific educational plans, including Program Service Plans for English Learners and Gifted Student Service Plans for students identified as gifted and talented, on nontraditional instruction days;

(f) Data demonstrating student participation and student learning on nontraditional instruction days;

(g) Evidence demonstrating how each job category within the district fulfills contractual obligations on nontraditional instruction days and data, including teacher work logs, demonstrating employee participation on nontraditional instruction days;

(h) The professional learning plan implemented by the district to ensure certified staff have the knowledge and capacity to provide instruction on nontraditional instruction days and evidence demonstrating implementation;

(i) Where appropriate, agreements about nontraditional instruction days between the district and educational agencies that are external to the district but have students of the district in attendance on a part-time or full-time basis;

(j) Evidence demonstrating stakeholder involvement in developing and implementing nontraditional instruction days;

(k) Methods used by the district to relay information about nontraditional instruction days to students and families; and

(l) Other evidence deemed necessary by the department to effectively monitor the implementation of the approved nontraditional instruction plan [Nontraditional Instruction Program Application], including ~~[renewals and]~~ amendments if applicable.

(4) ~~[At the conclusion of each term of implementation of the approved Nontraditional Instruction Program Application for the entirety of the approval status, the department]~~ The commissioner or his ~~designee/designee(s)~~ may revoke approval of a district's nontraditional instruction program as a result of evidence collected pursuant to this section ~~[of this administrative regulation]~~.

(5) Prior to having approval of its nontraditional instruction program revoked, a district shall receive a site visit from a review team selected and trained by the department. The purpose of the visit shall be to monitor the district's progress in implementing the nontraditional instruction program, collect qualitative data on the effectiveness of the nontraditional instruction program, and verify the district's compliance with all applicable laws. A site visit shall be made following adequate advance notice to the district and may include the gathering of information through:

- (a) Direct observation;
- (b) Interviews with staff and students; or
- (c) Examination of records.

(6) ~~Any district that has had approval of its nontraditional instruction program revoked by the department shall wait a minimum of one (1) calendar year before submitting a new Nontraditional Instruction Program Application.~~

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

(a) "Nontraditional Instruction Program Initial Application," October 2018; and

(b) "Nontraditional Instruction Program Renewal Application," October 2018.

(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).

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.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, January 13, 2021)

702 KAR 4:090. Property disposal.

RELATES TO: KRS [456.034,] 156.160

STATUTORY AUTHORITY: KRS 156.070, 156.160, ~~156.070~~

NECESSITY, FUNCTION, AND CONFORMITY: [KRS 456.034 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 (1) 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 shall [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 ~~and[/]~~ 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. ~~If [in the event] the third party has any financial interest in the transaction or adjacent property beyond a standard commission, the third party shall[must] publicly disclose his or[/] her conflict of interest to the local school board and the[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).

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EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, January 13, 2021)

704 KAR 3:035. Annual professional development plan.

RELATES TO: KRS 156.095, 158.070
 STATUTORY AUTHORITY: KRS 156.070, 156.095, 158.070(5)
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.095

requires the Kentucky Board of Education to establish, direct, and maintain a statewide program of professional development to improve instruction in the public schools. KRS 158.070(5) requires the state board to promulgate administrative regulations establishing guidelines and procedures to be followed for the approval of the days utilized for four (4) days of the minimum school term required to be utilized by each local school district for professional development activities for the professional staff. This administrative regulation establishes the requirements for the annual professional development plan.

Section 1. Definitions. (1) "Comprehensive District Improvement Plan" is defined ~~by~~~~[in]~~ 703 KAR 5:225, Section 1(3).

(2) "Comprehensive School Improvement Plan" is defined ~~by~~~~[in]~~ 703 KAR 5:225, Section 1(4)(3).

(3)(2) "Needs assessment" means the gathering, sorting, and analysis of student, educator, and system data that lead to conclusions regarding the need for content and learning designs for professional development in identified areas related to educator performance and student achievement.

(4)(3) "Professional development" means professional learning that is an individual and collective responsibility, ~~which[that]~~ fosters shared accountability among the entire education workforce for student achievement ~~that[, and]~~:

(a) Aligns with the Kentucky's ~~Core~~ Academic Standards in 704 KAR 3:303 and 704 KAR Chapter 8, educator effectiveness standards, individual professional growth goals, and school, school district, and state goals for student achievement;

(b) Focuses on content and pedagogy, as specified in certification requirements, and other related job-specific performance standards and expectations;

(c) Occurs among educators who share responsibility for student growth;

(d) Is facilitated by school and district leaders, including curriculum specialists, principals, instructional coaches, competent and qualified third-party facilitators, mentors, teachers or teacher leaders;

(e) Focuses on individual improvement, school improvement, and program implementation; and

(f) Is on-going.

(5)(4) "Professional development program" means a sustained, coherent, relevant, and useful professional learning process that is measurable by indicators and provides professional learning and ongoing support to transfer that learning to practice.

Section 2. Each local school and district shall develop a process to design a professional development plan that meets the goals established in KRS 158.6451 and in the local needs assessment. A school professional development plan shall be incorporated into the school improvement plan and shall be made public prior to the implementation of the plan. The local district professional development plan shall be incorporated into the district improvement plan and posted to the local district Web site prior to the implementation of the plan.

Section 3. Each school and local district professional development plan shall contain the following ~~five (5)[six-(6)]~~ elements:

(1) A clear statement of the school or district mission;

(2) Evidence of representation of all persons affected by the professional development plan;

(3) A needs assessment analysis;

(4) Professional development objectives that are focused on the school or district mission, derived from needs assessment, and that specify changes in educator practice needed to improve student achievement; and

(5) A process for evaluating impact on student learning and improving professional learning, using evaluation results.

Section 4. (1) The school or district improvement plan shall, in compliance with 703 KAR 5:225 and aligned to the goals established in KRS 158.6451, address professional learning required to improve instruction.

(2) Professional development shall:

- (a) Be related to the teachers' instructional assignments and the administrators' professional responsibilities;
- (b) Be aligned with the school or district improvement plan or the individual professional growth plans of teachers;
- (c) Occur within learning communities committed to continuous improvement, collective responsibility, and goal alignment;
- (d) Be facilitated by skillful leaders who develop capacity and advocate and create support systems for professional learning;
- (e) Be prioritized and monitored by the district;
- (f) Use a variety of sources and types of student, educator, and system data to plan, assess, and evaluate professional learning;
- (g) Integrate theories, research, and models of human learning to achieve its intended outcomes;
- (h) Apply current research on systems change and sustain support for implementation of professional learning for long-term instructional improvement as evidenced by student growth;
- (i) Align its outcomes with educator performance and student curriculum standards; and
- (j) Focus resources on areas of identified need.

(3) Professional development shall not supplant any of the six (6) hour instructional day.

(4) A district may report flexible professional development on unpaid noncontact days. This shall require a district calendar change and the change shall be reported to the Department of Education.

(5) Professional development that relates to an individual professional growth plan may be used to satisfy the requirements for certification or renewal options as established by the Kentucky Education Professional Standards Board in Title 16 KAR.

(6)(a) Professional development grant dollars may reimburse college or graduate course tuition expended for a teacher to deepen content knowledge and content-specific pedagogy in math, science, English/language arts, social studies, arts and humanities, and practical living and career studies, if the teacher is assigned to teach in those areas.

(b) The use of professional development funds for tuition reimbursement shall be specified in the district improvement plan approved by the school board or the school plan approved by the school council as to funds under its control.

(c) Particular content areas and grade levels, which qualify for reimbursement, may be specified based upon information about the level of academic preparation of the teacher employed, local student performance data, and student learning needs.

(7) Professional development credit shall not be awarded for those experiences that provide remuneration beyond travel, food, lodging, or tuition.

(8) A school district implementing a flexible professional development schedule shall award professional development credit for any experience that addresses the goals of the school, the goals of the district improvement plan, or the individual professional growth plans of teachers.

(9) Parent-teacher conferencing skill development shall be permissible as a professional development experience.

Section 5. The Qualifications and Duties of the District Professional Development Coordinator. (1) Qualifications for the position of district professional development coordinator shall include:

- (a) A staff member meeting the certification requirement for a professional development coordinator as established by the Education Professional Standards Board in 16 KAR 4:010;
- (b) A demonstrated ability to work with schools to plan, design, implement, and evaluate professional development that aligns with the requirements of this administrative regulation; and
- (c) A demonstrated ability to work with schools to connect professional development with effective instructional practices and student achievement data.

(2) Duties of the district professional development coordinator shall include:

- (a) Facilitating analysis of student, educator, and system data to conduct the district professional development needs assessment;

(b) Coordinating the intradistrict alignment of professional learning to achieve identified goals and objectives for professional development;

(c) Building capacity of school leaders, school council members, and other school and district leaders to plan, access resources, implement, and evaluate professional learning;

(d) Disseminating professional development information to school councils, staff members, and professional development committees;

(e) Providing technical assistance to school councils on scheduling to allow for job embedded professional learning opportunities;

(f) Coordinating the planning, implementation, and evaluation of the district professional development plan that is aligned, supportive of, and developed in conjunction with school improvement plans;

(g) Coordinating the establishment of local policies, procedures, timetables, necessary forms and letters, assignment of workshop sites, and all other practical elements of professional development, including fiscal management;

(h) Maintaining, verifying, and, if appropriate, submitting district and school professional development records, documentation, and other pertinent information to the Department of Education;

(i) Explaining the district's professional development plan's objectives, results, and needs to school professionals, district staff, board members, civic and parent groups, teacher training institutions, and others, as requested;

(j) Maintaining contact with the Department of Education and other agencies involved in providing professional development; and

(k) Identifying, selecting, coordinating, and evaluating the services of third-party professional development providers.

Section 6. A maximum of fifteen (15) percent of the district's professional development grant may be used for administrative purposes.

Section 7. When implementing professional development plans under KRS 158.070, a local school or district shall adhere to its school or district improvement plan.

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).

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EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, January 13, 2021)

704 KAR 3:305. Minimum requirements for high school graduation.

RELATES TO: KRS 156.160(1)(a), (d), 158.140(6), 158.142, 158.645, 158.6451

STATUTORY AUTHORITY: KRS 156.070, 156.160(1)(a), (d), 158.140(6), 158.142

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board of Education to promulgate administrative regulations relating to the courses of study for the different grades and the minimum requirements for high school graduation. KRS 158.142(3)(b) requires the board to promulgate administrative regulations establishing requirements for early graduation from high school. The content standards for the courses of study are established in the Kentucky academic standards incorporated by reference in 704 KAR 3:303 and 704 KAR Chapter

8. This administrative regulation establishes the minimum requirements necessary for entitlement to a high school diploma.

Section 1. Definitions. (1) "Early graduation" means meeting the competency-based criteria established in this administrative regulation in three (3) academic years or less.

(2) "Early Graduation Certificate" means a certificate, awarded by the district and signed by the principal and superintendent, that shall make the recipient eligible for a scholarship award equal to one-half (1/2) of the state portion of the average statewide per pupil guaranteed base funding level, to be used at a Kentucky public two (2) year community and technical college or a Kentucky four (4) year public or non-profit independent institution accredited by the Southern Association of Colleges and Schools. [

~~(3) "Essential workplace ethics" as described in KRS 158.1413.~~

~~(4) "Graduation prerequisite" means the requirements which will demonstrate basic competence in reading and mathematics.~~

~~(5) "Graduation qualifier" means a criterion which students have to meet in order to qualify for high school graduation.~~

~~(6) "Individual Education Program" or "IEP" is defined in 707 KAR 1:002.]~~

~~(3)[(7)] "Individual Learning Plan" or "ILP" is defined in 704 KAR 19:002.~~

Section 2. (1) A district shall implement an advising and guidance process throughout the middle and high schools to provide support for the development and implementation of an individual learning plan for each student. The plan shall include career development and awareness and specifically address the content as provided in the Kentucky academic standards for career studies established in [704 KAR 3:303 and] 704 KAR Chapter 8. The individual learning plan shall not be a substitute for the statement of transition service needs for students with disabilities as provided in 707 KAR 1:320.

(2) A district shall develop a method to evaluate the effectiveness and results of the individual learning plan process. The evaluation method shall include input from students, parents, and school staff. As part of the evaluation criteria, the district shall include indicators related to the status of the student in the twelve (12) months following the date of graduation.

(3) A feeder middle school and a high school shall work cooperatively to ensure that each student and parent receives information and advising regarding the relationship between education and career opportunities. Advising and guidance shall include information about financial planning for postsecondary education.

(4) A school shall maintain each student's individual learning plan. The individual learning plan shall be readily available to the student and parent and reviewed and approved at least annually by the student, parents, and school officials.

(5) Beginning with a student's eighth grade year, the individual learning plan shall set learning goals for the student based on academic and career interests and shall identify required academic courses, electives, and extracurricular opportunities aligned to the student's postsecondary goals. The school shall use information from the individual learning plans about student needs for academic and elective courses to plan academic and elective offerings.

(6) The development of the individual learning plan for each student shall begin by the end of the sixth grade year and shall be focused on career exploration and related postsecondary education and training needs.

Section 3. (1) For students entering grade **9[nine (9)]** on or before the first day of the 2018-2019 academic year, each student in a public school shall have a total of at least twenty-two (22) credits for high school graduation.

(2) Those credits shall include the content standards as provided in the Kentucky academic standards, established in 704 KAR 3:303 and KAR Chapter 8.

(3) Additional standards-based learning experiences shall align to the student's individual learning plan and shall consist of

standards-based content.

(4) The required credits and demonstrated competencies shall include the following minimum requirements:

(a) Language arts - four (4) credits (English I, II, III, and IV) to include the content contained in the Kentucky academic standards for this content area and comply with the following:

1. Language arts shall be taken each year of high school; and

2. If a student does not meet the college readiness benchmarks for English and language arts as established by the Council on Postsecondary Education in 13 KAR 2:020, the student shall take an English and language arts transitional course or intervention, which is monitored to address remediation needs, before exiting high school;

(b) Social studies - three (3) credits to include the content contained in the Kentucky academic standards for this content area;

(c) Mathematics - three (3) credits to include the content contained in the Kentucky academic standards for this content area and include the following minimum requirements:

1. Algebra I, Geometry, and Algebra II. An integrated, applied, interdisciplinary, occupational, or technical course that prepares a student for a career path based on the student's individual learning plan may be substituted for a traditional Algebra I, Geometry, or Algebra II course on an individual student basis if the course meets the content standards in the Kentucky academic standards, established in 704 KAR 3:303 and 704 Chapter 8;

2. A mathematics course or its equivalent as determined by the district shall be taken each year of high school to ensure readiness for postsecondary education or the workforce;

3. Any mathematics course other than Algebra I, Geometry, or Algebra II shall be counted as an elective; and

4. If a student does not meet the college readiness benchmarks for mathematics as established by the Council on Postsecondary Education in 13 KAR 2:020, the student shall take a mathematics transitional course or intervention, which is monitored to address remediation needs, before exiting high school;

(d) Science - three (3) credits that shall incorporate lab-based scientific investigation experiences and include the content contained in the Kentucky academic standards for this content area;

(e) Health - one-half (1/2) credit to include the content contained in the Kentucky academic standards for this content area;

(f) Physical education - one-half (1/2) credit to include the content contained in the Kentucky academic standards for this content area;

(g) Visual and performing arts - one (1) credit to include the content contained in the Kentucky academic standards for this content area or a standards-based specialized arts course based on the student's individual learning plan;

(h) Academic and career interest standards-based learning experiences - seven (7) credits including four (4) standards-based learning experiences in an academic or career interest based on the student's individual learning plan; and

(i) Demonstrated performance-based competency in technology.

Section 4. (1) Beginning with students who enter grade **9[nine (9)]** on or after the first day of the 2019-2020 academic year, in order to receive a high school diploma, each student in a public school shall:

~~(a) Complete one or more of the following graduation qualifiers:~~

~~1. Satisfy precollege curriculum as established by the Council on Postsecondary Education in 13 KAR 2:020;~~

~~2. Achieve benchmark score as established by the Council on Postsecondary Education in 13 KAR 2:020 in one (1) section of a college admissions or placement examination;~~

~~3. Complete three (3) postsecondary credit hours or more of a Kentucky Department of Education approved dual credit course with a grade of C or higher;~~

~~4. Complete one (1) course and corresponding assessment meeting the following criteria:~~

~~a. Advanced placement (AP) with a score of three (3) or~~

higher;

b. Cambridge Advanced International (CAI) with a score at E or higher; or

c. International baccalaureate (IB) with a score of five (5) or higher;

5. Obtain an industry certification as approved by the Kentucky Workforce Innovation Board;

6. Complete four (4) credits from valid courses within a single Kentucky Department of Education approved career pathway;

7. Complete a Kentucky Department of Education approved process to verify 500 hours of exceptional work experience, or alternative requirements as determined by a student's Admissions and Release Committee and specified in the student's IEP;

8. Complete two (2) years in an approved Kentucky Department of Education or Kentucky Labor Cabinet pre-apprenticeship or apprenticeship program; and

(b) Earn a total of at least twenty-two (22) credits for high school graduation.[

(2) Beginning with students who enter grade nine (9) on or after the first day of the 2020-2021 academic year, in order to receive a high school diploma, each student in a public school shall:

(a) Complete one (1) or more of the following graduation qualifiers:

1. Satisfy precollege curriculum as established by the Council on Postsecondary Education in 13 KAR 2:020;

2. Achieve benchmark score as established by the Council on Postsecondary Education in 13 KAR 2:020 in one (1) section of a college admissions or placement examination;

3. Complete three (3) postsecondary credit hours or more of a Kentucky Department of Education approved dual credit course with a grade of C or higher;

4. Complete one (1) course and corresponding assessment meeting the following criteria:

a. Advanced placement (AP) with a score of three (3) or higher;

b. Cambridge Advanced International (CAI) with a score of E or higher; or

c. International baccalaureate (IB) with a score of five (5) or higher;

5. Obtain an industry certification as approved by the Kentucky Workforce Innovation Board;

6. Complete four (4) credits from valid courses within a single Kentucky Department of Education approved career pathway;

7. Complete a Kentucky Department of Education approved process to verify 500 hours of exceptional work experience, or alternative requirements as determined by a student's Admissions and Release Committee and specified in the student's IEP;

8. Complete two (2) years in an approved Kentucky Department of Education or Kentucky Labor Cabinet pre-apprenticeship or apprenticeship program; and

(b) Meet one (1) of the following graduation prerequisites for reading and one (1) of the following graduation prerequisites for mathematics:

1. Score at or above the minimum criteria on the tenth-grade state-required assessments in reading or mathematics;

a. The minimum criteria shall include earning a scale score in the apprentice student performance level or higher as approved by the Kentucky Board of Education;

b. Students who do not meet the minimum criteria on one or both of the reading or mathematics assessments may retake the assessments twice annually in the eleventh and twelfth grades of high school enrollment;

c. The student's first completion of the assessments in grade ten (10) shall contribute to the school's accountability rating; or

2. Score proficient or higher for reading or mathematics on the eighth grade state required assessment; or

3. A student collection of evidence submitted by the principal to the superintendent or designee for review and approval, or in the case of a public charter school submitted by the principal to the Commissioner of Education or designee. The collection of evidence shall include the following:

a. The student's ILP that includes student transcript;

b. If applicable, for students with IEPs, evidence that the student has achieved progress on measurable annual IEP goals as determined by the Admissions and Release Committee;

c. Performance on the tenth-grade state-required assessments in reading or mathematics;

d. Appropriate interventions, targeted to the student's needs, provided to the student to ensure support was provided toward meeting the requirements outlined in this administrative regulation;

e. Student work demonstrating the students' competency in reading or mathematics; and

f. The student's post-graduation plans.

(c) Earn a total of at least twenty-two (22) credits for high school graduation.].

(2) [(3)] The required credits shall include the content standards as provided in the Kentucky academic standards, established in 704 KAR 3:303 and 704 KAR Chapter 8.

(3) [(4)] Additional standards-based learning experiences shall align to the student's individual learning plan and shall consist of standards-based content.

(4) [(5)] Each student shall be required to complete the following foundational credits and demonstrated competencies, consisting of ten (10) credits:

(a) English/language arts - two (2) credits (English I and II) to include the content contained in the Kentucky academic standards for this content area;

(b) Social studies - two (2) credits to include the content contained in the Kentucky academic standards for this content area;

(c) Mathematics - two (2) credits (Algebra I and Geometry) to include the content contained in the Kentucky academic standards for this content area;

(d) Science - two (2) credits that shall incorporate lab-based scientific investigation experiences and include the content contained in the Kentucky academic standards for this content area;

(e) Health - one-half (1/2) credit to include the content contained in the Kentucky academic standards for this content area;

(f) Physical education - one-half (1/2) credit to include the content contained in the Kentucky academic standards for this content area; and

(g) Visual and performing arts - one (1) credit to include the content contained in the Kentucky academic standards for this content area or a standards-based specialized arts course based on the student's individual learning plan.

(5) [(6)] In addition to the foundational requirements established in subsection (4) [(5)] of this Section, every student shall earn a minimum of twelve (12) personalized credits in order to receive a high school diploma. These twelve (12) personalized credits shall include:

(a) Two (2) additional English/Language Arts credits that include the content contained in the Kentucky academic standards for this content area and are aligned to the student's individual learning plan;

(b) Two (2) additional mathematics credits that include the content contained in the Kentucky academic standards for this content area and are aligned to the student's individual learning plan; (c) One (1) additional science credit that includes the content contained in the Kentucky academic standards for this content area and is aligned to the student's individual learning plan; (d) One (1) additional social studies credit that includes the content contained in the Kentucky academic standards for this content area and is aligned to the student's individual learning plan; (e) Academic and career interest standards-based learning experiences - six (6) credits including four (4) standards-based learning experiences based on the student's individual learning plan;

(f) Demonstrate performance-based competency in technology as approved by the Kentucky Department of Education;

(g) Pass a civics test as required by KRS 158.141; and

(h) Beginning with students entering grade 9[nine (9)] on or after the first day of the 2020-2021 academic year, successfully complete one (1) or more courses or programs that meet the

financial literacy requirements pursuant to KRS 158.1411 and standards as established in 704 KAR Chapter 8[by the Kentucky Board of Education].]

~~(7) Districts shall report individual student data regarding the completion of each graduation qualifier and each graduation prerequisite to the Kentucky Department of Education which may be included in aggregate public reporting.~~

~~(8) The provisions of subsections (3) through (7) of this Section shall apply to all students referenced in subsections (1) and (2) of this Section.]~~

Section 5. (1) Only students who meet the criteria established in this section shall be eligible for early graduation.

(a) Those students who meet the criteria for early graduation shall receive from the school district a diploma and an Early Graduation Certificate.

(b) Students wishing to graduate early shall indicate that intent to the school principal at the beginning of grade 9 or as soon as the intent is known, but within the first thirty (30) school days of the academic year in which they wish to graduate.

(c) A student's intent to graduate early shall be entered into the student information system by the school district by October 1 of the year in which the student makes the declaration.

(d) Students working toward early graduation and receipt of a corresponding Early Graduation Certificate shall be supported by development and monitoring of an individual learning plan to support their efforts.

(2) To graduate early and earn an Early Graduation Certificate, a student shall:

(a) Score proficient or higher on the state-required assessments required by the Kentucky Board of Education in 703 KAR 5:200; and

(b) Meet the college readiness exam benchmarks established by the Council on Postsecondary Education in 13 KAR 2:020 for placement in credit-bearing courses without the need for remediation.

(3) A student who has indicated an intent to graduate early may participate in the student's state administration of the college readiness exam prior to the junior year, if needed.

Section 6. (1) A local board of education may substitute an integrated, applied, interdisciplinary, occupational, technical, or higher level course for a required course if the alternative course provides rigorous content.

(2) For students with disabilities, a local board of education may substitute a functional, integrated, applied, interdisciplinary, occupational, technical, or higher level course for a required course if the alternative course provides rigorous content. These shall be based on grade-level content standards and may be modified to allow for a narrower breadth, depth, or complexity of the general grade-level content standards.

Section 7. (1) A local board of education may award credit toward high school graduation for satisfactory demonstration of learning based on content standards described in the Kentucky academic standards, established in 704 KAR 3:303 and 704 KAR Chapter 8, and a rigorous performance standards policy established by the local board of education. A school shall establish performance descriptors and evaluation procedures to determine if the content and performance standards have been met.

(2) A local board of education shall award credit toward high school graduation based on:

(a) A standards-based Carnegie unit credit that shall consist of at least 120 hours of instructional time in one (1) subject; or

(b) A performance-based credit based on standards, regardless of the number of instructional hours in one (1) subject.

(3) A local board of education which has chosen to award performance-based credit shall award a standards-based credit earned by a student enrolled in grade 5, 6, 7, or 8 if:

(a) The content of the course is the same as that described in the Kentucky academic standards, established in 704 KAR 3:303 and 704 KAR Chapter 8; and

(b) The district has criteria in place to make a reasonable determination that the middle level student is capable of success in the high school course.

(4) A local board of education which has chosen to award performance-based credit shall establish a policy for a performance-based credit system that includes:

(a) The procedures for developing performance-based credit systems and for amending the system;

(b) The conditions under which each high school may grant performance-based credits and the related performance descriptors and assessments;

(c) Objective grading and reporting procedures;

(d) Content standards established in 704 KAR 3:303 and 704 KAR Chapter 8;

(e) The extent to which state-provided assessments will be used in the local performance-based credit system;

(f) The ability for students to demonstrate proficiency and earn credit for learning acquired outside of school or in prior learning; and

(g) Criteria to ensure that internships, cooperative learning experiences, and other learning experiences in the school and community are:

1. Designed to further student progress towards the individual learning plan;

2. Supervised by qualified instructors; and

3. Aligned with state and local content and performance standards.

(5) A board of education may award standards-based, performance-based credit toward high school graduation for:

(a) Standards-based course work that constitutes satisfactory demonstration of learning in any high school course, consistent with Sections 3 and 4 of this administrative regulation;

(b) Standards-based course work that constitutes satisfactory demonstration of learning in a course for which the student failed to earn credit when the course was taken previously;

(c) Standards-based portfolios, senior year, or capstone projects;

(d) Standards-based online or other technology mediated courses;

(e) Standards-based dual credit or other equivalency courses; or

(f) Standards-based internship, cooperative learning experience, or other supervised experience in the school or the community.

(6) Each local board of education shall maintain a copy of its policy on high school graduation requirements. This policy shall include a description of how the requirements address KRS 158.6451(1)(b) and 703 KAR 4:060.

Section 8. (1) A student who satisfactorily completes the requirements of this administrative regulation and additional requirements as may be imposed by a local board of education or meets the requirements for early graduation established in Section 5 of this administrative regulation shall be awarded a graduation diploma.

(2) A local board ~~shall~~[may] not adopt any high school graduation requirements that include achieving a minimum score on a statewide assessment as established in KRS 158.140.

(3) The local board of education shall award the diploma.

Section 9. This administrative regulation shall not be interpreted as prohibiting a local governing board, superintendent, principal, or teacher from awarding special recognition to a student.

Section 10. (1) If the severity of an exceptional student's disability precludes a course of study that meets the high school graduation requirements established in Sections 3 and 4 of this administrative regulation leading to receipt of a high school diploma, an alternative course of study shall be offered.

(2) This course of study shall be based upon student needs and the provisions established in 704 KAR 3:303 and 704 KAR Chapter 8, and shall be reviewed at least annually.

(3) A student who completes this course of study shall receive

an alternative high school diploma to be awarded by the local board of education consistent with the graduation practices for all students.

(4) A local board of education may establish policies to award an alternative high school diploma to a former student who has received a certificate or certificate of attainment.

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).

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EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, January 13, 2021)

704 KAR 3:325. Effective Instructional Leadership Act.

RELATES TO: KRS 156.101

STATUTORY AUTHORITY: KRS 156.029(7), 156.070, 156.101

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.029(7) requires the Board of Education to develop policies and to promulgate administrative regulations by which the Department of Education shall be governed. KRS 156.070 authorizes the Board of Education to promulgate administrative regulations necessary for the efficient management, control, and operation of the schools and programs under its jurisdiction. KRS 156.101 requires the Kentucky Board of Education to establish specific criteria for implementing a statewide instructional leader improvement program for employees of the public schools holding valid certificates and performing responsibilities in a position for which administration certification is required by the Education Professional Standards Board pursuant to 704 KAR Chapter 20. This administrative regulation establishes criteria for the program.

Section 1. Definitions. (1) "Conference" means a scheduled professional training opportunity, sponsored by a state or national educational organization or a training provider, at which a variety of instructional leadership topics are available for participant attendance.

(2) ~~["Cycle" means a twenty-four (24) month period beginning with July 1 of even-numbered years and ending June 30 of even-numbered years.~~

~~(3)] "School year" means a twelve (12) month period beginning July 1 and ending June 30.~~

~~(3)](4)] "Training provider" means an established educational organization, local school district, or private educational consultant who sponsors training programs.~~

Section 2. (1) Participation in the program shall be required for a certified and employed instructional leader.

(2) To fulfill the requirements of KRS 156.101, an instructional leader shall obtain the approval of the local superintendent or designee if selecting specific training offerings from the state-approved directory or if attending education-related conferences.

~~(3)](a) Until June 30, 2006, every two (2) years, a local school district shall send a verification statement to the Kentucky Department of Education and the Education Professional Standards Board, recording the names of all instructional leaders, their position titles, their Social Security numbers, the dates they entered the two (2) year cycle, and the number of hours of training obtained during the two (2) year cycle.~~

~~(b)] Beginning July 1, 2006, a local district shall keep on file documentation of compliance with KRS 156.101(4) for each instructional leader employed by the school district, including a~~

copy of all training certificates. Beginning August 30, 2007 and by August 30 each year thereafter, the local school district shall report to the Kentucky Department of Education the name of any instructional leader who fails to complete the twenty-one (21) hours of training required under KRS 156.101, the individual's position title, Social Security number, and the number of hours which were completed.

(4) All certificates shall be kept on file for three (3) years by each local district for each participant. If a participant becomes employed by another district, the original file shall be sent to the instructional leader and a duplicate copy to the new employing district.

Section 3. (1) Instructional leaders shall participate in a training program designed to improve and maintain the quality and effectiveness of instructional leadership in the public schools of the Commonwealth. Agencies, institutions, education cooperatives, local school districts, and private educational consultants who qualify as training providers may be approved by the Kentucky Department of Education to design, implement, and evaluate the training. Specific training approved within the program by the Department of Education shall be:

(a) Intensive and designed specifically for instructional leaders. Participation shall occur during the contract period including extended employment, if applicable. Training shall be scheduled so as to minimize disruption of the instructional program of the district;

(b) Competency-based, specifying the instructional leadership competencies to be mastered by participants. Competencies shall have applicability for improving the effectiveness of the instructional leader or be role-specific. The design of the activities shall consider the participant's stage of professional development;

(c) Comprehensive in nature and shall meet identified needs based upon the personnel evaluation, the individual professional growth plan, and self-assessments of the instructional leaders; and

(d) Evaluated for approval in terms of program content, instructional processes, and impact upon participants.

(2)(a) An instructional leader may count attendance at education conferences up to six (6) hours of credit each school year. An instructional leader shall provide verification of attendance at education conferences to be filed with the local school district.

(b) An instructional leader shall receive three (3) participant-hours credit for duties performed by serving on one (1) beginning teacher committee established under KRS 161.030(6), and the instructional leader shall receive a maximum six (6) hours if the individual serves on more than one (1) committee.

~~(3)](a) Until June 30, 2006, an instructional leader whose effective date of employment is within the second half of a school year shall complete a prorated requirement of twenty-one (21) hours of leadership training.~~

~~(b)] If an instructional leader is employed for 100 days in the same position during a school year, the individual shall complete the required training.~~

(4) A participant's verification of attendance at approved Effective Instructional Leadership Training sessions and programs and copies of program certificates shall be recorded with the professional development coordinator of the instructional leader's school district no later than June 30 of each year.

(5) Excess hours, not to exceed twelve (12) earned by a participant during the thirty (30) day period of June 1 through June 30, may be credited toward required hours for the next school year.

Section 4. The training program content shall consist of specific competencies identified in the Professional Standards for Educational Leaders as incorporated by reference in 704 KAR 3:370[Standards and Indicators for School Improvement established in 703 KAR 5:120].

Section 5. The training provider shall:

(1) Develop programs that meet all the criteria identified in Sections 3 and 4 of this administrative regulation;

(2) Select program faculty who have adequate, pertinent training and education, appropriate experience, and the ability to instruct effectively;

(3) Meet identified needs consistent with those listed in the Professional Standards for Educational Leaders as incorporated by reference in 704 KAR 3:370[Standards and Indicators for School Improvement established in 703 KAR 5:120];

(4) Conduct training as set forth in its proposal and as approved by the Kentucky Department of Education;

(5) Award a participant a certificate of attendance that includes the providers approval number and the number of hours completed; and

(6) Evaluate the training in terms of its content, instructional processes, impact upon the professional behavior of participants, and improved student learning.

Section 6. (1) The Department of Education shall approve training activities and providers, and maintain and communicate a directory of approved activities and providers.

(2) The Department of Education may revoke the approval of any training program not in compliance with this administrative regulation and may delete the program.

Section 7. (1) Approval of a training program shall be granted for a period of one (1) year.

(2) Approval as a provider shall be based upon:

(a) Submission of a provider's training program proposal to the Department of Education at least thirty (30) days prior to the initial presentation of the training activity; and

(b) Content consistent with the Professional Standards for Educational Leaders as incorporated by reference in 704 KAR 3:370[Standards and Indicators for School Improvement established in 703 KAR 5:120].

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

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

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Kentucky Board of Education

Kentucky Department of Education

(As Amended at ARRS, January 13, 2021)

704 KAR 8:100. Kentucky Academic Standards for Library Media Elective.

RELATES TO: KRS 156.070, 156.160, 156.850, 158.102, 158.645, 158.6451, [156.850, 158.102,] 158.791, 160.290, 704 KAR 3:305

STATUTORY AUTHORITY: 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires the Kentucky Board of Education to establish courses of study for the different grades and kinds of common schools, with the courses of study to comply with the expected goals, outcomes, and assessment strategies developed under KRS 158.645 and 158.6451. KRS 156.070(1) requires the Kentucky Board of Education to manage and control the common schools and all programs operated in the schools. KRS 160.290 authorizes local boards of education to provide for courses and other services for students consistent with the administrative regulations of the Kentucky Board of Education. KRS 156.850 requires compliance with federal provisions and acts relating to vocational education. KRS 158.102 requires boards of education for each local school district to establish and maintain library media centers in every school to promote information literacy, technology in the curriculum, and to facilitate teaching, student achievement, and lifelong learning. KRS 158.791 details the provision of high-quality library media programs to support reading proficiency. This administrative regulation incorporates by reference the Kentucky

Academic Standards for Library Media, which contain the general courses of study and academic content standards of library media for use in Kentucky's common schools.

Section 1. Public schools offering a library media program shall meet the minimum content requirements established in the Kentucky Academic Standards for Library Media Elective.

Section 2. Incorporation by Reference. (1) The "Kentucky Academic Standards for Library Media Elective", October 2020, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, 5th floor, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

CONTACT PERSON: Todd Allen, General Counsel, Kentucky Department of Education, 300 Sower Boulevard, 5th Floor, Frankfort, KY 40601, phone (502) 564-4474, fax (502) 564-9321, email: regcomments@education.ky.gov.

PUBLIC PROTECTION CABINET

Department of Insurance

Consumer Protection Division

(As Amended at ARRS, January 13, 2021)

806 KAR 2:095. Accounting and reporting requirements for collecting local government premium tax.

RELATES TO: KRS 91A.080, 304.10-120[304.4-010]

STATUTORY AUTHORITY: KRS 91A.080(4), 304.2-110(1), 304.4-010

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 as established[defined] in KRS 304.1-010. [KRS 304.2-110 authorizes the Commissioner of Insurance to make reasonable rules and administrative regulations necessary for and as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010.] KRS 91A.080(4) requires the department to promulgate[Commissioner of Insurance to adopt] administrative regulations for the collection and reporting of local government premium taxes. This administrative regulation establishes requirements for the accounting and reporting procedures to be used for the collection and reporting of a local government premium tax.

Section 1. Definitions. (1) ["Agent" is established][defined][by KRS 304.9-020(1)].

(2) "Commissioner" is defined[established][defined] by KRS 304.1-050(1).

(2) [(3)] "Insurance company" shall mean [means]: (a) An entity holding a certificate of authority in accordance with KRS Subtitle 304.3[Chapter 304, Subtitle 3]; and (b) A surplus lines broker licensed in accordance with KRS 304.10-120.

(3) [(4)] "Local government" is defined[established][defined] by KRS 91A.080(2)[1].

(4) [(5)] "Local government premium tax" shall mean [means] a tax or license fee levied pursuant to KRS 91A.080.

Section 2. Quarterly Payment and Reporting of Local Government Premium Taxes. (1) Each insurance company with local government premium tax liability shall make payment of its tax liability based on premiums actually collected within a calendar quarter. Payment shall be made to each local government within thirty (30) days of the end of each calendar quarter [,] and shall be

accompanied by ~~[a report in the following format]:~~

- (a) 1. Form LGT-141, City, County, or Urban County Government Quarterly Insurance Premium Tax Return; and
2. Form LGT-142, City Credit Against County Taxes; or
- (b) A form containing the same information as substantially similar to Form LGT-141 and LGT-142.

(2) A copy of the report required in subsection (1) of this section shall not be filed with the commissioner.

Section 3. Annual Reports. (1) By March 31 of each year, an insurance company shall submit to:

(a) ~~[Submit to]~~ Furnish Each local government to which local government premium taxes have been paid during the preceding calendar year, a report on the local government premium taxes paid during the preceding calendar year on/in the following format:

- 1.a. Form LGT-140, City, County, or Urban County Government Insurance Premium Tax Annual Reconciliation; and
- b. Form LGT-142, City Credit Against County Taxes; or
2. A form substantially similar to Form LGT-140; and
- (b) ~~[Submit to]~~ The department a report on the local government premium taxes paid during the preceding calendar year, accompanied by a fee of five (5) dollars per insurance company, through the [:

1. The Department of Insurance Web site, <https://insurance.ky.gov/doeservices/UserRole.aspx> [<https://insurance.ky.gov/kentucky/secured/Eservices/default.aspx>; or 2. File Transfer Protocol through prior arrangement with the Department of Insurance].

(2)(a) If an insurance company does not have any local government premium tax liability for the preceding calendar year, the insurance company shall submit a report to the department in accordance with subsection (1)(b) of this section.

(b) The report[reports] required by paragraph (a) of this subsection shall be required if the insurance company held an active license or certificate of authority at any time during the preceding calendar year.

Section 4. Each insurance company shall maintain records adequate to support the reports required by this administrative regulation.

Section 5. Each insurance company shall file the reports required by this administrative regulation. Reports required by this administrative regulation and filed on a group basis shall not be acceptable.

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

- (a) Form LGT-140, "City, County, or Urban County Government Insurance Premium Tax Annual Reconciliation", 1/2012;
 - (b) Form LGT-141, "City, County, or Urban County Government Quarterly Insurance Premium Tax Return", 1/2012; and
 - (c) Form LGT-142 "City Credit Against County Taxes", 1/2012.
- (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, 2 SE 11, [215 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 [website] 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.

PUBLIC PROTECTION CABINET

Department of Insurance

Consumer Protection Division

(As Amended at ARRS, January 13, 2021)

806 KAR 10:030. Surplus lines reporting and tax payment structure.

RELATES TO: KRS 304.1-070, 304.10-030, 304.10-040, ~~[304.10-050, 304.10-170]~~, 304.10-180, 304.99-085

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.10-050, 304.10-170, 304.10-210,

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 as established[defined] in KRS 304.1-010. ~~[KRS 304.2-110 authorizes the commissioner to make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code.]~~ KRS 304.10-050 requires a surplus lines broker to file an affidavit setting forth facts from which it can be determined if the/whether such insurance was eligible for export under KRS 304.10-040. KRS 304.10-170 requires the commissioner to establish[established] ~~[prescribe]~~ the form of the verified statement of all surplus lines transactions for a preceding calendar quarter. KRS 304.10-210 requires the commissioner to promulgate administrative regulations to effectuate the Surplus Lines Law. This administrative regulation establishes[provides for] the reporting procedures to be used by surplus lines brokers for the reporting and payment of surplus lines tax pursuant to KRS 304.10-170 and 304.10-180.

Section 1. Affidavit Reporting.

(1) A licensed surplus broker shall file electronically a Kentucky Surplus Lines Affidavit of Insurance Transactions with the department within fifteen (15) days after the invoice date or effective date of each premium bearing surplus lines transaction, whichever occurs later.

(2) The affidavit shall be filed electronically through the Department of Insurance's secure Web site at <https://insurance.ky.gov/doeservices/UserRole.aspx> [[http://insurance.ky.gov/kentucky/secured/Eservices/default.aspx](https://insurance.ky.gov/kentucky/secured/Eservices/default.aspx)].

Section 2. Quarterly Reporting and Payment of Surplus Lines Premium Taxes for Insurance Transactions.

(1) The department shall generate a quarterly report of all surplus lines transactions reported in a preceding calendar quarter, for each surplus lines broker based on the affidavits filed in accordance with Section 1 of this administrative regulation.

(2) The department shall make the quarterly report available to a licensed surplus lines broker on its secure Web site at <https://insurance.ky.gov/doeservices/UserRole.aspx> [<https://insurance.ky.gov/kentucky/secured/Eservices/default.aspx>; thirty (30) days following the end of each calendar quarter].

(3) Each licensed surplus lines broker shall:

(a) Reconcile the surplus lines taxes owed on the quarterly report with the broker's own records;

(b) Notify the department of any discrepancy in surplus lines taxes owed; and

(c) Pay all surplus lines premium tax and any applicable penalties owed pursuant to KRS 304.99-085 within thirty (30) days of the end of the calendar quarter [date of the quarterly report].

(4) Surplus lines premium tax shall be:

(a) Computed at the rate of three (3) percent on the premiums, assessments, fees, charges, or other consideration deemed part of the premium as shown on the quarterly report;

(b) Payable to the Kentucky State Treasurer; and

(c) Remitted to the Kentucky Department of Insurance electronically through the department's secure Web site at

<https://insurance.ky.gov/doeservices/UserRole.aspx>
[<http://insurance.ky.gov/kentucky/secured/Eservices/default.aspx>].

(5) Agencies paying a surplus lines premium tax on behalf of a broker shall submit payment electronically through the broker's Eservices account using the department's secure Web site at <https://insurance.ky.gov/doeservices/UserRole.aspx> [<http://insurance.ky.gov/kentucky/secured/Eservices/default.aspx>].

(6) The department shall consider the payment of the surplus lines premium tax and any applicable penalty to be the submission of the broker's quarterly report and verified statement of transactions.

Section 3. Effective Date. ~~This~~**[The]** administrative regulation shall be effective beginning with the calendar quarter beginning July 1, 2021 [2019].

Section 4. Incorporation by Reference. (1) "Kentucky Surplus Lines Affidavit of Insurance Transaction", May 2019, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained on the department's secure Web site at https://insurance.ky.gov/doeservices/UserRole.aspx. [Section

4. Incorporation by Reference. (1) "Kentucky Surplus Lines Affidavit of Insurance Transactions", May 2019, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. The material is also available on the department's secure Web site at <https://insurance.ky.gov/doeservices/UserRole.aspx> <http://insurance.ky.gov/kentucky/secured/Eservices/default.aspx>].

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
Life and Health Division
(As Amended at ARRS, January 13, 2021)**

806 KAR 12:010. Advertising.

RELATES TO: KRS ~~[304.1-010]~~**[304.3-240]**, 304.12-010, 304.12-020, 304.12-060, 304.12-120, 304.12-130**[,]**

STATUTORY AUTHORITY: KRS 304.2-110**(1)**

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 as **established[defined]** in KRS 304.1-010. [KRS 304.2-110 provides that the Executive Director of Insurance shall make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code.] This administrative regulation clarifies the minimum standards for advertising as **established[set forth]** in KRS 304.12-010 and 304.12-020.

Section 1. **Definitions. (1) "Exception" means:**

(a) Any provision in a policy in which coverage for a specified hazard is entirely eliminated; and

(b) A statement of risk not assumed under the policy.

(2) "Limitation" means any provision that restricts coverage under the policy other than an exception or a reduction.

(3) "Reduction" means:

(a) Any provision that reduces the amount of the benefit; and

(b) A risk of loss is assumed but payment upon the occurrence of the loss is limited to some amount or period less than would be otherwise payable had the reduction clauses not been used.

Section 2. (1) An **insurance** advertisement for the purpose of **this administrative regulation**~~[the advertisement regulations]~~ shall include:

(a) Printed and published material and descriptive literature of an insurer used in newspapers, magazines, radio and TV scripts, **and** billboards and similar displays; **and**

(b) Descriptive literature and ~~[the]~~**[the]** sales aids of all kinds issued by an insurer for presentation to members of the public, including ~~[but not limited to]~~**[but not limited to]** circulars, leaflets, booklets, depictions, illustrations, and form letters; and

(c) Prepared sales talks, presentations and material for use by agents and brokers, and representations made by agents and brokers [in accordance therewith].

(2) Policy for the purpose of the advertisement regulations shall include any policy, plan, certificate, contract, agreement, statement of coverage, rider, or endorsement ~~that~~**[which]** provides accident or sickness benefits or medical, surgical, or hospital expense benefits, whether on a cash indemnity, reimbursement, or service basis, except ~~if~~**[when]** issued in connection with another kind of insurance other than life, and except disability and double indemnity benefits included in life insurance and annuity contracts.

(3) Insurer for the purpose of the advertisement regulations shall include any corporation, association, partnership, reciprocal exchange, interinsurer, Lloyds, fraternal benefit society, and any other legal entity engaged in the advertisement of a policy [as herein defined].

Section **3.[2.] This administrative regulation**~~[The advertisement regulations]~~ shall apply to agents and brokers to the extent that **an agent and broker**~~[they]~~ are responsible for the advertisement of any policy.

Section **4.[3.]** (1) Advertisements shall be truthful and not misleading in fact or in implication. Words or phrases, the meaning of which is clear only by implication or by familiarity with insurance terminology, shall not be used.

(2) Words, phrases, or illustrations shall not be used in a manner ~~that~~**[which]** misleads or has the capacity and tendency to deceive as to the extent of any policy benefit payable, loss covered, or premium payable. An advertisement relating to any policy benefit payable, loss covered, or premium payable shall be sufficiently complete and clear ~~[as]~~**[as]** to avoid deception or the capacity and tendency to deceive. ~~[, to wit:]~~

(a) The words and phrases "all," "full," "complete," "comprehensive," "up to," "as high as," "this policy will pay your hospital and surgical bills," or "this policy will replace your income," or similar words and phrases shall not be used so as to exaggerate any benefit beyond the terms of the policy, ~~and~~**[but]** may be used only in **a[such]** manner ~~that~~**[as]** fairly describes **a[such]** benefit.

(b) A policy covering only one (1) disease or a list of specified diseases shall not be advertised ~~[so]~~ as to imply coverage beyond the terms of the policy. Synonymous terms shall not be used to refer to any disease ~~[so]~~ as to imply broader coverage than is the fact.

(c) The benefits of a policy ~~that~~**[which]** pays varying amounts for the same loss occurring under different conditions or ~~that~~**[which]** pays benefits only ~~if~~**[when]** a loss occurs under certain conditions shall not be advertised without disclosing the limited conditions under which the benefits referred to are provided by the policy.

(d) Phrases similar to ~~[such as]~~ "this policy pays \$1,800 for hospital room and board expenses" **shall befare]** incomplete without indicating the maximum daily benefit and the maximum time limit for hospital room and board expenses.

(3) ~~if~~**[When]** an advertisement refers to any dollar amount, period of time for which any benefit is payable, cost of policy, or

specific policy benefit or the loss for which a[such] benefit is payable, it shall also disclose those exceptions, reductions, and limitations affecting the basic provisions of the policy without which the advertisement would have the capacity and tendency to mislead or deceive. [; to wit:]

(a) ~~If [The term "exception" shall mean any provision in a policy where] [whereby] [coverage for a specified hazard is entirely eliminated; it is a statement of risk not] [no] [assumed under the policy.~~

(b) ~~The term "reduction" shall mean any provision which reduces the amount of the benefit; a risk of loss is assumed but payment upon the occurrence of such loss is limited to some amount or period less than would be otherwise payable had the~~ [such] ~~reduction clause not been used.~~

(c) ~~The term "limitation" shall mean any provision which restricts coverage under the policy other than an exception or a reduction.~~

(d) ~~When~~ a policy contains a time period between the effective date of the policy and the effective date of coverage under the policy or a time period between the date of coverage under the policy or a time period between the date a loss occurs and the date benefits begin to accrue for the[such] loss, an advertisement shall disclose the existence of the[such] periods.

(b)(e) An advertisement shall disclose the extent to which any loss is not covered if the cause of the[such] loss is traceable to a condition existing prior to the effective date of the policy. If [When] a policy does not cover losses traceable to preexisting conditions, the [no] advertisement of the policy shall not state or imply that the applicant's physical condition or medical history will not affect the issuance of the policy or payment of a claim [thereunder]. This shall limit[limits] the use of phrase "no medical examination required" and similar phrases [of similar import].

Section 5.[4.] An advertisement that[which] refers to renewability, cancelability, or termination of a policy, that[for which] refers to a policy benefit, or that[which] states or illustrates time or age in connection with eligibility of applicants or continuation of the policy, shall disclose the provisions relating to renewability, cancelability, and termination and any modification of benefits, losses covered or premiums because of age or for other reasons, in a manner that[which] shall not minimize or render obscure the qualifying conditions.

Section 6.[5.] All information required to be disclosed by this administrative regulation[the advertisement regulations] shall be stated[set out] conspicuously and in close conjunction with the statements to which the [such] information relates or under appropriate captions of [such] prominence that [is] shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the context of the advertisement so as to be confusing or misleading.

Section 7.[6.] Testimonials used in advertisements shall [must] be genuine, represent the current opinion of the author, be applicable to the policy advertising, and be accurately reproduced. The insurer, in using a testimonial shall make [makes] as its own all of the statements contained in the advertisement [therein], and all the advertisement including the [such] statements shall be [is] subject to all of the provisions of this administrative regulation [the advertisement regulations].

Section 8.[7.] An advertisement relating to the dollar amounts of claims paid, the number of persons insured, or similar statistical information relating to any insurer or policy shall not be used unless it accurately reflects all of the relevant facts. The [Such] advertisement shall not imply that [such] statistics are derived from the policy advertised unless that [such] is the fact.

Section 9.[8.] An offer in an advertisement of free inspection of a policy or offer of a premium refund shall not be [is not] a cure for misleading or deceptive statements contained in the [such] advertisement.

Section 10.[9.] (1) ~~If[When]~~ a choice of the amount of benefits is referred to, an advertisement shall disclose that the amount of benefits provided depends upon the plan selected and that the premium will vary with the amount of the benefits.

(2) ~~If[When]~~ an advertisement refers to various benefits that could[which may] be contained in two (2) or more policies, other than group master policies, the advertisement shall disclose that the[such] benefits are provided only through a combination of the[such] policies.

Section 11.[10.] An advertisement shall not directly or indirectly make unfair or incomplete comparisons of policies or benefits or otherwise falsely disparage competitors, [their] policies, services, or business methods.

Section 12.[11.] (1) An advertisement that[which] is intended to be seen or heard beyond the limits of the jurisdiction in which the insurer is licensed shall not imply licensing beyond these limits.

(2) Advertisements [Such advertisements] by direct mail insurers shall indicate that the insurer is licensed in a specified state or states only, or is not licensed in a specified state or states, by use of [some] language similar to [such as] "This company is licensed only in State A" or "This company is not licensed in State B."

Section 13.[12.] The identity of the insurer shall be made clear in all of the insurers [its] advertisements. An advertisement shall not use a trade name, service mark, slogan, symbol, or other device that[which] has the capacity and tendency to mislead or deceive as to the true identity of the insurer.

Section 14.[13.] An advertisement of a particular policy shall not state or imply that prospective policyholders become group or quasi-group members and as members [such] enjoy special rates or underwriting privileges, unless that [such] is the fact.

Section 15.[14.] An advertisement shall not state or imply that a particular policy or combination of policies is an introductory, initial, or special offer and that the applicant shall [will] receive advantages by accepting the offer, unless that [such] is the fact.

Section 16.[15.] (1) An advertisement shall not state or imply that an insurer or a policy has been approved or an insurer's financial condition has been examined and found to be satisfactory by a governmental agency, unless that [such] is the fact.

(2) An advertisement shall not state or imply that an insurer or a policy has been approved or endorsed by any individual, group of individuals, society, association, or other organization, unless that [such] is the fact.

Section 17.[16.] An advertisement shall not contain untrue statements with respect to the time within which claims are paid or statements that[which] imply that claim settlements will be liberal or generous beyond the terms of the policy.

Section 18.[17.] An advertisement shall not contain statements that[which] are untrue in fact or by implication misleading with respect to the insurer's assets, corporate structure, financial standing, age, or relative position in the insurance business.

Section 19.[18.] (1) Each insurer shall maintain at its home or principal office a complete file containing every printed, published, or prepared advertisement of individual policies and typical printed published or prepared advertisements of blanket, franchise, and group policies [hereafter] disseminated in this or any other state whether or not licensed in the [such] other state, with a notation attached to each [such] advertisement that[which] shall indicate the manner and extent of distribution and the form number of any policy advertised. The [Such] file shall be subject to regular and periodical inspection by the Department of Insurance [this office]. All [such] advertisements shall be maintained by the insurer [in said file] for a period of not less than three (3) years.

(2) Each insurer required to file an annual statement in

accordance with KRS 304.3-240, which is now or which [hereafter] becomes subject to the provisions of this administrative regulation, shall [the advertisement regulations must] file with the Department of Insurance, [this office] together with its annual statement, a certificate executed by an authorized officer of the insurer stating [wherein it is stated] that to the best of his or her knowledge, information, and belief the advertisements that[which] were disseminated by the insurer during the preceding statement year complied or were made to comply in all respects with the provisions of KRS Chapter 304[the insurance laws of this state] [as implemented and interpreted by the advertisement regulations]. [It is requested that the chief executive officer of each insurer to which the advertisement regulations are addressed acknowledge its receipt and indicate its intention to comply therewith.]

Section 20.[19.] (1) The [purpose and intent of this administrative regulation shall be] [is] [to prohibit the transmission of information in the form of advertisements or otherwise which might be deceptive, misleading or untrue. The] [general] [intent], therefore, [and the] provisions of this administrative regulation shall not be [not] expressly limited to a particular type of insurance and [.] shall be applied to all insurance on subjects of risk located in or to be performed in Kentucky[this state].

(2) [The use of advertising material previously filed with and approved by the Department of Insurance] [office] [shall not subject the filer to any disciplinary action or penalty by the department] [this office] [as long as such prior approval remains in effect].

(3) Any person, firm, corporation, or association who knowingly aids and abets an insurer in the violation of this administrative regulation or the applicable provisions of the Insurance Code shall be subject to the penalties established by KRS Subtitle 304.99[provided by law].

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PUBLIC PROTECTION CABINET
Department of Insurance
Life and Health Division
(As Amended at ARRS, January 13, 2021)

806 KAR 12:020. Fair disclosure to consumers.

RELATES TO: KRS [304.1-010], 304.1-050, 304.2-310, 304.9-440, 304.12-010, 304.12-020, 304.12-040, 304.12-110, 304.12-130, 304.14-120 to 304.14-180

STATUTORY AUTHORITY: KRS 304.2-110(1)

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 as established[defined] in KRS 304.1-010. [304.2-110 provides that the Executive Director of Insurance shall make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code.] This administrative regulation establishes[further interprets and implements statutory] standards to assure fair disclosure to insurance consumers.

Section 1. Definitions.

(1) "Agent" is defined by KRS 304.9-020

(2) "Commissioner" is defined by KRS 304.1-050(1).

(3) "Consultant" is defined by KRS 304.9-040.

(4) [2)] "Department" is defined by KRS 304.1-050(2).

(5) "Insurer" is defined by KRS 304.1-050.

(6) "Person" is defined by KRS 304.1-020.

(7) [3)] "Pure endowment benefit" means a guaranteed insurance benefit, actuarially determined, the payment of which is

contingent upon the survival of the insured to a specified point in time.

Section 2 [Deeming it to be in the highest degree of public interest that the insurance buying public will not be deceived or misled] [in regard to] [the purchase of life insurance, it is [therefore] considered proper and desirable to further implement and interpret the statutory standards which generally relate to the sale of life insurance.

Section 3[2]. Applicability. This administrative regulation shall apply to:

(1) (a) Any [To any] insurance company, person, [broker,] or consultant, as those terms are defined in the insurance code, KRS Chapter 304[.]

(b) Acts [(2) To acts] and practices in the advertising, promotion, solicitation, and negotiation of or effecting the sale of life insurance policies; and

(c) Acts and practices related to the sale of insurance, whether or not they involve the use of language disseminated by means of sales kits, policy jackets or covers, letters, personal presentations[presentation], visual aids, or other sales media.

(2) This [(this) administrative regulation shall not apply to group insurance policies or to annuity contracts[)].

(3) To such acts and practices whether they involve the use of language disseminated by means of sales kits, policy jackets or covers, letters, personal presentation, visual aids or other sales media.]

Section 3[4] [3]. Statement of Policy. (1) [The purpose of this administrative regulation shall be] [essentially, is] To assure fair disclosure of relevant facts in the sale of life insurance and [This administrative regulation is also designed] to protect purchasers and prospective purchasers of life insurance policies [against the use of] sales methods that[which] are misleading shall not be used, including[because of].

(a) The omission of facts fairly describing both the subject matter of a life insurance policy and the benefits obtainable under the policy [thereunder]; [.]

(b) An undue emphasis upon facts that might[which may] be true but [however, true,] are not relevant to the sales of life insurance; and[.]

(c) An undue emphasis upon features that[which] are of incidental or secondary importance to the life insurance aspects of a policy.

(2) [To assure][such][fair disclosure and to prevent the use of misleading sales methods this administrative regulation provides advance interpretations as to specific acts and practices which the Department] [Office] [of Insurance believes constitute violations of][said][statutes; provided, however, it shall be][is][recognized that whether particular conduct comes within the prohibition of][said][statutory provisions depends upon the facts in each case.

(3) Although this administrative regulation is addressed to selected acts and practices that[which] have been of serious concern to the Department [Office] of Insurance, this [delimitation] shall not be [is not] a determination that any act of practice not established[specified] in this administrative regulation [herein] is in conformance with the [aforesaid] statutory provisions.

(3) [However, this administrative regulation shall][will][be read as a guide in considering whether any unspecified act or practice is of the kind or character which may be within the prohibitions of the][said][statutory provisions.

(4) In accordance with the purposes and limitations set out in Sections 3 and 4[1 and 2][of this administrative regulation,] The acts and practices established in Sections 7 through 7 of this administrative regulation shall be prohibited[set out in the following sections are declared to be unlawful when used in context or done under][such][circumstances or conditions as to have the capacity and tendency to mislead a purchaser or prospective purchaser to believe that he will receive, or that it is probable he will receive something other than an insurance

~~policy, some benefit not available to other persons of the same class and equal expectation of life. Each of the [said] sections of this administrative regulation shall will, therefore, be construed and applied in concordance with the provisions of this section.~~

Section ~~4[5]~~4. Policy Forms. ~~[From the effective date of this administrative regulation]~~ A company shall not [no company shall]:

(1) Include coupons as a part of policies containing pure endowment benefits; ~~[- A pure endowment benefit is a guaranteed insurance benefit, actuarially determined, the payment of which is contingent upon the survival of the insured to a specified point in time.]~~

(2) Issue a policy of insurance containing pure endowment benefits unless the gross premium for these provisions is shown prominently and separately in the policy as distinct from the regular insurance gross premium. This subsection shall not apply to any policy in which the amount of any pure endowment or periodic benefit or benefits payable during any policy year is greater than the total annual premium for the the [such] year.

(a) This separate gross premium for the series of pure endowments shall be based on reasonable assumptions and be consistent with the [basic] policy [form] as to interest, mortality, and expense.

(b) The amount of the guaranteed series of pure endowment benefits shall be expressed in dollar amounts and shall not be presented or defined, either in the policy or any sales and advertising material, as a "percentage" of any premiums or benefits contained in the policy [therein].

(c) All policies with pure endowments sold in Kentucky [after the 60th day following the date of this order] shall include [bear] the following statement stamped, or similar wording approved by the department [office] [set forth, rubberstamped] on the face of the policy until present stocks are exhausted: "The premium includes \$_____ for pure endowment benefits; [-]"

(3) Use a dividend illustration in connection with a participating life insurance policy unless the [such] dividend illustration is on file with the commissioner [Executive Director of Insurance] as a part of a rate book or as a separate filing; and [-]

(4) Use [such] words or phrases such as "investment or investment plan," "insured investment plan," "profitsharing," "charter plan," "founders plan," or similar language in a life insurance policy, either in context or under [such] circumstances or conditions as to have the capacity and tendency to mislead a purchaser or prospective purchaser to believe that he or she will receive or that it is probable he or she will receive something other than an insurance policy, some benefit not provided in the policy, or some benefit not available to other persons of the same class and equal expectation of life.

Section ~~5[6]~~5. Sales Presentation and Solicitation. Sales presentations and solicitations shall not ~~[From the effective date of this administrative regulation it shall be]~~ [deemed] ~~[unlawful to make]~~:

(1) Reference to a policy using similar terminology as established in Section 4 ~~[described in Section 5]~~4(4) of this administrative regulation, including and more particularly:

(a) Statements or representations that the prospective policyholder shall [will] receive the right to benefits from the insurance company that[which] are not stipulated in the policy itself; or

(b) Statements or references that refer to premium payments in language stating the payment is a "deposit" unless:

1. The payment establishes a debtor-creditor relationship between the insurance company and the policyholder; or

2. The term is used in conjunction with the word "premium" in [such] a manner that clearly indicates ~~[as to indicate clearly]~~ the true character of the payment; [-]

(c) Statements that[which] describe a life insurance policy or premium payments in terms of "unit of participation", unless accompanied by other language fairly indicating their reference to a life insurance policy or to premium payments; ~~as the case may~~

be]. Statements that[which] describe a life insurance policy or premium payments in terms of units [henceforth] shall be followed by the dollar amount representing the annual premium for each unit or units described; [-] and further wording clearly indicating that the unit or units represent a life insurance policy; and [-]

(d) Statements that[which] infer that the guaranteed endowments available under a policy are interest, earnings, return on investment, or anything other than benefits for which the cost is taken into consideration in calculating the total premium; [-]

(2) Reference to any policy or contract in [such] a manner as to misrepresent its true nature and more particularly:

(a) Statements that[which] tend to lead the prospect to believe that the agent is dealing in other than a life insurance contract; [-]

(b) Statements that[which] tend to lead the prospect to believe that life insurance is incidental to the purchase of the contract; [-]

(c) Statements or reference relating to the growth of the life insurance industry or to the tax status of life insurance companies in a context that[which] would reasonably be understood to interest a prospect in the purchase of shares of stock in an insurance company rather than in the purchase of a life insurance policy; [-]

(d) Statements that[which] reasonably give rise to the inference that the insured will enjoy a status common to a stockholder or will acquire a stock ownership interest in the insurance company by virtue of purchasing the policy; and [-]

(e) References or statements to a company's "investment department," "insured investment department," or similar terminology in [such] a manner as to imply that the policy was sold, [or] issued, or is serviced by the investment department of the insurance company; [-]

(3) Reference ~~References regarding~~ the payment of dividends in [such] a manner as to misrepresent their true nature, including and more particularly:

(a) Providing any illustration as to projected dividends unless the dividend scale is based on the experience currently used by the company for dividends; [-] and unless the illustration is expressed in dollar amounts; [-]

(b) Statements that[which] use the words "dividends," "cash dividends," "surplus," or similar phrases in [such] a manner as to state or imply that the payment of dividends is guaranteed or certain to occur; [-]

(c) Statements or references that a purchaser of a policy will share in a stated percentage or portion of the earnings of the company; [-]

(d) Statements that[which] use the word "dividend," "cash dividends," "surplus," or similar terminology not expressed as a dollar amount ~~[shall be expressed only in dollar amounts]~~. This shall apply to projected dividends and ~~[as well as]~~ past experience on dividends; and [-]

(e) Statements or inferences that projected dividends under a participating policy are ~~[will be or can be]~~ sufficient at any time to assure the receipt of benefits ~~[- such as a paid-up policy]~~ without the further payment of premiums unless the statement is accompanied by an adequate explanation as to:

1. What benefits or coverage would be provided; and [at such time];

2. The conditions under which this would occur; and [-]

(4) Reference to any policy or contract in [such] a manner as to suggest that certain policyholders will receive preferential treatment, including and more particularly:

(a) Statements or references that[which] would reasonably tend to imply that by purchasing a policy, the purchaser or prospective purchaser will become a member of a limited group of persons who may receive in the payment of dividends, special advantages, benefits, or favored treatment. This paragraph shall not apply ~~[has no relation or applicability]~~ to policies under which insured persons of one (1) class of risk may receive dividends of a higher rate than persons of another class of risk; [-]

(b) Statements or references that each policyholder is given the right to allocate a specific number of policies; [-]

(c) Statements or inferences that only a limited number of

person or a limited class of persons, will be eligible to buy a particular kind of policy, unless the [such] limitation is related to recognized underwriting practices.[-]

(d) Statements or inferences that policyholders who act as "centers of influence" for an insurance company in that capacity will share in the company's surplus earnings in some manner not available to policyholders of the same class; and[-]

(e) Comparisons to the past experience of other life insurance companies in which[where] the comparison is based on an arbitrary selection as to either the companies or the statistics or other data[which are] used. ~~[This paragraph shall be][is][intended to protect policyholders from being misled as to the character of a policy or its benefits, through the presentation of experience of companies with reverse experience.]~~

Section ~~6~~7[6]. Dividends. (1) Policyholder premium or gross cost reductions on participating policies shall [will] be designated dividends. ~~[No]~~Other items shall not be designated as dividends.

~~(a)~~ Dividends shall not be guaranteed as to amount, percentage, or premium, or other basis.

~~(b)~~ The decision for declaration of a dividend shall be determined by the insurance company's board of directors, based solely on operating results or projection for those policies designated ~~[]~~participating~~[]~~ policies.

(2) ~~If[When]~~ dividends are ~~[]~~declared~~[]~~ for a policy year classification ~~[]~~based on specific plan or [and/or] age classifications as they relate to contribution of company ability to declare dividends~~[]~~, dividends shall [will] be apportioned to all policies so entitled in that policy year.

(3) The date dividends are declared shall be the date liability is established for the dividends and the reserve established for this liability shall [will] be the full amount of the dividends declared.[-]

Section ~~8~~7[-] Other Provisions. (1) ~~An~~ In order to implement this administrative regulation the office will exercise its right at its discretion to require the submission of any or all sales material.

~~(2) Each company will be held responsible for disseminating this administrative regulation to its representatives and assuring compliance.~~

~~(3) The provisions of this administrative regulation are intended to apply only to policies issued on or after its effective date for delivery in this state, and it does not apply to contracts issued prior to the effective date nor to contracts issued prior to the effective date nor to contracts issued for delivery outside the state. The adoption of this administrative regulation should not disturb or cast doubt about the validity of previously issued contracts described herein.~~

~~(4) No[]insurance company, insurance agent, consultant, or[]insurance company representative shall not[]as a competitive or "twisting" device, []inform any policyholder or prospective policyholder that any insurance company was required to change a policy form or related material to comply with the provisions of this administrative regulation.~~

~~(5) The commissioner[]executive director[]may suspend or revoke any license or certificate of authority for violation of the provisions of this administrative regulation after a hearing upon written notice as required by KRS 304.2-310[]the insurance code[]~~

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**PUBLIC PROTECTION CABINET
Department of Insurance
Health and Life Division
(As Amended at ARRS, January 13, 2021)**

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.

~~(5)~~(6) "Generic name" means a short title descriptive of the annuity contract being applied for or illustrated.

~~(6)~~(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.

~~(7)~~(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.

~~(8)~~(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.

~~(9)~~(11) "Registered Product" means an annuity contract or life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933.

~~(10)~~(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 do not contain [no] non-guaranteed elements [Registered or nonregistered variable annuities or other registered products];

(2)(a) Annuities used to fund:

1. An employee pension plan that[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 of this administrative regulation 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) of this section, 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 administrative 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 contain [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;

e. 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 decrease by a Market Value Adjustment (MVA). If interest rates on which the MVA is based go up after you buy your annuity, the MVA likely will decrease the amount you receive. If interest rates go down, the MVA will likely increase the amount you receive."

(e) Illustrations shall describe both the upside and the downside aspects of the contract features relating to the market value adjustment;

(f) The illustrative effect of the market value adjustment shall be shown under at least one positive and one negative scenario. This demonstration shall appear on a separate page and be clearly labeled that it is information demonstrating the potential impact of a market value adjustment;

(g) Actual market value adjustment floors and ceilings as listed in the contract shall be illustrated; and

(h) If the market value adjustment has significant characteristics not addressed by paragraphs (a) through (f) of this subsection, the effect of the characteristics shall be shown in the illustration.

(10) A narrative summary for a fixed indexed annuity illustration also shall include the following unless provided at the same time in a disclosure document:

(a) An explanation, in simple terms, of the elements used to determine the index-based interest, including the following elements:

1. The indexes which will be used to determine the index-based interest;

2. The indexing method;

3. The index term, including the period over which index-based interest is calculated;

4. The participation rate, if applicable;

5. The cap, if applicable; and

6. The spread, if applicable;

(b) The narrative shall include an explanation, in simple terms, of how index-based interest is credited in the indexed annuity;

(c) The narrative shall include a brief description of the frequency with which the company can re-set the elements used to determine the index-based credits, including the participation rate, the cap and the spread, if applicable; and

(d) If the product allows the contract holder to make allocations to declared-rate segment, the narrative shall include a brief description of:

1. Any options to make allocations to a declared-rate segment, both for new premiums and for transfers from the indexed-based segments; and

2. Differences in guarantees applicable to the declared-rate segment and the indexed-based segments.

(11) A numeric summary for a fixed indexed annuity illustration shall include, at a minimum, the following elements:6(j):

(a) The assumed growth rate of the index in accordance with subsection (6)(j);

(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/>.

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

Life and Health Division

(As Amended at ARRS, January 13, 2021)

806 KAR 12:180. Military sales practices.

RELATES TO: KRS 304.1-040, 304.5-020, 304.5-030, 304.9-020[~~(10)~~][304.9-020(7)], 304.12-010, 304.12-030, 304.15-310, 12 C.F.R. 205, 230, 707, 10 U.S.C. 992, 12 U.S.C. 4301, 26 U.S.C. 401(a), (k), 403(b), 408(k), (p), 414, 457, 501(c)(23), 29 U.S.C. 1001, 38 U.S.C. 1965, Pub.L. 109-290

STATUTORY AUTHORITY: KRS 304.2-110(~~1~~), 304.12-257, 10 U.S.C. 992(9)(a)(2), Pub.L. 109-290

NECESSITY, FUNCTION AND CONFORMITY: KRS 304.12-257 authorizes the commissioner [executive director] to promulgate administrative regulations to protect service members of the United States Armed Forces from dishonest insurance marketing and sales practices. [EO 2008-507, effective June 16, 2008, reorganized the Office of Insurance as the Department of Insurance and established the Commissioner of Insurance, rather than executive director, as head of the department.] Pub.L. 109-290[10 U.S.C. 992 sec 9(a)(2)] requires the states to collectively work with the Secretary of Defense to ensure implementation of appropriate standards to protect members of the Armed Forces from dishonest and predatory insurance sales practices while on a military installation of the United States[,], and [~~further~~] requires each state to identify its role in promoting the standards in a uniform manner[, ~~not later than twelve (12) months after the date of enactment of the federal law~~]. This administrative regulation establishes[sets forth] standards to protect active duty service members of the United States Armed Forces from dishonest and predatory insurance sales practices by declaring certain identified practices to be false, misleading, deceptive, or unfair.

Section 1. Definitions. (1)[~~(a)~~] "Active duty":

(a) Means full-time duty in the active military service of the United States and includes members of the reserve component, both the National Guard and Reserve, while serving under published orders for active duty or full-time training; and

(b) Does not mean:

(b) "Active duty" does not include members of the reserve component who are performing active duty or active duty for training under military calls or orders specifying periods of less than thirty-one (31) calendar days.

(2) "Annuity" is defined by/established [defined] [in] KRS 304.5-030.

(3) "Commissioner" is defined by/means the Commissioner of the Department of Insurance as established in KRS 304.1-050(1).

(4) "Department of Defense Personnel" means all active duty service members and all civilian employees, including nonappropriated fund employees and special government employees, of the Department of Defense.

(5) "Door-to-door[~~Door to door~~]" means a solicitation or sales method in which an insurance producer proceeds randomly or selectively from household to household without a prior specific appointment.

(6) "General advertisement" means an advertisement having as its sole purpose the promotion of the reader's or viewer's interest in the concept of insurance, or the promotion of the insurer or the insurance producer.

(7) "Insurable needs" means the risks associated with premature death taking into consideration the financial obligations and immediate and future cash needs of the applicant's estate or survivors or dependents.

(8) "Insurer" is defined by/established [defined] [in] KRS 304.1-040.

(9) "Insurance producer" is defined by/established [defined]

~~[in]~~ KRS 304.9-020(10) [304.9-020(7)].

(10) "Known" or "knowingly" means the insurance producer or insurer had actual awareness, or in the exercise of ordinary care should have known, when the act or practice complained of occurred, that the person solicited is a service member.

(11) "Life insurance" is defined by established ~~[defined]~~ ~~[in]~~ 304.5-020.

(12) "Military installation" means any federally owned, leased, or operated base, reservation, post, camp, building, or other facility to which service members are assigned for duty, including barracks, transient housing, and family quarters.

(13) "MyPay" means the Defense Finance and Accounting Service Web-based system that enables service members to process certain discretionary pay transactions or provide updates to personal information data elements without using paper forms.

(14) "Other military survivor benefits" means ~~[mean]~~ the death gratuity, funeral reimbursement, transition assistance, survivor and dependents' educational assistance, dependency and indemnity compensation, TRICARE healthcare benefits, survivor housing benefits and allowances, federal income tax forgiveness, and Social Security survivor benefits.

(15) "SGLI" means the Servicemembers' Group Life Insurance as established ~~[authorized]~~ by 38 U.S.C. section 1965.

(16) "Service member" means an active duty officer, both commissioned and warrant, or enlisted member of the United States Armed Forces.

(17)(a) "Side fund":

(a) Means a fund or reserve that is part of or otherwise attached to a life insurance policy by rider, endorsement, or other mechanism that ~~[which]~~ accumulates premium or deposits with interest or by other means; and

(b) Does (b) "Side fund" shall ~~[does]~~ not mean:

1. Accumulated value or cash value or secondary guarantees provided by a universal life policy;

2. Cash values provided by a whole life policy [which] ~~are~~ subject to standard nonforfeiture law for life insurance; or

3. A premium deposit fund that ~~[which]~~:

- a. Contains only premiums paid in advance which accumulate at interest;
- b. Does not impose a ~~[imposes no]~~ penalty for withdrawal;
- c. Does not permit funding beyond future required premiums;
- d. Is not marketed or intended as an investment; and
- e. Does not carry a commission, either paid or calculated.

(18) "Specific appointment" means a prearranged appointment agreed upon by both parties and definite as to place and time.

(19) "United States Armed Forces" means all components of the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(20) "VGLI" means the Veterans' Group Life Insurance, as established ~~[authorized]~~ by U.S.C. Title 38 ~~[U.S.C. section 1965]~~.

Section 2. Scope. This administrative ~~[administration]~~ regulation shall apply only to the solicitation or sale of a life insurance policy or annuity by an insurer or insurance producer to an active duty service member of the United States Armed Forces.

Section 3. Exemptions. (1) This administrative regulation shall not apply to solicitations or sales involving:

- (a) Credit insurance;
- (b) Group life insurance or group annuities if:

1. An in-person, face-to-face solicitation of individuals by an insurance producer is not made; or

2. The contract or certificate does not include a side fund;

(c) An application to the existing insurer that issued the existing policy or contract if:

1. A contractual change or a conversion privilege is being exercised;

2. The existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner in accordance with KRS Chapter 304; or

3. A term conversion privilege is exercised among corporate affiliates;

(d) Individual stand-alone health policies, including disability

income policies;

(e) Contracts offered by SGLI or VGLI;

(f) Life insurance contracts offered through or by a non-profit military association, qualifying under 26 U.S.C. 501(c)(23), and that ~~[which]~~ are not underwritten by an insurer; or

(g) Contracts used to fund:

1. An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act, 29 U.S.C. Chapter 18 ~~[4001]~~;

2. A plan established ~~[described]~~ by 26 U.S.C. 401(a), 401(k), 403(b), 26 U.S.C. 408(k) or 408(p), [as amended] ~~[if]~~ established or maintained by an employer;

3. A governmental ~~[government]~~ or church plan established ~~[defined]~~ in 26 U.S.C. 414;

4. A governmental ~~[government]~~ or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under 26 U.S.C. 457;

5. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

6. Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution or process; or

7. Prearranged funeral contracts.

(2) This administrative regulation shall not [be construed to] ~~abrogate~~ the ability of a nonprofit organization or another organization to educate members of the United States Armed Forces in accordance with Department of Defense Instruction 1344.07, ["] ~~Personal Commercial Solicitation on DoD Installations.~~ ["]

(3)(a) General advertisements, direct mail, and internet marketing shall not constitute solicitation.

(b) Telephone marketing shall not constitute solicitation if the caller:

1. Explicitly and conspicuously discloses that the product concerned is life insurance; and

2. Does not make a statement that avoids a clear and unequivocal statement that life insurance is the subject matter of the solicitation.

(c) This subsection shall not [be construed to] ~~exempt~~ an insurer or insurance producer from the requirements of this administrative regulation in any in-person, face-to-face meeting established as a result of the exemptions established ~~[identified]~~ in this subsection.

Section 4. Practices Declared False, Misleading, Deceptive, or Unfair on a Military Installation. (1) The following acts or practices, if committed on a military installation by an insurer or insurance producer, with respect to the in-person, face-to-face solicitation of life insurance shall be false, misleading, deceptive, or unfair:

(a) Knowingly soliciting the purchase of any life insurance product:

1. Door to door; or

2. Without first establishing a specific appointment for each meeting with the prospective purchaser;

(b) Soliciting service members in a group or mass audience or in a captive audience if ~~[where]~~ attendance is not voluntary;

(c) Knowingly making appointments with or soliciting service members during their normally scheduled duty hours;

(d) Making appointments with or soliciting service members in:

1. Barracks;

2. Day rooms;

3. Unit areas;

4. Transient personnel housing; or

5. Other areas where the installation commander has prohibited solicitation;

(e) Soliciting the sale of life insurance without first obtaining permission from the installation commander or the commander's designee;

(f) Posting unauthorized bulletins, notices, or advertisements;

(g) Failing to present Department of Defense Form 2885, ["] ~~Personal Commercial Solicitation Evaluation,~~ ["] to service members solicited or encouraging service members solicited not to complete or submit a Department of Defense Form 2885; or

(h) Knowingly accepting an application for life insurance or issuing a policy of life insurance on the life of an enlisted member of the United States Armed Forces without first obtaining for the insurer's files a completed copy of a required form, which confirms that the applicant has received counseling or fulfilled any other similar requirement for the sale of life insurance established by regulations, directives, or rules of the US Department of Defense, or any branch of the US Armed Forces.

(2) The following acts or practices, if committed on a military installation by an insurer or insurance producer, shall constitute corrupt practices, improper influences, or inducements and shall be false, misleading, deceptive, or unfair:

(a) Using US Department of Defense personnel, directly or indirectly, as a representative or agent in any official or business capacity with or without compensation with respect to the solicitation or sale of life insurance to service members; and

(b) Using an insurance producer to participate in any United States Armed Forces sponsored education or orientation program.

Section 5. Practices Declared False, Misleading, Deceptive, or Unfair Regardless of Location.

(1) The following acts or practices by an insurer or insurance producer shall constitute corrupt practices, improper influences, or inducements and shall be false, misleading, deceptive, or unfair:

(a)1. Submitting, processing, or assisting in the submission or processing of any allotment form or similar device used by the United States Armed Forces to direct a service member's pay to a third party for the purchase of life insurance including using or assisting in using a service member's "MyPay" account or other similar internet or electronic medium for those purposes;

2. This subsection shall/does not prohibit assisting a service member by providing insurer or premium information necessary to complete an allotment form;

(b)1. Knowingly receiving funds from a service member for the payment of premium from a depository institution with which the service member does not have a formal banking relationship;

2. For purposes of this subsection/section, a formal banking relationship shall be/is established if the depository institution:

a. Provides the service member a deposit agreement and periodic statements and makes the disclosures required by the Truth in Savings Act, 12 U.S.C. 4301 et seq. and 12 C.F.R. 205, 230, and 707; and

b. Permits the service member to make deposits and withdrawals unrelated to the payment or processing of insurance premiums;

(c) Employing a device or method or entering into an agreement if funds received from a service member by allotment for the payment of insurance premiums are identified on the service member's leave and earnings statement or equivalent or successor form as "savings" or "checking" and if/where the service member has no formal banking relationship;

(d) Entering into any agreement with a depository institution for the purpose of receiving funds from a service member if the depository institution, with or without compensation, agrees to accept direct deposits from a service member with whom it has no formal banking relationship;

(e) Using US Department of Defense personnel, directly or indirectly, as a representative or agent in an official or unofficial capacity with or without compensation with respect to the solicitation or sale of life insurance to service members who are junior in rank or grade, or to the family members of [such] personnel;

(f) Offering or giving anything of value, directly or indirectly, to US Department of Defense personnel to procure their assistance in encouraging, assisting, or facilitating the solicitation or sale of life insurance to another service member;

(g) Knowingly offering or giving anything of value to a service member for the member's attendance at any event at which/where an application for life insurance is solicited; or

(h) Advising a service member to change the member's income tax withholding or state of legal residence for the sole purpose of increasing disposable income to purchase life insurance.

(2) The following acts or practices by an insurer or insurance

producer lead to confusion regarding source, sponsorship, approval, or affiliation and shall be false, misleading, deceptive, or unfair:

(a)1. Making any representation, or using any device, title, descriptive name, or identifier that has the tendency or capacity to confuse or mislead a service member into believing that the insurer, insurance producer, or product offered is affiliated, connected, or associated with, endorsed, sponsored, sanctioned, or recommended by the U.S. Government, the United States Armed Forces, or any state or federal agency or government entity;

2. This subsection/section shall not [be—construed to] prohibit a person from using a professional designation awarded after the successful completion of a course of instruction in the business of insurance by an accredited institution of higher learning; or

(b) Soliciting the purchase of any life insurance product through the use of or in conjunction with a third party organization that promotes the welfare of or assists members of the United States Armed Forces in a manner that has the tendency or capacity to confuse or mislead a service member into believing that either the insurer, insurance producer, or insurance product is affiliated, connected, or associated with, endorsed, sponsored, sanctioned, or recommended by the U.S. Government or the United States Armed Forces.

(3) The following acts or practices by an insurer or insurance producer lead to confusion regarding premiums, costs, or investment returns and shall be false, misleading, deceptive, or unfair:

(a) Using or describing the credited interest rate on a life insurance policy in a manner that implies that the credited interest rate is a net return on premium paid; or

(b) Excluding individually issued annuities, misrepresenting the mortality costs of a life insurance product, including stating or implying that the product "costs nothing" or is "free."

(4) The following acts or practices by an insurer or insurance producer regarding SGLI or VGLI shall be false, misleading, deceptive, or unfair:

(a) Making any representation regarding the availability, suitability, amount, cost, exclusions, or limitations to coverage provided to a service member or dependents by SGLI or VGLI, which is false, misleading, or deceptive;

(b) Making any representation regarding conversion requirements, including the costs of coverage, [or] exclusions, or limitations to coverage of SGLI or VGLI to private insurers that/which is false, misleading, or deceptive; or

(c) Suggesting, recommending, or encouraging a service member to cancel or terminate his or her SGLI policy or issuing a life insurance policy that/which replaces an existing SGLI policy unless the replacement shall take effect upon or after the service member's separation from the United States Armed Forces.

(5) The following acts or practices by an insurer or insurance producer regarding disclosure shall be false, misleading, deceptive, or unfair:

(a) Deploying, using, or contracting for a lead generating material designed exclusively for use with service members that does not clearly and conspicuously disclose that the recipient will be contacted by an insurance producer, if that is the case, for the purpose of soliciting the purchase of life insurance;

(b) Failing to disclose that a solicitation for the sale of life insurance will be made if establishing a specific appointment for an in-person, face-to-face meeting with a prospective purchaser;

(c) Excluding individually issued annuities, failing to clearly and conspicuously disclose the fact that the product being sold is life insurance;

(d) Failing to make, at the time of sale or offer to an individual known to be a service member, the written disclosures required by Section 10 of the "Military Personnel Financial Services Protection Act," Pub. L. No. 109-290, p.16; or

(e) Excluding individually issued annuities, if the sale is conducted in-person face-to-face with an individual known to be a service member, failing to provide the applicant if the application is taken:

1. An explanation of a free look period with instructions on how to cancel if a policy is issued; and

- 2.a. A copy of the application; or
b.(i) A written disclosure.

(ii) The copy of the application or the written disclosure shall state/set out the type of life insurance and the death benefit applied for and the policy or benefit [its] expected first year cost. A basic illustration that complies with/meets the requirements of 806 KAR 12:140 shall be sufficient to meet this requirement for a written disclosure.

(6) The following acts or practices by an insurer or insurance producer ~~[with respect to the sale of certain life insurance products]~~ shall be false, misleading, deceptive, or unfair:

(a) Excluding individually issued annuities, recommending the purchase of any life insurance product that/which includes a side fund to a service member unless the insurer has reasonable grounds for believing that the life insurance death benefit, standing alone, is suitable;

(b) Offering for sale or selling a life insurance product that/which includes a side fund to a service member who is:

1. Currently enrolled in SGLI; and

2. Presumed unsuitable unless, after the completion of a needs assessment, the insurer demonstrates that the applicant's SGLI death benefit, together with any other military survivor benefits, savings and investments, survivor income, and other life insurance are insufficient to meet the applicant's insurable needs for life insurance;

(c) Excluding individually issued annuities, offering for sale or selling a life insurance contract that includes a side fund:

1. Unless interest credited accrues from the date of deposit to the date of withdrawal and permits withdrawals without limit or penalty;

2. Unless the applicant has been provided with a schedule of effective rates of return based upon cash flows of the combined product.

a. The effective rate of return shall consider all premiums and cash contributions made by the policyholder and all cash accumulations and cash surrender values available to the policyholder in addition to life insurance coverage.

b. The schedule shall be provided for at least each policy year from one (1) to ten (10) and for every subsequent fifth policy year ending at age 100, policy maturity, or final expiration; and

3. That by default diverts or transfers funds accumulated in the side fund to pay, reduce, or offset any premiums due; or

(d) Excluding individually issued annuities, offering for sale or selling a life insurance contract that after considering all policy benefits, does not comply with KRS 304.15-310.

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

(a) "Department of Defense Instruction Number 1344.07, Personal Commercial Solicitation on DoD Installations", (March 30, 2006); and

(b) "Department of Defense Form 2885, Personal Commercial Solicitation Evaluation", (April 2006).

(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 website at: <http://insurance.ky.gov>.

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PUBLIC PROTECTION CABINET
Department of Insurance
Consumer Protection Division
(As Amended at ARRS, January 13, 2021)

806 KAR 13:020. Excess rates; consent form.

RELATES TO: KRS ~~[304.1-010]~~ 304.13-051 ~~[, 304.13-100]~~

STATUTORY AUTHORITY: KRS 304.2-110, 304.13-100
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 as established/defined in KRS 304.1-010. [KRS 304.2-110 provides that the Executive Director of Insurance may make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code.] This administrative regulation establishes that/requires an insurer and applicant shall/to file a form confirming the/showing applicant's consent to the, if any, excess rate charged [to him].

Section 1. (1) For rates required to be filed with the department in accordance with KRS 304.13-051, if/when [When] an insurer and an applicant for insurance contemplated by KRS Subtitle 304.13 [Chapter 304, Subtitle 13,] consent to rates to be charged in any specific instance in excess of those filed by or on behalf of the [such] insurer, the insurer shall, within ten (10) days following the effective date of the policy, file with the commissioner [executive director in triplicate] a statement [writing] signed by the applicant that/which shall include recite [the following]:

- (a) [(1)] The policy number;
- (b) [(2)] The inception and expiration dates;
- (c) [(3)] The name and address of the agent of record;
- (d) [(4)] The name of the insurer;
- (e) [(5)] The name and address of the insured;
- (f) [(6)] The limits of coverage;
- (g) [(7)] The total premium charged;
- (h) [(8)] The fact that the rate exceeds [exceed] the filed rate;
- (i) [(9)] The reasons that the rate exceeds the filed rate [therefor]; and
- (j) [(10)] That the insured has consented to the excess rate [thereto].

(2) For rates not required to be filed with the department pursuant to KRS 304.13-051, if/when an insurer and an applicant for insurance contemplated by KRS Subtitle 304.13 [Chapter 304, Subtitle 13,] consent to rates to be charged in any specific instance in excess of those utilized by the insurer, the insurer shall prepare a statement, which shall not be required to be filed with the department, signed by the applicant that/which shall include the:

- (a) Policy number;
- (b) Inception and expiration dates;
- (c) Name and address of the agent of record;
- (d) Name of the insurer;
- (e) Name and address of the insured;
- (f) Limits of coverage;
- (g) Total premium charged;
- (h) Fact that the rate exceeds the utilized rate;
- (i) Reasons that the rate exceeds the utilized rate; and
- (j) Acknowledgement that the insured has consented to the excess rate/information required by subsection (1)(a) through (1)(i) of this subsection. The insurer shall not be required to file the statement with the department.

Section 2. A copy of the [such] consent to rate statement required by Section 1 of this administrative regulation shall be submitted [furnished] to the insured.

Section 3. The commissioner [executive director] shall, in accordance with KRS Subtitle 304.13, approve or deny the consent to rate statement required by Section 1(1) of this administrative regulation [take such action as he deems appropriate, as in the case of all rates filed], and shall return to the agent and to the insurer, one (1) copy of the [such] consent, indicating the action taken [with his action indicated thereon].

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PUBLIC PROTECTION CABINET
Department of Insurance
Financial Standards and Examination Division
(As Amended at ARRS, January 13, 2021)

806 KAR 38:100. Risk-based capital for health organizations.

RELATES TO: KRS 304.2-150, 304.2-250(3), 304.2-260, 304.2-270, 304.32-140, 304.38-070, 304.38A-080, 304.38A-110

STATUTORY AUTHORITY: KRS 304.32-140(1), 304.38-070, 304.38A-080, 304.38-150, 304.38A-110(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.38-150 authorizes the Commissioner of the Kentucky Department of Insurance to promulgate administrative regulations necessary for the proper administration of KRS ~~[Chapter]~~ 304.38. KRS 304.32-140(1), 304.38-070, 304.38A-080, and 304.38A-110(2) require the Commissioner of the Kentucky Department of Insurance to promulgate administrative regulations establishing requirements for risk-based capital. KRS 304.38-150 ~~authorizes~~provides that the Commissioner of Insurance ~~to promulgate~~may make reasonable administrative regulations necessary for the proper administration of KRS Subtitle 304.38~~[Chapter 30]~~[38]. This administrative regulation establishes requirements for health maintenance organizations, limited health service corporations, and nonprofit health service corporations to comply with risk-based capital reporting requirements to aid in the department's financial monitoring.

Section 1. Definitions. (1) "Adjusted RBC report" means an RBC report ~~that~~which has been adjusted by the commissioner in accordance with Section 2(3)(2)(5) of this administrative regulation.

(2) "Authorized control level event" means any of the following events:

(a) The filing of an RBC report by the health organization that indicates that the health organization's total adjusted capital is greater than or equal to its Mandatory Control Level RBC but less than its Authorized Control Level RBC;

(b) The notification by the commissioner to the health organization of an adjusted RBC report that indicates the event in paragraph (a) of this subsection, if the health organization does not challenge the adjusted RBC report under Section 7 of this administrative regulation;

(c) If, pursuant to Section 7 of this administrative regulation, the health organization challenges an adjusted RBC report that indicates the event in paragraph (a) of this subsection, notification by the commissioner to the health organization that the commissioner has, after a hearing, rejected the health organization's challenge;

(d) The failure of the health organization to respond to a corrective order, if the health organization has not challenged the corrective order under Section 7 of this administrative regulation; or

(e) If the health organization has challenged a corrective order under Section 7 of this administrative regulation and the commissioner has, after a hearing, rejected the challenge or modified the corrective order, the failure of the health organization to respond to the corrective order subsequent to rejection or modification by the commissioner.

(3) "Commissioner" is ~~defined~~established~~[defined]~~ by KRS 304.1-050(1).

(4) "Company action level event" means any of the following events:

(a) The filing of an RBC report by a health organization that indicates that the health organization's total adjusted capital is greater than or equal to its Regulatory Action Level RBC but less than its Company Action Level RBC;

(b) Notification by the commissioner to the health organization of an adjusted RBC report that indicates an event in paragraph (a) of this subsection, if the health organization does not challenge the adjusted RBC report under Section 7 of this administrative regulation; ~~or~~

(c) Pursuant to Section 7 of this administrative regulation, if a health organization challenges an adjusted RBC report that

indicates the event in paragraph (a) of this subsection, the notification by the commissioner to the health organization that the commissioner has, after a hearing, rejected the health organization's challenge; ~~or~~;

(d) A health maintenance organization that has total adjusted capital ~~[which is]~~ greater than or equal to its Company Action Level RBC but less than the product of its Authorized Control Level RBC and three and zero-tenths (3.0)~~[3.0]~~ and triggers the trend test determined in accordance with the trend test calculation included in the NAIC 2019 Risk-Based Capital Forecasting & Instructions, Health.

(5) "Corrective order" means an order issued by the commissioner specifying corrective actions ~~that~~which the commissioner has determined are required, under the provisions of this administrative regulation.

(6) "Department" is defined by KRS 304.1-050(2).

(7) "Domestic health organization" means a health organization domiciled in this state.

(8) "Foreign health organization" means a health organization that is licensed to do business in this state under KRS Subtitle 304.38, 304.38A, or 304.32~~[Chapter 304]~~[Subtitle 38, 38A or 32] but is not domiciled in this state.

(9) "Health organization" means a health maintenance organization, limited health service organization, dental or vision plan, hospital, medical and dental indemnity or service corporation, or other managed care organization licensed under KRS Subtitle 304.38, 304.38A, or 304.32~~[Chapter 304]~~Subtitle 38, 38A, or 32, except for an organization that is licensed as either a life and health insurer or a property and casualty insurer under KRS Subtitle 304.24 or 304.3~~[Chapter 304]~~Subtitle 24 or 3 and that is otherwise subject to either the life or property and casualty RBC requirements.

(10) "Mandatory control level event" means any of the following events:

(a) The filing of an RBC report ~~that~~which indicates that the health organization's total adjusted capital is less than its Mandatory Control Level RBC;

(b) Notification by the commissioner to the health organization of an adjusted RBC report that indicates the event in paragraph (a) of this subsection, if the health organization does not challenge the adjusted RBC report under Section 7 of this administrative regulation; or

(c) Pursuant to Section 7 of this administrative regulation, the health organization challenges an adjusted RBC report that indicates the event in paragraph (a) of this subsection, notification by the commissioner to the health organization that the executive director has, after a hearing, rejected the health organization's challenge.

(11) "NAIC" means the National Association of Insurance Commissioners.

(12) "RBC" means risk-based capital.

(13) "RBC instructions" means the RBC report including risk-based capital instructions adopted by the NAIC, as these RBC instructions ~~are~~may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

(14) "RBC level" means a health organization's company action level RBC, regulatory action level RBC, authorized control level RBC, or mandatory control level RBC in which~~[where]~~.

(a) "Company Action Level RBC" means, with respect to any health organization, the product of two and zero-tenths (2.0)~~[2.0]~~ and its Authorized Control Level RBC;

(b) "Regulatory Action Level RBC" means the product of one and five-tenths (1.5) and its Authorized Control Level RBC;

(c) "Authorized Control Level RBC" means the number determined under the risk-based capital formula in accordance with the RBC instructions; and

(d) "Mandatory Control Level RBC" means the product of 0.70~~[70]~~ and the Authorized Control Level RBC.

(15) "RBC plan" means a comprehensive financial plan containing the elements established~~[specified]~~ in Section 3(2) of this administrative regulation.

(16) "RBC report" means the report required in Section 2 of this administrative regulation.

(17) "Regulatory action level event" means, with respect to a health organization, any of the following events:

(a) The filing of an RBC report by the health organization that indicates that the health organization's total adjusted capital is greater than or equal to its Authorized Control Level RBC but less than its Regulatory Action Level RBC;

(b) Notification by the commissioner to a health organization of an adjusted RBC report that indicates the event in paragraph (a) of this subsection, ~~if provided~~ the health organization does not challenge the adjusted RBC report under Section 7 of this administrative regulation;

(c) If, pursuant to Section 7 of this administrative regulation, the health organization challenges an adjusted RBC report that indicates the event in paragraph (a) of this subsection, the notification by the commissioner to the health organization that the commissioner has, after a hearing, rejected the health organization's challenge;

(d) The failure of the health organization to file an RBC report by the filing date, unless the health organization has provided an explanation for the failure and has cured the failure within ten (10) days after the filing date;

(e) The failure of the health organization to submit an RBC plan to the commissioner within the time period ~~established~~**[set forth]** in Section 3(3) of this administrative regulation;

(f) Notification by the commissioner to the health organization that:

1. The RBC plan or revised RBC plan submitted by the health organization is unsatisfactory; and

2. Notification constitutes a regulatory action level event with respect to the health organization, if the health organization has not challenged the determination under Section 7 of this administrative regulation;

(g) If, pursuant to Section 7 of this administrative regulation, the health organization challenges a determination by the commissioner under this paragraph, the notification by the commissioner to the health organization that the commissioner has, after a hearing, rejected the challenge;

(h) Notification by the commissioner to the health organization that the health organization has failed to adhere to its RBC plan or revised RBC plan, but only if the failure has a substantial adverse effect on the ability of the health organization to eliminate the company action level event in accordance with its RBC plan or revised RBC plan and the commissioner has ~~so~~**stated so** in the notification, if the health organization has not challenged the determination under Section 7 of this administrative regulation; or

(i) If, pursuant to Section 7 of this administrative regulation, the health organization challenges a determination by the commissioner under this paragraph, the notification by the commissioner to the health organization that the commissioner has, after a hearing, rejected the challenge.

(18) "Revised RBC plan" means an RBC plan that ~~was~~:

(a) ~~[Was]~~Rejected by the commissioner; and

(b) ~~[Was]~~Revised by the health organization, with or without the commissioner's recommendation.

(19) "Total adjusted capital" means the sum of:

(a) A health organization's statutory capital and surplus (~~i.e.,~~ net worth) as determined in accordance with the statutory accounting applicable to the annual financial statements required to be filed under KRS 304.3-240 or 304.32-090; and

(b) Other items, if any, as the RBC instructions ~~[may]~~**provide**.

Section 2. RBC Reports. (1) A domestic health organization shall, on or prior to each March 1 (~~[the "filing date"]~~), prepare and submit to the commissioner a report of its RBC levels as of the end of the calendar year just ended, in the ~~[the NAIC 2019 Risk-Based Capital Forecasting & Instructions, Health's 2013 NAIC Health Risk-Based Capital Report Including Overview and Instructions for Companies]~~. In addition, a domestic health organization shall file its RBC report ~~with the~~:

(a) ~~[With the]~~NAIC in accordance with the RBC instructions; and

(b) ~~[With the]~~Insurance commissioner in any state in which the health organization is authorized to do business, if the insurance

commissioner has notified the health organization of its request in writing, in which case the health organization shall file its RBC report not later than the later of:

1. Fifteen (15) days from the receipt of notice to file its RBC report with that state; or

2. The filing date.

(2) A health organization's RBC shall be determined in accordance with the formula ~~established~~**[set forth]** in the RBC instructions. The formula shall take the following into account, and may adjust for the covariance between, determined in each case by applying the factors in the manner ~~established~~**[set forth]** in the RBC instructions:

(a) Asset risk;

(b) Credit risk;

(c) Underwriting risk; and

(d) All other business and relevant risks as are ~~established~~**[set forth]** in the RBC instructions.

(3) If a domestic health organization files an RBC report that ~~[in the judgment of the commissioner]~~is inaccurate, then the commissioner shall adjust the RBC report to correct the inaccuracy and shall notify the health organization of the adjustment. The notice shall contain a statement of the reason for the adjustment. ~~[An RBC report as so adjusted is referred to as an "adjusted RBC report".]~~

Section 3. Company Action Level Event. (1) If a company action level event occurs, the health organization shall prepare and submit to the commissioner an RBC plan that shall:

(a) Identify the conditions that contribute to the company action level event;

(b) Contain proposals of corrective actions that the health organization intends to take and that would be expected to result in the elimination of the company action level event;

(c) Provide projections of the health organization's financial results in the current year and at least the two (2) succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory balance sheets, operating income, net income, capital and surplus, and RBC levels. The projections for both new and renewal business may include separate projections for each major line of business and separately identify each significant income, expense, and benefit component;

(d) Identify the key assumptions impacting the health organization's projections and the sensitivity of the projections to the assumptions; and

(e) Identify the quality of, and problems associated with, the health organization's business, including its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, ~~and~~ mix of business and use of reinsurance, if any, in each case.

(2) The RBC plan shall be submitted:

(a) Within forty-five (45) days of the company action level event; or

(b) If the health organization challenges an adjusted RBC report pursuant to Section 7 of this administrative regulation, within forty-five (45) days after notification to the health organization that the commissioner has, after a hearing, rejected the health organization's challenge.

(3) Within sixty (60) days after the submission by a health organization of an RBC plan to the commissioner, the commissioner shall notify the health organization whether ~~or not~~ the RBC plan shall be implemented or is unsatisfactory. If the commissioner determines the RBC plan ~~fails to address the requirements of subsection (1)(a) through (e)]is unsatisfactory~~, the notification to the health organization shall ~~state~~**[set forth]** the reasons for the determination, and ~~establish revisions to correct~~**[may set forth proposed revisions which will render]** the RBC plan ~~[satisfactory]~~. Upon notification from the commissioner, the health organization shall prepare a revised RBC plan, which may incorporate by reference any revisions proposed by the commissioner, and shall submit the revised RBC plan to the commissioner:

(a) Within forty-five (45) days after the notification from the

commissioner; or

(b) If the health organization challenges the notification from the commissioner under Section 7 of this administrative regulation, within forty-five (45) days after a notification to the health organization that the commissioner has, after a hearing, rejected the health organization's challenge.

(4) If the commissioner notifies a health organization that the health organization's RBC plan or revised RBC plan is unsatisfactory, the commissioner may, subject to the health organization's right to a hearing under Section 7 of this administrative regulation, specify in the notification that the notification constitutes a regulatory action level event.

(5) Every domestic health organization that files an RBC plan or revised RBC plan with the commissioner shall file a copy of the RBC plan or revised RBC plan with the insurance commissioner in any state in which the health organization is authorized to do business if:

(a) The state has an RBC provision substantially similar to Section 8(1) of this administrative regulation; and

(b) The insurance commissioner of that state has notified the health organization of its request for the filing in writing, in which case the health organization shall file a copy of the RBC plan or revised RBC plan in that state no later than the later of:

1. Fifteen (15) days after the receipt of notice to file a copy of its RBC plan or revised RBC plan with the state; or

2. The date on which the RBC plan or revised RBC plan is filed under subsections (3) and (4) of this section.

Section 4. Regulatory Action Level Event. (1) If a regulatory action level event occurs, the commissioner shall:

(a) Require the health organization to prepare and submit an RBC plan or, if applicable, a revised RBC plan;

(b) Perform an examination or analysis of the assets, liabilities, and operations of the health organization including a review of its RBC plan or revised RBC plan; and

(c) Subsequent to the examination or analysis, issue an order specifying corrective actions ~~as the commissioner shall determine are required~~.

(2) In determining corrective actions, the commissioner ~~shall~~ may take into account relevant factors with respect to the health organization, based upon the commissioner's examination or analysis of the assets, liabilities, and operations of the health organization, including the results of any sensitivity tests undertaken pursuant to the RBC instructions. The RBC plan or revised RBC plan shall be submitted:

(a) Within forty-five (45) days after the occurrence of the regulatory action level event;

(b) If the health organization challenges an adjusted RBC report pursuant to Section 7 of this administrative regulation and the challenge is made in good faith within forty-five (45) days after the notification to the health organization that the commissioner has, after a hearing, rejected the health organization's challenge; or

(c) If the health organization challenges a revised RBC plan pursuant to Section 7 of this administrative regulation and the challenge is made in good faith, within forty-five (45) days after the notification to the health organization that the commissioner has, after a hearing, rejected the health organization's challenge.

(3) The commissioner may retain actuaries and investment experts and other consultants as ~~may be~~ necessary to review the health organization's RBC plan or revised RBC plan; ~~;~~ examine or analyze the assets, liabilities, and operations, including contractual relationships, of the health organization, and formulate the corrective order with respect to the health organization. The fees, costs, and expenses relating to consultants shall be borne by the affected health organization or other party as directed by the commissioner.

Section 5. Authorized Control Level Event. If an authorized control level event occurs with respect to a health organization, the commissioner shall:

(1) Take action as required under Section 4 of this administrative regulation regarding a health organization with

~~a respect to which an~~ regulatory action level event ~~has occurred~~; or

(2) If ~~the commissioner determines~~ it ~~is to be~~ in the best interests of the policyholders and creditors of the health organization and of the public, take action as necessary to cause the health organization to be placed under regulatory control under KRS ~~Subtitle 304.33~~ Chapter 304 Subtitle 33. If the commissioner takes action, the authorized control level event shall be sufficient grounds for the ~~commissioner to take~~ action ~~under KRS Chapter 304 Subtitle 33, and the commissioner shall have the rights, powers, and duties with respect to the health organization as are set forth in KRS Chapter 304 Subtitle 33~~. If the commissioner takes actions under this ~~subsection~~ paragraph pursuant to an adjusted RBC report, the health organization shall be entitled to protections as are afforded to health organizations under the provisions of Section KRS 304.33-130 pertaining to summary proceedings.

Section 6. Mandatory Control Level Event. (1) If a mandatory control level event occurs, the commissioner shall take action as necessary to place the health organization under regulatory control under KRS ~~Subtitle 304.33~~ Chapter 304 Subtitle 33. The mandatory control level event shall be sufficient grounds for the commissioner to take action ~~under KRS Chapter 304 Subtitle 33, and the commissioner shall have the rights, powers, and duties with respect to the health organization as are set forth in KRS Chapter 304 Subtitle 33~~.

(2) If the commissioner takes actions pursuant to an adjusted RBC report, the health organization shall be entitled to the protections of Section KRS 304.33-130 pertaining to summary proceedings.

(3) The commissioner may forego action for up to ninety (90) days after the mandatory control level event if ~~the commissioner finds~~ there is a reasonable expectation that the mandatory control level event ~~will~~ may be eliminated within the ninety (90) day period.

Section 7. Hearings. Upon the occurrence of any of the following events the health organization shall have the right to a confidential departmental hearing, on a record, at which the health organization may challenge any determination or action by the commissioner. The health organization shall notify the commissioner of its request for a hearing within five (5) days after the notification by the commissioner of any of the following events:

(1) Notification to a health organization by the commissioner of an adjusted RBC report;

(2) Notification to a health organization by the commissioner that:

(a) The health organization's RBC plan or revised RBC plan is unsatisfactory; and

(b) Notification constitutes a regulatory action level event with respect to the health organization;

(3) Notification to a health organization by the commissioner that the health organization has failed to adhere to its RBC plan or revised RBC plan and that the failure has a substantial adverse effect on the ability of the health organization to eliminate the company action level event with respect to the health organization in accordance with its RBC plan or revised RBC plan; or

(4) Notification to a health organization by the commissioner of a corrective order with respect to the health organization.

Section 8. Confidentiality; Prohibition on Announcements, and Prohibition on Use in Ratemaking. (1)(a) If in the possession or the control of the Department of Insurance, the following shall be confidential:

1. RBC reports, to the extent that the information is not required to be ~~stated~~ set forth in a publicly available annual statement schedule; and

2. RBC plans, including the results or report of any examination or analysis of a health organization performed ~~pursuant to this statute~~ and any corrective order issued by the commissioner pursuant to examination or analysis with respect to a domestic health organization or foreign health organization.

(b) The commissioner may use the documents, materials, or other information in paragraph (a) of this subsection, in accordance with KRS 304.2-150, 304.2-250(3), 304.2-260, and 304.2-270.

(2) In order to assist the performance of the commissioner's duties, the commissioner may:

(a) ~~[May]~~Share documents, materials, or other information obtained under this administrative regulation, in accordance with KRS 304.2-150, 304.2-250(3), 304.2-260(5), and 304.2-270;

(b) ~~[May]~~Receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the NAIC and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and

(c) ~~[May]~~Enter into agreements governing sharing and use of information consistent with this section.

(3)(a) Except as otherwise required or authorized under the provisions of this administrative regulation, a health organization, agent, broker, or other person engaged in any manner in the insurance business shall not make an assertion, representation, or statement with regard to the RBC levels of any health organization, or any component derived in the calculation, by:

1.a. Making, publishing, disseminating, circulating, or placing before the public; or

b. Causing, directly or indirectly, to be made published, disseminated, circulated, or placed before the public; and

2. Using:

a. A newspaper, magazine, or other publication;

b. A notice, circular, pamphlet, letter, or poster;

c. A radio or television station;

d. An advertisement, announcement, or statement; or

e. Any other means that[which] places the information before the public.

(b) A health organization may publish an announcement in a written publication:

1. If the sole purpose is to rebut:

a. A materially false statement with respect to the comparison of the health organization's total adjusted capital to its RBC levels; or

b. An inappropriate comparison of any other amount to the health organization's RBC levels;

2. If these materially false statements or inappropriate comparisons are published in a written publication; and

3. If the health organization is able to demonstrate to the commissioner, with substantial proof, the falsity or inappropriateness of the statement.

(4) The RBC instructions, RBC reports, adjusted RBC reports, RBC plans, and revised RBC plans shall be[are intended] solely for use by the commissioner in monitoring the solvency of health organizations and the need for possible corrective action with respect to health organizations and shall not be used by the commissioner for ratemaking, nor considered or introduced as evidence in any rate proceeding, nor used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance that a health organization or any affiliate is authorized to write.

Section 9. Supplemental Provisions; Rules; Exemption. (1) The provisions of this administrative regulation shall be[are] supplemental to any other provisions of the laws of this state~~[,]~~ and shall not preclude or limit any other powers or duties of the commissioner under the law, including KRS Subtitle 304.32, 304.33, 304.37, or 304.38[Chapter 304 Subtitles 32, 33, 37 or 38], 304.2-065, or 806 KAR 3:150.

(2) If requested, the commissioner shall[may] exempt from the application of this administrative regulation a domestic health organization that:

(a) Writes direct business only in this state;

(b) Assumes no reinsurance in excess of five (5) percent of direct premium written; and

(c) Writes direct annual premiums for comprehensive medical business of \$2,000,000 or less or is a limited health service organization that covers less than 2,000 lives.

Section 10. Foreign Health Organizations. (1)(a) A foreign health organization shall, upon the written request of the commissioner, submit to the commissioner an RBC report as of the end of the calendar year just ended the later of:

1. The date an RBC report would be required to be filed by a domestic health organization under this administrative regulation; or

2. Fifteen (15) days after the request is received by the foreign health organization.

(b) A foreign health organization shall, within thirty (30) days offat] the written request of the commissioner, [promptly] submit to the commissioner a copy of any RBC plan that is filed with the insurance commissioner of any other state.

(2)(a) The commissioner may require a foreign health organization to file an RBC plan if a company action level event, regulatory action level event, or authorized control level event occurs with respect to the foreign health organization:

1. As determined under the RBC statute applicable in the foreign health organization's state of domicile;

2. Under the provisions of this administrative regulation, if no RBC statute is in force in the state of domicile; or

3. If the insurance commissioner of the state of domicile fails to require the foreign health organization to file an RBC plan in the manner established[specified] under the RBC statute of the domicile state.

(b) If the commissioner chooses to require the filing specified in paragraph (a) of this subsection, the failure of the foreign health organization to file the RBC plan shall be grounds to order the organization to cease and desist from writing new insurance business in the state of Kentucky.

(3) If a mandatory control level event occurs with respect to a foreign health organization~~[,]~~ and no domiciliary receiver has been appointed with respect to the foreign health organization under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign health organization:

(a) The commissioner may make application to the Franklin Circuit Court permitted under the KRS Subtitle 304.33[Chapter 304 Subtitle 33] with respect to the liquidation of property of foreign health organizations found in this state; and

(b) The occurrence of the mandatory control level event shall be considered adequate grounds for the application.

Section 11. Incorporation by Reference. (1) "NAIC 2019 Risk-Based Capital Forecasting & Instructions Health" ["2013 NAIC Health Risk-Based Capital Report Including Overview and Instructions for Companies, National Association of Insurance Commissioners, 9/6/2013,] 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-West Main Street], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

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PUBLIC PROTECTION CABINET

Department of Insurance

Fraud Division

(As Amended at ARRS, January 13, 2021)

806 KAR 47:010. Fraud prevention.

RELATES TO: KRS 304.2-140, 304.47-010, 304.47-020, 304.47-040, 304.47-050~~[, 304.47-055, 304.47-080]~~

STATUTORY AUTHORITY: KRS 304.2-110, 304.47-055, 304.47-080

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 as established[defined] in KRS 304.1-010. [KRS 304.2-110 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.] This administrative regulation establishes insurer requirements and a comprehensive process for reporting and investigating fraudulent insurance acts.

Section 1. Definitions.

(1) "Division" is defined[established][defined] by KRS 304.47-010(6).

(2) "Special investigative unit" or "SIU" means a unit to investigate fraudulent insurance acts as established [required] by KRS 304.47-080.

Section 2. Scope. This administrative regulation shall apply to all insurers authorized[admitted] to do business in the Commonwealth that are not otherwise exempted by KRS 304.47-080(1).

Section 3. Primary Anti-fraud Contacts. To facilitate communication with the division, an insurer shall designate two (2) primary contact persons, one (1) of whom shall be the head of the SIU, who shall communicate with the division on matters relating to the reporting, investigation, and prosecution of suspected fraudulent insurance acts, as established[defined] in KRS 304.47-020.

Section 4. Special Investigative Units and Anti-fraud Plans.

(1) An insurer shall maintain an SIU to fulfill the requirements of KRS 304.47-080.

(2) In conjunction with its SIU, an insurer shall:

(a) Implement systematic and effective methods to detect and investigate suspected fraudulent insurance claims;

(b) Educate and train all claims handlers to identify possible insurance fraud;

(c) Develop policies for the SIU to cooperate, coordinate, and communicate with:

1. The insurer's claims handlers, legal personnel, technical support personnel, and database support personnel; and

2. The division and other relevant law enforcement agencies; and

(d) Develop and submit to the division a written anti-fraud plan, which shall include:

1. Acknowledgment of duty to report to the division, including mandatory reporting of the determination that a suspected fraudulent act has been committed within fourteen (14) days;

2. SIU contact information;

3. SIU investigative ethics;

4. Procedures to detect and deter fraud; and

5. Continuing education plans for SIU staff.

Section 5. Compliance Report.

(1) Within ninety (90) days of admission, and at least once every two (2) years, an insurer shall submit to the division a written report stating how[setting forth the manner in which] the insurer is complying with Section 4 of this administrative regulation. The report shall also include:

(a) The total number of SIU investigative staff responsible for cases in Kentucky, and whether or not any staff member also investigate cases in other jurisdictions; and

(b)1. If the insurer formed the SIU in house and solely governs it, the year that the SIU was [Legislative Research Commission PDF Version Page: 2]formed; or

2. If the insurer has contracted SIU services through another company, the identity of the company providing SIU services and the initial year of the contract between the insurer and the company.

(2) Within thirty (30) days of a material change of the

information provided in the compliance report, the insurer shall amend the compliance report and resubmit it to the division.

Section 6. Reporting Fraudulent Insurance Acts.

(1) All persons identified in KRS 304.47-050(2) shall report suspected fraudulent insurance acts to the division within fourteen (14) days of determination that a suspected fraudulent act has been committed. Reports submitted to a person or entity other than the division shall not satisfy the reporting duty of KRS 304.47-050(2). Reports shall be submitted by:

(a) Completing a report on the department's electronic services portal at <https://insurance.ky.gov/eservices/default.aspx>; or

(b) Submitting a completed Uniform Suspected Insurance Fraud Reporting Form.

(c) 1. To supplement the report required by this subsection and in addition to the reports required by paragraph (a) or (b) of this subsection[(1) of this section], persons identified in KRS 304.47-050(2) may also report suspected fraudulent insurance acts through intermediaries including:

a. the National Association of Insurance Commissioners' Online Fraud Reporting System;

b. The National Health care Anti-Fraud Association; or

c. The National Insurance Crime Bureau.

2. A report submitted through an intermediary shall be subject to the confidentiality provisions in KRS 304.47-055.

(2) All persons identified in KRS 304.47-050(1) shall[may] report suspected fraudulent insurance acts to the division by:

(a) Completing a report on the department's electronic services portal at <https://insurance.ky.gov/eservices/default.aspx>; or

(b) Submitting a completed Uniform Suspected Insurance Fraud Reporting Form.

Section 7. Incorporation by Reference.

(1) The "Uniform Suspected Insurance Fraud Reporting Form," 7/2019, 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-W. Main St.], 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
Kentucky Horse Racing Commission
(As Amended at ARRS, January 13, 2021)**

811 KAR 2:120. Kentucky Horse Breeders' Incentive Fund.

RELATES TO: KRS 230.225(5)(c)[(7)(b), (7)(e)], 230.330, 230.804, [EO-2008-668,] 15 U.S.C. 1821-1831

STATUTORY AUTHORITY: KRS 230.804(2)(b)[, EO-2008-668]

NECESSITY, FUNCTION AND CONFORMITY: KRS. 230.804 establishes the Kentucky Horse Breeders' Incentive Fund. KRS 230.804(2)(b) requires[authorizes] the Kentucky Horse Racing Commission [(the "commission")][Authority] to promulgate administrative regulations establishing the conditions and criteria for the distribution of moneys from the fund. [EO-2008-668, effective July 3, 2008, established the Kentucky Horse Racing Commission and transferred all authority, function, and responsibilities of the Kentucky Horse Racing Authority to Commission.] This administrative regulation establishes eligibility standards, administrative practices to enforce the standards, and the procedures for paying incentive awards from the fund.

Section 1. Definitions.

(1) "Applicant" means a Kentucky affiliate representing a breed of horses which is eligible to register with the commission to participate in the Kentucky Horse Breeders' Incentive Fund.

(2) "Award distribution plan" means a plan submitted by a Kentucky affiliate to the commission outlining the procedures by which the Kentucky affiliate will award funds from the Kentucky Horse Breeders' Incentive Fund to incentive winners who are members of the Kentucky affiliate.

(3) "Breed" means a subspecies of horse with particular physical characteristics common to the subspecies which are used in establishing the identity of a horse by a registry recognized by the commission[Commission].

(4) "Breeder" means:

(a) A person or persons engaged in the breeding of horses eligible for the Kentucky Horse Breeders' Incentive Fund[KHBIF], as defined by the national association of the Kentucky affiliate recognized by the commission as a participant in the Kentucky Horse Breeders' Incentive Fund[KHBIF] program; or

(b) If the national association does not define "breeder", the owner of the dam of a horse when the horse was foaled.

(5) "Closed breed registry" means the restrictions of the official national breed registry recognized by the Kentucky Horse Breeders' Incentive Fund[KHBIF].

(6) "Contest" means a competitive event with an outcome which qualifies the owner of a horse as an incentive winner under a Kentucky affiliate's award distribution plan.

(7) "Incentive winner" means a person whose horse's performance in a contest entitles that person to an award from the Kentucky Horse Breeders' Incentive Fund.

(8) "Kentucky affiliate" means the Kentucky organization that is recognized by a national breed organization representing that particular breed of horse in Kentucky.

(9) "Kentucky Horse Breeders' Incentive Fund" means the trust and revolving fund established by KRS 230.804.

(10) "KHBIF" means the Kentucky Horse Breeders' Incentive Fund.

(11) "Show horse" means a horse that participates in judged exhibition competitions.

Section 2. Registration of Kentucky Affiliate.

(1) Only a Kentucky affiliate may register to participate in the KHBIF.

(2) **Kentucky affiliates shall have an Internal Revenue Service 501(c) designation.**

(3) To become eligible to receive funds from the KHBIF, a Kentucky affiliate shall register with the commission by:

(a) Filing an "Application for Registration of Kentucky Affiliate with the Kentucky Horse Breeders' Incentive Fund", KHRC[KHRA] Form HB-1, (12/08); and

(b) Filing with the application an award distribution plan to be reviewed and approved by the commission.

(4) A thoroughbred breed shall not be eligible for registration with the KHBIF, **unless the thoroughbred breed consists exclusively of show horses.**

(5) A standardbred breed shall not be eligible for registration with the KHBIF, unless the standardbred breed consists exclusively of show horses.

(6) The color of a breed of horses shall not be the sole criterion used to define that breed for purposes of registration with the KHBIF.

(7) The commission [authority] may establish, under its [the] general jurisdiction[of the Kentucky Horse Racing Commission], the KHBIF Advisory Committee [Kentucky Horse Breeders' Incentive Fund] (the "advisory committee"). If established, the advisory committee shall consist of three (3) members appointed by the chairman of the commission by July 1 of each year. One (1) member shall be recommended to the chairman for appointment by the Kentucky Equine Education Project (KEEP). If KEEP has not recommended a member for appointment by July 1 of a given year, the Chairman of the commission[Kentucky Horse Racing Commission] shall make the appointment without the recommendation. **At least one (1) member of the advisory committee shall have established knowledge of gaited horses.** Each member of the advisory committee shall serve from July 1 through June 30 of the following year. Each member of the advisory committee shall be a resident

of Kentucky. Each member of the advisory committee shall serve without compensation, but shall be entitled to reimbursement for all **reasonable** expenses incurred in the discharge of official business. The advisory committee shall select a chairman from its membership annually.

(8) (a) The KHBIF advisory committee[Kentucky Horse Breeders' Incentive Fund Advisory Committee] shall advise and assist the commission[Kentucky Horse Racing Commission] in the registration process described in this section. The advisory committee shall make a recommendation of approval or denial to the commission for each applicant based upon the application and compliance with the requirements established in subsection (13) of this section.

(b) The commission[Kentucky Horse Racing Commission] shall employ qualified personnel necessary to assist the commission and the advisory committee in carrying out the provisions of this administrative regulation. These personnel shall serve at the pleasure of the commission, and compensation for these personnel shall be fixed by the commission.

(9) After the advisory committee recommends to the commission the approval or denial of an application, the commission shall consider the recommendation and whether or not the requirements of this administrative regulation have been met, and shall:

(a) Approve the application;

(b) Deny the application; or

(c) Defer consideration of the application for a reasonable time for the purpose of conducting further investigation of the application.

(10) Registration shall be effective for three (3) years. The first three (3) year registration period shall consist of the period beginning January 1, 2022[2006], and ending December 31, 2024[2008].

(11) For the first registration period, a Kentucky affiliate shall register with the commission on or prior to November 1, 2021. Any Kentucky affiliate that registered with the commission under any previously effective version of this administrative regulation shall reregister March 31, 2007.

(12) For each three (3) year period beginning on or after January 1, 2022[2009], a Kentucky affiliate shall register with the commission on or prior to November 1 of the calendar year immediately preceding January 1 of the first year of the three (3) year registration period.

(13) A Kentucky affiliate shall have until December 31 following the November 1 deadline established in subsections (11) and (12)[set forth in subsection (14)] of this section to revise and update any information previously provided to the commission on or before the November 1 deadline.

(14) The application and the accompanying award distribution plan provided to the commission shall include[set forth] the following information:

(a) The name of the breed of horse covered by the plan;

(b) The name of the Kentucky affiliate;

(c) A letter from the national breed organization representing the breed certifying that the Kentucky affiliate is the recognized representative in Kentucky of that breed, and certifying the number of horses twenty-five (25) years of age and younger in the breed residing in Kentucky. **If the Kentucky affiliate is the national breed organization, then an independent third party approved by the commission shall certify the number of horses. Optionally, if the Kentucky affiliate demonstrates to the commission that it is unable to obtain an independent third party to certify horse numbers as required in this subsection, the commission may certify horse numbers at a fee of \$120.00 per hour.**

1. For a horse to be included in the certification, the horse shall be the result of parentage verified by DNA verification of either the horse's sire or dam. A three (3) generation pedigree on one (1) side shall be displayed on the certificate of registration, so that the horse, at least one (1) of the horse's parents, and at least (1) set of the horse's grandparents are displayed on the certificate.

2. Each horse shall be registered with only one (1)

Kentucky affiliate.

3. The affiliate shall provide the data electronically to the commission and in a format agreeable to the commission;

(d) A letter from the national[nation] breed organization representing the breed certifying that the breed has a closed breed registry; and

(e) The award distribution plan pursuant to which awards will be distributed to KHBIF incentive winners who are breeders or owners of horses bred and foaled in Kentucky. The award distribution plan shall specify:

1. The scoring method or point system to be utilized in contests to determine the incentive winner of each contest as certified by the national breed organization;

2. The identity of the scoring person or body that will judge each contest as certified by the national breed organization;

3. The rules of the contests in which the horses of the breed will participate as certified by the national breed organization; and

4. The percentage distribution formula by which the Kentucky affiliate shall grant awards to incentive winners.

(15)/(14)(a) The commission shall be recognized and designated as the sole official registrar of the KHBIF[Kentucky Horse Breeders' Incentive Fund] for the purposes of registering the application and award distribution plan for each breed in accordance with the terms of this administrative regulation.

(b) The records of each national breed organization shall be used as the official records of the commission for determining the following information:

1. The identity of the Kentucky affiliate representing the breed in Kentucky; and

2. The number of horses of the breed twenty-five (25) years of age and younger registered with the national breed organization and currently residing in Kentucky.

(16)/(15) If the information on an application form required under this section is found to be inaccurate, or becomes inaccurate, or changes, the organization identified as the Kentucky affiliate shall promptly notify the commission of the correct information within thirty (30) days of discovering the inaccuracy or the circumstances causing the information to become inaccurate or to change.

Section 3. Timing and Distribution of Awards.

(1) The events eligible for awards from the KHBIF[Kentucky Horse Breeders' Incentive Fund], as set forth in each award distribution plan, shall be those occurring on or after January 1, 2006.

(2) Awards to incentive winners shall be calculated and distributed each year.

(3) The commission, with the cooperation of each Kentucky affiliate shall, after the end of each calendar year, calculate the funds due to each Kentucky affiliate for that year.

(4) The amount allocated to a Kentucky affiliate participating in the KHBIF shall be calculated by:

(a) Dividing the number of horses of the breed twenty-five (25) years of age and younger and currently residing in Kentucky as certified by the national breed organization pursuant to Section 2(14)/(13)(c) of this administrative regulation, by the total number of horses from all Kentucky affiliates certified pursuant to Section 2(14)/(13)(c) of this administrative regulation. The number of horses in each case shall be the number of horses recorded on each Kentucky affiliate's application form on the December 31 deadline established in Section 2(13) of this administrative regulation[preceding the three (3) year registration period]; and

(b) Multiplying the fraction obtained in paragraph (a) by the total amount of money allocated to all Kentucky affiliates during the year.

(5) An award to an incentive winner from the KHBIF shall be determined based on the award distribution plan submitted by the Kentucky affiliate representing the breed to the commission pursuant to Section 2(2)(b) of this administrative regulation.

(6) The commission[Kentucky affiliate] shall, by March 1 of each year, notify the Kentucky affiliate of the total dollars allocated to that affiliate[determine the names of the incentive

winners who are entitled to awards for contests held during the previous year and provide the names of the incentive winners to the commission].

(7) Kentucky affiliate shall, by October 1 of each year, notify the commission of the names of the incentive winners who are entitled to awards for contests held during the previous year. The Kentucky affiliate shall also, by October 1 of each year, notify the commission of the names of the horses registered to that affiliate, and the date of each horse's registration. If a horse is registered with more than one (1) affiliate, the commission shall not count that horse's award, and the funds for that award shall revert back to the KHBIF to be distributed in future awards.

(a) Within thirty (30) calendar days of receiving the names of the incentive winners from the Kentucky affiliate, the commission shall generate claim forms for the appropriate Kentucky affiliate.

(b) The Kentucky affiliate shall provide the claim forms received from the commission to its incentive winners from the previous year.

(c) The Kentucky affiliate shall provide a letter to the commission, which certifies that it has notified all incentive winners of their awards from the previous year. The commission shall not issue an award check for any of that Kentucky affiliate's incentive winners prior to receiving this letter[The commission shall, by June 1 of each year, notify each incentive winner of the amount of the award to which the incentive winner is entitled by notice sent to the last known address provided to the commission by the Kentucky affiliate].

(8) After receiving notification of an award, each incentive winner shall return an enclosed claim form for the award that certifies that the incentive winner is entitled to the award and that certifies the incentive winner's taxpayer ID number or Social Security number. The claim form shall be delivered to the commission no later than December 31 of the same year in which the commission notified the incentive winner of the award pursuant to subsection (7) of this section.

(9) The claim form shall be the form "Claim Form of Incentive Winner for Award from the Kentucky Horse Breeders' Incentive Fund", KHRC[KHRA] Form HB-2, (12/06).

(10) [Any award owing to an incentive winner who cannot be located by December 31 of the year in which the commission attempted to notify the incentive winner of the award pursuant to subsection (7) of this section], [shall lapse to the KHBIF.

(11)] Failure to return the claim form required by subsection (8) of this section by December 31 of the year in which the incentive winner was notified of the award pursuant to subsection (7) of this section shall result in forfeiture of the award, and the award money shall lapse to the KHBIF.

(11)/(12)] An award from the KHBIF shall not be granted to any incentive winner who is not in good standing with the national breed organization or Kentucky affiliate.

Section 4. Semiannual Reports.

(1) A semiannual status report describing a Kentucky affiliate's progress and participation in the award distribution plan shall be filed with the advisory committee by each Kentucky affiliate on or before July 31 and January 31. If that date is on a Saturday, Sunday, or legal holiday, the report shall be due on the first business day thereafter.

(2) The semiannual report shall also include:

(a) A list of all stallions presently breeding horses eligible to participate in the fund, and the farm locations on which the stallions stand; [and]

(b) A schedule of all state and national contests for that year in which horses eligible to participate in the KHBIF are scheduled to participate;

(c) A list of all horses registered with the Kentucky affiliate and the horse's date of registration with that affiliate;

(d) A current list of the Kentucky affiliate's board members; and

(e) The current contact information of the Kentucky affiliate's preferred contacts.

Section 5. Disputes.

(1) Any dispute between the commission and a Kentucky affiliate or national breed organization arising under this administrative regulation shall be raised by the aggrieved party filing a petition seeking relief with the executive director of the commission, within thirty (30) days of the action or the inaction leading to the dispute, as established in 810 KAR 7:070.

(2) If the executive director and the aggrieved party do not agree on a resolution of the dispute, the executive director shall assign the case to a hearing officer who shall conduct a hearing pursuant to KRS Chapter 13B.

Section 6. Disciplinary Procedures.

(1) Violations, discipline, disputes, and investigation shall take place according to 810 KAR 7:070.

(2) In addition to the procedures established in 810 KAR 7:070, and notwithstanding any contrary provisions of 810 KAR 7:070, the commission may take the following actions, which would be subject to appeal as established in 810 KAR 7:070:

(a) For a violation of 810 KAR 7:070, the commission may bar a Kentucky affiliate or national breed organization from registering for a period of from one (1) to ten (10) years, based on the seriousness of the violation.

(b) For a second or subsequent violation of 810 KAR 7:070, the commission may bar the Kentucky affiliate or national breed organization from eligibility to receive an incentive from the KHBIF for a period of from one (1) to twenty (20) years.

(c) If the evidence available to the commission indicates that an individual who is a member of, or acting on behalf of, a Kentucky affiliate or national breed organization has, without the knowledge or consent of the Kentucky affiliate or national breed organization, violated 810 KAR 7:070, then the commission may condition the continuing registration of the Kentucky affiliate in the KHBIF upon the exclusion of that individual from any further participation in work related to the KHBIF. [The commission may deny or revoke the registration of a Kentucky affiliate or national breed organization if the Kentucky affiliate or national breed organization:

(a) Knowingly provides the commission with incorrect, false, or misleading information concerning any aspect of the registration of the breed represented by the Kentucky affiliate with the commission;

(b) Knowingly fails to furnish within thirty (30) days information the commission has requested relating to the registration; or

(c) Knowingly violates any provision of KRS Chapter 230 or KAR Title 810] [or 811 KAR] [in any other manner.

(2) If the commission denies or revokes the registration of a Kentucky affiliate or national breed organization, the Kentucky affiliate or national organization may request, and the commission shall schedule, a hearing to be conducted pursuant to KRS Chapter 13B.

(3) At the conclusion of the KRS Chapter 13B hearing, the commission shall, in its final order, determine whether the Kentucky affiliate or national breed organization has knowingly provided the commission with incorrect, false, or misleading information, or has knowingly failed to provide the commission with requested information, or has knowingly violated any provision of KRS Chapter 230 or KAR Title 810] [or 811 KAR] [in any other manner, and may take one (1) or more of the following actions:

(a) Deny or revoke the registration;

(b) Uphold the denial or revocation of the registration;

(c) Rescind the denial or revocation of the registration;

(d) Bar the Kentucky affiliate or national breed organization which violated subsection (1) of this section from registering for a period of from one (1) to ten (10) years, based on the seriousness of the violation, beginning with the date on which the final order becomes effective;

(e) Withhold] [Without] [funds due to be allocated to the

Kentucky affiliate; or

(f) Withdraw funds previously allocated to the Kentucky affiliate.

(4) If a Kentucky affiliate's designee or representative fails to appear at the hearing, the commission may take one (1) or more of the following actions:

(a) Deny or revoke the registration; or

(b) Bar the Kentucky affiliate which failed to respond to the summons from registering foals to the fund for a period of from one (1) to ten (10) years, based on the seriousness of the violation, beginning with the date on which the final order becomes effective;

(c) Withdraw funds previously allocated to the Kentucky] [state] [affiliate;

(d) Withhold funds due to be allocated to the Kentucky affiliate; or

(e) Reschedule the hearing.

(5) For a second or subsequent violation of subsection (1) of this section, the commission may bar the Kentucky affiliate or national breed organization from eligibility to receive an incentive from the KHBIF for period of from one (1) to twenty (20) years.

(6) The commission shall notify the Kentucky affiliate in writing of the action taken by the commission.

(7) If the evidence available to the commission indicates that an individual who is a member of, or acting on behalf of, a Kentucky affiliate or national breed organization has, without the knowledge or consent of the Kentucky affiliate or national breed organization, knowingly provided the commission with incorrect, false, or misleading information, knowingly failed to provide the commission] [Authority] [with requested information, or knowingly violated the federal Horse Protection Act, 15 U.S.C. Sections 1821 through 1831, or any other federal or state law pertaining to the breeding, racing, or showing of horses, or reflecting on the honesty and trustworthiness of the individual to participate in the KHBIF, the commission may take one (1) or more of the following actions:

(a) Condition the continuing registration of the Kentucky affiliate in the KHBIF upon the exclusion of that individual from any further participation in work related to the KHBIF;

(b) Withdraw funds previously allocated to the individual;

(c) Withhold funds due to be allocated to the individual; or

(d) Bar the individual from further participation in the KHBIF for a period of time proportionate to the seriousness of the violation. (8) An individual against whom disciplinary action has been taken under subsection (7) of this section may appeal the matter to the commission pursuant to KRS Chapter 13B.]

Section 7. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Application for Registration of Kentucky] [State] Affiliate with the Kentucky Horse Breeders' Incentive Fund", KHRC] [KHRA] Form HB-1, (12/08); and

(b) "Claim Form of Incentive Winner for Award from the Kentucky Horse Breeders' Incentive Fund", KHRC] [KHRA] Form HB-2, (12/08).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Horse Racing Commission, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the KHRC Web site at www.khrc.ky.gov.

JOHNATHAN RABINOWITZ, Chair

KERRY HARVEY, Secretary

APPROVED BY AGENCY: September 8, 2020

FILED BY LRC: September 9, 2020 at 8:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 AM on November 23, 2020 at Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to

the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on November 30, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Jennifer Wolsing, General Counsel, Kentucky Horse Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039, email jennifer.wolsing@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jennifer Wolsing

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the conditions and criteria for the distribution of money from the Kentucky Horse Breeders' Incentive Fund.

(b) The necessity of this administrative regulation: This regulation is necessary to establish the conditions and criteria for the distribution of money from the Kentucky Horse Breeders' Incentive Fund.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 230.804 establishes the Kentucky Horse Breeders' Incentive Fund and authorizes the Kentucky Horse Racing Commission to promulgate administrative regulations establishing the conditions and criteria for the distribution of money from the fund.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the conditions and criteria for distributing the Kentucky Horse Breeders' Incentive Fund money, which is required by KRS 230.804.

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

(a) How the amendment will change this existing administrative regulation: This amendment changes the existing regulation by fixing some technical deficiencies. For example, obsolete references to the "Kentucky Horse Racing Authority" are replaced by references to the "Kentucky Horse Racing Commission."

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary because this regulation will expire if it is not amended on or before September 18, 2020, pursuant to Kentucky's regulatory sunset provision.

(c) How the amendment conforms to the content of the authorizing statutes: This regulation establishes the conditions and criteria for distributing the Kentucky Horse Breeders' Incentive Fund money, which is required by KRS 230.804.

(d) How the amendment will assist in the effective administration of the statutes: This regulation establishes the conditions and criteria for distributing the Kentucky Horse Breeders' Incentive Fund money, which is required by KRS 230.804.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky affiliates and their members will be affected by this regulation.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: The regulated entities will have to take no new actions. This amendment simply makes technical changes to the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: No new costs are anticipated as a result of this proposed amendment. This

amendment simply makes technical changes to the regulation.

(c) As a result of compliance, what benefits will accrue to the entities: Compliance with this regulation will allow Kentucky affiliates and incentive winners to take part in the funds distributed from the Kentucky Breeders Incentive Fund.

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

(a) Initially: No new costs are anticipated as a result of this proposed amendment. This amendment simply makes technical changes to the regulation.

(b) On a continuing basis: No new costs are anticipated as a result of this proposed amendment. This amendment simply makes technical changes to the regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No new costs are anticipated as a result of this proposed amendment. This amendment simply makes technical changes to the regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No new costs are anticipated as a result of this proposed amendment. This amendment simply makes technical changes to the regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new costs are anticipated as a result of this proposed amendment. This amendment simply makes technical changes to the regulation.

(9) TIERING: Is tiering applied? Tiering is not applied. All aspects of this regulation will be applied equally to each racing association.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Commission will be impacted.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 230.804.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No new revenue is anticipated as a result of this proposed amendment. This amendment simply makes technical changes to the regulation.

(c) How much will it cost to administer this program for the first year? No new costs are anticipated as a result of this proposed amendment. This amendment simply makes technical changes to the regulation.

(d) How much will it cost to administer this program for subsequent years? No new costs are anticipated as a result of this proposed amendment. This amendment simply makes technical changes to the regulation.

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

Revenues (+/-): None.

Expenditures (+/-): None.

Other Explanation: N/A

PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Division of Plumbing
(As Amended at ARRS, January 13, 2021)

815 KAR 20:150. Inspections and tests.

RELATES TO: KRS 318.090, 318.130, 318.134, 318.140, 318.160, 318.170

STATUTORY AUTHORITY: KRS 198B.040(10), 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the department to promulgate an administrative regulation establishing the Kentucky State Plumbing Code. KRS 318.160 requires a person who constructs, installs, or extensively alters any plumbing, sewerage, or water supply system of any public building or establishment to obtain approval of the department in writing. This administrative regulation establishes the requirements for the tests and inspections that are necessary in order to ensure compliance with 815 KAR Chapter 20, the Kentucky State Plumbing Code.

Section 1. Required Inspections and Tests. (1) Required inspections. The department shall inspect the following to ensure compliance with the code:

- (a) The water distribution system;
- (b) The soil, waste, and vent system;
- (c) The fixtures and fixture traps;
- (d) Appurtenances; and
- (e) All connections in a plumbing system.

(2) Required tests. Tests shall be made separately or as follows:

- (a) The house sewer and its branches from the property line to the house drain;
- (b) The house drain including its branches;
- (c) The soil, waste, and vent system;
- (d) Inside rain water conductors; and
- (e) The final inspection and air test which shall include the complete plumbing system as required by Section 3(2) of this administrative regulation, exclusive of the house sewer.

(3) Rough-in inspection.

(a) The plumbing system shall not be covered until it has been inspected, tested, and approved.

(b) A rough-in inspection shall be conducted prior to the covering or concealment of the plumbing system.

(c) If any part of a plumbing system is covered or concealed before being inspected, tested, and approved, it shall be uncovered, or unconcealed and tested as required.

(4) Condemned buildings. In buildings condemned by other authorities because of unsanitary conditions of the plumbing system, necessary alterations shall be considered a new plumbing system.

(5) Tests of alterations, extensions, or repairs. Any alterations, repairs, or extensions that require more than ten (10) feet of soil, waste, or vent piping shall be inspected and tested as required by Section 3(2) of this administrative regulation.

Section 2. Permit Holder Requirements. The person procuring the plumbing permit shall:

(1) Furnish all equipment, material, and labor necessary for inspections and tests;

(2) Notify the department representative and request a rough-in inspection for the plumbing system prior to the plumbing system being concealed or covered within the floors or walls of a building; and

(3) Notify a department representative and request a final inspection and air test upon completion of the installation.

Section 3. Requirements for Remote Inspection. (1) A master plumber may request a plumbing inspection from the department conducted by live video or submission of recorded video or photograph if the master plumber holds a certificate of completion issued by the department.

(2) Certificate of completion. (a) The department shall issue a

certificate of completion to a master plumber who has successfully completed a training course provided by the department that shall cover the following topics:

- 1. Technology necessary for effective remote inspection;
- 2. Information to be conveyed and shown by the master plumber to the department; and
- 3. How to show corrections made to installations that failed remote inspection.

(b) A certificate of completion issued to a master plumber pursuant paragraph (a) of this subsection~~section 3(2)(a) of this administrative regulation~~ shall be valid for a period of three (3) years from the date of issuance, after which the certificate shall expire unless renewed prior to expiration as established in paragraph (c) of this subsection. A master plumber whose certificate of completion has expired shall not be eligible to request or receive remote inspections.

(c) A certificate holder may renew his or her~~their~~ certificate of completion by completing the~~a~~ training course established in paragraph (a) of this subsection~~described in section 3(2)(a) of this administrative regulation~~.

(3) The department shall~~may~~ deny a request for remote inspection if:

- (a) The scope of the work is too complex for remote inspection;
- (b) Remote inspection is not feasible or practical; or
- (c) The situation would not provide an adequate inspection if done remotely~~Any other reason is articulated in writing to the certificate holder by the department~~.

(4) Remote inspection seals. (a) A certificate holder may request numbered remote inspection seals from the department to place on completed plumbing installations that are approved for remote inspection. The request shall be made by by submitting a completed form PLB-4, Application for Plumbing Remote Inspection Seals, to the department.

(b) Except for the initial request for remote inspection seals, a certificate holder requesting seals shall submit a completed form PLB-5, Plumbing Remote Inspection Seal Verification, to the department prior to receiving remote inspection seals.

(c) A certificate holder shall:

- 1. Affix a seal to a completed plumbing installation for which he or she has been approved for remote inspection;
- 2. Not affix a seal to a plumbing installation if~~when~~ he or she has not submitted videos or photographs of the installation to the department or participated in a live video inspection with the department; and

3. Not allow seals he or she received from the department to be used by another.

(d) The department shall:

- 1. Assign an inspection number to the permit and seal for a plumbing installation that has successfully passed all required remote inspections and tests; and
- 2. Complete remote inspections that are not live video within three (3) business days of receipt of videos or photographs of the completed plumbing installation eligible for remote inspection.

(e) A property owner, property owner's designee, or certificate holder shall write the inspection number assigned by the department on the seal the inspection number is assigned to upon successful passage of all required inspections and tests.

(5) Notification of noncompliance. The department shall immediately issue a notification of noncompliance in writing to the certificate holder upon finding deficiencies in the documentation submitted for remote inspection.

(6) Corrections to noncompliant installations. A plumbing installation found to be noncompliant through remote inspection shall be corrected within ten (10) business days upon receiving notice of noncompliance from the department. Failure to make the required corrections may result in the termination of the certificate holder's certificate of completion.

(7) Penalties. A certificate holder who knowingly engages in activity intended to defraud or deceive a plumbing inspector or any other agent of the department shall be subject to certificate and license revocation or suspension.

(8) Department determinations established in subsections (6) and (7) of this section may be appealed to the department.

An appeal shall be conducted pursuant to KRS Chapter 13B.

Section 4[3]. Testing of Systems. (1) The water distribution system, as well as the water service, shall be:

(a) Tested with air or water under a pressure of not less than the maximum working pressure under which it is to be used; and
(b) Free from leaks.

(2)(a) Except as provided in subsection (3) of this section, a water test shall be performed:

1. On the entire soil, waste, and vent system; or
2. In sections.

(b) If it is applied to the entire system, all openings shall be closed, except the highest opening and the system shall be filled with water to the point of overflow.

(c) If the system is tested in sections, each opening shall be tightly plugged, except the highest opening and it shall be tested with not less than a ten (10) foot head of water. In testing successive sections, at least the upper ten (10) feet of the preceding section shall be retested.

(3) In lieu of a water test, an air pressure test may be used by attaching an air compressor or test apparatus to any suitable opening. All other inlets and outlets to the system shall be closed, forcing air into the system until there is a uniform pressure of five (5) pounds per square inch (PSI). The pressure shall be maintained for fifteen (15) minutes.

(4) After the plumbing fixtures have been set and their traps filled with water and before the building is occupied, the final air test shall test the entire soil, waste, and vent system including the fixtures and appurtenances, other than a house sewer, by connecting an air machine to any suitable opening or outlet and applying air pressure equivalent to a one (1) inch water column. It shall be maintained for at least a fifteen (15) minute period. If there are no leaks or forcing of trap seals as may be indicated by the functioning of a drum, float, or water column, the system shall be determined as airtight.

(5) A garage drainage system shall be tested in the same manner as the soil, waste, and vent system.

(6) A house sewer shall be tested by a water, air, or smoke test. A four (4) inch test tee or Y connection shall be provided at the property line for testing.

(7) The department may require the removal of any clean-outs to ascertain if the pressure has reached all parts of the system

(8) A building sewer not drained by gravity shall have a minimum of twenty-four (24) inches of cover and shall be tested with five (5) pounds per square inch for a period of fifteen (15) minutes.

(9) Inside rain water conductors shall be tested with water, air, or smoke test.

Section 5[4]. Defective Work. If an inspection or a test indicates defective work or material, it shall be replaced and the inspection and the test repeated.

Section 6[5]. Testing Defective Plumbing. An air test shall be used in testing the condition of a plumbing system if there is reason to believe it has become defective.

Section 7[6]. Certificate of Approval. The department shall issue a certificate of approval upon the satisfactory completion and final test of the plumbing system.

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

(a) "Application for Plumbing Remote Inspection Seals", Form PLB-4, June 2020; and

(b) "Plumbing Remote Inspection Seal Verification", Form PLB-5, June 2020.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, 500 Mero Street, Frankfort, Kentucky 40601-5412, Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at dhbc.ky.gov.

CONTACT PERSON: Benjamin Siegel, General Counsel, Department of Housing, Buildings and Construction, 500 Mero Street, 1st Floor, Frankfort, Kentucky 40601, phone (502) 782-0604, fax (502) 573-1057, email benjamin.siegel@ky.gov.

**PUBLIC PROTECTION CABINET
Department of Housing, Buildings and Construction
Electrical Division
(As Amended at ARRS, January 13, 2021)**

815 KAR 35:015. Certification of electrical inspectors.

RELATES TO: KRS 198B.060, 198B.090, 211.350, 227.450, 227.480, 227.489, 227.491, 227.492, 227.495

STATUTORY AUTHORITY: KRS 227.489

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227.489 requires the commissioner of the Department of Housing, Buildings and Construction to require electrical inspectors to be certified based on standards of the National Electrical Code. This administrative regulation establishes the procedures for achieving and maintaining [a] certification as an electrical inspector.

Section 1. Applicability. This administrative regulation shall apply to electrical inspectors in Kentucky and applicants for certification as an electrical inspector in Kentucky.

Section 2. Classifications of Electrical Inspectors. (1) An electrical inspector shall be classified as either:

(a) An electrical inspector one (1) and two (2) family shall be a person who has:

1. Passed an examination focused on electrical installations in one (1) or two (2) family dwellings with a score of seventy (70) percent or greater by a test provider approved by the department; and

2. At least four (4) years' experience immediately preceding the application in the installation and design of residential wiring systems installed in accordance with the National Electrical Code, NFPA 70 incorporated by reference in 815 KAR 7:120 and 815 KAR 7:125; or

(b) An electrical inspector general shall be a person who has:

1. Passed an examination focused on electrical installations in residential, commercial, and industrial buildings with a score of seventy (70) percent or greater by a test provider approved by the department; and

2. At least eight (8) years of experience immediately preceding the application in the installation and design of residential, commercial, and industrial wiring systems installed in accordance with the National Electrical Code, NFPA 70, incorporated by reference in 815 KAR 7:120 and 815 KAR 7:125.

(2) The requirements in subsections **(1)(a) and (b) of this section[1(a) and 1(b)]** shall be satisfied if the person is:

(a) A registered professional electrical engineer engaged in that profession for at least three (3) years immediately preceding the application; or

(b) Currently licensed as a master electrician, having obtained his or her[their] license after successful passage of an exam in accord with 815 KAR 35:060, Section 4, and actively engaged in the electrical trade in that capacity immediately preceding the application.

(3)(a) An electrical inspector one (1) and two (2) family shall be certified to inspect and approve an electrical installation related to a:

1. One (1) or two (2) family dwelling; or
2. Manufactured home or mobile home.

(b) An electrical inspector general shall be certified to inspect and approve an electrical installation related to any type of residential, commercial, industrial, or any other property that requires electrical inspection.

(4) A passing score as **established in subsection (1)(a)1. and (1)(b)1. of this section[described in subsection (1)(a)1. and 1(b)1.]** shall be valid for a period of three (3) years.

Section **3.[4.]** Application Requirements for Certification. (1) An

applicant for certification as an electrical inspector shall submit to the department:

(a) A completed Application for Electrical Inspector Certification on Form EL-11;

(b) Proof of successful completion of the examination applicable to the certification sought pursuant to Section 2(1)(a) and (b) of this administrative regulation;

(c) Except for electrical inspectors employed by the department, a fee of \$100 dollars payable to the Kentucky State Treasurer.

(d) Proof of the applicant's experience as required by Section ~~2(1)(a)2. and 2(1)(b)2.[3(1)(a)2. and (b)2.]~~ of this administrative regulation.

(e) A passport-sized, color photograph of the applicant taken within the past six (6) months; and

(f) Proof of a bond in the amount of \$5,000 in compliance with KRS 227.487(4), unless employed by the department or a local government rules otherwise.

(2) An applicant shall possess:

(a) The ability to read and write the English language; and

(b) A general educational level at least adequate to perform his or her duties.

(3) Proof of listed experience shall be provided by:

1. A federal or state tax form; or

2. An affidavit by another license holder who worked with the applicant.

(4) An applicant shall receive credit for an electrical course satisfactorily completed from an accredited vocational school or college on a year-for-year basis. Credit for education to replace an applicant's experience requirements shall be limited to a total of two (2) years.

(5) The department shall issue a certification for an electrical inspector only to an individual. A corporation, partnership, company, or other entity shall not be issued a certification.

Section ~~4.[5.]~~ Certificate Renewal. (1) Certification period.

(a) Each electrical inspector's certification shall expire on the last day of the electrical inspector's birth month each year.

(b) The department shall send each electrical inspector a renewal application form prior to the date of expiration.

(2) Filing for renewal. Each electrical inspector seeking certification renewal shall submit to the department:

(a) A completed Application for Electrical Inspector Certification on Form EL-11;

(b) A renewal fee off fifty (50) dollars;

(c) Proof of compliance with the continuing education requirements established in 815 KAR 2:010;

(d) If the electrical inspector is employed by a local government, documented proof of continued employment signed by the hiring authority responsible for administering the local jurisdiction's inspection and code enforcement program;

(e) For each local jurisdiction with which the applicant is contracted to act as an electrical inspector, a copy of the current contract naming the applicant and establishing the terms and conditions of his or her authority; and

(f) For each local jurisdiction with which the applicant is contracted to act as an electrical inspector, a copy of the ordinance fixing the schedule of fees authorized to be charged for electrical inspections within that jurisdiction.

(3) Current information. An applicant who has previously submitted a document required by subsection (2)(e) and (f) of this section for a prior renewal shall not be required to resubmit that document if it remains current and effective at the time of the current renewal.

(4) Change of information. Within ten (10) days of the occurrence, ~~an~~[a] electrical inspector shall provide the department:

(a) Notice of any establishment, change, or termination of the electrical inspector's contract or employment with a local jurisdiction;

(b) A copy of any new or revised contract entered into with a local jurisdiction; and

(c) For any local jurisdiction with which the electrical inspector is employed or contracted, a copy of any ordinance amending the

schedule of fees authorized to be charged for electrical inspections within that jurisdiction.

(5) Late renewal.

(a) An electrical inspector who fails to submit the renewal application and renewal fee on or before the last day of his or her birth month shall be a late renewal fee of fifty (50) dollars in addition to the renewal fee.

(b) If both fees are not paid or all required continuing education is not completed within sixty (60) days after the last day of the electrical inspector's birth month, the certification shall be terminated.

(6) Reinstatement.

(a) A certificate that has been terminated may be reinstated at the discretion of the commissioner upon a petition in writing, demonstrating just cause why the petitioner failed to comply with the renewal requirements established by this section.

(b) An application for reinstatement shall:

1. Pay a reinstatement fee of \$100 in addition to the late renewal fee required by subsection (5) of this section;

2. Comply with the requirements established by subsection (2) of this section;

3.a. Submit proof of required continuing education pursuant to 815 KAR 2:010 for the number of hours required in one (1) year; or

b. Submit proof of having passed the examination applicable to the certification to be reinstated, as established by Section 2(1)(a) and (b) of this administrative regulation, within the current year.

(7) The requirements of this section shall not apply to a state-employed electrical inspector.

Section ~~5.[6.]~~ Duties and Responsibilities. (1) In addition to the National Electrical Code, the electrical inspector shall be familiar with all applicable building codes and fire safety codes governing buildings in the area in which the electrical inspector performs an inspection.

(2) Record retention.

(a) Each electrical inspector shall make a complete record of each inspection. The record shall contain, as a minimum:

1. Sufficient information to identify the location of the structure inspected;

2. The date of the inspection;

3. The type of structure, whether residential, commercial, industrial, or other;

4. The designation of a required permit and the agency granting the permit;

5. The size and complexity of the structure; and

6. Any deficiencies in meeting code requirements and the actions required to comply.

(b) If the electrical inspector is employed by a local government, the electrical inspector or the local government shall maintain the records in compliance with 725 KAR 1:061.

(c) If the electrical inspector contracts with a local government, the local government shall maintain the records in compliance with 725 KAR 1:061.

(d) If the electrical inspector is an employee of the department, the electrical inspector shall submit the reports to the department in compliance with KRS 227.487(1).

Section ~~6.[7.]~~ Complaints and Grievance Procedures. (1) A person may file a complaint against an electrical inspector if the person believes that an act or omission of the electrical inspector in the performance of his or her duties is in violation of the administrative regulation or other law or has caused an undue hardship to the person.

(2) A complaint or allegation of misconduct shall be submitted in writing to the department and shall:

(a) Include the nature of the alleged misconduct, with specific details as to acts, names, dates, and witnesses; and

(b) Specify the action requested of the department.

(3) Following an investigation, the department shall:

(a) Set the matter for public hearing; or

(b) Take other appropriate action in accordance with KRS 227.495 to resolve or correct the matter.

Section **7.[8.]** Suspension and Revocation of Certification. The commissioner shall revoke, suspend, or refuse to renew the certificate of an electrical inspector who is determined, by the commissioner after having afforded the opportunity for a KRS Chapter 13B administrative hearing, to have:

(1) Engaged in an activity that constitutes a conflict of interest, including:

(a) Work as an electrical contractor, master electrician, or electrician;

(b) Involvement in an activity in the electrical industry; or

(c) Having a pecuniary or associational interest in a business or other venture involved in an activity in the electrical industry.

(2) Engaged in fraud, deceit, or misrepresentation in obtaining certification;

(3) Demonstrated negligence, incompetence, or misconduct in the field of electrical inspection;

(4) Affixed or caused to be affixed a seal of approval or issued a certificate of approval for an electrical installation subject to inspection if he or she has not personally inspected the installation and found it to be satisfactory in accordance with the National Electrical Code, NFPA 70 incorporated by reference in 815 KAR 7:120 and 815 KAR 7:125[ede];

(5) Operated as an electrical inspector in a locality in conflict with state or local laws, ordinances, or regulations;

(6) Knowingly overruled the proper findings of another electrical inspector or attempted to supplant, overrule, or otherwise invalidate the judgment of another electrical inspector without first obtaining express written consent from the designated electrical inspector's office supervising the original electrical inspector;

(7) Failed to maintain accurate and adequate recordkeeping as required by Section 6 of this administrative regulation;

(8) Violated KRS 211.350(8); or

(9) Violated any provision of KRS 227.491 or this administrative regulation.

Section **8.[9.]** Incorporation by Reference. (1) Form EL-11, "Application for Electrical Inspector Certification", May 2020[August 2018] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Housing, Buildings and Construction, 500 Mero Street, Frankfort, Kentucky 40601[Electrical Section, 101 Sea Hero Road, Suite 100, Frankfort, Kentucky 40601-5412], Monday through Friday, 8 a.m. to 4:30 p.m. and is available online at [dhbc.ky.gov\[http://dhbc.ky.gov/pages/default.aspx\]](http://dhbc.ky.gov/pages/default.aspx).

CONTACT PERSON: Benjamin Siegel, General Counsel, Department of Housing, Buildings and Construction, 500 Mero Street, 1st Floor, Frankfort, Kentucky 40601, phone (502) 782-0604, fax (502) 573-1057, email benjamin.siegel@ky.gov.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(As Amended at ARRS, January 13, 2021)

902 KAR 45:180. Permits and fees for food processing[manufacturing] plants, food storage warehouses, salvage processors and distributors, cosmetic manufacturers, and certificate of free sale.

RELATES TO: KRS 217.015, 217.025, 217.035, 217.037, 217.085, 217.095, 217.155, 21 C.F.R. Parts 113, 114, 120, 123

STATUTORY AUTHORITY: KRS 217.125(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217.125(1) requires the secretary of the Cabinet for Health and Family Services to promulgate administrative regulations for the efficient administration and enforcement of the Kentucky Food, Drug and Cosmetic Act. KRS 217.125(2) requires the secretary to provide by administrative regulation a schedule of reasonable fees to be paid by food processing[manufacturing] plants, food storage warehouses, salvage distributors, salvage processing

plants, and cosmetic manufacturers for permits to operate and for inspection activities carried out by the cabinet. This administrative regulation establishes the schedule of fees.

Section 1. **Definitions.** (1) **"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.**

(2) **"Specialized processes" means foods processed under 21 C.F.R. Parts 113, 114, 120, or 123.**

Section 2. Classification. Food processing and storage facilities shall be classified by the highest risk level of the food processed or stored.

(1) A facility shall be classified as a high risk food plant or risk level 1 if the facility:

(a) Is engaged in international, interstate, statewide, or regional distribution; and

(b) Uses one (1) or all of the following manufacturing processes:

1. Time and temperature controlled foods that are ready-to-eat;

2. High risk foods that are considered ready-to-eat; or

3. Foods that require specialized processes to decrease risk potential.

(2) A facility shall be classified as a medium risk food plant or risk level 2 if the facility processes foods that are either ready-to-eat foods or potentially hazardous foods, but not both.

(3) A facility shall be classified as a low risk food plant or risk level 3 if the facility processes foods that are not time and temperature controlled.

Section 3. Fees. (1) A permit fee shall be required for inspections conducted by the cabinet or the local health department to determine compliance with:

(a) 902 KAR 45:080 for a salvage distributor or a salvage processing plant;

(b) KRS 217.025, 217.035, and 217.037 for a food processing[manufacturing] plant or food storage warehouse; or

(c) KRS 217.085 and 217.095 for a cosmetic manufacturer.

(2) **The[A]** fee for the inspection of a food processing[manufacturing] plant, for food storage warehouse, or salvage processing facility shall be:

(a) Assessed according to the:

1. Total square footage/yearly gross income from product sales of the facility; and

2. Highest risk level of commodity manufactured by or stored at the facility; and

(b) Calculated as established in this paragraph.

1. If the facility is between zero to 1,000 square feet, the fee:

a. For risk level 1 shall be \$135;

b. For risk level 2 shall be \$130; or

c. For risk level 3 shall be \$125.

2. If the facility is between 1,001 to 5,000 square feet, the fee:

a. For risk level 1 shall be \$190;

b. For risk level 2 shall be \$180; or

c. For risk level 3 shall be \$170.

3. If the facility is between 5,001 to 20,000 square feet, the fee:

a. For risk level 1 shall be \$350;

b. For risk level 2 shall be \$300; or

c. For risk level 3 shall be \$250.

4. If the facility is between 20,001 to 40,000 square feet, the fee:

a. For risk level 1 shall be \$500;

b. For risk level 2 shall be \$450; or

c. For risk level 3 shall be \$400.

5. If the facility is between 40,001 to 80,000 square feet, the fee:

- a. For risk level 1 shall be \$600;
- b. For risk level 2 shall be \$550; or
- c. For risk level 3 shall be \$500.

6. If the facility is between 80,001 to 150,000 square feet, the fee:

- a. For risk level 1 shall be \$750;
- b. For risk level 2 shall be \$700; or
- c. For risk level 3 shall be \$650.

7. If the facility is greater than 150,000 square feet, the fee:

- a. For risk level 1 shall be \$1,000;
- b. For risk level 2 shall be \$900; or
- c. For risk level 3 shall be \$800. If the income is less than

\$100,000 per year, the fee:

- a. For risk level 1 shall be \$250;
- b. For risk level 2 shall be \$200; or
- c. For risk level 3 shall be \$150.

2. If the income is equal to or greater than \$100,000 but less than \$500,000 per year, the fee:

- a. For risk level 1 shall be \$400;
- b. For risk level 2 shall be \$350; or
- c. For risk level 3 shall be \$300.

3. If the income is equal to or greater than \$500,000 but less than \$1,000,000 per year, the fee:

- a. For risk level 1 shall be \$1,200;
- b. For risk level 2 shall be \$750; or
- c. For risk level 3 shall be \$450.

4. If the income is equal to or greater than \$1,000,000 per year, the fee:

- a. For risk level 1 shall be \$2,800;
- b. For risk level 2 shall be \$1,500; or
- c. For risk level 3 shall be \$1,000.:

- (a) High-risk plant – \$2,400;
- (b) Medium-risk plant – \$1,350; or
- (c) Low-risk plant – \$750].

(3) A fee for the inspection of a cosmetic manufacturer shall be ~~\$125/150~~ **[300]**.

(4) A request for a certificate of free sale or export authorizing a Kentucky food ~~processing~~ **[manufacturing]** plant holding a valid permit to operate to export a product outside of the United States shall be accompanied by a service fee of fifty (50) dollars for each certificate requested.

[5][Section 2. Payment of Fees.] Fees shall be made payable to the Kentucky State Treasurer and forwarded to the Kentucky Department for Public Health, Food Safety Branch, 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 FOR HEALTH AND FAMILY SERVICES
Department for Aging and Independent Living
Division of Operations and Support
(As Amended at ARRS, January 13, 2021)

910 KAR 2:060. Guardianship Trust Fund.

RELATES TO: KRS Chapter 13B, 210.290, 387.010(6), 387.510(15), 387.760

STATUTORY AUTHORITY: 194A.050(1), 387.760(2)

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to KRS 210.290(4)-(6), the Cabinet for Health and Family Services is authorized to establish a guardianship trust fund that may be used for the benefit of individuals under state guardianship who are indigent. This administrative regulation establishes procedures used by the cabinet to provide public notice of any funds remaining after expenses are paid following the death of an individual under state guardianship who has an estate of less than ten thousand dollars (\$10,000) of personal property or money and the process for claiming that property. This administrative regulation establishes the procedures used for any funds that remain

unclaimed after the expiration of one (1) year to escheat to the guardianship trust fund and how the guardianship trust fund may be utilized.

Section 1. Definitions. (1) "Applicant" or "Claimant" means the person who has applied to receive unclaimed personal property or funds of a deceased ward listed on the registry.

(2) "Beneficiary" means an individual or entity that has been identified as a recipient of the estate pursuant to the order of a probate court in this or any other state.

(3) "Cabinet" means the Cabinet for Health and Family Services.

(4) "Department" means the Department for Aging and Independent Living.

(5) "Guardianship trust fund" or "trust" means the guardianship trust fund established by KRS 210.290(4)-(6).

(6) "Guardianship unclaimed funds registry" or "registry" means the registry maintained by the department to post unclaimed funds of a deceased ward.

(7) "Heir" means a legal relative, limited to a spouse, parent, child, or sibling of the deceased appointee.

(8) "Individual under guardianship" means a ward of the state as defined by KRS 387.010(6).

Section 2. Public Notice of Remaining Funds. (1) Upon the death of an individual under guardianship who has less than \$10,000 in personal property or funds, the department shall pay, in priority order, the following:

(a) Funeral expenses:

1. ~~If~~ **[When]** not prepaid; and

2. ~~If~~ **[When]** not covered by life insurance; ~~;~~ **[**

(b) Outstanding bills related to living expenses including:

1. Rent to a landlord; and

2. Utility companies; and

(c) Medicaid estate recovery owed.

(2) Funds remaining after expenses listed in Subsection 1(a) –

(c) of this section shall be listed on the registry for a period of one (1) year from the date posted.

(3) The registry shall be maintained on the department's website and shall include:

(a) Name of deceased individual under guardianship;

(b) Year of birth;

(c) Date of death;

(d) Last known city of residence;

(e) Date notice is posted on the registry;

(f) The date the notice expires;

(g) If the amount or value remaining in the estate is more or less than \$100; and

(h) The account number.

Section 3. Notice of Registry for Claiming Funds. The cabinet may utilize public announcements, interagency agreements, and announcements to creditors associations, including funeral homes and nursing home associations, in order to provide notice to the public of the registry.

Section 4. Filing a Claim for Funds as a Creditor, Heir, or Beneficiary.

(1) The cabinet shall make available on its website the:

(a) "GUF-1 Guardianship Unclaimed Funds Registry Claim Form - Creditor" for any creditor; and

(b) "GUF-2 Guardianship Unclaimed Funds Registry Claim Form - Individual" for any heir or beneficiary of the deceased ward.

(2) All claims shall be submitted by mail. No claim shall be accepted in person, by fax, or by email.

(3) The cabinet shall review all claims received no later than thirty (30) days of the expiration of one (1) year after the public notice of estate funds is listed. ~~[No]~~ Funds shall ~~not~~ be released prior to the expiration of the one (1) year period for filing claims.

(4) Creditors shall have first preference to receive payment from the estate in order as set forth in KRS 210.290(4)(b).

(5) A beneficiary of the estate shall submit a "GUF-2 Guardianship Unclaimed Funds Registry Claim Form - Individual",

and the following documentation:

(a) A copy of the will of the deceased individual under guardianship;

(b) A verified copy of an order of a probate court that the beneficiary is entitled to the funds or personal property, or is the administrator or executor of the deceased's estate; and

(c) A copy of the applicant's driver's license or identification card as proof of identity.

(6) An heir of the estate shall submit a "GUF-2 Guardianship Unclaimed Funds Registry Claim Form - Individual", and the following documentation:

(a) A copy of the applicant's driver's license or identification card as proof of identity; and

(b) 1. If a spouse, a copy of the marriage certificate;

2.[(e)] If a sibling or child of the deceased individual under guardianship, a copy of the applicant's birth certificate; or

3.[(d)] If a parent of the deceased individual under guardianship, a copy of the deceased's birth certificate.

(7) A creditor, other than Medicaid Estate Recovery Program, of the deceased individual under guardianship shall submit a "GUF-1 Guardianship Unclaimed Funds Registry Claim Form - Creditor", and the following documentation:

(a) An affidavit setting out the relationship to the deceased, the services provided, and the amount owed; and

(b) An itemized copy of the statement of charges owed, a description of the service provided, and dates of service. [-or]

8.[(e)] Medicaid Estate Recovery Program may file a claim by providing the notice required by 907 KAR 1:585.

9.[(8)] All claims submitted within one (1) year of the public notice of a deceased individual under guardianship's funds shall be:

(a) Processed; and

(b) Paid, if valid. [;]

10.[(9)] Any remaining funds of the ward shall escheat to the guardianship trust fund.

Section 5. Informal Dispute Resolution and Appeal of Determination Regarding Claim.

(1) Any person or entity aggrieved over a determination by the department regarding a claim may file an informal dispute resolution, which shall be received by the department within fifteen (15) calendar days of the date on the written decision letter.

(2) The request for informal dispute resolution shall be in writing and mailed to the commissioner of the department.

(3) The informal dispute resolution shall include the following information:

(a) Name, address, and telephone number of the claimant;

(b) Justification for the dispute;

(c) Documentation supporting the dispute; and

(d) Signature of person requesting the informal dispute resolution.

(4) The commissioner, or his or her designee, may:

(a) Hold an informal dispute resolution meeting to consider the sufficiency of the claim; and

(b) Provide an opportunity for the claimant to appear to present facts or concerns about the claim.

(5) A complete record of the informal dispute resolution meeting shall be kept for three (3) years. The claimant shall be notified of the determination, including the reason, and the right to appeal, in writing within ten (10) business days.

(6) A claimant dissatisfied with the determination of the informal dispute resolution may request an administrative hearing be conducted in accordance with KRS Chapter 13B.

(7) The request for administrative hearing shall be received:

(a) Within thirty (30) calendar days from the date on the letter providing the decision of the informal dispute resolution;

(b) In writing; and

(c) To the Office of the Ombudsman and Administrative Review, Quality Advancement Branch, 275 E. Main Street, 2 E-O, Frankfort, Kentucky 40621.

Section 6. Matters not Appealable: An[No] administrative hearing shall not be conducted if:

(1) The applicant has submitted a claim for funds within one (1) year of the date public notice is posted on the registry.

(2) The applicant has failed to submit a request for administrative hearing within the thirty (30) day time period.

(3) The applicant has failed to produce the documentation required by this administrative regulation when submitting a claim for funds.

(4) The applicant is not an heir as defined by Section 1(7) of this administrative regulation.

Section 7. Guardianship Trust Fund: Investments and Disbursements.

(1) The cabinet may establish the trust with a bank, taking into consideration the location of the bank and if the bank has an established trust division.

(2) The cabinet shall be trustee and shall invest in the[such] funds as authorized by KRS 210.290(5).

(3) Funds may be utilized from the trust for banking fees and charges and for the cost of personnel needed within the department to maintain the registry and process disbursements. All other funds of the trust shall be utilized for the needs of indigent individuals under guardianship of the cabinet.

(4) The trust may accept donations and conduct fundraising functions.

(5) Disbursements from the trust may be authorized [in-a uniform-manner] by the commissioner of the department or by his or her designee in accordance with subsection (7) of this section.

(6) Requests for disbursements from the trust for an individual under guardianship may be made by any employee of the department or by an individual under guardianship.

(7) The following disbursements may be authorized to the extent funds are available in the trust:

(a) Temporary housing costs not to exceed the cost of housing for two (2) months for an individual under guardianship:

1. With no housing;

2. Who has received an eviction notice; or

3. Who is the victim of abuse, neglect, or exploitation and due to the circumstance is no longer able to safely remain in their current living environment and has no access to alternative living arrangements;

(b) Medical supplies, medication, or medical transportation that are not covered by Medicaid or another insurance plan;

(c) Emergency personal needs including clothing or food;

(d) The reasonable cost of burial or cremation:

1. For an individual under guardianship at least six (6) months prior to death. [;] and

2. Not to exceed \$5,000, for an individual under guardianship who has no:

a. Burial plan or life insurance;

b. Family able to cover the cost in full; or

c. The county of death has no fund for indigent burials; or

(e) Expenses necessary to ensure the health, safety, and well-being if[when] no other funds are available or accessible in a timely manner.

Section 8. Right of Reimbursement of the Trust. (1) The trust shall have the right of reimbursement from an individual under guardianship.

(2) The trust shall be reimbursed as follows by the individual under guardianship:

(a) 1. Funds received are in excess of the individual under guardianship's cost of living expenses; or

2.[(b)] Other funding sources are obtained to cover the individual's cost of living expenses and allow for repayment to the trust; and

(b) [(e)] No other debts are owed by the individual under guardianship for living expenses.

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

(a) "GUF-1 Guardianship Unclaimed Funds Registry Claim Form - Creditor" edition 7/2020; and[;]

(b) "GUF-2 Guardianship Unclaimed Funds Registry Claim Form - Individual" edition 7/2020.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Aging and Independent Living, 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 Community Based Services
Division of Family Support
(As Amended at ARRS, January 13, 2021)

921 KAR 3:030. Application process.

RELATES TO: KRS 116.048, 205.2005, 7 C.F.R. 273.2, [273.10,] 7 U.S.C. 2020(e)(2)(B)[(iii), (iii), (iv)], 42 U.S.C. 2000d, 52 U.S.C. 20506[Pres. EO 13166]

STATUTORY AUTHORITY: KRS 116.048(1), 194A.010(2), 194A.050(1), 7 C.F.R. 271.4, 7 C.F.R. 273.2(i), [7 U.S.C. 2020(e)(2)(B),] 7 U.S.C. 2011-2029[52 U.S.C. 20506]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) requires the Cabinet for Health and Family Services to administer income-supplement programs that protect, develop, preserve, and maintain families and children in the Commonwealth. 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 U.S.C. 2011 to 2029 and 7 C.F.R. 271.4 authorize the cabinet to administer a Supplemental Nutrition Assistance Program (SNAP) and prescribe the manner in which the program shall be implemented. 7 U.S.C. 2020(e)(2)(B) requires the cabinet to develop a uniform application process. KRS 116.048(1) designates the cabinet as a voter registration agency in accordance with 52 U.S.C. 20506. This administrative regulation establishes the application and the voter registration processes used by the cabinet in the administration of the SNAP.

Section 1. Right to Apply or Reapply. (1) An individual shall have the right to apply or reapply for SNAP benefits on the same day that the household first contacts the Department for Community Based Services (DCBS) office [in-person] during office hours.

(2) The cabinet shall make the application process readily accessible to a household.

(3) In accordance with the procedures established in 920 KAR 1:070, interpreter services shall be provided for a person who is:

- (a) Deaf; or
- (b) Hard of hearing.

(4) In accordance with 42 U.S.C. 2000d [and Presidential EO 13166], interpreter services shall be provided for a person who is Limited English Proficient.

(5) An application shall be considered filed if:

(a) A FS-1, Application for SNAP, containing the name, address, and signature of the applicant is received by a DCBS office; or

(b) Application for benefits and another public assistance program is made in accordance with 921 KAR 2:040 and Section 6 of this administrative regulation.

(6) An application shall be processed after the:

(a) Applicant or representative is interviewed;

(b) Required information and verification for the application is provided to the DCBS office; and

(c) Application and all related documents are received by the DCBS office, in accordance with Section 3(1) of this administrative

regulation.

Section 2. Who May Sign an Application. An application for SNAP shall be signed by:

- (1) An adult or emancipated child who is a responsible member of the household; or
- (2) The household's authorized representative.

Section 3. Where an Application is Filed. (1) Except as provided in subsection (2) of this section, an application shall be filed in any DCBS office or online at benefind.ky.gov.

(2) A concurrent application for Supplemental Security Income (SSI) and SNAP shall be filed in the service area office of the Social Security Administration.

Section 4. Prompt Action on an Application. The cabinet shall provide an eligible household that completes the initial SNAP application process an opportunity to participate as soon as possible. The cabinet shall not provide an opportunity to participate later than:

- (1) Thirty (30) days after the application is filed for a household ineligible for expedited services; or
- (2) The fifth calendar day following the date an application is filed for a household eligible for expedited services.

Section 5. Expedited Service. The cabinet shall provide expedited services to a household that is eligible in accordance with 7 C.F.R. 273.2(i).

Section 6. Public Assistance Application Process. (1) A household applying for Kentucky Transitional Assistance Program (KTAP) shall be allowed to simultaneously apply for SNAP benefits. A single interview shall be conducted for both programs.

(2) Time standards established in Section 4 of this administrative regulation shall not apply to a public assistance application. A public assistance application shall be governed by the time standards established in 921 KAR 2:035, Section 3.

(3) A household in which every member receives, or is authorized to receive, SSI shall be considered categorically eligible unless:

- (a) The entire household is institutionalized;
- (b) A household member is ineligible due to a drug-related felony conviction and does not meet the criteria to remain eligible established in KRS 205.2005;
- (c) A household member is disqualified due to an intentional program violation, defined [established] in 921 KAR 3:010; [or]
- (d) The head of the household is disqualified for failure to comply with the work requirements established in 921 KAR 3:025; or

(e) The entire household is disqualified due to lottery or gambling winnings pursuant to 921 KAR 3:020, Section 7 [3:042].

(4) A household in which any member receives, or is authorized to receive cash, in-kind, or other benefits funded under the Temporary Assistance for Needy Families (TANF) Block Grant shall be considered categorically eligible unless:

- (a) The entire household is institutionalized;
- (b) A household member is ineligible due to a drug-related felony conviction and does not meet the criteria to remain eligible established in KRS 205.2005;
- (c) A household member is disqualified due to an intentional program violation, defined [established] in 921 KAR 3:010; [or]

(d) The head of household is disqualified for failure to comply with the work requirements established in 921 KAR 3:025; or

(e) The entire household is disqualified due to lottery or gambling winnings pursuant to 921 KAR 3:020, Section 7 [3:042].

(5) If verified by the program, a categorically eligible household shall not be required to verify the following eligibility factors:

- (a) Resources;
 - (b) Gross and net income;
 - (c) Social Security number;
 - (d) Sponsored immigrant [alien] information; and
 - (e) Residency.
- (6) A household that receives a TANF information sheet at

application, which makes the household aware of other programs for which the household may qualify, shall be considered expanded categorically eligible.

(7) If verified by the program, an expanded categorically eligible household shall not be required to verify the following factors:

- (a) Resources;
- (b) Social Security number;
- (c) Sponsored immigrant ~~[alien]~~ information; and
- (d) Residency.

Section 7. Joint SSI and SNAP Application Process. A household in which every member is an applicant or recipient of SSI shall be allowed to simultaneously apply for both SSI and SNAP in accordance with Section 3(2) of this administrative regulation.

Section 8. Voter Registration. (1) In accordance with KRS 116.048 and 52 U.S.C. 20506, a SNAP applicant or recipient shall be provided the opportunity to complete an application to register to vote or update current voter registration if the applicant or recipient is:

- (a) Age eighteen (18) or over; and
- (b) Not registered to vote or not registered to vote at his or her current address.

(2) PAFS-706, Voter Registration Rights and Declination, shall be utilized to document a SNAP applicant or recipient's choice to:

- (a) Register to vote;
- (b) Not register to vote; or
- (c) Indicate that they are currently registered to vote.

(3) A voter registration application shall be completed if a SNAP applicant or recipient wants to:

- (a) Register to vote; or
- (b) Update voter registration to provide a new address.

(4) The voter registration process shall not apply to an individual not included in the assistance application, such as an authorized representative.

(5) All information utilized in the voter registration process shall remain confidential and be used only for voter registration purposes.

(6) The State Board of Elections shall approve the application to register to vote and send a confirmation or denial notice to the voter registration applicant.

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

- (a) "FS-1, Application for SNAP", 1/21/10/18; and
- (b) "PAFS-706, Voter Registration Rights and Declination", 1/21/8/10.

(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.

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 Community Based Services
Division of Family Support
(As Amended at ARRS, January 13, 2021)

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(14);] 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", 1/21/12/20[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.

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

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

LABOR CABINET
Department of Workers' Claims
(Amended After Comments)

803 KAR 25:091. Workers' compensation hospital fee schedule.

RELATES TO: KRS 216B.105, 342.020, 342.035, 342.315

STATUTORY AUTHORITY: KRS 342.020, 342.035(1), 342.260(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.035(1) and 342.260(1) require the Commissioner of the Department of Workers' Claims to promulgate administrative regulations to adopt a medical fee schedule for fees, charges and reimbursements under KRS 342.020. KRS 342.020 requires the employer to pay for hospital treatment, including nursing, medical, and surgical supplies and appliances. This administrative regulation establishes hospital fees for services and supplies provided to workers' compensation patients pursuant to KRS 342.020.

Section 1. Definitions. (1) "Ambulatory surgery center" means a public or private institution that is:

(a) Hospital based or freestanding;

(b) Operated under the supervision of an organized medical staff; and

(c) Established, equipped, and operated primarily for the purpose of treatment of patients by surgery, whose recovery under normal circumstances will not require inpatient care.

(2) "Hospital" means a facility; surgical center; [or] psychiatric, [rehabilitative;] or other treatment or specialty center that is licensed pursuant to KRS 216B.105 or, if located in another state, is licensed pursuant to the laws of such other state; and shall include a facility that is approved as a rehabilitation agency under the Medicare or Medicaid programs.

(3) "Hospital-based practitioner" means a provider of medical services who is an employee of the hospital and who is paid by the hospital.

(4) "Independent practitioner" means a physician or other practitioner who performs services that are covered by the Kentucky Workers' Compensation Medical Fee Schedule for Physicians, incorporated by reference in 803 KAR 25:089, on a contract basis and who is not a regular employee of the hospital.

(5) "New hospital" means a hospital that has not completed its first fiscal year.

(6) "Surgical hardware" means any object that provides internal fixation but is not intended to replace or alter the part of an internal body organ and is not intended to replace all or part of the function of a permanently inoperative or malfunctioning internal body organ. Surgical hardware can be removed after a healing period.

(7) "Surgical implant" means any single-use item/object/device which replaces all or part of an internal body organ, or replaces all or part of the function of a permanently inoperative or malfunctioning internal body organ.

Section 2. Applicability. This administrative regulation shall apply to all workers' compensation patient hospital and ambulatory surgery center fees for each hospital and ambulatory surgery center for each compensable service or supply.

Section 3. Calculation of Hospital's Base and Adjusted Cost-to-charge Ratio; Reimbursement. (1)(a) The commissioner shall calculate cost-to-charge ratios and notify each hospital of its adjusted cost-to-charge ratio on or before February 1 of each calendar year.

(b) A hospital's base cost-to-charge ratio shall be based on the latest cost report, or HCFA-2552, which has been supplied to the Cabinet for Health and Family Services, Department of Medicaid Services, pursuant to 907 KAR 1:815 and utilized in 907 KAR 1:820 and 1:825 on file as of October 31 of each calendar year.

(c) The base cost-to-charge ratio shall be determined by dividing the net expenses for allocation as reflected on Worksheet A, Column 7, Line 118 [95;] plus the costs of hospital-based physicians and nonphysician anesthetists reflected on lines 10 [42] and 28 [35] of Worksheet A-8, by the total patient revenues as reflected on line 28 of Worksheet G-2 of the HCFA-2552. The adjusted cost-to-charge ratio shall be determined as set forth in paragraph (d) of this subsection.

(d) 1. The base cost-to-charge ratio shall be further modified to allow for a return to equity by multiplying the base cost-to-charge ratio by 132 percent except that a hospital with more than 400 licensed acute care beds as shown by the Cabinet for Health and Family Services, Office of Inspector General's website [Web-site] or a hospital that is designated as a Level I trauma center by the American College of Surgeons shall have a return to equity by multiplying its base cost-to-charge ratio by 138 percent.

2. If a hospital's base cost-to-charge ratio falls by ten (10) percent or more of the base for one (1) reporting year, the next year's return to equity shall be reduced from 132 percent to 130 percent or 138 percent to 135 percent as determined by subparagraph 1. of this paragraph.

a. This reduction shall be subject to an appeal pursuant to Section 4 of this administrative regulation.

b. Upon written request of the hospital seeking a waiver and a showing of extraordinary circumstances, the commissioner shall waive the reduction for no more than one (1) consecutive year.

c. The determination of the commissioner shall be made upon the written documents submitted by the requesting hospital.

(e)1. Except as provided in subparagraph 2 of this paragraph, a hospital's adjusted cost-to-charge ratio shall not exceed fifty (50) percent, including the return to equity adjustment.

2. The adjusted cost-to-charge ratio shall not exceed sixty (60) percent for a hospital that:

a. Has more than 400 licensed acute care beds as shown by the Cabinet for Health and Family Services, Office of Inspector General's Web site;

b. Is designated as a Level I trauma center by the American College of Surgeons;

c. Services sixty-five (65) percent or more patients covered and reimbursed by Medicaid or Medicare as reflected in the records of the Cabinet for Health and Family Services, Department of Medicaid Services; or

d. Has a base cost-to-charge ratio of fifty (50) percent or more.

(2)(a) Except as provided in paragraph (b) and (c) of this subsection, the reimbursement to a hospital for services or supplies furnished to an employee that are compensable under KRS 342.020 shall be calculated by multiplying the hospital's [total] charges by its adjusted cost-to-charge ratio after removing any duplicative charges, billing errors, [or] charges for services or supplies not confirmed by the hospital records, and charges for surgical implants and surgical hardware.

(b) If part of a bill for services or supplies is alleged to be noncompensable under KRS 342.020 and that part of the bill is challenged by the timely filing of a medical fee dispute or motion to reopen, the noncontested portion of the bill shall be paid in accordance with paragraph (a) of this subsection.

(c) Charges for surgical implants and surgical hardware shall be reimbursed at invoice cost plus fifteen (15) percent. Invoice cost shall not include shipping, handling, and taxes. Shipping, handling and taxes shall be reimbursed at the amount paid for those charges [listed on the invoice]. [The hospital shall provide a copy of the invoice and shall certify the actual cost of the item or items.]

Section 4. Appeal of Assigned Ratio. (1) A hospital may request a review of its assigned ratio. A written appeal to request a review shall be filed with the commissioner no later than thirty (30) calendar days after the ratio has been assigned and the hospital notified of its proposed cost-to-charge ratio.

(2) The determination of the commissioner shall be made upon

the written documents submitted by the requesting hospital.

Section 5. Calculations of New Hospitals, Hospitals that do not file Worksheets A and G-2 of HCFA-2552 and ASC's within the Commonwealth of Kentucky.

(1)(a) A new hospital shall be assigned a cost-to-charge ratio equal to the average adjusted cost-to-charge ratio of all existing in-state acute care hospitals until it has been in operation for one (1) full fiscal year.

(b) A hospital that does not file Worksheets A and G-2 of HCFA 2552 shall be assigned a cost-to-charge ratio as follows:

1. A psychiatric, rehabilitation, or long-term acute care hospital shall be assigned a cost-to-charge ratio equal to 125 percent of the average adjusted cost-to-charge ratio of all in-state acute care hospitals;

2. An ambulatory surgery center shall be assigned a cost-to-charge ratio equal to:

a. 120 percent of the average adjusted cost-to-charge ratio of all acute care hospitals located in the same county as the ambulatory surgery center;

b. 120 percent of the average adjusted cost-to-charge ratio of all acute care hospitals located in counties contiguous to the county in which the ambulatory surgery center is located, if an acute care hospital is not located in the county of the ambulatory surgery center; or

c. The adjusted cost-to-charge ratio of the base hospital if:

(i) The center is hospital based;

(ii) It is a licensed ambulatory surgery center pursuant to 902 KAR 20:106; and

(iii) It is a Medicare provider based entity;

d. Except as provided in subparagraph c, an ambulatory surgery center's adjusted cost-to-charge ratio shall not exceed fifty (50) percent; and

3. All other hospitals not specifically mentioned in subparagraphs 1 or 2 of this paragraph shall be assigned a cost-to-charge ratio equal to:

a. The average adjusted cost-to-charge ratio of all acute care hospitals located in the same county as the facility; or

b. If there are no hospitals in the county, the average of all acute care hospitals located in contiguous counties.

(2) An assigned cost-to-charge ratio shall remain in full force and effect until a new cost-to-charge ratio is assigned by the commissioner.

(3)(a) Reimbursement to an ambulatory surgical center for services or supplies furnished to an employee that are compensable under KRS 342.020 shall be calculated by multiplying the ambulatory surgical center's charges by its assigned cost-to-charge ratio after removing any duplicative charges, billing errors, charges for services or supplies not confirmed by ambulatory surgical center records, and charges for surgical implants and surgical hardware.

(b) If part of a bill for services or supplies is alleged to be noncompensable under KRS 342.020 and that part of the bill is challenged by the timely filing of a medical fee dispute or motion to reopen, the noncontested portion of the bill shall be paid in accordance with paragraph (a) of this subsection.

(c) Charges for surgical implants and surgical hardware shall be reimbursed at invoice cost plus fifteen (15) percent. Invoice cost shall not include shipping, handling, and taxes. Shipping, handling and taxes shall be reimbursed at the amount paid for those charges [listed on the invoice]. [The ambulatory service center shall provide a copy of the invoice and shall certify the actual cost of the item or items.]

Section 6. Calculation for Hospitals and Ambulatory Surgery Centers Located Outside the Commonwealth of Kentucky. (1) A hospital or ambulatory surgery center located outside the boundaries of Kentucky shall be deemed to have agreed to be subject to this administrative regulation if it accepts a patient for treatment who is covered under KRS Chapter 342.

(2) The base cost-to-charge ratio for an out-of-state hospital shall be calculated in the same manner as for an in-state hospital, using Worksheets A and G-2 of the HCFA 2552.

(3) An out-of-state ambulatory surgery center having no contiguous Kentucky counties shall be assigned a cost-to-charge ratio equal to 120 percent of the average adjusted cost-to-charge ratio of all existing in-state acute care hospitals.

(4) An out-of-state ambulatory surgery center having one (1) or more contiguous Kentucky counties shall be assigned a cost-to-charge ratio in accordance with Section 5(1)(b)2.b. of this administrative regulation.

(5) An out-of-state ambulatory surgical center's assigned cost-to-charge ratio shall not exceed fifty (50) percent.

Section 7. Reports to be Filed by Hospitals. Each bill submitted by a hospital pursuant to this administrative regulation shall be submitted on a statement for services, Form UB-04 (Formerly UB-92), as required by 803 KAR 25:096.

Section 8. Billing and Audit Procedures. (1) A hospital providing the technical component of a procedure shall bill and be paid for the technical component.

(2)(a) An independent practitioner providing the professional component shall bill for and be paid for the professional component.

(b) An independent practitioner billing for the professional component shall submit the bill to the insurer on the appropriate statement for services, HCFA 1500, as required by 803 KAR 25:096.

(3) When more than one (1) procedure is performed during a surgical session, an [An] Ambulatory Surgical Center may charge a facility fee for each procedure performed; however, for the purpose of reimbursement, the total charge for all facility fees shall not exceed one hundred fifty percent 150% of the facility fee charged for the primary procedure. [Only one facility fee for one surgical session even though the surgical session may involve multiple procedures and CPT codes; more than one facility charge shall constitute a duplicate charge.] A [The] physician may submit charges on form HCFA 1500 using appropriate CPT codes.

Section 9. Miscellaneous. (1) A new hospital shall file a letter with the commissioner setting forth the start and end of its fiscal year within ninety (90) days of the date it commences operation.

(2)(a) An independent practitioner who does not receive direct compensation from the contracting hospital shall use the statement for services defined by 803 KAR 25:096 if billing for professional services and shall be compensated pursuant to the Kentucky Workers' Compensation Medical Fee Schedule for Physicians, incorporated by reference in 803 KAR 25:089.

(b) An independent practitioner who is directly compensated for services by the contracting hospital shall not bill for the service, but shall be compensated pursuant to the practitioner's agreement with the hospital.

(c) The hospital may bill for the professional component of the service under the Kentucky Workers' Compensation Medical Fee Schedule for Physicians if the independent practitioner is directly compensated for services by the contracting hospital.

(3) A hospital-based practitioner shall not bill for a service he performs in a hospital if the service is regulated by 803 KAR 25:089, but he shall receive payment or salary directly from the employing hospital.[]

~~Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) Form UB-04, 10-23-06; and~~

~~(b) HCFA 1500, 12-90.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

This is to certify the commissioner has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 342.260, 342.270 and 342.285.

ROBERT L. SWISHER, Commissioner

APPROVED BY AGENCY: January 14, 2021

FILED WITH LRC: January 14, 2021 at 3:42 p.m.

CONTACT PERSON: B. Dale Hamblin, Jr., Assistant General Counsel, Department of Workers' Claims Mayo-Underwood Building, 3rd Floor, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 782-4404, fax (502) 564-0681, email Dale.Hamblin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: B. Dale Hamblin, Jr.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets the fee schedule for hospitals, ambulatory surgical centers, and other specified facilities.

(b) The necessity of this administrative regulation: Pursuant to KRS 342.035, the commissioner is required to promulgate an administrative regulation regarding fee schedules.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation sets the fee schedule for hospitals, ambulatory surgical centers, and other specified facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It is imperative to have fee schedules to control the medical costs of the workers' compensation system. Injured employees should receive quality medical care and hospitals and ambulatory surgical centers should be appropriately reimbursed.

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

(a) How the amendment will change this existing administrative regulation: The amendment clarifies the definition of "hospital" to include certain out-of-state facilities and rehabilitation agencies, defines "surgical hardware" and "surgical implants," establishes the method by which the cost of surgical implants will be reimbursed, and clarifies the calculation and use of a cost-to-charge ratio for ambulatory service centers.

(b) The necessity of the amendment to this administrative regulation: KRS 342.035(1) and 342.260(1) require the Commissioner of the Department of Workers' Claims to promulgate administrative regulations to adopt a medical fee schedule for fees, charges and reimbursements under KRS 342.020. KRS 342.020 requires the employer to pay for hospital treatment, including nursing, medical, and surgical supplies and appliances. The amendments to this administrative regulation clarifies fees for services and supplies provided to workers' compensation patients pursuant to KRS 342.020.

(c) How the amendment conforms to the content of the authorizing statutes: The schedule of fees has been appropriately updated to insure that medical fees are fair, current, and reasonable for similar treatment in the same community for general health insurance payments.

(d) How the amendment will assist in the effective administration of the statutes: The schedule of fees assists the workers' compensation program by updating fees for hospitals and other facilities to insure injured employees get qualified and appropriate medical treatment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All hospitals and ambulatory surgery centers providing services to injured workers pursuant to KRS Chapter 342, injured employees, insurance carriers, self-insurance groups, and self-insured employers and employers, third party administrators.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Insurance carriers, self-insured groups, self-insured employers, third party administrators, and medical

providers, hospitals and other facilities must calculate the charge for surgical implants in a manner different from other charges.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Medical providers will receive fair, current, and reasonable fees for services provided to injured workers. Injured workers will be treated in appropriate medical facilities. Insurance carriers, self-insured groups, and self-insured employers will reimburse the cost of surgical implant hardware at an appropriate rate.

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

(a) Initially: There is no additional cost to the administrative body to implement these amendments.

(b) On a continuing basis: There are no continuing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department of Workers' Claims normal budget is the source of funding.

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

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation sets forth a current schedule of fees to be paid to hospitals and other facilities. Fees have been updated to be fair, current, and reasonable for similar treatment in the same community as paid by health insurers.

(9) TIERING: Is tiering applied? is not applied, because the updated fee schedule applies to all parties equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Workers' Claims and all parts of government with employees

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 342.020, 342.035, 342.260(1)

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. As an employer, there may be some increased costs for medical services. It is impossible to estimate without knowing what medical services will be needed by injured workers.

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

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There is no fiscal impact on state or local government because the fee schedule governs the cost of medical services between medical treatment providers and payment obligors.

**PUBLIC PROTECTION CABINET
Department of Insurance
Agent Licensing Division
(Amended After Comments)**

806 KAR 9:025. [Agent] Licensing process.

RELATES TO: KRS 304.4-010, 304.9-105, 304.9-130, 304.9-150, 304.9-160, 304.9-230, 304.-260, 304.9-270, 304.9-295, 304.9-320, 304.9-430, 304.14-642

STATUTORY AUTHORITY: KRS 304.2-110, 304.9-080, 304.9-105, 304.9-160, 304.9-170, 304.9-230, 304.9-270, 304.9-295

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code. KRS 304.9-080 requires the commissioner to prescribe and furnish all forms required for licenses and appointments under Subtitle 9 of the insurance code. KRS 304.9-105 requires the commissioner to promulgate administrative regulations to mandate a prelicensing course of study for all agents except for a variable life and variable annuities line of authority and limited lines of authority. KRS 304.9-230 requires the commissioner to promulgate administrative regulations regarding a prelicensing course of study for limited lines of authority. KRS 304.9-160 requires the commissioner to establish the examination process, and KRS 304.9-170 provides exemptions to the examination requirement. KRS 304.9-270 requires the commissioner to prescribe a form required for appointment of individual and business entity agents. KRS 304.9-295 requires the commissioner to establish forms and standards for the approval of pre-licensing and continuing education course providers, instructors, and courses. This administrative regulation establishes the guidelines for individual agents, business entities, consultants, and adjusters to become licensed, obtain appointments, as required, in Kentucky, maintain their licenses through the completion of continuing education, and surrender their license voluntarily or have their appointment terminated by an insurer.

Section 1. Pre[-]Licensing Course Requirements.

(1) An individual applying for an agent license shall complete a pre-licensing course of study approved by the commissioner for a minimum of forty (40) hours for life and health insurance, forty (40) hours for property and casualty insurance, or twenty (20) hours for each line of authority, as applicable, for the lines of authority included in the application, unless the applicant is:

- (a) Seeking a limited line of authority under KRS 304.9-230; or
- (b) Exempt pursuant to KRS 304.9-170.

(2)(a) All prelicensing courses, providers, and instructors shall be approved by the commissioner prior to offering a course.

(b) A prelicensing course provider shall submit either in writing or electronically through the department's Web site, <http://insurance.ky.gov>:

1. A Form KYP-01, Provider Approval Application, submitted once to become an approved course provider;
2. A Form CE/PL-100, Course Approval Application, for each course the approved provider wants to offer;
3. A Form CE/PL-200, Instructor Approval Application, for each course instructor;
4. The fee, as applicable, established for provider, instructor, and course approval in 806 KAR 4:010; and
5. An outline of the content of the course of study.

(c) In approving a prelicensing course of study, the commissioner or the commissioner's designee shall consider whether the course of study covers the subject matter included in the department's current study outlines or their equivalent.

(d) If approved, a prelicensing course of study approved by the commissioner shall be renewed biennially.

(e) If approved previously, the provider and instructor approval applications shall not be ~~[are not]~~ required to be submitted with each course.

(3) A prelicensing course of study shall be ~~[is]~~ valid for one (1)

year from the date of completion.

(4) The prelicensing provider shall submit proof of completion of a course of study to the department and the applicant on Form CPL-01, Certificate of Pre-Licensing Course Completion or electronically through the department's Web site, <http://insurance.ky.gov>, for each applicant.

Section 2. Agent Examinations.

(1) An applicant ~~[All applicants]~~ for an individual agent ~~[a]~~ license shall file with the department~~[commissioner]~~:

- (a) A completed Form 8301, NAIC Individual Insurance Producer License Application;
- (b) Documentation demonstrating successful completion of any required prelicensing course ~~[courses]~~;
- (c) A completed background check through the administrative office of the courts; and
- (d) Payment of the fees applicable to the license and lines of authority sought in accordance with ~~[according to]~~ KRS 304.4-010 and 806 KAR 4:010.

(2) If an examination is required, the documents and fees required in subsection (1) of this section shall be submitted prior to scheduling an examination.

(3) An individual applying for a line of authority identified in KRS 304.9-030(2) shall successfully ~~[successfully]~~ complete an examination ~~[examinations]~~ as follows:

- (a) For a life line of authority, a life examination;
- (b) For a health line of authority, a health examination;
- (c) For a property line of authority, a property examination;
- (d) For a casualty line of authority, a casualty examination;
- (e) For a personal line~~[lines]~~, a property and casualty personal lines examination;

(f) For a line of authority identified in accordance with KRS 304.9-030(2)(h), an examination appropriate for the kind of insurance; and

(g) For a variable life and variable annuity product~~[products]~~, no examination is required.

(4) An examination ~~[Examinations]~~ shall only be required for the following limited lines of authority identified in KRS 304.9-230:

- (a) For a crop limited of authority, a crop examination; and
- (b) For a rental vehicle limited line of authority, a rental vehicle examination shall be administered or monitored by a rental vehicle agent pursuant to 806 KAR 9:265.

(5) Every applicant for a license for which ~~[required to take]~~ an examination is required shall answer correctly seventy (70) percent of the questions to pass the examination.

(6) To retake an examination, an applicant shall submit to the department:

- (a) Form 8304, Examination Retake Form; and
- (b) The applicable examination retake fees established in 806 KAR 4:010.

Section 3. Adjuster Examinations.

(1) An applicant for an adjuster license shall file with the department:

(a) A completed Form 8301, NAIC Individual Insurance Producer License Application;

(b) The applicable fee established in 806 KAR 4:010.

(2) An individual applying for an adjuster line of authority identified in KRS 304.9-430(7) or (8) shall:

- (a) For a property and casualty line of authority, successfully complete a property and casualty adjuster examination;
- (b) For a workers' compensation line of authority, successfully complete a workers' compensation adjuster examination; and
- (c) For a crop line of authority, either:

1. Successfully complete a crop adjuster examination; or
2. Demonstrate certification through the Crop Adjuster Proficiency Program, by providing to the department a copy of a Crop Adjuster Proficiency Program certification identification card with an active status issued by the federal Risk Management Agency, an agency within the U.S. Department of Agriculture, which specifies the applicant has passed a proficiency examination to adjust multi-peril crop claims.

(3) ~~[(2)]~~ Every applicant for a license for which ~~[required to]~~

take] an examination is required shall answer correctly seventy (70) percent of the questions to pass the examination.

(4) To retake an examination, an applicant shall submit to the department:

(a) Form 8304, Examination Retake Form; and

(b) The applicable examination retake fees established in 806 KAR 4:010.

Section 4. Consultant Examination.

(1) An applicant for a consultant license shall file with the department:

(a) A completed Form 8301, NAIC Individual Insurance Producer License Application;

(b) Payment of the fees applicable to the license in accordance with KRS 304.4-010 and 806 KAR 4:010.

(2) The documents and fees required in subsection (1) of this section shall be submitted prior to scheduling an examination.

(3) An applicant for a consultant license shall answer correctly seventy (70) percent of the questions to pass the consultant examination and obtain a license.

(4) To retake an examination, an applicant shall submit to the department:

(a) Form 8304, Examination Retake Form; and

(b) The applicable examination retake fees established in 806 KAR 4:010.

Section 5. Continuing Education.

(1) Continuing education providers, instructors, and courses shall be approved by the commissioner unless specifically exempted by KRS 304.9-295.

(a) To apply for approval as a continuing education provider, an applicant [Continuing education courses providers] shall submit to the department:

1. A [a] completed Form KYP-01, Provider Approval Application; and

2. For new proprietary education providers, documentation of approval by the Kentucky Commission on Proprietary Education.

(b) To apply for approval of a continuing education instructor, an approved continuing education provider [Continuing education course instructors] shall submit to the department:

1. A [a] completed Form CE/PL-200, Instructor Approval Application; and

2. The applicable fee established in 806 KAR 4:010.

(c) 1. To apply for approval of a continuing education course, an approved continuing education provider [A continuing education course] shall submit to the department [be filed by submitting the] Form CE/PL-100, Course Approval Application [form] at least sixty (60) days in advance of advertising the course, unless good cause is demonstrated by the provider for the failure to timely submit the form [file]. If the course is offered in multiple states, the provider may use the National Association of Insurance Commissioners', NAIC Uniform Continuing Education Reciprocity Course Filing Form for approval.

2. After approval of the continuing course and the determination of the number of credit hours assigned to the course, the continuing education provider shall pay to the department the applicable fee established in 806 KAR 4:010.

(d) The commissioner shall consider the following in determining approval of a continuing education course [courses]:

1. Whether the applicant has remitted all fees due once the total credit hours are determined pursuant to 806 KAR 4:010;

2. Whether the continuing education course contributes directly, at a professional level, to the competence of the licensee with respect to the following subjects:

- a. Insurance, annuities, and risk management;
- b. Insurance laws and administrative regulations;
- c. Mathematics, statistics, and probability;
- d. Economics;
- e. Business law;
- f. Finance;
- g. Taxes;
- h. Agency management including all aspects of agency operations that support the long-term stability of the agency

system and encourage the service and protection of customers;

i. Ethics; or

j. Other topics approved by the commissioner which contribute directly at a professional level to the competence of the licensee.

(e) The continuing education course shall:

1. Include current, relevant, accurate, and valid reference materials, graphics, and interactivity;

2. Have clearly defined objectives and course completion criteria;

3. Have a written outline and study materials or texts; and

4. Include a means for evaluation.

(f) A self-study course [Self-study courses] shall require successful completion of an examination.

(g) Continuing education credit shall not be provided for:

1. Any course used to prepare for taking an examination required pursuant to KRS Chapter 304;

2. Committee service for professional organizations;

3. Computer training to develop functional skills; and

4. Motivational or self-help courses.

(h) The commissioner shall measure continuing education course credit hours by the following:

1. Each credit hour for live instruction courses, completed in a classroom, by video, teleconference, or computer, shall include at least fifty (50) minutes of continuous instruction or participation; and [-]

2. Each credit hour for recorded self-study courses, completed online or by correspondence, shall be calculated in accordance with the National Association of Insurance Commissioners', Recommended Guidelines for Online Courses.

(i) Any material change in a previously approved continuing education course shall be filed with and approved by the commissioner prior to use.

(j) Biennially, a continuing education provider [providers] shall request renewal [renew approval] of a continuing education course [courses] and a continuing education instructor [instructors] by submitting the information required by subsection (1)(b) and (c) of this section and the fee established in 806 KAR 4:010 to the department on or before [all applicable information and fee payment to the commissioner prior to] June 30 of even-numbered years.

(2) Licensees engaging in the sale, solicitation, or negotiation of specialized products listed [as noted] in paragraphs (a), (b) and (c) of this subsection are subject to the following:

(a) A resident [Resident] individual agent [licensees] selling, soliciting, or negotiating insurance products that qualify under the Long-Term Care Partnership Insurance Program, as described in KRS 304.14-642, shall complete eight (8) hours of initial long-term care training, and four (4) hours of additional training for each biennial continuing education compliance period;

(b) A resident individual agent [Any resident licensee] who holds [licensed with] a property and casualty line [Property and Casualty lines] of authority selling federal flood insurance shall complete three (3) hours of training in accordance with the Flood Insurance Reform Act of 2004, as set forth in Pub.L. 108-264, Section 207; and

(c) 1. An individual agent [Any individual licensee] who holds a life line of authority shall successfully complete four (4) hours of initial training, prior to the sale, solicitation, or negotiation of annuities, unless the agent [licensee] has documented the completion of substantially similar training in another state, that shall include at a minimum information on the following topics:

a. [1.] The types of annuities and various classifications of annuities;

b. [2.] Identification of the parties to an annuity;

c. How product specific annuity contract features affect consumers [3. The manner in which fixed, variable, and indexed annuity contract provisions affect consumers];

d. [4.] The application of income taxation of qualified and non-qualified annuities;

e. [5.] The primary uses of annuities; and

f. [6.] Appropriate standard of conduct, sales practices, replacement, and disclosure requirements.

2. The training required by subparagraph (c)1. of this

subsection shall not include:

a. Marketing information;

b. Training on sales techniques; or

c. Specific information about a particular insurer's products.

(d)1. An agent who has completed an annuity training course approved by the department prior to ~~January 1, 2022~~July 1, 2021 shall, within six (6) months after ~~January 1, 2022~~July 1, 2021, complete either:

a. A new four (4) hour credit training course approved by the Department of Insurance **and provided by a Department of Insurance-approved education provider; or**

b. An additional one-time one (1) credit training course approved by the Department of Insurance and provided by a Department of Insurance-approved education provider on appropriate sales practices, replacement and disclosure requirements under 806 KAR 12:120.

2. A non-resident agent who has completed a training course that is substantially similar to the training course required in subparagraph 1. of this paragraph shall meet the requirements of subparagraph 1. of this paragraph.

(3) A continuing ~~[Continuing]~~ education provider ~~[providers]~~ shall:

(a) Within thirty (30) days of completion of a continuing education course, submit electronically through the department's Web site, <http://insurance.ky.gov> ~~[to the commissioner]~~ the Continuing Education Certificate of Completion forms and attendance roster for all licensees who satisfactorily completed the course;

(b) Issue the Form CE-301, Approved Continuing Education Certificate of Completion form to the licensee that successfully completed the course; and

(c) Maintain all attendance rosters and course completion certificates in hard copy or electronic format for at least five (5) years for review, as necessary, by the commissioner.

(4) A licensee shall be ~~[Licensees remain]~~ responsible for verifying that a continuing education provider has submitted a continuing education certificate of completion form to the department for a continuing education course that the licensee has successfully completed. If the continuing education provider has not submitted a continuing education certificate of completion form in accordance with subsection (3) of this section, the licensee shall submit continuing education certificate of completion to the department within the timeframes established in KRS 304.9-260 and 304.9-295. ~~[the timely submission of a continuing education certificates of completion to the commissioner even if the provider does not fulfill their responsibilities under this section.]~~

(5) A licensee ~~[Licensees]~~ may carry forward up to twelve (12) excess credit hours to the subsequent continuing education biennium.

(6) If the department does not receive proof of fulfillment of a licensee's continuing education requirement on or before the deadline established in KRS 304.9-260 and 304.9-295, the commissioner shall:

(a) Make information of the deficiency available to the licensee; and

(b) Terminate the license if proof of completion of the deficient hours is not received as prescribed by KRS 304.9-295.

(7) A licensee ~~[Licensees]~~ whose license is terminated due to the failure to submit the certification of continuing education by the required deadline established in KRS 304.9-260 and 304.9-295 shall:

(a) Have the license reissued within twelve (12) months of the license termination if the licensee:

1. Satisfies the delinquent continuing education requirements;

2. Submits a new application with required attachments included within Section 2(1) or Section 3(1) of this administrative regulation for a license; and

3. Submits the applicable fees established in 806 KAR 4:010;

or

(b) Complete ~~[Be required to complete]~~ all licensing requirements specified in KRS Chapter 304, Subtitle 9 and this administrative regulation ~~if~~ [after] the continuing education delinquency remains unsatisfied for twelve (12) months or longer.

(8) A licensee may seek exemption from continuing education ~~[Continuing Education]~~ requirements by completing a Form CE AFF 304, Affidavit for Exemption from Continuing Education Requirement.

(a) An agent exempted from continuing education requirements on the basis of a supporting affidavit that the agent license is maintained for the sole purpose of receiving renewals or deferred commissions may withdraw the continuing education exemption and may have all restrictions against selling, soliciting, and negotiating insurance removed from the agent license by:

1. Completing the continuing education requirements for the immediate preceding continuing education biennium;

2. Providing a certification of completion of those continuing education requirements; and

3. Providing a signed, written statement withdrawing the affidavit.

(b) The false use of a supporting affidavit that the agent license is maintained for the sole purpose of receiving renewals or deferred commissions for any reason, including for the purpose of obtaining an extension for completion of continuing education requirements for a continuing education biennium, shall be a violation of KRS 304.9-295 and shall subject the affiant to suspension or revocation of the agent license.

(9) Members of the Armed Forces who have been mobilized or deployed in support of their duties may:

(a) Request an extension of time for completion of continuing education requirements, in accordance with KRS 304.9-260(3), by filing with the department the Form MLW-01, Request for Waiver of Renewal Procedures or Exemption from Examination or Extension for Continuing Education Due to Active Military Service Deployment; or

(b) Request a waiver of continuing education requirements in accordance with KRS 304.9-260(3).

Section 6. Business Entity Agent Application and Designation.

(1) A business entity applying for a license in accordance with KRS Chapter 304 Subtitle 9 or Subtitle 10 ~~[seeking an agent's license pursuant to KRS 304.9-130]~~ shall submit to the department:

(a) Form 8301-BE, Uniform Application for Business Entity Insurance License; and

(b) The applicable fee established in 806 KAR 4:010.

(2) A business entity shall submit Form 8305, Business Entity Designation or Termination of Designation Form, to designate or terminate individuals authorized to act under the business entity's license or ~~[and]~~ appointments.

Section 7. Agent Appointment.

(1) Each insurer shall appoint each agent acting on the insurer's behalf within fifteen (15) days of the agent contract's execution or the date on which the agent submits their first application to the insurer, whichever is earlier, in accordance with ~~[as established by]~~ KRS 304.9-270.

(2) An insurer seeking approval of an agent's appointment shall submit to the department:

(a) Form 8302-AP, Producer Appointment; and

(b) The ~~[the]~~ applicable filing fee established in 806 KAR 4:010.

(3) An insurer terminating an appointment pursuant to KRS 304.9-280 shall submit Form 8302-TE, Termination of Producer Appointment within thirty (30) days following the effective date of an agent's termination.

(4) The requirements of this section shall apply to both individual and business entity agent appointments.

Section 8. Record Correction. A licensee shall submit Form 8303, Record Correction Form to the department ~~[with the commissioner]~~ to make a change or update the licensee's:

(1) Name;

(2) Address;

(3) Phone number;

(4) Email address; and

(5) Name in which the licensee is doing business. ~~[name and address.]~~

Section 9. Material Incorporated by Reference.

(1) The following material is incorporated by reference:

- (a) Form CPL-01, "Certificate of Pre-licensing Course Completion," (8/2019);
- (b) Form 8301, "NAIC Individual Insurance Producer License Application," (11/2020)~~(8/2019)~~;
- (c) Form 8301-BE, "Uniform Application for Business Entity Insurance License Application," (8/2019);
- (d) Form 8302-AP, "Producer Appointment," (8/2019);
- (e) Form 8302-TE, "Termination of Producer Appointment," (8/2019);
- (f) Form 8305, "Business Entity Designation or Termination of Designation Form," (8/2019);
- (g) Form 8304, "Examination Retake Form," (8/2019);
- (h) Form KYP-01, "Provider Approval Application," (8/2019);
- (i) Form CE/PL-100, "Course Approval Application," (8/2019);
- (j) Form CE/PL-200, "Instructor Approval Application," (8/2019);
- (k) Form CE-301, "Approved Continuing Education Certificate of Completion," (12/2019);
- (l) Form CE AFF 304, "Affidavit for Exemption from Continuing Education," (8/2019);
- (m) Form 8303, "Record Correction Form," (8/2019);
- (n) Form MLW-01, "Request for Waiver of Renewal Procedures or Exemption from Examination or Extension for Continuing Education Due to Active Military Service Deployment," (8/2019);
- (o) "NAIC Uniform Continuing Education Reciprocity Course Filing Form," (8/2019); and
- (p) "Recommended Guidelines for Online Courses", National Association of Insurance Commissioners, 3/2015.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, Mayo-Underwood Building, 500 Mero Street~~[245 West Main Street]~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SHARON P. CLARK, Commissioner

KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: January 7, 2021

FILED WITH LRC: January 8, 2021 at 12:45 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the guidelines for individual agents, business entities, consultants, and adjusters to become licensed, obtain appointments, as required, in Kentucky, maintain their licenses through the completion of continuing education, and surrender their license voluntarily or have their appointment terminated by an insurer.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide additional information to clarify the licensing requirements for adjusters and apprentice adjusters.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code. KRS 304.9-080 requires the commissioner to prescribe and furnish all forms required for licenses and appointments under Subtitle 9 of the insurance code. KRS 304.9-105 requires the commissioner to promulgate administrative regulations to mandate a prelicensing course of study for all agents except for a variable life and variable annuities line of authority and limited lines of authority. KRS 304.9-230 requires the commissioner to promulgate administrative regulations regarding a prelicensing course of study for limited lines of authority. KRS 304.9-160 requires

the commissioner to establish the examination process, and KRS 304.9-170 provides exemptions to the examination requirement. KRS 304.9-270 requires the commissioner to prescribe a form required for appointment of individual and business entity agents. KRS 304.9-295 requires the commissioner to establish forms and standards for the approval of pre-licensing and continuing education course providers, instructors, and courses. This administrative regulation establishes the guidelines for individual agents, business entities, consultants, and adjusters to become licensed, obtain appointments, as required, in Kentucky, maintain their licenses through the completion of continuing education, and surrender their license voluntarily or have their appointment terminated by an insurer.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide the Department with the necessary information to appropriately and effectively evaluate an applicant for licensure.

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

(a) How the amendment will change this existing administrative regulation: This amendment adopts the annuity training requirements related to the National Association of Insurance Commissioner's (NAIC) model law related to Suitability on Annuity Transactions. Additionally, the amendment updates the address of the Department of Insurance.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure agents selling annuities receive the proper training and to ensure the general public is informed of the Department's new address.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code. KRS 304.9-080 requires the commissioner to prescribe and furnish all forms required for licenses and appointments under Subtitle 9 of the insurance code. KRS 304.9-105 requires the commissioner to promulgate administrative regulations to mandate a prelicensing course of study for all agents except for a variable life and variable annuities line of authority and limited lines of authority. KRS 304.9-230 requires the commissioner to promulgate administrative regulations regarding a prelicensing course of study for limited lines of authority. KRS 304.9-160 requires the commissioner to establish the examination process, and KRS 304.9-170 provides exemptions to the examination requirement. KRS 304.9-270 requires the commissioner to prescribe a form required for appointment of individual and business entity agents. KRS 304.9-295 requires the commissioner to establish forms and standards for the approval of pre-licensing and continuing education course providers, instructors, and courses. This administrative regulation establishes the guidelines for individual agents, business entities, consultants, and adjusters to become licensed, obtain appointments, as required, in Kentucky, maintain their licenses through the completion of continuing education, and surrender their license voluntarily or have their appointment terminated by an insurer.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will conform to the national training requirements for agents selling annuities.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment will impact the approximately 19,795 agent licensed to sell annuities in Kentucky.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: All agents licensed to sell annuities must complete the required training listed the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Each approved provider can establish its own cost for offering the training course.

(c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance, licensees will be appropriately trained on the sale of annuity products, as required to maintain their license.

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

(a) Initially: Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance.

(b) On a continuing basis: Implementation of this amendment is not anticipated to have an on-going cost on the Department of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks necessary.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all licensees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110, 304.9-080, 304.9-105, 304.9-160, 304.9-170, 304.9-230, 304.9-270, 304.9-295

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

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

(c) How much will it cost to administer this program for the first year? There should not be a significant cost to administer this program initially

(d) How much will it cost to administer this program for subsequent years?? There should not be a significant cost to administer this program in subsequent years

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

Revenues (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation:

PUBLIC PROTECTION CABINET
Department of Insurance
Health and Life Division
(Amended After Comments)

806 KAR 12:120. Suitability in annuity transactions.

RELATES TO: KRS 304.1-040, 304.5-030, 304.9-020(1),

304.9-025, 304.9-040, 304.9-390, 304.12-010, 304.12-030(1)(a), 304.99-020, 26 U.S.C. 401, 403, 408, 414, 457, 29 U.S.C. 1001-1461

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. This administrative regulation requires licensees to satisfy specific requirements and standards [act in the best interest of the consumer] when making a recommendation of an annuity and to require insurers to establish [establish] and maintain a system to supervise recommendations [standards and procedures for recommendations to consumers that result in a transaction involving annuity products] so that the insurance needs and financial objectives of consumers at the time of [during] the transaction are effectively [appropriately] addressed.

Section 1. Definitions. (1) "Agent" is defined in KRS 304.9-020(1).

(2) "Annuity" is defined in KRS 304.5-030.

(3) "Cash Compensation" means any discount, concession, fee, service fee, commission, sales charge, loan, override, or cash benefit received by a producer in connection with the recommendation or sale of an annuity from an insurer, intermediary, or directly from the consumer.

(4) [(3)] "Commissioner" is defined by KRS 304.1-050(1).

(5) "Comparable standards" means:

1. With respect to broker-dealer and registered representatives of broker-dealers, applicable SEC and FINRA rules pertaining to best interest obligations and supervision of annuity recommendations and sales, including Regulation Best Interest and any amendments or successor regulations thereto;

2. With respect to investment advisers registered under federal and state securities laws or investment adviser representatives, the fiduciary duties and all other requirements imposed on such investment advisers or investment adviser representatives by contract or under the Investment Advisers Act of 1940, including the Form ADV and interpretations; and

3. With respect to plan fiduciaries or fiduciaries, means the duties, obligations, prohibitions and all other requirements attendant to such status under the Employee Retirement Security Act of 1974 (ERISA) or the Internal Revenue Code (IRC) and any amendments or successor statutes thereto.

(6) [(4)] "Consultant" is defined in KRS 304.9-040.

(7) [(5)] "Financial professional" means a licensee that is regulated and acting as:

(a) [1.] A broker-dealer registered under federal and state securities laws or a registered representative of a broker-dealer;

(b) [2.] An investment adviser registered under federal and state securities laws or an investment adviser representative associated with the federal and state registered investment adviser; or

(c) [3.] A plan fiduciary under Section 3(21) of the ERISA or fiduciary under Section 4975 (e)(3) of the IRC or any amendments or successor statutes thereto.

(8) "FINRA" means the Financial Industry Regulatory Authority or a succeeding agency.

(9) [(6)] "Insurance producer" is defined in KRS 304.9-020(10).

(10) [(7)] "Insurer" is defined in KRS 304.1-040.

(11) "Intermediary" means an entity contracted directly with an insurer or with another entity contracted with an insurer to facilitate the sale of the insurer's annuities by producers.

(12) [(8)] "Licensee" means agent, or an insurer if an agent is not involved, and consultant.

(13) "Material conflict of interest" means a financial interest of the producer in the sale of an annuity that a reasonable person would expect to influence the impartiality of a recommendation but does not include cash compensation or non-cash compensation.

(14) "Non-cash compensation" means any form of compensation that is not cash compensation.

(15) "Nonguaranteed elements" means the premium, credited interest rates including bonus, benefits, values, dividends, non-

interest based credits, charges or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue. **An element shall be considered nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.**

(16)(a) [(9)] "Recommendation" means advice provided by a licensee to an individual consumer that results in a purchase, exchange, or replacement of an annuity in accordance with that advice.

(b) Recommendation shall not include general communication to the public, generalized customer services assistance or administrative support, general educational information and tools, prospectuses, or other product and sales material.

(17) [(40)] "Replacement" is defined in KRS 304.12-030(1)(a).

(18) "SEC" means the United States Securities and Exchange Commission.

(14) ~~"Suitability information" means information that is reasonably appropriate to determine the suitability of a recommendation in accordance Section 3(2)-]~~

Section 2. Exemptions. This administrative regulation shall not apply to recommendations involving:

(1) Direct response solicitations without a recommendation based on information collected from the consumer pursuant to this administrative regulation; or

(2) Contracts used to fund:

(a) An employee pension or welfare benefit plan covered by the Employee Retirement and Income Security Act (ERISA), codified as 29 U.S.C. 1001 to 1461;

(b) A plan described by 26 U.S.C. 401(a), **401(k)**, 403(b), 408(k), or **408(p)**, as amended, if established or maintained by an employer;

(c) A government or church plan defined in 26 U.S.C. 414, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under 26 U.S.C. 457;

(d) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(e) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(f) Prepaid funeral contracts.

Section 3. Duties of Insurers and Licensees.

(1) **Obligations [Best interest obligations].** A licensee, when making a recommendation of an annuity, shall **do so [act in the best interest of the consumer]** under the circumstances known at the time the recommendation is made, without placing the licensee's or the insurer's financial interest ahead of the consumer's interest **and does so by satisfying[. A licensee shall have acted in the best interest of the consumer if he has satisfied]** the following obligations regarding care, disclosure, conflict of interest and documentation.

(a) 1. Care obligation. The licensee, in making a recommendation, shall exercise reasonable diligence, care and skill to:

a. Know the consumer's financial situation, insurance needs, and financial objectives;

b. Understand the available recommendation options after making a reasonable inquiry into options available to the licensee;

c. Have a reasonable basis to believe the recommended option effectively addresses the consumer's financial situation, insurance needs and financial objectives over the life of the product, as evaluated in light of the consumer profile information; and

d. Communicate the basis or bases of the recommendation.

2.a. The requirements under subparagraph 1. of this paragraph shall include **at a minimum, the following information to determine whether a recommendation addresses the consumer's financial situation, insurance needs and financial objectives** making reasonable efforts to obtain consumer profile information from the consumer prior to the recommendation of an annuity.

b. Consumer profile information shall include:

(i) Age;

(ii) Annual Income;

(iii) Financial situation and needs, including debts and other obligations;

(iv) Financial experience;

(v) Insurance needs;

(vi) Financial objectives;

(vii) Intended use of the annuity;

(viii) Financial time horizon;

(ix) Existing assets or financial products, including investment, annuity and insurance holdings;

(x) Liquidity needs;

(xi) Liquid net worth;

(xii) Risk tolerance, including willingness to accept nonguaranteed elements in the annuity;

(xiii) Financial resources used to fund the annuity; and

(xiv) Tax status.

3.a. The requirements under subparagraph 1. of this paragraph shall require a licensee to consider the types of products the licensee is authorized and licensed to recommend or sell that address the consumer's financial situation, insurance needs, and financial objectives.

b. The requirements under subparagraph 1. of this paragraph shall not require analysis or consideration of any products outside the authority and licensee of the licensee or other possible alternative products or strategies available in the market at the time of the recommendations.

4. The requirements under paragraph (a) of this subsection shall not create a fiduciary obligation or relationship and only create a regulatory obligation as established in this administration regulation.

5 a. Factors relevant in making a determination whether an annuity effectively addresses the consumer's financial situation, insurance needs, and financial objectives shall include:

(i) Consumer profile information;

(ii) Characteristics of the insurer; and

(iii) Product costs, rates, benefits and features.

b. The level of importance of each factor under the care obligation of the paragraph may vary depending on the facts and circumstances of a particular case;

c. Each factor shall not be considered in isolation.

6. The requirements under paragraph (a) of this subsection shall include having a reasonable basis to believe the consumer would benefit from certain features of the annuity, such as annuitization, death, or living benefit or other insurance-related features.

7. The requirements under subparagraph (a) of this subsection shall apply to the particular annuity as a whole and the underlying subaccount to which funds are allocated at the time of purchase or exchange of an annuity, and riders and similar **product [producer]** enhancements, if any.

8. The requirements under paragraph (a) of this subsection shall not mean the annuity with the lowest one-time or multiple occurrence compensation structure shall necessarily be recommended.

9. The requirements under paragraph (a) of this subsection shall not mean the licensee has ongoing monitoring obligations. An obligation may be separately owed under the terms of a fiduciary, consulting, investment advising, or financial planning agreement between the consumer and the licensee.

10. In the case of an exchange or replacement of an annuity, the licensee shall consider the whole transaction, which shall include taking into consideration whether:

a. The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits, such as death, living or other contractual benefits, or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements;

b. The replacing product would substantially benefit the consumer in comparison to the replaced product over the life of the product; and

c. The consumer had another annuity exchange or

replacement and, in particular, an exchange or replacement within the preceding sixty (60) months.

11. If the licensee does not give advice or provide services that are otherwise subject to securities laws or engage in any other activity requiring other professional licenses, this administrative regulation shall not be construed to require a licensee to obtain any license other than a license with the appropriate line of authority to sell, solicit, or negotiate insurance in this state, including any securities license, in order to fulfill the duties and obligations contained in this administrative regulation

(b) Disclosure obligation.

1. Prior to the recommendation or sale of an annuity, the licensee shall prominently disclose to the consumer on a form substantially similar to "Insurance Agent (Producer) Disclosure For Annuities":

a. A description of the scope and terms of the relationship with the consumer and the role of the licensee in the transaction;

b. An affirmative statement on whether the licensee is licensed and authorized to sell the following products:

(i) Fixed annuities;

(ii) Fixed indexed annuities;

(iii) Variable annuities;

(iv) Life insurance;

(v) Mutual funds;

(vi) Stocks and bonds; and

(vii) Certificates of deposit;

c. An affirmative statement describing the insurers the licensee is authorized, contracted or appointed, or otherwise able to sell insurance products for using the following descriptions:

(i) From one [One] insurer;

(ii) From two or more insurers; or

(iii) From two or more insurers although primarily contracted with one insurer.

d. A description of the sources and types of cash compensation and non-cash compensation to be received by the licensee, including whether the licensee is to be compensated for the sale of a recommended annuity by commission as part of premium or other remuneration received from the insurer, intermediary, or other licensee, or by fee as a result of a contract for advice or consulting services; and

e. A notice of the consumer's right to request additional information regarding cash compensation described in subparagraph 2. of this paragraph:

2. Upon request of the consumer or the consumer's designated representative, the licensee shall disclose:

a. A reasonable estimate of the amount of cash compensation to be received by the licensee, which may be stated as a range of amounts or percentages; and

b. Whether the cash compensation is a one-time or multiple occurrence amount, and if a multiple occurrence amount, the frequency and amount of the occurrence, which may be stated as a range of amounts or percentages.

3. Prior to or at the time of the recommendation or sale of an annuity, the licensee shall have a reasonable basis to believe: [In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the licensee shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to these investments and other insurance products and as to the consumer's financial situation and needs, including the consumer's suitability information, and that there shall be a reasonable basis to believe all of the following:—]

a. [(a)] The consumer has been informed of various features of the annuity, including:

(i) [1.] The potential surrender period and surrender charge;

(ii) [2.] Potential tax penalty if the consumer sells, exchanges, surrenders, or annuitizes the annuity;

(iii) [3.] Mortality and expense fees;

(iv) [4.] Investment advisory fees;

(v) [5.] Potential charges for and features of riders or other options of the annuity;

(vi) [6.] Limitations on interest returns, potential changes in

nonguaranteed elements of the annuity, insurance, and investment components; [and]

(vii) [7.] Market risk; and

(viii) Annual fees.];

(b) The consumer would benefit from certain features of the annuity, including:

1. Tax deferred growth;

2. Annuitization; or

3. Death or living benefit;

(c) For the particular consumer, based on his or her suitability information, the transaction as a whole is suitable, including:

1. The type of annuity;

2. The underlying subaccounts to which the funds are allocated at purchase or exchange of the annuity;

3. The riders; and

4. The similar product enhancements; and

(d) If there is an exchange or replacement of an annuity, the exchange or replacement is suitable including taking into consideration whether:

1. The consumer shall:

a. Incur a surrender charge;

b. Be subject to the commencement of a new surrender period;

c. Lose existing benefits including death, living, or other contractual benefits; or

d. Be subject to increased fees, including:

(i) Investment advisory fees; or

(ii) Charges for riders and similar product enhancements;

2. The consumer would benefit from product enhancements and improvements; and

3. The consumer has had another annuity exchange or replacement and in particular, exchange or replacement within the preceding thirty-six (36) months.];

(c) Conflict of interest obligation. A licensee shall identify and avoid or reasonably manage and disclose material conflicts of interest, including material conflicts of interest related to an ownership interest.

(d) Documentation obligation. A licensee shall at the time of recommendation or sale:

1. Make a written record of any recommendation and the basis for the recommendation subject to this regulation;

2. Obtain a consumer signed statement on a form substantially similar to "Consumer Refusal To Provide Information" documenting:

a. A consumer's refusal to provide the consumer profile information, if any; and

b. A consumer's understanding of the ramifications of not providing his or her consumer profile information or providing insufficient consumer profile information; and

3. Obtain a consumer signed statement on a form substantially similar to "Consumer Decision To Purchase An Annuity NOT Based A On Recommendation" acknowledging the annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the licensee's recommendation.];

(2) Prior to the execution of a purchase, exchange, or replacement of an annuity resulting from a recommendation, the licensee shall make reasonable efforts to obtain the consumer's suitability information including the following:

(a) Age;

(b) Annual income;

(c) Financial situation and needs, including the financial resources used for the funding of the annuity;

(d) Financial experience;

(e) Financial objectives;

(f) Intended use of the annuity;

(g) Financial time horizon;

(h) Existing assets, including investment and life insurance holdings;

(i) Liquidity needs;

(j) Liquid net worth;

(k) Risk tolerance; and

(l) Tax status.

(3) Except as permitted under subsection (4), an insurer shall

not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.]

(e) 1. Application of the [best interest] obligation. A requirement applicable to a licensee under this subsection shall apply to every licensee who has exercised material control or influence in the making of a recommendation and has received direct compensation as a result of the recommendation or sale, regardless of whether the licensee has had any direct contact with the consumer.

2. Activities providing or delivering marketing or educational materials, product wholesaling or other back office product support, and general supervision of a licensee shall not constitute material control or influence.

(2) Transactions not based on a recommendation.

(a) [(4)(a)] Except as provided under paragraph (b) of this subsection, the licensee shall not have an obligation to a consumer under this subsection or subsection (1)(a) of this section related to an annuity transaction if:

1. A consumer refuses to provide relevant [suitability] consumer profile information requested by the licensee and the annuity transaction is not recommended;

2. A consumer decides to enter into an annuity [insurance] transaction not based on a recommendation of the licensee;

3. A recommendation was made and was later found to have been prepared based on materially inaccurate information provided by the consumer; or

4. No recommendation is made.

(b) An insurer's issuance of an annuity [A licensee's recommendation] subject to paragraph

(a) of this subsection shall be reasonable under all the circumstances actually known to the insurer [licensee] at the time the annuity is issued.

(3)(a) Except as permitted under subsection (2) of this section, an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity would effectively address the particular consumer's financial situation, insurance needs, and financial objectives based on the consumer's consumer profile information.]

(5) A licensee shall at the time of sale:

(a) Make a record of any recommendation subject to section 3(1) of this administrative regulation;

(b) Obtain a consumer signed statement documenting a consumer's refusal to provide suitability information, if any; and

(c) Obtain a consumer signed statement acknowledging that an annuity transaction is not recommended if a consumer decides to enter into an annuity transaction that is not based on the licensee's recommendation.]

(b) [(6)(a)] An insurer shall establish and maintain a system that is reasonably designed to achieve a licensee's compliance with this administrative regulation, including the following:

1. The insurer shall establish and maintain reasonable procedures to inform its licensees of the requirements of this administrative regulation and shall incorporate the requirements of this administrative regulation into relevant [insurance] licensee training manuals.

2. The insurer shall establish and maintain standards for licensee product training and shall establish and maintain reasonable procedures to require its licensees to comply with the requirements of Section 4 of this administrative regulation.

3. The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its licensees.

4. The insurer shall establish and maintain procedures for the review of each recommendation prior to issuance of an annuity that are designed to ensure [that] there is a reasonable basis to determine that the recommended annuity would effectively address the particular consumer's financial situation, insurance needs and financial objectives. [a recommendation is suitable.]

a. These review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including physical review.

b. This electronic or other system for review procedures may be designed to require additional review only of those transactions identified for additional review by the selection criteria.

5. The insurer shall establish and maintain reasonable procedures to detect recommendations that are not in compliance with subsections (1), (2), (4), and (5) of this section. [suitable.] This may include confirmation of the consumer's consumer profile [consumer suitability] information, systematic customer surveys, licensee and consumer interviews, confirmation letters, licensee statements or attestations, and programs of internal monitoring. An insurer may comply with this subparagraph by applying sampling procedures, or by confirming the consumer profile [suitability] information or other required information under this section after issuance or delivery of the annuity.

6. The insurer shall establish and maintain reasonable procedures to assess, prior to or upon issuance or delivery of an annuity, if a licensee has provided to the consumer the information required to be provided under this section.

7. The insurer shall establish and maintain reasonable procedures to identify and address suspicious consumer refusals to provide consumer profile information.

8. The insurer shall establish and maintain reasonable procedures to identify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific annuities within a limited period of time. The requirements of this subparagraph shall not prohibit the receipt of health insurance, office rent, office support, retirement benefits, or other employee benefits by employees as long as those benefits are not based upon the volume of sales of a specific annuity within a limited period of time.

9. [6.] The insurer shall annually provide a written report to senior management, including to the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

(c) [(b)] 1. An insurer may contract for performance of a function, including maintenance of procedures, required under paragraph (2) [(a)] of this subsection.

2. An insurer's supervision system under this subsection [paragraph 4.] shall include supervision of contractual performance under this subsection. This shall include the following:

a. Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and

b. Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager represents, that the function is properly performed; and

3. If an insurer contracts for performance of a function and supervises the performance of the contract in accordance with subsection (c) 1 [(6)(b) 2.] of this section, the insurer shall remain responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to Section 5 of this administrative regulation.

(d) 1. [(e)] An insurer shall not be required to include in its system of supervision a licensee's recommendations to consumers of products other than the annuities offered by the insurer; or [-]

2. Include consideration of or comparison to options available to the licensee or compensation relating to those options other than annuities or other products offered by the insurer.

(4) [(7)] Prohibited practices. A licensee or an insurer shall not attempt to influence a consumer from:

(a) Truthfully responding to an insurer's request for confirmation of the consumer profile [suitability] information;

(b) Filing a complaint; or

(c) Cooperating with the investigation of a complaint.

(5) (a) 1. Safe Harbor. Recommendations and sales of annuities [(8)(a) 1. Sales] made in compliance with comparable standards [FINRA requirements pertaining to suitability and supervision of annuity transactions] shall satisfy the requirements under this administrative regulation.

2. This subsection shall apply to [FINRA broker-dealer] all recommendations and sales of [variable annuities and fixed] annuities made by financial professionals in compliance with

business rules, controls and procedures that satisfy a comparable standard even if such standard would not otherwise apply to the product or recommendation at issue [if the suitability and supervision is similar to those applied to variable annuity sales.]

3. This subsection shall not limit the commissioner's ability to investigate and enforce the provisions of this administrative regulation.

(b) Nothing in paragraph (a) of this subsection shall limit the insurer's obligation to comply with subsection (3)(a) of this section, although the insurer may base its analysis on information received from either the financial professional or the entity supervising the financial professional.

(c)(b) For paragraph (a) to apply, an insurer shall:

1. Monitor the [FINRA member broker-dealer] relevant conduct of the financial professional seeking to rely on paragraph (a) or the entity responsible for supervising the licensee, such as the licensee's broker-dealer or investment adviser registered under federal securities laws using information collected in the normal course of an insurer's business; and

2. Provide to the [FINRA member broker-dealer] entity responsible for supervising the licensee seeking to rely on paragraph (a), such as the financial professionals broker-dealer or investment adviser registered under federal securities laws, information and reports that are reasonably appropriate to assist [the FINRA member broker-dealer] such entity to maintain its supervision system.

(6) [(9)] The requirements of this section are intended to supplement and not replace the disclosure requirements in 806 KAR 12:150.

Section 4. Licensee Training. (1) An agent shall not sell, solicit, or negotiate an annuity product unless the agent has adequate knowledge of the product to recommend the annuity and completed training in accordance with 806 KAR 9:025[806 KAR 9:220, Section 5.]

(2) A consultant shall not advise an individual regarding an annuity unless the consultant has adequate knowledge of the product to recommend the annuity and completed the training in accordance with 806 KAR 9:025 [806 KAR 9:220, Section 5.]

(3) A licensee shall maintain records documenting compliance with the training requirements in subsection (1) and (2) of this section, which shall be available:

- (a) To the department, if requested; and
- (b) For a period not less than five (5) years.

(4) An insurer shall verify that an agent has completed the annuity training course required under this subsection before allowing the agent to sell an annuity product for that insurer.

Section 5. Mitigation of Responsibility. (1) An insurer shall be responsible for compliance with this administrative regulation. If a violation occurs, due to the action or inaction of the insurer or its licensee, the commissioner may require:

(a) An insurer to take appropriate corrective action for any consumer harmed by a failure to comply with this regulation by the insurer[insurer's], an entity contracted to perform the insurer's supervisory duties or by its licensee's; [agent's, violation of this administrative regulation];

(b) A licensee [an agent] to take appropriate corrective action for any consumer harmed by the licensee's [insurance agent's] violation of this administrative regulation; or

(c) A supervising licensee [insurance producer] that employs or contracts with another licensee [an insurance agent] to sell, or solicit the sale, of annuities to consumers, to take appropriate corrective action for any consumer harmed by the licensee's [agent's] violation of this administrative regulation;

(2) The commissioner may require consultant to take appropriate corrective action for any consumer harmed by the consultant's violation of this administrative regulation.

(3) Any applicable penalty under KRS 304.99-020 for a violation of [Section 3(1), (2), or (3) of] this administrative regulation may be reduced or eliminated, if corrective action for the consumer is taken promptly after a violation is discovered.

Section 6. Recordkeeping. Licensees shall maintain records of the information collected from the consumer, disclosure made to the consumer, including summaries of oral disclosures, and other information used in making the recommendations that were the basis for insurance transactions in accordance with KRS 304.9-390 and 806 KAR 2:070. An insurer may maintain documentation on behalf of a licensee.

Section 7. Effective Date. The requirements of this administrative regulation shall not be implemented or enforced prior to the effective date, determined pursuant to KRS 13A.330, or January 1, 2022 [July 1, 2021] [January 1, 2012], whichever is later.

Section 8. Scope. This administrative regulation shall not create or imply a private cause of action for violation of this administrative regulation.

Section 9. Material Incorporated by Reference.

(1) The following material is incorporate by reference:

(a) "Insurance Agents (Producer) Disclosure For Annuities", (7/2020);

(b) "Consumer Refusal To Provide Information", (7/2020); and

(c) Consumer Decisions To Purchase An Annuity NOT Based on A Recommendation", (7/2020).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Insurance, Mayo-Underwood Building, 500 Mero Street Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

SHARON P. CLARK, Commissioner

KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: January 7, 2021

FILED WITH LRC: January 8, 2021 at 4:25 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards and procedures for recommendations to consumers that result in a transaction involving annuity products so that the insurance needs and financial objectives of consumers during the transaction are appropriately addressed.

(b) The necessity of this administrative regulation: This administrative regulation will provide guidance to insurers and agents selling an annuity product as to the suitability of the product.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the commissioner to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. This regulation will aid insurers and agents by providing guidance and requirements for purchase of annuities as to the suitability.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation currently provides guidance, procedures and information for insurers and agents with regard to the purchase of annuities as to the suitability of the product.

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

(a) How the amendment will change this existing administrative regulation: The amendments adopt the amendments to the National Association of Insurance Commissioners (NAIC) model regulation on Suitability in Annuity Transactions.

(b) The necessity of the amendment to this administrative regulation: Adoption of the amendments to this model regulation are necessary to protect consumers purchasing annuities in

Kentucky by ensuring that the recommendations made to them on the purchase of products are to ensure consistent regulation of the sale of annuities across the nation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110(1) authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. This administrative regulation requires licensees to satisfy specific requirements and standards before/when making a recommendation of an annuity and to require insurers to establish and maintain a system to supervise so that the insurance needs and financial objectives of consumers during the transaction are effectively addressed.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will add a requirement for licensees to satisfy specific requirements and standards before making a recommendation of an annuity.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment to this administrative regulation will affect approximately 470 insurers and 66,000 agents offering annuity products.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Licensees will be required to comply with the amended regulation by revising their suitability questionnaires to ensure that all required information is obtained prior to recommending an annuity product.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities:

(c) As a result of compliance, what benefits will accrue to the entities: Since these insurers and agents are already complying with the previous version of this regulation, the costs associated with providing the amended version should be minimal.

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

(a) Initially: Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance. Minimal, if any.

(b) On a continuing basis: Implementation of this amendment is not anticipated to have an on-going cost on the Department of Insurance

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks necessary.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied; the provisions of this administrative regulation will be implemented in the same manner for all insurers and agents who have annuity products.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Department of Insurance

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency

(including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

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

(c) How much will it cost to administer this program for the first year? There should not be a significant cost to administer this program initially

(d) How much will it cost to administer this program for subsequent years?? There should not be a significant cost to administer this program in subsequent years

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation:

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](#).

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Amendment)

103 KAR 26:100. Industrial laundry and linen supply services.~~[Towel and linen service.]~~

RELATES TO: KRS 139.010, 139.200

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of Kentucky tax laws. This administrative regulation interprets [To interpret] the sales and use tax law as it applies to transactions involving industrial laundry and linen supply services. [towel and linen services.]

Section 1. Industrial laundry services subject to sales tax pursuant to KRS 139.200(2)(k) shall include, but are not limited to:

- (1) Industrial uniform supply services;
- (2) Protective apparel supply services;
- (3) Industrial mat and rug supply services; and
- (4) Any other substantially similar industrial services.

Section 2. Linen supply services subject to the sales tax pursuant to KRS 139.200(2)(m) shall include, but are not limited to:

- (1) Table and bed linen supply services;
- (2) Nonindustrial uniform supply services; and
- (3) Any other substantially similar nonindustrial linen supply services.

Section 3. (1) Persons furnishing periodic cleaning or laundering of aprons, caps, coats, diapers, dresses, linens, mats, protective apparel, rugs, towels, uniforms, or other articles of a similar nature under an agreement for the provisions of a continuous industrial laundry or linen supply service are consumers of the supplies and other property used in performing their services and the tax shall apply at the time such items are purchased.

(2) Industrial laundry and linen supply service providers shall not issue the "Resale Certificate" (Revenue Form 51A105) for the purchase of the aprons, caps, coats, diapers, dresses, linens, mats, protective apparel, rugs, towels, uniforms, or other articles of a similar nature when retaining title to property they provide under an agreement for continuous cleaning service. [(4) Persons furnishing periodic cleaning or laundering of coats, caps, aprons, diapers, uniforms, dresses, towels and articles of a similar nature under an agreement which provides for a continuous service to be rendered to barber shops, beauty shops, industrial plants and other establishments or to individuals, are consumers of the supplies and other property used in performing their services and the tax applies at the time such supplies are purchased.]

Section 4. Forms. The form(s) referenced in this administrative regulation may be inspected, copied, or obtained, subject to applicable copyright law, at:

- (1) The Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40601;
- (2) A Kentucky Taxpayer Service Center, Monday through Friday, 8:00 a.m. to 4:30 p.m.; or
- (3) The Department or Revenue Web site at <http://revenue.ky.gov>.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: January 13, 2021

FILED WITH LRC: January 14, 2021 at 8:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on

March 25, 2021, at 10:00 a.m. in Room 11A, State Office Building, 501 High Street, Frankfort, Kentucky 40601. In the event the declaration of a State of Emergency in Executive Order 2020-215 is not rescinded by this time, this hearing will be conducted by video teleconference. 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 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 March 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation interprets the sales and use tax law as it applies to industrial laundry and linen supply services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide up to date guidance regarding industrial laundry and linen supply services due to 2018 statutory changes in KRS 139.200, and to be in compliance with KRS 13A.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed regulatory language conforms with the provisions of KRS 13A that require an agency to maintain the most up to date guidance and statutory references in its regulations to avoid deficiency.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed regulatory language provides guidance on the taxability of industrial laundry and linen supply services. The proposed amendment further provides guidance on the application of the "Resale Certificate" to property purchased within these industries.

(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 will change the existing administrative regulation by updating the regulation title; adding KRS 139.200 to the RELATES TO section; updating the promulgation statement within the NECESSITY, FUNCTION, AND CONFORMITY section; updating the taxability of industrial laundry and linen supply services in Section 1 and Section 2 pursuant to KRS 139.200; providing examples of property consumed within industrial laundry and linen supply services in Section 3; and providing guidance on the application of the "Resale Certificate" to property purchased within these industries.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this

administrative regulation: All industrial laundry and linen supply service providers as well as their customers.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions are necessary to comply with the amendment. This amendment does not add any requirements. It is only intended to provide updated guidance regarding the taxability of transactions involving industrial laundry and linen supply services.

(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 comply with the amended regulation. This regulation does not add any additional fees or costs to be incurred by industrial laundry and linen supply service providers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anyone who accesses the regulation will benefit from the information contained therein.

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

(a) Initially: It is not anticipated that there will be any additional costs to implement this regulation. Additional costs that may have been created by the statutory changes (for example, taxpayer outreach efforts to inform the general public of the changes in KSR 139.200) have already been, and will continue to be, absorbed through current staff and budgeted funding. Current staff are already answering questions to provide guidance on industrial laundry and linen supply services.

(b) On a continuing basis: There is no cost expected on a continual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental staff and funding will be used to implement and enforce this regulation.

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(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? No revenues are expected to be generated by this administrative regulation because this administrative regulation only clarifies statutory language which has been in effect since July 1, 2018.

(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 known.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect.

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

BOARDS AND COMMISSIONS

Board of Licensure of Marriage and Family Therapists (Amendment)

201 KAR 32:030. Fees.

RELATES TO: KRS 335.330, 335.340(1), (3), 335.342

STATUTORY AUTHORITY: KRS 335.320(4), 335.330, 335.340(1), (3), 335.348

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.330 requires the board to promulgate an administrative regulation establishing the initial fee for licensure required to be paid by an applicant for licensure and requires an applicant to pass a written examination prescribed by the board. KRS 335.340(1) requires that all licenses issued under KRS 335.330 shall be renewed annually, and that the board promulgate an administrative regulation establishing the fee for licensure renewal. KRS 335.340(3) requires the board to promulgate an administrative regulation establishing the late renewal fee. This administrative regulation establishes fees for licensure as a marriage and family therapist or marriage and family therapy[therapist] associate.

Section 1. Initial Application Fee. The initial application fee for licensure as a marriage and family therapist shall be:

(1) Fifty (50) dollars;

(2) Nonrefundable; and

(3) Payable to the Kentucky State Treasurer.

Section 2. Initial Licensure Fee. The initial fee for licensure as a marriage and family therapist shall be:

(1) \$175;

(2) Nonrefundable; and

(3) Payable to the Kentucky State Treasurer.

Section 3. Initial Application. (1) An applicant for licensure as a marriage and family therapist shall submit a completed Licensure as a Marriage and Family Therapist Application to the board in accordance with KRS 335.330 and with the fees required under Sections 1 and 2 of this administrative regulation.

(2) The applicant shall complete six (6) hours of training in the field of suicide assessment, treatment, and management every six (6) years as required by 201 KAR 32:060, Section 1(4).

(3) The applicant shall complete the three (3) hours of training in the field of domestic violence within three (3) years of licensure as required by 201 KAR 32:060, Section 1(5).

(4) The applicant shall document professional experience obtained as a marriage and family therapy[therapist] associate, including 1,000 client hours over a minimum of two (2) years, and verify clinical supervision as required by 201 KAR 32:035.

Section 4. Examination Fee. (1) An applicant shall pass the National Marital and Family Therapy Examination administered and verified by the Association of Marital and Family Therapy Regulatory Boards.

(2) The applicant shall pay the required examination fee.

Section 5. Renewal Fee. (1) A licensed marriage and family therapist shall submit a completed Licensure as a Marriage and Family Therapist Renewal Application to the board in accordance

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with KRS 335.340.

(2) The fee for renewal of licensure as a marriage and family therapist shall be:

(a) \$150 annually;

(b) Nonrefundable; and (c) Payable to the Kentucky State Treasurer.

(3) The licensee shall complete six (6) hours of training in the field of suicide assessment, treatment, and management every six (6) years as required by 201 KAR 32:060, Section 1(4).

(4) The licensee shall complete the three (3) hours of training in the field of domestic violence within three (3) years of licensure as required by 201 KAR 32:060, Section 1(5).

(5) The licensee shall submit proof of completion of the continuing education requirements under 201 KAR 32:060.

Section 6. Late Renewal Fees. (1) A licensee who renews a license during the ninety (90) day grace period provided by KRS 335.340(3) shall pay a late renewal fee of seventy-five (75) dollars in addition to the payment of the renewal fee as established in Section 5 of this administrative regulation.

(2) The fee shall be:

(a) Nonrefundable; and

(b) Payable to the Kentucky State Treasurer.

Section 7. Administrative Fine. A licensee who fails to meet the continuing education unit requirements as set forth in 201 KAR 32:060, by the renewal date, shall pay an additional administrative fine of seventy-five (75) dollars.

Section 8. Reinstatement of Expired License. (1) In accordance with KRS 335.340, an expired license shall be reinstated by:

(a) Submitting a completed Application for License Reactivation;

(b) Paying of the renewal fee as established in Section 5 of this administrative regulation for each year since the date of last active licensure;

(c) Paying of a reinstatement fee of \$100, which shall be:

1. Nonrefundable; and

2. Payable to the Kentucky State Treasurer; and

(d) Meeting all other requirements of this section of this administrative regulation.

(2) The applicant for reinstatement of an expired license shall submit proof of:

(a) Completion of fifteen (15) hours of continuing education for each year since the date of last active licensure as required by 201 KAR 32:060;

(b) Completion of six (6) hours of training in the field of suicide assessment, treatment and management every six (6) years as required by 201 KAR 32:060, Section 1(4); and

(c) Completion of three (3) hours of training in the field of domestic violence within three (3) years of licensure as required by 201 KAR 32:060, Section 1(5).

Section 9. Fees for Providers of Continuing Education. (1) There shall be a nonrefundable fee of \$100[fifty (50) dollars] for a single continuing education workshop offered an unlimited number of times in a calendar year, January 1 to December 31. The provider shall submit the Continuing Education Program Provider Approval Application with the applicable fee required under this subsection[per day for six (6) continuing education workshops or less offered a single time].

(2) There shall be a nonrefundable fee of \$300 for a provider designated as an approved sponsor for continuing education for two consecutive calendar years, January 1 to December 31. The provider shall submit the Application for Continuing Education Sponsor with the applicable fee required under this subsection[\$125 per day for seven (7) or more continuing education workshops offered a single time].

(3) [There shall be a nonrefundable fee of \$250 for a single continuing education workshop offered unlimited times in a calendar year, January 1 to December 31.

(4) The provider shall submit the Continuing Education

Program Provider Approval Application with the applicable fee required under subsections (1) through (3) of this section.

(5) The marriage and family therapist, and the marriage and family therapy[therapist] associate shall submit the Application for Continuing Education Program Approval Individual for post approval only.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Licensure as a Marriage and Family Therapist Application", July 2016;

(b) "Licensure as a Marriage and Family Therapist Renewal Application", July 2016;

(c) "Application for License Reactivation", July 2016;

(d) "Continuing Education Program Provider Approval Application", September 2016; [and]

(e) "Application for Continuing Education Program Approval Individual", 2016; and

(f) "Application for Continuing Education Sponsor", January 2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure for Marriage and Family Therapists, 500 Mero Street, 2SC32[911 Leawood Drive], Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

DR. C. SHAWN OAK, Ph.D., LMFT, Chair

APPROVED BY AGENCY: December 17, 2020

FILED WITH LRC: January 14, 2021 at 3:23 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:30 AM on Tuesday, March 23, 2021 at 500 Mero Street, 127CW, Frankfort, Kentucky 40601. In the event the declaration of a State of Emergency in Executive Order 2020-215 and the State of Emergency Relating to Social Distancing in Executive Order 2020-243 are not rescinded by March 23, 2021, this hearing will be done by video teleconference. Members of the public wishing to attend may utilize the following link:

<https://us02web.zoom.us/j/85760716794?pwd=TnBjRElGMjNwTzVIMmVJRDIgGpWUT09>

Join from PC, Mac, Linux, iOS or Android:

Password: 424436

Or Telephone:

Dial:

USA 713 353 0212

USA 8888227517 (US Toll Free)

Conference code: 497796

Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on March 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Bryan D. Morrow, Attorney for the Board of Marriage and Family Therapists, 500 Mero Street, 218NC, Frankfort, Kentucky 40601, phone +1 (502) 229-6917, fax +1 (502) 564-3696, email Bryan.Morrow@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Bryan D. Morrow

(1) Provide a brief summary of:

(a) What this administrative regulation does: This

administrative regulation sets forth the fees for licensure, renewal, reinstatement, and sponsors of continuing education.

(b) The necessity of this administrative regulation: The administrative regulation is necessary under KRS 335.320(4) and 335.330, which requires the Board to set by administrative regulation an initial licensure fee; KRS 335.332(3), which requires the Board to set by administrative regulation, an initial permit fee for associates; KRS 335.340(1), which requires the Board to set by administrative regulation a renewal fee; KRS 335.340(3), which requires the Board to set by administrative regulation a late fee; KRS 335.340(7), which requires the Board to prescribe administrative regulations for continuing education; and KRS 335.320(9), which requires the Board to promulgate administrative regulations to implement the purpose and scope of KRS 335.300 to 335.399.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 335.320(4) and 335.330 authorize the Board to charge a fee for an applicant to become licensed. KRS 335.332(3) authorizes the Board to charge a fee for an applicant to receive a permit from the Board. KRS 335.340(1) authorizes the Board to establish a fee for an applicant to renew license. KRS 335.340(3) allows the board to charge a late renewal fee. KRS 335.340(7) authorizes the Board to prescribe regulations for continuing education.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by setting forth the fees for licensure, to receive a permit, to renew and reinstate a license, and to provide continuing education programming.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change the existing administrative regulation by: (1) eliminating the existing fee of fifty (50) dollars per day for six (6) continuing education workshops or less offered a single time; (2) eliminating the \$250 fee for a single continuing education workshop offered unlimited times in a calendar year, January 1 to December 31; (3) allowing a continuing education provider to pay \$100 for a single continuing education workshop offered an unlimited number of times in a calendar year; and (4) allowing a continuing education sponsor to pay \$300 to provide unlimited continuing education programs for two consecutive calendar years.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to notify continuing education providers of the costs of becoming a board-approved continuing education provider.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes. KRS 335.340(7) requires the Board to prescribe administrative regulations for continuing education. KRS 335.320(9) requires the Board to promulgate administrative regulations to implement the purpose and scope of KRS 335.300 to 335.399.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide continuing education providers a way to become board-approved providers of continuing education programs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Licensed Marriage and Family Therapists and Marriage, Family Therapy Associates, and continuing education providers will be affected by this administrative regulation. As of December 7, 2020, there were 770 total active license and permit holders. It is unknown how many program providers there are. The Board averages 44 requests a month to provide board-approved continuing education programs.

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

(a) List the actions each of the regulated entities have to take

to comply with this regulation or amendment: Licensees and permit holders do not have to take any action to conform to the amendment. Program providers will have to fill out an application and pay a fee to comply with the amended regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Licensees and permit holders will have no cost associated with the amendment. Program providers who want to apply to provide a single board-approved continuing education program for one calendar year will be required to pay a nonrefundable fee of \$100. Sponsors who want to apply to provide unlimited board-approved continuing education programs for two calendar years will be required to pay a nonrefundable fee of \$300.

(c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance, licensees and permit holders will know the board-approved continuing education programs. Board-approved program providers will be able to advertise their continuing education programs as board approved.

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

(a) Initially: Initially, there is no additional cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: On a continuing basis, there is no additional cost to the administrative body to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Under KRS 335.342(1), all fees and other moneys received by the Board pursuant to KRS 335.300 through KRS 335.599 shall be deposited in the State Treasury to the credit of a revolving fund for the use of the board.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The amendment establishes a fee of \$100 for a single continuing education workshop offered an unlimited number of times in a calendar year, January 1 to December 31. It also establishes a fee of \$300 for a provider designated as an approved sponsor for continuing education for two consecutive calendar years, January 1 to December 31.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The amendment establishes a fee of \$100 for a single continuing education workshop offered an unlimited number of times in a calendar year, January 1 to December 31. It also establishes a fee of \$300 for a provider designated as an approved sponsor for continuing education for two consecutive calendar years, January 1 to December 31.

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply to all applicants.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensure for Marriage and Family Therapists is housed for administrative purposes within the Public Protection Cabinet Department of Professional Licensing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.320(4) and 335.330 require the Board to set by administrative regulation an initial licensure fee. KRS 335.332(3) requires the Board to set by administrative regulation, an initial permit fee for associates. KRS 335.340(1) requires the Board to set by administrative regulation a renewal fee. KRS 335.340(3) requires the Board to set by administrative regulation a late fee. KRS 335.340(7) requires the Board to prescribe administrative regulations for continuing education. KRS 335.320(9) requires the Board to promulgate administrative regulations to implement the purpose and scope of KRS 335.300 to 335.399.

(3) Estimate the effect of this administrative regulation on the

expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

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

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

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

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

BOARDS AND COMMISSIONS

Board of Licensure of Marriage and Family Therapists (Amendment)

201 KAR 32:035. Supervision of marriage and family therapy[therapist] associates.

RELATES TO: KRS 335.300, 335.320(6), 335.330, 335.332

STATUTORY AUTHORITY: KRS 335.320(4), (5), (9)

NECESSITY FUNCTION AND CONFORMITY: KRS 335.320(9) requires the board to promulgate administrative regulations to implement KRS 335.300 to 335.399. KRS 335.320(4) requires the board to license applicants who satisfy the experience and educational requirements and who have paid the fee. KRS 335.320(5) requires the board to review and approve supervision contracts between marriage and family therapy associates and their approved supervisors. This administrative regulation establishes the supervision requirements for marriage and family therapy associates and their board-approved supervisors.

Section 1. Definitions. (1) "Group supervision" means supervision of three (3) to six (6) supervisees with the supervisor.

(2) "Individual supervision" means supervision of one (1) or two (2) supervisees with the supervisor.

(3) "Qualified mental health professional" means a licensed marriage and family therapist, licensed psychologist, licensed psychiatrist, licensed professional clinical counselor, or licensed clinical social worker.

(4) "Raw data" means video recorded sessions, live observation, or co-therapy with a board-approved supervisor.

(5) "Two (2) years of post-licensure experience in the practice of marriage and family therapy" means a minimum of two (2) years of the practice of marriage and family therapy consisting of 1,000 hours of direct, face-to-face or telehealth contact with individuals, couples, families, and groups in the practice of marriage and family therapy under the supervision of an approved supervisor. Face-to-Face includes synchronous contact via technology assisted services for those who have met the training requirements of 201 KAR 32:110.

Section 2. Qualifications for Board-Approved Supervisors Status. (1) Until December 31, 2015, a board-approved supervisor shall be:

(a) An American Association for Marriage and Family Therapy (AAMFT) approved supervisor in good standing;

(b) An AAMFT supervisor candidate; or

(c) A marriage and family therapist in good standing, who is licensed in Kentucky and has a minimum of five (5) years of post-licensure[postlicensure] experience in the practice of marriage and family therapy.

(2) Except as established in subsection (3) of this section, effective January 1, 2016, a board-approved supervisor shall be:

(a) An American Association for Marriage and Family Therapy (AAMFT) approved supervisor in good standing, who is licensed in Kentucky and has a minimum of two (2) years of post-licensure experience in the practice of marriage and family therapy;

(b) An AAMFT supervisor candidate in good standing who is licensed in Kentucky and has three (3) years of post-licensure[postlicensure] experience in the practice of marriage and family therapy; or

(c) A marriage and family therapist in good standing, who is licensed in Kentucky and has a minimum of five (5) years of post-licensure[postlicensure] experience in the practice of marriage and family therapy, with the last eighteen (18) months of experience being in Kentucky.

(3) AAMFT approved supervisors, AAMFT supervisor candidates, and non-AAMFT board approved supervisors, approved as of December 31, 2015, shall maintain board approved status.

(4) To obtain initial board-approved supervisor status, an applicant who is not an AAMFT supervisor or supervisor candidate in good standing shall provide proof of completion of six (6) hours of board-approved continuing education courses in supervision.

(a) The course shall be taken within the two (2) years preceding the date of application to become a board-approved supervisor.

(b) This requirement shall be in addition to the hours of continuing education required for licensure renewal.

(c) Each approved course shall be live or online and shall include:

1. Kentucky law governing the practice of marriage and family therapy, both in KRS 335.300 to 335.399 and 201 KAR Chapter 32;

2. Theories of supervision;

3. Ethical issues involved in supervision; and

4. Supervisor responsibilities such as logs, treatment planning, and recording.

(5) To maintain board-approved supervisor status, a non-AAMFT approved supervisor shall complete at least two (2) hours of continuing education in supervision every year. These two (2) hours shall be included in the hours of continuing education required for licensure renewal. Each approved course shall be live or online and shall include:

(a) Kentucky law governing the practice of marriage and family therapy, both in KRS 335.300 to 335.399 and 201 KAR Chapter 32;

(b) Theories of supervision;

(c) Ethical issues involved in supervision; and

(d) Supervisor responsibilities such as logs, treatment planning, and recording.

(6) To renew as a board-approved supervisor, an AAMFT approved supervisor or supervisor candidate shall complete at least one (1) hour of continuing education every year in Kentucky law governing the practice of marriage and family therapy found both in KRS 335.300 to 335.399 and 201 KAR Chapter 32. The course shall be attended live or online. The one (1) hour shall be included in the hours of continuing education required for licensure renewal.

Section 3. Clinical Supervision. (1) Clinical supervision shall:

(a) Be equally distributed throughout the qualifying period and shall average at least four (4) hours per month as specified in the supervision contract;

(b) Be clearly distinguishable from psychotherapy, didactic enrichment, or training activities;

(c) Focus on raw data from the supervisee's clinical work within

in the last twelve (12) months;

(d) Be direct, face-to-face contact between the supervisor and supervisee[.] or be conducted via live video conferencing if both the supervisor and supervisee have met the educational requirements of 201 KAR 32:110, Section 3(1) and (2)[unless an alternative form of supervision has been approved by the board based on undue burden for the supervisor or supervisee such as in cases of serious illness or injury]; and

(e) Continue until the supervisee is licensed by the board.

(2) The supervision process shall focus on:

(a) Accurate diagnosis of client problems leading to proficiency in applying professionally recognized nomenclature and developing a plan for treatment as established in DSM 5: Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (2013);

(b) Development of treatment skills appropriate to the therapeutic process;

(c) Development of sensitivity to context and issues relating specifically to the family or individual being counseled;

(d) Acknowledgment of an awareness of the use of the professional self of the therapist in the process of therapy;

(e) Increased theoretical and applied knowledge for the therapist;

(f) Acquisition of a greater depth of knowledge and range of techniques in the provision of marriage and family therapy; and

(g) Awareness of ethical issues in practice, in order to safeguard and enhance the quality of care available to marriage and family therapy clients.

Section 4. Standards for Raw Data Used for Supervision. The use of raw data in a supervision session shall constitute a minimum of fifty (50) hours of the 200 hours of required supervision. In a group setting, raw data can only be used for an individual presenting or conducting the raw data, not the entire group.

Section 5. In a therapy session involving a board-approved supervisor and supervisee:

(1) The role of the board-approved supervisor as a supervisor or co-therapist shall be clearly defined prior to beginning a therapy session; and

(2) The supervisees shall receive credit for client contact hours and supervision hours.

Section 6. Documentation Requirements. (1) The board-approved supervisor and marriage and family therapy[therapist] associate shall maintain copies of the completed Supervisory Log, which shall document:

(a) The frequency and type of supervision provided; and

(b) The method of supervision utilized, such as observation, dialogue and discussion, and instructional techniques employed.

(2) No more than 100 hours of supervision shall take place in group supervision.

(3) At least 100 hours shall take place in individual supervision.

Section 7. Number of Supervisees. (1) A board-approved supervisor shall not supervise more than twelve (12)[six-(6)] marriage and family therapy[therapist] associates at the same time, unless approved by the board.

(2) A request to supervise more than twelve (12)[six-(6)] marriage and family therapy[therapist] associates shall be submitted to the board for approval and shall demonstrate in writing the supervisor's plan and ability to supervise additional marriage and family therapy[therapist] associates.

Section 8. Temporary Supervision. (1) In extenuating circumstances, if a marriage and family therapy[therapist] associate is without supervision, the associate may continue working up to ninety (90) calendar days under the supervision of a qualified mental health professional while an appropriate board-approved supervisor is sought and a new supervision contract is submitted to the board. Extenuating circumstances include situations such as death or serious illness of the board-approved supervisor, a leave of absence by the supervisor, or the

termination of the supervisor's employment.

(2)(a) Within thirty (30) calendar days of a change in status of board-approved supervision, the supervisee shall:

1. Notify the board of these circumstances; and

2. Submit, in writing, a plan for resolution of the situation.

(b) The written plan shall include:

1. The name of the temporary supervisor;

2. Verification of the credential held by the temporary supervisor;

3. An address for the temporary supervisor; and

4. A telephone number for the temporary supervisor.

Section 9. Board-approved Supervisor's Responsibilities to Clients and Supervisees. (1) A board-approved supervisor shall be responsible for ensuring the proper and appropriate delivery of marriage and family therapy services to clients.

(2) A board-approved supervisor shall be responsible for fostering the professional competence and development of the marriage and family therapy[therapist] associates under his or her supervision.

(3) A board-approved supervisor shall be responsible for compliance with the code of ethics established in 201 KAR 32:050 and take steps to ensure that supervisees comply with the code of ethics as well.

Section 10. Incorporation by Reference. (1) "Supervisory Log", 7/2015, is incorporated by reference. (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Professional Licensing[Kentucky Office of Occupations and Professions], 500 Mero Street, 2 SC 32[911 Leawood Drive], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. C. SHAWN OAK, Ph.D., LMFT, Chair

APPROVED BY AGENCY:

FILED WITH LRC:

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:30 AM on Tuesday, March 23, 2021 at 500 Mero Street, 127CW, Frankfort, Kentucky 40601. In the event the declaration of a State of Emergency in Executive Order 2020-215 and the State of Emergency Relating to Social Distancing in Executive Order 2020-243 are not rescinded by March 23, 2021, this hearing will be done by video teleconference. Members of the public wishing to attend may utilize the following link : <https://us02web.zoom.us/j/85760716794?pwd=TnBjRElGMjNwTzVIMmVJRDIgGpWUT09>

Join from PC, Mac, Linux, iOS or Android:

Password: 424436

Or Telephone:

Dial:

USA 713 353 0212

USA 8888227517 (US Toll Free)

Conference code: 497796

Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on March 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Bryan D. Morrow, Attorney for the Board of Marriage and Family Therapists, 500 Mero Street, 218NC, Frankfort, Kentucky 40601, phone +1 (502) 229-6917, fax

+1 (502) 564-3696, email Bryan.Morrow@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Bryan D. Morrow

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the requirements of supervision of marriage and family therapist associates.

(b) The necessity of this administrative regulation: The administrative regulation is necessary under KRS 335.320(5), which requires the Board to review and approve contracts between marriage and family therapy associates and approved supervisors for their supervision of practice during the qualifying terms, and KRS 335.320(9), which requires the Board to promulgate administrative regulations to implement the purpose and scope of KRS 335.300 to 335.399.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by setting forth the requirements for supervision of marriage and family therapy associates.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by setting forth the supervisory requirements for a board-approved supervisor.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change the existing administrative regulation by: (1) clearly defining "two (2) years of post-licensure experience in the practice of marriage and family therapy"; (2) by allowing supervision to take place by live video conference; (3) by clarifying that raw data can only be used for individual supervision not group supervision; (4) changing "marriage and family therapist" associate to "marriage and family therapy associate" to conform with statutory definition; and (5) updating the Board's address.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the definition of a "two (2) years of post-licensure experience in the practice of marriage and family therapy" and to allow supervision to continue by live video conferencing as it has been allowed during the current state of emergency.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is consistent with the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide licensees and associates with clarity regarding board-approved supervisors and allow supervisors and supervisees to continue conducting supervision via live video conferencing.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Board-approved supervisors and supervisees are affected by this administrative regulation. As of January 11, 2021, there were 601 marriage and family therapists and 173 marriage and family therapy associates.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: In order to provide supervision via live video conferencing, the supervisor and supervisee will be required to meet the educational requirements of 201 KAR 32:110, Section 3(1) and (2).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Supervisors and supervisees wanting to conduct supervision via live video conferencing will be required to pay for educational classes to meet the requirements contained in 201 KAR 32:110, Section 3(1) and (2).

(c) As a result of compliance, what benefits will accrue to the

entities: As a result of compliance, supervisors and supervisees will be able to conduct supervision via live video conferencing.

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

(a) Initially: Initially, there is no additional cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: On a continuing basis, there is no additional cost to the administrative body to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operation is funded by the registration fees paid by licensed marriage and family therapists, marriage and family therapy associates, and applicants.

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

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

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply to all supervisors and supervisees.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensure for Marriage and Family Therapists will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.320(4), (5), (9)

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

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

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

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

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: None

BOARDS AND COMMISSIONS

Board of Licensure of Marriage and Family Therapists (Amendment)

201 KAR 32:060. Continuing education requirements.

RELATES TO: KRS 194.540, 210.366, 335.300(4), 335.340

STATUTORY AUTHORITY: KRS 335.320(4), (9), 335.340(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.340(7) authorizes the board to promulgate administrative regulations to establish the fees and other requirements for a

permit as a marriage and family ~~therapy~~[therapist and] associate. This administrative regulation establishes the requirements for continuing education and the methods and standards for the accreditation of continuing education courses.

Section 1. Accrual of Continuing Education Hours; Computation of Accrual. (1) Effective January 1, 2017, a minimum of fifteen (15) approved continuing education hours shall be accrued by each licensee and a minimum of ten (10) approved continuing education hours shall be accrued by each associate during each one (1) year renewal period.

(2) All hours shall be in "the practice of marriage and family therapy" as defined by KRS 335.300(4) and shall relate to the professional application of psychotherapeutic and systems theories and techniques in the delivery of services to individuals, couples, and families.

(3) Three (3) hours of the hours required by subsection (1) of this section for licensees and associates shall be accrued in the field of professional marriage and family therapy ethics.

(4) Commencing on January 1, 2017, each licensee and associate shall be required to show proof of completion of six (6) hours of continuing education in suicide assessment, treatment, and management every six (6) years beginning January 1, 2015 as required by KRS 210.366. These hours shall be in addition to the requirements set forth in subsection (1) of this section unless preapproved by the board as meeting the requirements set forth in subsection (2) of this section or meets requirements of Section 2 of this administrative regulation.

(5) Within three (3) years of initial licensure or certification, all mental health professionals shall successfully complete a three (3) hour training that covers dynamics of domestic violence, elder abuse, neglect, and exploitation; effects of domestic violence and elder abuse, neglect, and exploitation on adult and child victims; legal remedies for protection; lethality and risk issues; model protocols for addressing domestic violence and elder abuse, neglect, and exploitation; available community resources and victim services and reporting requirements as required by KRS 194A.540.

Section 2. Methods of Acquiring Continuing Education Hours. Continuing education hours applicable to the renewal of the license or permit shall be directly related to the professional growth and development of marriage and family therapy practitioners and associates. Education hours shall be earned by completing any of the educational activities established in this subsection. (1) Programs not requiring board review and approval. Programs from the following sources shall be deemed to be relevant to the practice of marriage and family therapy and shall be approved without further review by the board:

(a) Programs provided or approved by the American Association for Marriage and Family Therapy (AAMFT) and its state affiliates;

(b) Academic courses as defined in 201 KAR 32:010; and

(c) Continuing education programs offered by Commission on Accreditation for Marriage and Family Therapy Education accredited institutions.

(2) Programs requiring board review and approval. Programs from the following sources shall be reviewed and may be determined to be relevant and subsequently approved by the board:

(a) Relevant programs including online study courses, manualized training, and face-to-face workshops, by other organizations, educational institutions, or other service providers approved by the board;

(b) Relevant programs or academic courses presented by the licensee. Presenters of relevant programs or academic courses may earn full continuing education credit for each contact hour of instruction, not to exceed one-half (1/2) of the continuing education renewal requirements. Credit shall not be issued for repeated instruction of the same course; and

(c) Relevant publications in a professionally recognized or juried publication. Credit shall not be granted except for those publications that were published within the one (1) year period

immediately preceding the renewal date. A licensee shall earn one-half (1/2) of the continuing education hours required for a relevant publication. More than one (1) publication shall not be counted during each renewal period.

Section 3. Continuing Education Providers. (1) Any entity seeking to obtain approval of a continuing education program prior to its offering shall pay the fee as established in 201 KAR 32:030, Section 9, and submit a Continuing Education Program Provider Approval Application, as incorporated by reference in 201 KAR 32:030, Section 10, to the board at least sixty (60) days in advance of the program. The application shall include the:

- (a) Type of learning activity;
- (b) Subject matter;
- (c) Names and qualifications of the instructors; and
- (d) Number of continuing education hours offered.

(2) A continuing education activity shall be qualified for preapproval if the activity being presented:

- (a) Is an organized program of learning;
- (b) Pertains to subject matters that integrally relate to the practice of marriage and family therapy;
- (c) Contributes to the professional competency of the licensee or associate; and
- (d) Is conducted by individuals who have relevant educational training or experience.

(3) An approved continuing education sponsor is a person or organization which is approved by the Board to provide more than one (1) continuing education programs over a two (2) year period of time.

(a) Any person or organization seeking to obtain approval as a continuing education sponsor shall:

1. Pay the fee established in 201 KAR 32:030 section 9; and
2. Complete the Application for Continuing Education Sponsor and submit it at least sixty (60) days in advance of offering courses. The application shall include the following:

- a. Continuing education sponsor provider information;
- b. Sponsor administrator information;
- c. One sample continuing education course that would qualify for approval under Section 1(2) of this regulation. Although only one course is submitted, it is understood that this course serves as an example of all courses providing Kentucky.

d. The sample course provided must include the following:

- (i) Published course or similar description;
- (ii) Complete resume of each instructor;
- (iii) Copy of the program indicating hours of education;
- (iv) Time agenda include coffee and lunch breaks listed;
- (v) Copy of the evaluation tool to be used; and
- (vi) Official certificate from the provider. The official certificate must include the following statement: "KY LMFT Board granted approval for this program on _____ (date)."

(vii). The documents submitted in this subsection must be kept on file for each of the programs and courses presented as board-approved continuing education hours. The board may request a copy of this information at any time.

e. The delivery format for which the applicant is applying:

f. A description of how the continuing education of licensed marriage and family therapist and permitted marriage and family therapy associates support the overall goals of the provider;

g. A description of the target audience, including education level and profession, to whom the program is directed;

h. A statement that the applicant will provide all legally required disability accommodations to participants at live events;

i. A statement that all live programs offered for board-approved credit will be presented in facilities compliant with all federal and state laws, including the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq.;

j. A description of the process by which the applicant selects presenters for the continuing education programs;

k. A statement of whether the provider maintains policies concerning program fee, refunds, and cancellations;

l. A description of the organization's procedure for verifying attending including sign-in sing-out procedures;

m. A description of the organization's procedure for distributing certificates of completion;

n. A description of the record-keeping process that will be utilized to maintain all materials for a period of five years following each program;

o. A description of the method by which program evaluations are obtained from participants and how the evaluation results are used for future program planning; and

p. An attestation that the information provided in the application:

(i) Is complete;

(ii) If approved as a continuing education sponsor, the provider will comply with the terms set forth by the board;

(iii) Board approval will be for a period of two years;

(iv) Board approval will include all programs and courses that meet board continuing education requirements; and

(v) That the board has the right to audit, at any time, programs and courses to evaluate if they comply with board regulations.

(b) An approved continuing education sponsor shall submit an annual report of the education programs offered during the year.

(c) Notwithstanding this subsection, the board shall individually approve the following courses:

1. The six (6) hours of board-approved continuing education courses in supervision under 201 KAR 32:035, Section 2(4);

2. The two (2) hours of continuing education in supervision under 201 KAR 32:035, Section 2(5) needed by a non-AAMFT approved supervisor to maintain board-approved supervisor status;

3. The one (1) hour of continuing education in Kentucky law required under 201 KAR 32:035, Section 2(6);

4. The three (3) hours of marriage and family therapy ethics required by Section 1(1) of this regulation; and

5. The 15-hour telehealth course required by 201 KAR 32:110, Section 3.

(d) The applicant must designate an authorized representative to serve as the sponsor administrator.

1. The administrator is responsible for assuring:

a. That the content of all programs offering continuing education hours meet the qualifications of Section 1(2) of this regulation; and

b. That the programs are conducted by individuals who have relevant education training or experience.

2. The administrator shall serve as the primary contact person with the board concerning sponsor program matters.

Section 4. Responsibilities and Reporting Requirements of Licensees and Associates. (1) Licensees and associates shall:

(a) Be responsible for obtaining required continuing education hours;

(b) Identify personal continuing education needs;

(c) Take the initiative in seeking continuing professional education activities to meet these needs; and

(d) Seek ways to integrate new knowledge, skills, and attitudes.

(2) Each person holding a license or permit shall:

(a) Select approved activities by which to earn continuing education hours;

(b) If seeking approval for continuing education from a program not already approved pursuant to Section 2(2) of this administrative regulation and not exempted from requiring board approval pursuant to Section 2(1) of this administrative regulation, submit an application to the board for consideration. The application shall include the:

1. Agenda that is detailed, timed, and includes topics and presenters;

2. Presenter's biography, including education;

3. Credentials of all presenters;

4. All presenters' experience related to topic;

5. Description of training; and

6. Objectives and goals;

(c) Maintain records of continuing education hours. Each licensee and associate shall maintain, for a period of one (1) year from the date of renewal, all documentation verifying successful completion of continuing education hours. During each renewal

period, up to fifteen (15) percent of all licensees and associates shall be required by the board to furnish documentation of the completion of the appropriate number of continuing education hours for the current renewal period. Verification of continuing education hours shall not otherwise be reported to the board;

(d) Document attendance and participation in a continuing education activity in the form of official documents including transcripts, certificates, or affidavits signed by instructors. The type of documentation required shall vary depending on the specific activity submitted to the board for approval; and

(e) Fully comply with the provisions of this administrative regulation. Failure to comply shall constitute a violation of KRS 335.340(7) and may result in the refusal to renew, suspension, or revocation of the license or permit.

Section 5. Carry-over of Continuing Education Hours, Prohibited. There shall not be a carry-over of continuing education hours earned in excess of those required under Section 1 of this administrative regulation into the immediately following renewal period.

Section 6. Board to Approve Continuing Education Hours; Appeal Upon Approval Denial. In the event of denial, in whole or part, of any application for approval of continuing education hours, the licensee or associate shall have the right to request reconsideration by the board of its decision. The request shall be in writing and shall be received by the board within thirty (30) days after the date of the board's decision denying approval of continuing education hours.

Section 7. Waiver or Extensions of Continuing Education. (1) The board may, in individual cases involving medical disability, illness, or undue hardship, grant waivers of the minimum continuing education requirements or extensions of time within which to fulfill the same or make the required reports.

(2) A request for waiver or extension shall be in writing and submitted within the renewal grace period.

(3) A written request for waiver or extension of time involving medical disability or illness shall be submitted by the licensee or associate accompanied by a verifying document signed by a licensed physician, a physician's assistant, or a nurse practitioner, and shall be received by the board within the grace period.

(4) A written request for waiver or extension of time involving undue hardship shall be submitted by the licensee or associate accompanied by a verifying document signed by the licensee or associate, and shall be received by the board within the grace period.

(5) A waiver of the minimum continuing education requirements or an extension of time within which to fulfill the continuing education requirements may be granted by the board for a period of time not to exceed one (1) calendar year.

(6) If the medical disability, illness, or undue hardship upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the licensee or associate shall reapply for the waiver or extension in writing prior to the expiration of the previous extension or waiver.

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

(a) "Application for Continuing Education Sponsor", January 2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Licensure for Marriage and Family Therapists, 500 Mero Street, 2SC32, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DR. C. SHAWN OAK, Ph.D., LMFT, Chair

APPROVED BY AGENCY: December 17, 2020

FILED WITH LRC: January 14, 2021 at 3:23 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:30 AM on Tuesday, March 23, 2021 at 500 Mero Street, 127CW,

Frankfort, Kentucky 40601. In the event the declaration of a State of Emergency in Executive Order 2020-215 and the State of Emergency Relating to Social Distancing in Executive Order 2020-243 are not rescinded by March 23, 2021, this hearing will be done by video teleconference. Members of the public wishing to attend may utilize the following link:

<https://us02web.zoom.us/j/85760716794?pwd=TnBjRElGMjNwTzVIMmVJRDIgYjVUT09>

Join from PC, Mac, Linux, iOS or Android:

Password: 424436

Or Telephone:

Dial:

USA 713 353 0212

USA 8888227517 (US Toll Free)

Conference code: 497796

Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on March 31, 2020. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Bryan D. Morrow, Attorney for the Board of Marriage and Family Therapists, 500 Mero Street, 218NC, Frankfort, Kentucky 40601, phone +1 (502) 229-6917, fax +1 (502) 564-3696, email Bryan.Morrow@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Bryan D. Morrow

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the requirements for continuing education for licensed marriage and family therapists and marriage and family therapy associates.

(b) The necessity of this administrative regulation: The administrative regulation is necessary under KRS 335.340(7), which requires the Board to prescribe regulations for a person applying for renewal or reinstatement of licensure to show evidence of completion of continuing education; and KRS 335.320(9), which requires the Board to promulgate administrative regulations, in accordance with KRS Chapter 13A, to implement the purpose and scope of KRS 335.300 to 335.399.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by setting forth the continuing education requirements for licensed marriage and family therapists and marriage and family therapy associates.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation conforms to the content of the authorizing statutes by setting forth the continuing education requirements for licensed marriage and family therapists and marriage and family therapy associates.

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

(a) How the amendment will change this existing administrative regulation: The amendment will change the existing administrative regulation by allowing entities to become an approved sponsor able to provide more than one continuing education programs over a two-year period of time.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to allow entities to have sponsor status to receive board approval to become sponsors that

can provide more than one continuing education programs over a two-year period of time.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes. KRS 335.340(7) requires the Board to prescribe administrative regulations for continuing education. KRS 335.320(9) requires the Board to promulgate administrative regulations to implement the purpose and scope of KRS 335.300 to 335.399.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will allow sponsors the ability to be approved to provide unlimited continuing education programs without having to submit individual programs to the Board for approval.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Licensed Marriage and Family Therapists and Marriage, Family Therapy Associates, and continuing education providers will be affected by this administrative regulation. As of December 7, 2020, there were 770 total active license and permit holders. It is unknown how many program providers there are. The Board averages 44 requests a month to provide board-approved continuing education programs.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Licensees and permit holders do not have to take any action to conform to the amendment. Program providers will have to fill out an application and pay a fee to comply with the amended regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Licensees and permit holders will have no cost associated with the amendment. Program providers who want to apply to provide a single board-approved continuing education program for one calendar year will be required to pay a nonrefundable fee set forth in 201 KAR 32:030.

(c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance, licensees and permit holders will know the board-approved continuing education programs. Board-approved program providers will be able to advertise their continuing education programs as board approved.

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

(a) Initially: Initially, there is no additional cost to the administrative body to implement this administrative regulation.

(b) On a continuing basis: On a continuing basis, there is no additional cost to the administrative body to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Under KRS 335.342(1), all fees and other moneys received by the Board pursuant to KRS 335.300 through KRS 335.599 shall be deposited in the State Treasury to the credit of a revolving fund for the use of the board.

(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: A fee of \$300 is established in 201 KAR 32:030 for a provider designated as an approved sponsor for continuing education for two consecutive calendar years, January 1 to December 31.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation established directly or indirectly a fee of \$300 for a provider designated as an approved sponsor for continuing education for two (2) consecutive calendar years, January 1 to December 31.

(9) TIERING: Is tiering applied? Tiering was not applied as the criteria apply to all licensed marriage and family therapists and permitted marriage and family therapy associates.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Board of Licensure for Marriage and Family Therapists is housed for administrative purposes within the Public Protection Cabinet Department of Professional Licensing.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.340(7) requires the Board to prescribe administrative regulations for continuing education. KRS 335.320(9) requires the Board to promulgate administrative regulations to implement the purpose and scope of KRS 335.300 to 335.399.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

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

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

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

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

Revenues (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation: None

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

501 KAR 6:070. Kentucky Correctional Institution for Women

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards by the American Correctional Association. This administrative regulation establishes the policies and procedures for the Kentucky Correctional Institution for Women.

Section 1. Incorporation by Reference. (1) "Kentucky Correctional Institution for Women Policies and Procedures", January 13, 2021[July 10, 2018], are incorporated by reference. Kentucky Correctional Institution for Women Policies and Procedures include:

KCIW 01-03-01	Communications Between Staff and Inmates (Amended 1/13/21[2/14/13])
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KCIW 01-08-01	News Media Access (Amended 2/14/13)
KCIW 02-04-01	Accounting Procedures (Amended 1/13/21[2/14/13])
KCIW 02-05-01	Inmate Canteen and Staff Canteen (Amended 5/15/18)
KCIW 05-01-01	Outside Consultation, Research and Student Interns (Amended 1/13/21[2/14/13])
KCIW 06-01-01	Offender Information (Amended 1/13/21[5/14/13])
KCIW 08-02-01	Fire Safety Practices (Amended 1/13/21[2/14/13])
KCIW 08-02-02	Fire Evacuation Routes (Amended 1/13/21[5/15/18])
KCIW 09-01-02	Inmate Move Sheet (Amended 1/13/21[2/14/13])
KCIW 09-06-04	Regulation of Inmate Movement (Amended 5/15/18)
KCIW 09-06-05	State Vehicles and Private Vehicles (Amended 1/13/21[7/10/18])
KCIW 09-10-01	Pedestrian and Vehicular Traffic (Amended 11/25/[20]13)
KCIW 09-10-02	Inmate Entry and Exit Procedure (Amended 1/13/21[5/14/13])
KCIW 09-11-01	Prohibiting Inmate Authority Over Other Inmates (Amended 2/14/13)
KCIW 09-12-01	Search Plan (Amended 12/29/[20]14)
KCIW 09-13-01	Tobacco Free Environment (Amended 1/13/21[11/25/13])
KCIW 09-13-02	Alcohol Detection (Amended 5/14/13)
KCIW 10-01-01	Restrictive Housing Unit and Lonnie Watson C-wing General Operations and Rules[Regulations] (Amended 1/13/21[7/10/18])
KCIW 10-01-02	Restrictive Housing Unit Status, Placement and Review (Amended 7/10/18)
KCIW 10-01-04	Death Row (Amended 1/13/21[7/10/18])
KCIW 11-02-01	Menu Preparation and Special Diets (Amended 1/13/21[2/14/13])
KCIW 11-03-01	Food Service Operations (Amended 5/15/18)
KCIW 11-04-01	Health Regulations and General Guidelines for the Food Service Area (Amended 12/29/[20]14)
KCIW 11-07-01	Special Religious Diets (Amended 7/10/18)
KCIW 12-01-01	Laundry, Clothing, and Personal Hygiene (Amended 1/13/21[5/15/18])
KCIW 12-02-01	Pest Control (Amended 1/13/21[12/29/14])
KCIW 12-04-04	Sanitation Plan (Amended 1/13/21[5/15/18])
KCIW 13-01-01	Provision of Medical and Dental Care (Amended 1/13/21[11/25/13])
KCIW 13-01-02	Health Appraisal and Periodic Exams (Amended 1/13/21[2/14/13])
KCIW 13-01-03	Pharmaceutical Services (Amended 11/25/13)
KCIW 13-02-01	Family Notification (Amended 1/13/21[5/14/13])
KCIW 13-03-01	Emergency Care (Amended 1/13/21[2/14/13])
KCIW 13-03-02	Convalescent and Chronic Care (Amended 2/14/13)
KCIW 13-04-02	Psychiatric and Psychological Services (Amended 1/13/21[3/10/15])
KCIW 13-07-01	Detoxification and Alcohol or Chemical Dependency (Amended 1/13/21[2/14/13])
KCIW 13-09-01	Suicide Prevention and Intervention Program (Amended 1/13/21[2/14/13])
KCIW 13-09-02	Inmate Observer Program (Amended 1/13/21[2/14/13])
KCIW 13-13-01	Health Care Records (Amended 11/25/13)
KCIW 13-14-01	Health Services (Amended 1/13/21[2/14/13])
[KCIW 13-14-02	Operational Guidelines for the Mental Health Area of the Lonnie Watson Center (Amended 11/25/13)]
KCIW 13-14-04	Injury Prevention (Amended 1/13/21[2/14/13])
KCIW 14-02-01	Access to Legal Resources and Services (Amended 5/15/18)
KCIW 15-06-01	Restriction Guidelines (Amended 2/14/13)

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KCIW 16-01-01	Inmate Correspondence (Amended 1/13/21[7/10/18])
KCIW 16-02-01	Access to Telephones (Amended 1/13/21[2/14/13])
KCIW 16-03-01	Inmate Visiting (Amended 1/13/21[5/15/18])
KCIW 16-05-01	Inmate Packages (Amended 5/15/18)
KCIW 17-01-01	Assessment and Classification Center Operations and Programs (Amended 1/13/21[5/15/18])
KCIW 17-02-01	Admission Procedure (Amended 1/13/21[2/14/13])
KCIW 17-05-01	Inmate Personal Property (Amended 1/13/21[7/10/18])
KCIW 18-01-01	Inmate Classification (Amended 11/25/13)
KCIW 18-01-03	Honor Program (Amended 1/13/21[5/15/18])
KCIW 18-05-01	Special Needs Inmates (Amended 1/13/21[5/15/18])
KCIW 18-05-02	Youthful Offender (Amended 1/13/21[12/15/14])
KCIW 18-05-03	Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) (Amended 5/15/18)
KCIW 19-01-01	Inmate Work and Program Assignments (Amended 1/13/21[5/15/18])
KCIW 19-02-01	Governmental Services (Amended 2/14/13)
KCIW 19-03-01	Landscape and Maintenance Work Details (Amended 2/14/13)
KCIW 19-04-01	Correctional Industries (Amended 5/15/18)
KCIW 20-01-01	Educational Programs (Amended 1/13/21[7/10/18])
KCIW 21-01-01	Library Services (Amended 1/13/21[3/10/15])
KCIW 22-01-01	Recreation and Inmate Activity (Amended 1/13/21[11/25/13])
KCIW 22-01-02	Arts and Crafts Program (Amended 1/13/21[2/14/13])
KCIW 22-01-04	Inmate Club Activities (Amended 1/13/21[11/25/13])
KCIW 23-01-01	Religious Services (Amended 1/13/21[12/29/2014])
KCIW 24-01-01	Social Services Program (Amended 1/13/21[2/14/13])
KCIW 24-02-01	Substance Abuse Program (Amended 2/14/13)
KCIW 25-02-01	Temporary Release and Community Release (Amended 1/13/21[5/14/13])
KCIW 25-03-01	Funeral Home Visit or Bedside Visit (Amended 2/14/13)
KCIW 26-01-01	Volunteer Service Program (Amended 1/13/21[2/14/13])

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-6686, Monday through Friday, 8 a.m. to 4:30 p.m.

COOKIE CREWS, Commissioner

APPROVED BY AGENCY: December 15, 2020

FILED WITH LRC: January 3, 2021 at 2:19 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on March 23, 2021, at 9:00 a.m. at the Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing 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 March 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax(502) 564-6686 email Justice.RegContact@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Amy Barker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the Kentucky Correctional Institution for Women (KCIW).

(b) The necessity of this administrative regulation: This regulation meets statutory requirements in KRS 196.035 and 197.020 and meets American Correctional Association (ACA) standards policy requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs the operations of the Kentucky Correctional Institution for Women, a correctional institution within the Kentucky Department of Corrections. The authorizing statutes permit the Secretary of the Cabinet or his delegate and the Commissioner to implement or amend practices or procedures to ensure the safe and efficient operation of the Kentucky Department of Corrections and its institutions.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation and material incorporated by reference establish the policies and procedures that govern the operations of the Kentucky Correctional Institution for Women. It provides direction and information to Corrections employees, inmates, and visitors concerning the rules and operations of the institution.

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

(a) How the amendment will change this existing administrative regulation: The amendment maintains the institution's compliance with ACA and PREA standards and updates practices for the institution.

(b) The necessity of the amendment to this administrative regulation: The amendment meets the requirements of KRS 196.035 and 197.020 and updates practices for the institution in part to maintain accreditation with the ACA.

(c) How the amendment conforms to the content of the authorizing statutes: The authorizing statutes permit the Secretary of the Cabinet or his delegate and the Commissioner to implement or amend practices or procedures to ensure the safe and efficient operation of the Kentucky Department of Corrections and its institutions.

(d) How the amendment will assist in the effective administration of the statutes: The amendment provides staff and inmates information concerning the effective and orderly management of the institution.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This affects the Kentucky Correctional Institution for Women, approximately 200 employees, 700 inmates, and all visitors to KCIW.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Staff, inmates, volunteers, and visitors will have to follow the changes made in the policies and procedures. They will have to change their actions to comply with the operational changes made by this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An exact cost of compliance is unknown, but it is not anticipated that the amendment to this administrative regulation will increase current costs for the institution.

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3): The operational changes will assist in the effective and orderly management of the institution.

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

(a) Initially: No additional cost is anticipated.

(b) On a continuing basis: No additional cost is anticipated.

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

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

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

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

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The amendments to this regulation impact the operation of the Kentucky Correctional Institution for Women.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 196.035, 197.020, 28 C.F.R. §115.14, 28 C.F.R. §115.15, 28 C.F.R. §115.42.

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

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

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

(c) How much will it cost to administer this program for the first year? The amendment impacts how the institution operates. The amendment is not expected to increase costs from what will be budgeted to the institution for the biennium.

(d) How much will it cost to administer this program for subsequent years? The amendment impacts how the institution operates. The amendment is not expected to increase costs from what will be budgeted to the institution for the biennium.

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: 501 KAR 6:070

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 2:019. Receiving and unloading bulk hazardous liquids.

RELATES TO: KRS 338.051, 338.061

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. [Pursuant to the authority granted the Kentucky Occupational Safety and Health Standards Board by KRS 338.051 and 338.061, the following administrative regulation is adopted. The function of this administrative regulation is to set forth minimum safety requirements for employees with respect to receiving and unloading bulk hazardous liquids.] This administrative regulation establishes standards that are to be enforced by the Department of Workplace Standards in general industry [is 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 338.014)].

Section 1. Definitions[Definition]. (1) "Compliance safety and health officer" means a person authorized by the Commissioner of the Department of Workplace Standards, Labor Cabinet, to conduct occupational safety and health inspections.

(2) "Employee" is defined in KRS 338.015(2).

(3) "Employer" is defined in KRS 338.015(1).

(4) "Hazardous liquid" means[~~for the purpose of this administrative regulation,~~] a chemical or mixture of chemicals that is toxic, an irritant, corrosive, a strong oxidizer, a strong sensitizer, combustible, flammable, extremely flammable, dangerously reactive or pressure generating or which otherwise may cause substantial personal injury or substantial illness during, or as a direct result of any customary or reasonably foreseeable handling or use.

Section 2. Scope. This administrative regulation establishes [~~will provide employers in Kentucky with~~] specific requirements for chemical handling procedures to control receiving and transfer to storage of bulk hazardous liquids [~~received via motor truck. This applies to chemicals which if inadvertently mixed or transferred to an inappropriate container could result in explosion and/or production of toxic gases.~~]. This administrative regulation does not apply to receiving gasoline, fuel oil, or liquefied petroleum gas at retail or wholesale outlets or to industrial filling stations where the industry standard operating procedure requires the hauler to make connections and complete delivery. [~~This administrative regulation does not apply to agriculture.~~]

Section 3. General Requirements. (1) Signs and labels shall be posted as follows, [;]

(a) At bulk chemical receiving and storage facilities[~~;~~] capable of unloading tank trucks or trailers, [;] signs and labels, readily legible at normal operating positions, shall indicate appropriate contents and item identification at receiving and dispensing connections, valves, tanks, and the storage area perimeter.

(b) Prominently displayed signs at critical access points shall direct tank truck drivers to plant security stations or to supervisory personnel. Signs at the unloading area shall give specific instruction to drivers not to connect truck tank hoses to chemical receiving lines.

(c) Bills of lading, freight bills, or accompanying paper work shall [should] have each hazardous chemical clearly identified by its shipping name [(49 C.F.R.)] or, if not otherwise specified, [if N.O.S. (not otherwise specified)] by its common name. Handling information clearly indicated for receiver information shall [should] be included.

(2) Receiving liquid chemicals.

(a) Receiving of bulk liquid chemicals shall be coordinated by the receiving department or persons responsible for receiving. Only those persons trained and authorized shall make the required chemical identification and perform or supervise the unloading of hazardous chemicals.

(b) Prior to unloading, the [authorized] person receiving bulk

liquid chemicals shall make an inspection of the accompanying papers, check the load, and ascertain its identity.

(c) If necessary for identification, chemical testing shall be accomplished prior to acceptance.

(d) The ~~[authorized]~~ person authorized to receive bulk liquid chemicals shall direct the driver to the proper unloading area.

(e) The receiving area, where chemicals are unloaded, shall be secured in ~~[behind]~~ a locked ~~[fence]~~ enclosure or all receiving connections shall be under lock and key or made secure by other positive means.

(f) The ~~[authorized]~~ person authorized to receive bulk liquid chemicals shall be responsible for control of keys or combination to locking devices.

(g) The tank truck driver may make connection to the tank truck.

1. A ~~[An authorized]~~ person authorized to receive bulk liquid chemicals ~~[only]~~ shall make connection to company receiving connections and supervise the unloading into storage.

2. The tank truck driver may make both connections provided ~~[an authorized]~~ person authorized to receive bulk liquid chemicals is present to identify, check, and supervise the connection and unloading.

3. In receiving areas where more than one (1) chemical is stored, the tank connection shall be individually keyed.

4. Connection to different chemical receiving systems shall be locked by separated keying arrangement.

5. Due caution shall be made to prevent spills and to assure ~~[that]~~ the receiving tank is not overfilled.

6. Prior arrangements shall be made to assure that inadvertent overflow is controlled without exposing employees. ~~[[It is recognized that environmental protection administrative regulations require storm or sewer drains also be protected.]]~~

(h) Upon completion of unloading, the receiving device or the enclosure shall be locked and the key returned to its designated security location or other equivalent action ~~[be]~~ taken to secure the chemical inventory.

~~(i) Appropriate respiratory and other emergency personal protective equipment for the body, eyes, face, etc., shall be immediately available and used in accordance with 29 C.F.R. 1910, Subpart I, as adopted by 803 KAR 2:308.]~~

(3) Training.

(a) Persons ~~[Authorized persons]~~ responsible for the acceptance of potentially hazardous chemicals shall have an understanding of the particular hazards associated with those chemicals individually and in combination.

(b) Internal written operating procedures shall be prepared. All ~~[affected]~~ employees exposed to the hazards addressed by this regulation shall be trained in these procedures.

(c) Written emergency evacuation plans shall be prepared ~~[,]~~ and practiced by all potentially affected employees.

(d) Copies of the operating procedures, emergency evacuation plans, and a listing of personnel authorized to receive bulk chemicals shall be on the premises and available to employees and to compliance safety and health officers.

~~(e) Employees subject to exposure in the storage area requiring the use of respirators shall be fitted for and trained in their use, all in accordance with 29 C.F.R. 1910.134, as adopted by 803 KAR 2:308.~~

~~(f) Special first aid procedures shall be prepared for the potential injuries of the operation. First aid capability shall be in accordance with 803 KAR 2:340.]~~

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: January 7, 2021

FILED WITH LRC: January 13, 2021 at 2:26 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2021 at 10:00 am (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/82552984635?pwd=VjRaRjFkeWs2NHFPNUVWOGY4ZDVjUT09>. Password: 151868 or by telephone at

(713) 353-0212 or (888) 822-7517 (toll free), conference code 194378. 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 March 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, 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 July 2, 1980, defines terms used in the regulation. Section 2 establishes the scope of the regulation. Section 3 establishes requirements for receiving and unloading bulk hazardous liquids. 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 provides all employers with specific requirements for receiving and unloading bulk hazardous liquids received via motor truck to protect employers and employees. The regulations promotes employer and employee occupational safety and health (OSH) throughout Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky OSH Standards Board to promulgate OSH administrative regulations. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation, effective since July 2, 1980, promotes employer and employee safety and health throughout Kentucky by establishing specific requirements for safe receiving, transfer, and unloading of bulk hazardous liquids.

(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 July 2, 1980, establishes the scope of the regulation. Section 2 defines terms used in the regulation. Section 3 establishes requirements for receiving and unloading bulk hazardous liquids received via motor truck to protect employers and employees. 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, maintain consistency with other administrative regulations, and promote understanding of the requirement.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation, effective since July 2, 1980, promotes employer and employee safety and health throughout Kentucky by establishing specific requirements for safe receiving, transfer, and unloading of bulk hazardous liquids

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061. KRS 338.051(3) and 338.061 authorize the Kentucky OSH Standards Board to promulgate OSH administrative

regulations.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides all a clear understanding of the requirements. It promotes employer and employee occupational safety and health throughout Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in general industry activities covered by KRS Chapter 338.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are imposed and no immediate action is required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection will result from clarification of the regulation.

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

(a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to the OSH Program to implement this administrative regulation.

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

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Not applicable.

2. State compliance standards. This regulation provides protection to employees and employers; OSHA does not have a regulation for receiving and unloading of bulk hazardous liquid.

3. Minimum or uniform standards contained in the federal mandate. Not applicable.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: There is no federal OSH standard for receiving and unloading of bulk hazardous liquids. This regulation, effective since July 2, 1980, establishes requirements for receiving and unloading bulk hazardous liquids received via motor truck to protect employers and employees.

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 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.

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 2:120. Citations.

RELATES TO: KRS Chapter 338

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 if necessary to meet federal time requirements [by KRS 338.051, the following rules and administrative regulations are adopted, formulating the procedure to be followed by the commissioner when a citation has been issued]. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This administrative regulation establishes occupational safety and health citation procedures [The function of this administrative regulation is to spell out with clarity the procedure which must be followed by the [compliance officers both as to form and content of the citation. Also, the administrative regulation makes clear the procedure to be followed by the Commissioner of the] Department of Workplace Standards [in reviewing the inspection conducted by the compliance officers].

Section 1. Definitions. (1) "Commissioner" is defined in 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) "Occupational safety and health standard" is defined by KRS 338.015(4).

(6) "Review commission" is defined by KRS 338.015(8).

(7) "Working days" means Monday through Friday and does

not include Saturday, Sunday, federal, or state holidays, as well as the day of receipt of notice.

Section 2. Citations. (1) [The Commissioner of the Department of Workplace Standards shall review the inspection report of the compliance safety and health officer.] If [on the basis of the report] the commissioner believes an [that the] employer [has] violated a requirement of KRS Chapter 338, or any occupational safety and health standard, rule, or order promulgated pursuant [to] KRS Chapter 338, he or she shall issue, with delivery or receipt confirmation, [to] the employer a citation indicating the violation[violations].

(2) An appropriate citation shall be issued even though after being informed of an alleged violation by the compliance safety and health officer, the employer immediately abates, or initiates steps to abate, such alleged violation.

(3) Each [Any] citation shall be issued with reasonable promptness [after termination of the inspection].

Section 3 [2]. Content of Citation. (1) Each [A] citation shall describe with particularity the nature of the alleged violation, including a reference to the provision(s) of KRS Chapter 338, standard, rule, administrative regulation, or order alleged [to have been] violated.

(2) Each [Any] citation shall establish [also fix] a reasonable date by which the alleged violation shall be eliminated [time or times for the abatement of the alleged violation].

(3) Each citation may propose a civil penalty.

Section 4.[Section 3.] Citations Issued for Requested Inspections. If a citation is issued for a violation alleged in request for inspection pursuant KRS 338.121 [under 803-KAR 2:090, Section 1(1), or a notification of violation under 803-KAR 2:090, Section 1(3)], a copy of the citation shall [also] be sent, with delivery or receipt confirmation, to the employee or representative of employees who made such request or notification.

Section 5[4. Informal Review of Inspection. After an inspection, if the commissioner determines that a citation is not warranted with respect to a danger or violation alleged to exist in a request for inspection under 803-KAR 2:090, Section 1(1), or a notification of violation under 803-KAR 2:090, Section 1(3), the informal review procedures prescribed in 803-KAR 2:090, Section 2, shall be applicable. After considering all views presented, the commissioner shall either affirm his determination, order a reinspection, or issue a citation if he believes that the inspection disclosed a violation. The commissioner shall furnish the complaining party and the employer with written notification of his determination and the reasons therefor. The determination of the commissioner shall be final and not subject to review.

Section 5. Citation]. Final Order Statement. Each citation shall state the citation 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 within fifteen (15) working days from the receipt of the citation that he or she intends to contest the citation. [Every citation shall state that the issuance of a citation does not constitute a finding that a violation of KRS Chapter 338, or any standard, rule, order or administrative regulation filed pursuant thereto, has occurred unless there is a failure to contest as provided for in KRS Chapter 338 or, if contested, unless the citation is affirmed by the review commission].

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: January 7, 2021

FILED WITH LRC: January 13, 2021 at 2:26 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 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/82552984635?pwd=VjRaRjFkeWs2NHhPNUVWOGY4ZDVjUT09_Password:151868 or by telephone at (713) 353-0212 or (888) 822-7517 (toll free), conference code 194378. 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 March 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, 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 when a citation is issued. Section 3 establishes the content of a citation. Section 4 establishes a copy of the citation is provided to the employee or employee representative. Section 5 establishes the citation final order statement. This amendment to this administrative regulation 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: 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 when a citation is issued. Section 3 establishes the content of a citation. Section 4 establishes a copy of the citation is provided to the employee or employee representative. Section 5 establishes the citation final order statement. This amendment to this administrative regulation 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: 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. 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 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 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, which all require Kentucky OSH regulations to be as effective as the federal requirements. 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 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 2:309. General environmental controls.

RELATES TO: KRS 338.051(3), 338.061, 29 C.F.R. 1910.141-1910.147

STATUTORY AUTHORITY: KRS 338.051[(3)], 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS

338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to ~~[adopt and]~~ promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements [to accomplish the purposes of KRS Chapter 338. 29 C.F.R. 1910.141 to 1910.147 establishes the federal requirements relating to general environmental controls]. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This administrative regulation establishes ~~[the general environmental controls]~~ standards ~~that are [to be]~~ enforced by the Department of Workplace Standards in general industry.

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.~~

(2) ~~[(4)] "Employee" is defined in KRS 338.015(2).~~

(3) ~~[(5)] "Employer" is defined in 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.]~~

(4) ~~[(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 modified by the definitions in Section 1 and the requirements in Section 3 of this administrative regulation, general industry shall comply with 29 C.F.R. 1910, Subpart J, General Environmental Controls, ~~[the following federal requirements]~~ published by the Office of the Federal Register, National Archives and Records Services, General Services Administration[:

(1) ~~29 C.F.R. 1910.141-1910.147, revised July 1, 2013; and~~

(2) ~~The amendments to 29 C.F.R. 1910.145 published in the June 13, 2014 Federal Register, Volume 78, Number 114, and confirmed and corrected in the November 6, 2013 Federal Register, Volume 78, Number 245].~~

Section 3. (1)(a) ~~[Construction of Water Closets. The requirements relating to construction of water closets] in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1910.141(c)(2)(i).~~

~~(b) Each water closet shall occupy a separate compartment with walls or partitions between fixtures sufficiently high to assure privacy.~~

~~(2)(a) Lockout. The requirements [relating to the utilization of lockout procedures] in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1910.147(c)(2)(ii).~~

~~(b) If an energy isolating device is capable of being locked out, the employer's energy control program under 29 C.F.R. 1910.147(c)(1) shall utilize lockout.~~

~~(2)(a) [(3)(a)] Full employee protection. The requirements [relating to tag location] in subsection (b) and (c) of this section shall apply in lieu of 29 C.F.R. 1910.147(c)(3)(i).~~

~~(b) When a tagout device is used on an energy isolating device that [which] is incapable of being locked out, the tagout device shall be attached at the same location that the lockout device would have been attached, and the employer shall demonstrate that the tagout program will provide a level of safety equivalent to that obtained by using a lockout program.~~

~~(c) If a tagout device is [devices are] used with an energy isolating device that is incapable [devices designed with the incapability] of being locked out, the tagout device [tag attachment] shall be fastened at the same point at which the lock would have been attached.~~

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: January 7, 2021

FILED WITH LRC: January 13, 2021 at 2:26 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2021 at 10:00 am (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/82552984635?pwd=VjRaRjFkeWVs2NHFPNUVWOGY4ZDVjUT09> Password: 151868 or by telephone at (713) 353-0212 or (888) 822-7517 (toll free), conference code 194378. 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 until March 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, 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 found in the federal standard. Section 2 adopts the requirements of 29 C.F.R. 1910.141-147, which establishes the federal requirements for general environmental controls. Section 3 of this administrative regulation establishes specific lockout requirements. 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, effective since December 15, 1989, defines terms not found in the federal standard. Section 2 adopts the requirements of 29 C.F.R. 1910.141-147, which establishes the federal requirements for general environmental controls. Section 3 of this administrative regulation establishes specific lockout requirements. 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 administrative 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 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. 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 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? Yes.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: The amendment maintains the energy control lockout requirement that has been in effect in Kentucky since December 15, 1989. The requirement promotes worker safety and health throughout Kentucky.

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? 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. 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 2:320. Toxic and hazardous substances.

RELATES TO: KRS 338.015, 338.031, 29 C.F.R. 1910.134, 1910.141, 1910.1000-1910.1450

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

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. 29 C.F.R. 1910.1000 to 1910.1450 establish federal requirements relating to toxic and hazardous substances. This administrative regulation establishes the toxic and hazardous substances standards enforced by the Department of Workplace Standards in the area of general industry.

Section 1. Definitions. (1) "Absolute filter" means a filter capable of retaining 99.97 percent of a mono disperse aerosol of three-tenths (0.3) μ particles.

(2) "Area director" means Director, Division of Occupational Safety and Health Compliance, Kentucky Labor Cabinet.

(3) "Authorized employee" means an employee whose duties require the employee to be in the regulated area and who has been specifically assigned to that area by the employer.

(4) "Clean change room" means a room where employees put on clean clothing or protective equipment in an environment free of 4,4'-Methylene bis (2-chloroaniline).

(5) "Closed system" means an operation involving 4,4'-Methylene bis (2-chloroaniline) if containment prevents the release of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, nonregulated areas, or the external environment.

(6) "Decontamination" means the inactivation of 4,4'-Methylene bis (2-chloroaniline) or its safe disposal.

(7) "Director" means the Director, National Institute for Occupational Safety and Health, or any person directed by the director or the Secretary of Health, Education, and Welfare to act for the director.

(8) "Disposal" means the safe removal of 4,4'-Methylene bis (2-chloroaniline) from the work environment.

(9) "Emergency" means an unforeseen circumstance or set of circumstances resulting in the release of 4,4'-Methylene bis (2-chloroaniline) that may result in exposure to or contact with 4,4'-Methylene bis (2-chloroaniline).

(10) "Employee" is defined by KRS 338.015(2).

(11) "Employer" is defined by KRS 338.015(1).

(12) "External environment" means any environment external to regulated and nonregulated areas.

(13) "Isolated system" means a fully enclosed structure, other than the vessel of containment, of 4,4'-Methylene bis (2-chloroaniline), which is impervious to the passage of entry of 4,4'-Methylene bis (2-chloroaniline), and which would prevent the entry of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, or the external environment, if leakage or spillage from the vessel of containment occurs.

(14) "Laboratory type hood" means a device:

(a) Enclosed on three (3) sides with the top and bottom designed and maintained to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute; and

(b) Designed, constructed, and maintained so that an operation involving 4,4'-Methylene bis (2-chloroaniline) within the hood does not require the insertion of any portion of an employee's body other than hands and arms.

(15) "National consensus standard" is defined by KRS 338.015(9).

(16) "Nonregulated area" means any area under the control of the employer where entry and exit is neither restricted nor controlled.

(17) "Open-vessel system" means an operation involving 4,4'-Methylene bis (2-chloroaniline) in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, nonregulated areas, or the external environment.

(18) "Protective clothing" means clothing designed to protect an employee against contact with or exposure to 4,4'-Methylene bis (2-chloroaniline).

(19) "Regulated area" means an area where entry and exit is

restricted and controlled.

(20) "Standard" means "occupational safety and health standards" as defined by KRS 338.015(3).

Section 2. 4,4'-Methylene bis (2-Chloroaniline). (1) Scope and application.

(a) This section shall apply to any area in which 4,4'-Methylene bis (2-chloroaniline), Chemical Abstracts Service Registry Number 101144, is manufactured, processed, repackaged, released, handled, or stored. This section shall not apply to trans-shipment in sealed containers, except for the labeling requirements under subsection (4)(b), (c), and (d) of this section.

(b) This section shall not apply to solid or liquid mixtures containing less than one and zero-tenths (1.0) percent by weight of 4,4'-Methylene bis (2-chloroaniline).

(2) Requirements for areas containing 4,4'-Methylene bis (2-chloroaniline). A regulated area shall be established by an employer where 4,4'-Methylene bis (2-chloroaniline) is manufactured, processed, used, repackaged, released, handled, and stored. Those areas shall be controlled in accordance with the requirements for the following category or categories describing the operations involved:

(a) Isolated systems. Employees working with 4,4'-Methylene bis (2-chloroaniline) within an isolated system such as a "glove box" shall wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated with the isolated system.

(b) Closed system operation. Within regulated areas if 4,4'-Methylene bis (2-chloroaniline) is stored in a sealed container, or contained in a closed system including piping systems, with any sample ports or openings closed while 4,4'-Methylene bis (2-chloroaniline) is contained within:

1. Access shall be restricted to authorized employees only; and
2. Employees shall be required to wash hands, forearms, face, and neck upon each exit from the regulated areas, close to the point of exit and before engaging in other activities.

(c) Open vessel system operations. Open vessel system operations shall be prohibited.

(d) Transfer from a closed system, charging or discharging point operations, or otherwise opening a closed system. In operations involving a "laboratory type hood," or in locations where 4,4'-Methylene bis (2-chloroaniline) is contained in an otherwise "closed system," but is transferred, charged, or discharged into other normally closed containers, the provisions of this paragraph shall apply.

1. Access shall be restricted to authorized employees only.

2. Each operation shall be provided with continuous local exhaust ventilation so that air movement shall always be from ordinary work areas to the operation.

a. Exhaust air shall not be discharged to regulated areas, nonregulated areas, or the external environment unless it is decontaminated.

b. Clean make-up air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.

3. Employees shall be provided with, and required to wear, clean, full body protective clothing (smocks, coveralls, or long-sleeved shirt and pants), shoe covers, and gloves prior to entering the regulated area.

4. Employees engaged in 4,4'-Methylene bis (2-chloroaniline) handling operations shall be provided with and required to wear and use a half-face, filter-type respirator for dusts, mists, and fumes, in accordance with 29 C.F.R. 1910.134. A respirator affording a higher level of protection may be substituted.

5. Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal. The contents of the impervious containers shall be identified, as required under subsection (4)(b), (c), and (d) of this section.

6. Employees shall be required to wash hands, forearms, face, and neck on each exit from the regulated area, close to the point of exit, and before engaging in other activities.

7. Employees shall be required to shower after the last exit of the day.
8. Drinking fountains shall be prohibited in the regulated area.
- (e) Maintenance and decontamination activities. In cleanup of leaks or spills, maintenance or repair operations on contaminated systems or equipment, or any operations involving work in an area where direct contact with 4,4'-Methylene bis (2-chloroaniline) could result, each authorized employee entering that area shall be:
 1. Provided with and required to wear clean, impervious garments, including gloves, boots, and continuous-air supplied hood in accordance with 29 C.F.R. 1910.134;
 2. Decontaminated before removing the protective garments and hood; and
 3. Required to shower upon removing the protective garments and hood.
- (f) Laboratory activities. The requirements of this paragraph shall apply to research and quality control activities involving the use of 4,4'-Methylene bis (2-chloroaniline).
 1. Mechanical pipetting aids shall be used for all pipetting procedures.
 2. Experiments, procedures, and equipment that could produce aerosols shall be confined to laboratory-type hoods or glove boxes.
 3. Surfaces on which 4,4'-Methylene bis (2-chloroaniline) is handled shall be protected from contamination.
 4.
 - a. Contaminated wastes and animal carcasses shall be collected in impervious containers that are closed and decontaminated prior to removal from the work area.
 - b. The wastes and carcasses shall be incinerated so that no carcinogenic products are released.
 5. All other forms of 4,4'-Methylene bis (2-chloroaniline) shall be inactivated prior to disposal.
 6. Employees engaged in animal support activities shall be:
 - a. Provided with and required to wear, a complete protective clothing change, clean each day, including coveralls or pants and shirt, foot covers, head covers, gloves, and appropriate respiratory protective equipment or devices;
 - b. Required, prior to each exit from a regulated area, to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal. The contents of the impervious containers shall be identified as required under subsection (4)(b), (c), and (d) of this section;
 - c. Required to wash hands, forearms, face, and neck upon each exit from the regulated area close to the point of exit and before engaging in other activities; and
 - d. Required to shower after the last exit of the day.
 7. Employees, except for those engaged in animal support activities, each day shall be:
 - a. Provided with and required to wear a clean change of appropriate laboratory clothing, such as a solid front gown, surgical scrub suit, or fully buttoned laboratory coat;
 - b. Required, prior to each exit from a regulated area, to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal. The contents of the impervious containers shall be identified as required under subsection (4)(b), (c), and (d) of this section; and
 - c. Required to wash hands, forearms, face, and neck upon each exit from the regulated area close to the point of exit and before engaging in other activities.
 8. Air pressure in laboratory areas and animal rooms where 4,4'-Methylene bis (2-chloroaniline) is handled and bioassay studies are performed shall be negative in relation to the pressure in the surrounding area. Exhaust air shall not be discharged to regulated areas, nonregulated areas, or the external environment unless it is decontaminated.
 9. There shall not be a connection between regulated areas and any other areas through the ventilation system.
 10. A current inventory of 4,4'-Methylene bis (2-chloroaniline) shall be maintained.
 11. Ventilated apparatus such as laboratory type hoods, shall

be tested at least semi-annually or immediately after ventilation modification of maintenance operations, by personnel fully qualified to certify correct containment and operation.

(g) Premixed solutions. If 4,4'-Methylene bis (2-chloroaniline) is present only in a single solution at a temperature not exceeding 120 degrees Celsius, the establishment of a regulated area shall not be required, except:

1. Only authorized employees shall be permitted to handle the materials;
 2. Each day employees shall be provided with and required to wear a clean change of protective clothing (smocks, coveralls, or long-sleeved shirts and pants), gloves, and other protective garments and equipment necessary to prevent contact with the solution in the process used;
 3. Employees shall be required to remove and leave protective clothing and equipment if leaving the work area at the end of the work day or if solution is spilled on the clothing or equipment. Used clothing and equipment shall be placed in impervious containers for decontamination or disposal. The contents of the impervious containers shall be identified, as required under subsection (4)(b), (c), and (d) of this section;
 4. Employees shall be required to wash hands and face after removing protective clothing and equipment and before engaging in other activities;
 5. Employees assigned to work covered by this paragraph shall be deemed to be working in regulated areas for the purposes of subsection (4)(a), (b), and (c) of this section; and
 6. Work areas where solution may be spilled shall be:
 - a. Covered daily or after any spill with a clean covering; and
 - b. Cleaned thoroughly daily and after any spill.
- (3) General regulated area requirements.
- (a) Employee identification.
1. A daily roster of employees entering regulated areas shall be established and maintained.
 2. The rosters or a summary of the rosters shall be retained for a period of twenty (20) years.
 3. The rosters or summaries shall be provided upon request to authorized representatives of the assistant secretary and the director.
 4. If the employer ceases business without a successor, rosters shall be forwarded by registered mail to the director.
- (b) Emergencies. In an emergency, immediate measures, including the requirements of this paragraph, shall be implemented.
1. The potentially affected area shall be evacuated as soon as the emergency is determined.
 2. Hazardous conditions created by the emergency shall be eliminated and the potentially affected area shall be decontaminated prior to the resumption of normal operations.
 3.
 - a. Special medical surveillance by a physician shall be instituted within twenty-four (24) hours for employees present in the potentially affected area at the time of the emergency.
 - b. A report of the medical surveillance and any treatment shall be included in the incident report, in accordance with subsection (5)(b) of this section.
 4. If an employee has a known contact with 4,4'-Methylene bis (2-chloroaniline), the employee shall be required to shower as soon as possible, unless contraindicated by physical injuries.
 5. An incident report on the emergency shall be reported as provided in subsection (5)(b) of this section.
- (c) Hygiene facilities and practices.
1. Storage or consumption of food, storage or use of containers of beverages, storage or consumption of beverages, storage or application of cosmetics, smoking, storage of smoking materials, tobacco products or other products for chewing, or the chewing of those products, shall be prohibited in regulated areas.
 2. If employees are required by this section to wash, washing facilities shall be provided in accordance with 29 C.F.R. 1910.141.
 3. If employees are required by this section to shower, facilities shall be provided in accordance with 29 C.F.R. 1910.141(d)(3).
 4. If employees wear protective clothing and equipment, clean change rooms shall be provided, in accordance with 29 C.F.R. 1910.141(e), for the number of employees required to change

clothes.

5. If toilets are located in regulated areas, the toilets shall be in a separate room.

(d) Contamination control.

1. Regulated areas, except for outdoor systems, shall be maintained under pressure negative with respect to nonregulated areas.

a. Local exhaust ventilation may be used to satisfy this requirement.

b. Clean make-up air in equal volume shall replace air removed.

2. Any equipment, material, or other item taken or removed from a regulated area shall be done so in a manner that does not cause contamination in nonregulated areas or the external environment.

3. Decontamination procedures shall be established and implemented to remove 4,4'-Methylene bis (2-chloroaniline) from the surface of materials, equipment, and the decontamination facility.

4. Dry sweeping and dry mopping shall be prohibited.

(4) Signs, information, and training.

(a) Signs.

1. Entrance to regulated areas shall be posted with signs bearing the legend:

<p style="text-align: center;">CANCER-SUSPECT AGENT</p> <p style="text-align: center;">Authorized Personnel Only</p>

2. Entrances to regulated areas containing operations established in subsection (2)(e) of this section shall be posted with signs bearing the legend:

<p style="text-align: center;">Cancer-Suspect Agent Exposed In this Area</p> <p style="text-align: center;">Impervious Suit Including Gloves, Boots, and Air-Supplied Hood Required At All Times</p> <p style="text-align: center;">Authorized Personnel Only</p>

3. Appropriate signs and instructions shall be posted at the entrance to, and exit from, regulated areas, informing employees of the procedures that shall be followed in entering and leaving a regulated area.

(b) Container labeling. Containers shall be labeled in accordance with the requirements of 29 C.F.R. 1910.1200.

(c) Lettering.

1. Lettering on signs and instructions required by paragraph (a) of this subsection shall be a minimum letter height of two (2) inches.

2. Labels on containers required by paragraph (b) of this subsection shall:

a. Not be less than one-half (1/2) the size of the largest lettering on the package, up to a maximum required size of one (1) inch in height; and

b. Not use less than eight (8) point type.

(d) Prohibited statements. A statement shall not appear on or near any required sign, label, or instruction that contradicts or detracts from the effect of any required warning, information, or instruction.

(e) Training and indoctrination.

1. Each employee, prior to being authorized to enter a regulated area, shall receive a training and indoctrination program including:

a. The nature of the carcinogenic hazards of 4,4'-Methylene bis (2-chloroaniline), including local and systemic toxicity;

b. The specific nature of the operation involving 4,4'-Methylene bis (2-chloroaniline) that could result in exposure;

c. The purpose for and application of the medical surveillance program, including, as appropriate, methods of self-examination;

d. The purpose for and application of decontamination practices and procedures;

e. The purpose for and significance of emergency practices and procedures;

f. The employee's specific role in emergency procedures;

g. Specific information to aid the employee in recognition and evaluation of conditions and situations that may result in the release of 4,4'-Methylene bis (2-chloroaniline); and

h. The purpose for and application of specific first-aid procedures and practices.

2. Each employee shall receive a review of this section at the employee's first training and indoctrination program and annually thereafter.

3. Specific emergency procedures shall be prescribed and posted, and employees shall be familiarized with their terms and rehearsed in their application.

4. All materials relating to the program shall be provided if requested by authorized representatives of the assistant secretary and the director.

(5) Reports.

(a) Operations. Not later than March 1 of each year, the information required by this paragraph shall be reported in writing by the employer to the nearest Area Director. Any change in the reported information shall be reported in writing within fifteen (15) calendar days of the change. The report shall contain the following information:

1. A brief description and in-plant location of the areas regulated and the address of each regulated area;

2. The names and other identifying information as to the presence of 4,4'-Methylene bis (2-chloroaniline) in each regulated area;

3. The number of employees in each regulated area, during normal operations including maintenance activities; and

4. The manner in which 4,4'-Methylene bis (2-chloroaniline) is present in each regulated area, such as whether it is manufactured, processed, used, repackaged, released, stored, or otherwise handled.

(b) Incidents. Incidents that result in the release of 4,4'-Methylene bis (2-chloroaniline) into any area where employees may be exposed shall be reported in accordance with this paragraph.

1. A report of the incident and the facts obtainable at that time, including a report on any medical treatment of affected employees, shall be made within twenty-four (24) hours to the nearest Area Director.

2. A written report shall be filed with the nearest Area Director within fifteen (15) calendar days of the initial report and shall include:

a. A specification of the amount of material released, the amount of time involved, and an explanation of the procedure used in determining this figure;

b. A description of the area involved, and the extent of known and possible employee and area contamination;

c. A report of any medical treatment of affected employees and any medical surveillance program implemented; and

d. An analysis of the steps to be taken, with specific completion dates, to avoid further similar release.

(6) Medical surveillance. At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to enter regulated areas, and for authorized employees.

(a) Examinations.

1. Before an employee is assigned to enter a regulated area, a preassignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family and occupational background, including genetic and environmental factors.

2. Authorized employees shall be provided with periodic physical examinations at least annually, following the preassignment examination.

3. In all physical examinations, the examining physician shall consider whether there exist conditions of increased risk, including reduced immunological competence, current treatment with steroids of cytotoxic agents, pregnancy, and cigarette smoking.

(b) Records.

1. Employers of employees examined pursuant to this subsection shall maintain complete and accurate records of all medical examinations. Records shall be maintained for the

duration of the employee's employment. If the employee's employment is terminated, including by retirement or death, or if the employer ceases business without a successor; records, or notarized true copies thereof, shall be forwarded by registered mail to the director.

2. Records required by this paragraph shall be provided if requested by authorized representatives of the assistant secretary or the director. If requested by an employee or former employee, the records shall be provided to a physician designated by the employee or to a new employer.

3. Any physician who conducts a medical examination required by this subsection shall furnish to the employer a statement of the employee's suitability for employment in the specific exposure.

Section 3. Laboratory Activities. The requirements of this section shall apply to research and quality control activities involving the use of chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016.

(1) Mechanical pipetting aids shall be used for all pipetting procedures.

(2) Experiments, procedures, and equipment which could produce aerosols shall be confined to laboratory-type hoods or glove boxes.

(3) Surfaces on which chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016 are handled shall be protected from contamination.

(4) Contaminated wastes and animal carcasses shall be collected in impervious containers that are closed and decontaminated prior to removal from the work area. The wastes and carcasses shall be incinerated so that carcinogenic products shall not be released.

(5) All other forms of chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016 shall be inactivated prior to disposal.

(6) Laboratory vacuum systems shall be protected with high-efficiency scrubbers or with disposal absolute filters.

(7) Employees engaged in animal support activities shall be:

(a) Provided with and required to wear, a complete protective clothing change, clean each day, including coveralls, or pants and shirt, foot covers, head covers, gloves, and appropriate respiratory protective equipment or devices;

(b) 1. Required, prior to each exit from a regulated area, to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal; and

2. The contents of the impervious containers shall be identified as required under Section 2(4)(b), (c), and (d) of this administrative regulation;

(c) Required to wash hands, forearms, face, and neck upon each exit from the regulated area close to point of exit, and before engaging in other activities; and

(d) Required to shower after the last exit of the day.

(8) Employees, except for those engaged only in animal support activities, each day shall be:

(a) Provided with and required to wear a clean change of appropriate laboratory clothing, such as a solid front gown, surgical scrub suit, or fully buttoned laboratory coat;

(b) 1. Required, prior to each exit from a regulated area, to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal; and

2. The contents of the impervious containers shall be identified as required under Section 2(4)(b), (c), and (d) of this administrative regulation; and

(c) Required to wash hands, forearms, face, and neck upon each exit from the regulated area close to point of exit, and before engaging in other activities.

(9) Air pressure in laboratory areas, and animal rooms where chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016 are handled and bioassay studies are performed shall be negative in relation to the pressure in surrounding areas. Exhaust air shall not be discharged to regulated areas, nonregulated areas, or the

external environment unless it is decontaminated.

(10) There shall not be a connection between regulated areas and any other areas through the ventilation system.

(11) A current inventory of chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016 shall be maintained.

(12) Ventilated apparatus such as laboratory-type hoods shall be tested at least semi-annually or immediately after ventilation modification or maintenance operations, by personnel fully qualified to certify correct containment and operation.

Section 4. Access to Exposure or Medical Records. (1) The language relating to the access to exposure or medical records in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1910.1020(e)(1)(i).

(2) If an employee or designated representative requests access to an exposure or medical record, the employer shall assure that access is provided in a reasonable time, place, and manner, but not longer than fifteen (15) days after the request for access is made unless sufficient reason is given why that time is unreasonable or impractical.

(3) The language relating to the access to exposure or medical records in subsection (4) of this section shall apply in lieu of 29 C.F.R. 1910.1020(e)(1)(iii).

(4) If an employee or designated representative requests a copy of a record, the employer shall, except as specified in 29 C.F.R. 1910.1020(e)(1)(v) of this section, within the period of time previously specified assure that either:

(a) A copy of the record is provided without cost to the employee or representative;

(b) The necessary mechanical copying facilities (e.g., photocopying) are made available without cost to the employee or representative for copying the record; or

(c) The record is loaned to the employee or representative for a reasonable time to enable a copy to be made.

Section 5. (1) The language relating to gloves in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1910.1030(d)(3)(ix).

(2) Gloves shall be worn if it can be reasonably anticipated that the employees may have hand contact with blood, other potentially infectious materials, mucous membranes, and nonintact skin if performing vascular access procedures or if handling or touching contaminated items or surfaces.

Section 6. Except as modified by Sections 1 through 5 of this administrative regulation, general industry shall comply with 29 C.F.R. Subpart Z, Toxic and Hazardous Substances, [the following federal requirements] published by the Office of the Federal Register, National Archives and Records Services, General Services Administration and the revisions to 29 C.F.R. 1910.1024 published in the July 14, 2020 Federal Register, Volume 85, Number 135[:

(1) 29 C.F.R. 1910.1000–1910.1450; and

(2) ~~The revisions to 29 C.F.R. 1910.1001, 29 C.F.R. 1910.1018, 29 C.F.R. 1910.1027, 29 C.F.R. 1910.1029, 29 C.F.R. 1910.1043, and 29 C.F.R. 1910.45 as published in the May 14, 2019 Federal Register, Volume 84, Number 93].~~

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: January 7, 2021

FILED WITH LRC: January 13, 2021 at 1:52 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2021 (EST). 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/82552984635?pwd=VjRaRjFkeWs2NHFPNUVWOGY4ZDVjUT09> Password: 151868, or by telephone at (713) 353-0212 or (888) 822-7517 (toll free), conference code 194378. 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 March 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2, effective since February 12, 1996, retains requirements for employees with occupational exposure to 4,4'-Methylenedis(2-Chloroaniline). Section 3, also effective since February 12, 1996, retains requirements associated with research and quality control laboratory activities involving the use of the chemicals covered by 29 C.F.R. 1910.1003-1016. Section 4, effective since July 17, 1997, retains requirements related to access to exposure or medical records. Section 5, effective since October 7, 1992, retains requirements involving glove use related to 29 C.F.R. 1910.1030. Section 6 requires employers to comply with the requirements of 29 C.F.R. Parts 1910.1000-1910.1450 and the amendments to 29 C.F.R. 1910.1024, published in the July 14, 2020 Federal Register, Volume 85, Number 135. On July 14, 2020, OSHA published a final rule that clarified certain provisions and simplified, or improved, compliance with 29 C.F.R. 1910.1024, Beryllium. The final rule is deregulatory action. The changes maintain safety and health protections for workers and enhance worker protections by ensuring the standard is well understood. The final rule enhances employee safety by revising provisions that may be misinterpreted. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations.

(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. 29 C.F.R. 1953.5 mandates state adoption of OSHA's July 14, 2020 Occupational Exposure to Beryllium and Beryllium Compounds final rule. Therefore, Kentucky must adopt the rule to ensure the state program is at least as effective as OSHA.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky OSH Standards Board to promulgate OSH administrative regulations and establishes the chair may adopt established federal standards without board approval if necessary to meet federal time requirements. 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: The amendment enhances employee safety by revising provisions that may be misinterpreted. The majority of the changes clarify certain provisions and simplify, or improve, employer compliance with 29 C.F.R. 1910.1024, Beryllium. The final rule is deregulatory action. The changes maintain safety and health protections for workers and enhance worker protections by ensuring the standard is well understood. The final rule enhances employee safety by revising provisions that may be misinterpreted. The majority of the changes clarify certain provisions and simplify, or improve, employer compliance with 29 C.F.R. 1910.1024. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as 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 and establishes the chair may adopt established federal standards without board approval if necessary to meet federal time requirements. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides all a clear understanding of the requirements. This amendment promotes employee health and safety throughout Kentucky and ensures the state is as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects employers in the Commonwealth engaged in all general industry activities covered by KRS Chapter 338.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are imposed and no immediate action is required.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes employee health and safety throughout Kentucky and 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 are 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. 29 C.F.R. 1953.5 mandates adoption of OSHA's July 14, 2020 Occupational Exposure to Beryllium and Beryllium Compounds final rule. Therefore, Kentucky must adopt the final rule or develop an equivalent standard to ensure the state program is at least as effective as OSHA.

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? Yes.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Section 1 of this administrative regulation defines terms not found in the federal standard. Section 2, effective since February 12, 1996, retains requirements related to 4,4'-Methylene bis (2-chloroaniline). Section 3, also effective since February 12, 1996, retains requirements associated with research and quality control laboratory activities involving the use of the chemicals covered by 29 C.F.R. 1910.1003-1016 that are different from OSHA. Section 4, effective since July 17, 1997, retains requirements related to access to exposure or medical records that are different from OSHA. Section 5, effective since October 7, 1992, retains requirements related to glove use as it applies to 29 C.F.R. 1910.1030 that are different from OSHA. Section 6 requires employers to comply with the requirements of 29 C.F.R. Parts 1910.1000-1910.1450 and the amendments to 29 C.F.R. 1910.1024, published in the July 14, 2020 Federal Register, Volume 85, Number 135. The final rule is deregulatory action. The changes maintain safety and health protections for workers and enhance worker protections by ensuring the standard is well understood. The final rule enhances employee safety by revising provisions that may be misinterpreted.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects any unit, part, or division of local government covered by KRS 338 and engaged in any general industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

None.

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

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

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

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: This amendment does not impose any additional requirements or expenditures to the employer.

LABOR CABINET

Department of Workplace Standards

Division of Occupational Safety and Health Compliance

Division of Occupational Safety and Health Education and Training

(Amendment)

803 KAR 2:401. General interpretations[Adoption of 29 C.F.R. Part 1926.10-20].

RELATES TO: KRS Chapter 338.051, 338.061, 29 C.F.R. 1926.10-16

STATUTORY AUTHORITY: KRS 338.051(3), 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 that are enforced by the Department of Workplace Standards in construction. [KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules and administrative regulations, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 C.F.R. 1926.]

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "C.F.R." means Code of Federal Regulations.

(3) "Employee" is defined by KRS 338.015(2).

(4) "Employer" is defined by KRS 338.015(1).

(5) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.

(6) "Standard" is defined in KRS 338.015(3). [The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926.10-20 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference.]

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, the construction industry shall comply with the 29 C.F.R. 1926, Subpart B, General Interpretations, published by the Office of the Federal Register, National Archives and Records Services, General Services

VOLUME 47, NUMBER 8– FEBRUARY 1, 2021

~~Administration[Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), 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.~~

~~(2) Office hours are 8 a.m. – 4:30 p.m. (EST), Monday through Friday].~~

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: January 7, 2021

FILED WITH LRC: January 13, 2021 at 3:14 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2021 at 10:00 am (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/82552984635?pwd=VjRaRjFkeWs2NHFPNUVWOGY4ZDVjUT09_Password=151868 or by telephone at (713) 353-0212 or (888) 822-7517 (toll free), conference code 194378. 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 March 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation defines terms not used in the federal standard. Section 2 of this administrative regulation, effective since December 15, 1989, adopts the requirements of 29 C.F.R. 1926.10-20, which establishes the federal safety and health provisions in construction. 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 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 defines terms not used in the federal standard. Section 2 of this administrative regulation adopts the requirements of 29 C.F.R. 1926.10-20, which establishes the federal safety and health provisions in construction. 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.

(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 regulation are technical and maintain consistency with other regulations.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(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 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This amendment does not impose stricter requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects any unit, part, or division of state or local government covered by KRS Chapter 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. 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 2:405. Fire protection and prevention.

RELATES TO: KRS 338.051(3), 338.061, 29 C.F.R. 1926.150-159

STATUTORY AUTHORITY: KRS 338.051[3], 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) ~~requires~~ [and 338.061—require] the Kentucky Occupational Safety and Health Standards Board to [adopt and] promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 ~~authorizes the board to establish, modify, or repeal standards and reference federal standards.~~ This administrative regulation establishes standards ~~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) "Assistant secretary" means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet.

(2) "C.F.R." means Code of Federal Regulations. [~~"Director" means Director, Division of Occupational Safety and Health Compliance, Kentucky Labor Cabinet.~~

(3) "~~U.S. Department of Labor~~" means Kentucky Labor Cabinet or U.S. Department of Labor.

(3) "Employee" is defined by KRS 338.015(2).

(4) "Employer" is defined by KRS 338.015(1).

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, the construction industry shall comply with 29 C.F.R. 1926 Subpart F, Fire Protection and Prevention [the following federal requirements] published in the Office of the Federal Register, National Archives and Records Services, General Services Administration [:

(1) ~~29 C.F.R. 1926.150 through 1926.159, revised July 1, 2011; and~~

(2) ~~The amendments to Subpart F of 29 C.F.R. 1926 as published in the March 26, 2012 Federal Register, Volume 77, Number 58].~~

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: January 7, 2021

FILED WITH LRC: January 13, 2021 at 3:14 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2021 at 10:00 am (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/82552984635?pwd=VjRaRjFkeWs2NHFPNUVWOGY4ZDVjUT09> Password: 151868 or by telephone at (713) 353-0212 or (888) 822-7517 (toll free), conference code 194378. 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 March 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation defines terms not used in the federal

standard. Section 2 of this administrative regulation, effective since December 15, 1989, adopts the requirements of 29 C.F.R. 1926.150-159, which establishes the federal rules for fire prevention and protection in construction. 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 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 used in the federal standard. Section 2, effective since December 15, 1989, adopts the requirements of 29 C.F.R. 1926.150-159, which establishes the federal rules for fire prevention and protection in construction. 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 administrative 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 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 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 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 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. 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 2:408. Tools - hand and power.

RELATES TO: KRS Chapter 338, 29 C.F.R. 1926.301-307

STATUTORY AUTHORITY: KRS 338.051(3), 338.061[—29 C.F.R. 1926]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires [authorizes] 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[(2) authorizes the board to incorporate by reference established federal standards and national consensus standards]. This administrative regulation establishes [hand and power tool] standards [to be] that are enforced by the Department of Workplace Standards in construction [Division of Occupational Safety and Health Compliance in the construction industry].

Section 1. Definitions. (1) "C.F.R." means Code of Federal Regulations.

(2) "Employee" is defined in KRS 338.015(2).

(3) [(2)] "Employer" is defined in KRS 338.015(1).

(4) [(3)] "Standard" is defined in KRS 338.015(3).

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, the construction industry shall comply with 29 C.F.R. 1926, Subpart I, Tools-Hand and Power, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration [General industry shall follow the federal regulations incorporated by reference in Section 3 of this administrative regulation as modified by the definitions in Section 1 of this administrative regulation.

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

(a) 29 C.F.R. 1926.300-1926.307 revised as of July 1, 2004; and

(b) The revision to 29 C.F.R. 1910.268, as published in the June 8, 2004, Federal Register, Volume 69, Number 110.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Labor Cabinet, Division of Occupational Safety and Health Education and Training, 1047 U.S. Highway 127 South, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material may also be obtained from the Office of the Federal Register, National Archives and Records Service, General Services Administration.]

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: January 7, 2021

FILED WITH LRC: January 13, 2021 at 3:14 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2021 at 10:00 am (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/82552984635?pwd=VjRaRjFkeWs2NHFPNUVWOGY4ZDVjUT09> Password: 151868 or by telephone at (713) 353-0212 or (888) 822-7517 (toll free), conference code 194378. 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 March 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation defines terms not used in the federal standard. Section 2 of this administrative regulation, effective since December 15, 1989, adopts the requirements of 29 C.F.R. 1926.300-1926.307, which establishes the hand and power tool rules in construction. 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 used in the federal standard. Section 2 of this administrative regulation adopts the requirements of 29 C.F.R. 1926.300-1926.307, which establishes the hand and power tool rules in construction. Additionally, this regulation was reviewed in

accordance with 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 by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Amendments to this regulation were technical and intended to maintain consistency with other regulations.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061. KRS 338.051(3) 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 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 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 the federal requirement. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This amendment does not impose stricter requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects any unit, part, or division of state or local government covered by KRS Chapter 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. 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 2:409. Welding and cutting[Adoption of 29 C.F.R. Part 1926.350-354].

RELATES TO: KRS Chapter 338, 29 C.F.R. 1926.350-354
STATUTORY AUTHORITY: KRS 338.051(3), 338.061[KRS Chapter 13A]

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 [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 federal standards and reference

~~federal standards. [Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following] This administrative regulation establishes [contains those] standards that are [to be] enforced by the Department of Workplace Standards in construction[Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 C.F.R. 1926].~~

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) "Standard" is defined in KRS 338.015(3).~~(The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926.350-.354 of the Code of Federal Regulations, revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:~~

~~(1) Revisions to 29 C.F.R. 1926.350, "Gas Welding and Cutting", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, are incorporated by reference.~~

~~(2) Revision to 29 C.F.R. 1926.351(d)(5), as published in the Federal Register, Volume 51, Number 133, July 11, 1986 is incorporated by reference.~~

~~(3) Revisions to 29 C.F.R. 1926.353, "Ventilation and Protection in Welding and Cutting", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, are incorporated by reference.]~~

Section 2. Except as modified by Section 1 of this administrative regulation, the construction industry shall comply with 29 C.F.R. 1926, Subpart J, Welding and Cutting, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration[Public Notice. (1) In accordance with KRS 13A.224(3)(c), 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.

(2) Office hours are 8 a.m. – 4:30 p.m. (EST), Monday through Friday].

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: January 7, 2021

FILED WITH LRC: January 13, 2021 at 1:36 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2021 at 10:00 am (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/82552984635?pwd=VjRaRjFkeWs2NHFPNUVWOGY4ZDVjUT09> Password: 151868 or by telephone at (713) 353-0212 or (888) 822-7517 (toll free), conference code 194378. 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 March 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax

(502) 564-4769, email Robin.Maples@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does:

Section 1 of this administrative regulation defines terms not used in the federal standard. Section 2 of this administrative regulation, effective since December 15, 1989, adopts the requirements of 29 C.F.R. 1926.350-1926.354, which establishes the welding and cutting rules in construction. 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 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 used in the regulation. Section 2 of this administrative regulation adopts the requirements of 29 C.F.R. 1926.350-1926.354, which establishes the welding and cutting rules in construction. 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.

(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 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 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 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 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This amendment does not impose stricter requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects any unit, part, or division of state or local government covered by KRS Chapter 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. 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 2:410. Electrical.

RELATES TO: KRS 338.051, 338.061, 29 C.F.R. 1926.400-449

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. [Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following] This administrative regulation establishes [contains these] standards that are [to be] enforced by the Department of Workplace Standards in construction [Division of Occupational Safety and Health Compliance in the area of construction].

Section 1. Definitions. (1) "Assistant Secretary of Labor" means Secretary, Labor Cabinet or Commissioner, Department of Workplace Standards, Labor Cabinet.

(2) "C.F.R." means Code of Federal Regulations.

(3) "Employee" is defined by KRS 338.015(2).

(4) "Employer" is defined by KRS 338.015(1).

(5) "Standard" is defined in KRS 338.015(3).

Section 2. Except as modified by Section 1 of this administrative regulation, the construction industry shall comply with 29 C.F.R. 1926 Subpart K, Electrical, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration [Incorporation by Reference. (4) The following material is incorporated by reference:

(a) ~~29 C.F.R. 1926.400-449 revised as of July 1, 1996, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration is~~

incorporated by reference.

(b) The amendment to 29 C.F.R. 1926 Subpart K, "Electrical" as published in the Federal Register, Volume 61, Number 156, August 12, 1996 is incorporated by reference.

(2) This material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m.—4:30 p.m. (EST), Monday through Friday].

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: January 7, 2021

FILED WITH LRC: January 13, 2021 at 1:36 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2021 at 10:00 am (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/82552984635?pwd=VjRaRjFkeWs2NHFPNUVWOGY4ZDVjUT09> Password: 151868 or by telephone at (713) 353-0212 or (888) 822-7517 (toll free), conference code 194378. 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 March 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation defines terms not used in the federal standard. Section 2 of this administrative regulation, effective since December 15, 1989, adopts the requirements of 29 C.F.R. 1926.400-449, which establishes the federal standards for electrical safety requirements in construction. 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. Additionally, this regulation was reviewed in accordance HB 50 2017 of the 2017 General Assembly.

(c) How this administrative regulation conforms to the content of the authorizing statutes: 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 used in the federal standard. Section 2 of this administrative regulation, effective since December 15, 1989, adopts the requirements of 29 C.F.R. 1926.400-449, which establishes the federal standards for electrical safety in construction. 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.

(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 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 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 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): Improved employee protection will result from the promulgation of this amendment, due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

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

(a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to the 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.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5 to be at least as effective as the federal requirement. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This amendment does not impose stricter requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect 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. 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 2:414. Motor vehicles, mechanized equipment, and marine operations.

RELATES TO: KRS 338.051, 338.061, 29 C.F.R. 1926.600-606

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to ~~adopt and~~ promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. 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) ~~"Assistant Secretary" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.~~

(2) "C.F.R." means Code of Federal Regulations.

(2) ~~(3)~~ "Employee" is defined by KRS 338.015(2).

(3) ~~(4)~~ "Employer" is defined by KRS 338.015(1).

(4) ~~(5)~~ "Standard" is defined by KRS 338.015(3).

Section 2. Except as established by the definitions in Section 1 of this administrative regulation, the construction industry shall comply with 29 C.F.R. 1926 Subpart O, Motor Vehicles, Mechanized Equipment, and Marine Operations ~~the following federal regulations~~ published by the Office of the Federal Register, National Archives and Records Services, General Services Administration:

(1) 29 C.F.R. 1926.600-1926.606, revised July 1, 2010; and

(2) The revision of 29 C.F.R. 1926.600 as published in the August 9, 2010 Federal Register, Volume 75, Number 152].

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: January 7, 2021

FILED WITH LRC: January 13, 2021 at 1:36 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2021 at 10:00 am (EDT). 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/82552984635?pwd=VjRaRjFkeWs2NHFPNUVWOGY4ZDVjUT09> Password: 151868 or by telephone at (713) 353-0212 or (888) 822-7517 (toll free), conference code 194378. 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 March 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500

Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation defines terms not used in the federal standard. Section 2, effective since December 15, 1989, adopts the requirements of 29 C.F.R. 1926.600-606, which establishes the federal rules related to motor vehicles, mechanized equipment, and marine operations in construction. 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 used in the federal standard. Section 2, effective since December 15, 1989, adopts the requirements of 29 C.F.R. 1926.600-606, which establishes the federal rules related to motor vehicles, mechanized equipment, and marine operations in construction. 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.

(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 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 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 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 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 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: 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 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. 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 2:415. Excavations [Adoption of 29 C.F.R. Part 1926.650-653].

RELATES TO: KRS Chapter 338.051, 338.061, 29 C.F.R. 1926.650-653.pag

STATUTORY AUTHORITY: KRS 338.051, 338.061

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 [rules and] 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. [, and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board.] 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. [The standards are arranged in numerical order in order to facilitate reference to 29 C.F.R. 1926.]

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)[The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926.650 - 1926.653 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference, as amended April 13, 1990, with following additions, exceptions, and deletions:

(1) Revisions to 29 C.F.R. 1926, Subpart P, "Excavations," as published in Federal Register, Volume 54, Number 209, October 31, 1989, are incorporated by reference.

(2) The revisions to 29 C.F.R. 1926.651(1), "Specific Excavation Requirements," as published in Federal Register, Volume 59, Number 152, August 9, 1994, are incorporated by

reference].

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, the construction industry shall comply with 29 C.F.R. 1926, Subpart P, Excavations, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration[Public Notice. (1) In accordance with KRS 13A.224(3)(c), 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.

(2) Office hours are 8 a.m. — 4:30 p.m. (EST), Monday through Friday].

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: January 7, 2021

FILED WITH LRC: January 13, 2021 at 1:36 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2021 at 10:00 am (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/82552984635?pwd=VjRaRjFkeWs2NHFPNUVWOGY4ZDVjUT09> Password: 151868 or by telephone at (713) 353-0212 or (888) 822-7517 (toll free), conference code 194378. 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 March 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation defines terms not used in the federal standard. Section 2, effective since December 15, 1989, adopts the requirements of 29 C.F.R. 1926.650-653, which establishes the federal standards for excavations. 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: 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 used in the federal standard. Section 2, effective since December 15, 1989, adopts the requirements of 29 C.F.R. 1926.650-653, which establishes the federal standards for excavations. 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.

(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 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 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 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):

Improved employee protection will result from the promulgation of this amendment, due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

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

(a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to the 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.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5 to be at least as effective as the federal requirement. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This amendment does not impose stricter requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects any unit, part, or division of state or 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. 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 2:416. Concrete and masonry work [Adoption of 29 C.F.R., Part 1926.700-706].

RELATES TO: KRS Chapter 338.051, 338.061, 29 C.F.R. 1926.700-706

STATUTORY AUTHORITY: KRS 338.051, 338.061

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 [rules.] 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 [and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following] administrative regulation establishes [contains those] standards that are [to be] enforced by the Department of Workplace Standards in construction [Division of Occupational Safety and Health Compliance in the area of construction. The standards are arranged in numerical order in order to facilitate reference to 29 C.F.R. 1926.]

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). [The Occupational Safety and Health Standards Board hereby adopts 29 C.F.R., Part 1926.700—1926.706, revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference, as amended April 13, 1990, with the following additions, exceptions, and deletions:

(1) Revisions to 29 C.F.R. 1926, Subpart Q, "Concrete, Concrete Forms and Shoring," (now "Concrete and Masonry Construction"), as published in Federal Register, Volume 53, Number 116, June 16, 1988, are incorporated by reference.

(2) Revisions to 29 C.F.R. 1926.700, as published in the Federal Register, Volume 55, Number 202, October 18, 1990, are incorporated by reference.

(3) The revision to 29 C.F.R. 1926.701, "General Requirements", as published in the Federal Register, Volume 59, Number 152, August 9, 1994, is incorporated by reference.

(4) Revisions to Subpart Q of 1926.704(b), "Concrete and Masonry Construction Safety Standards," as published in Federal Register, Volume 54, Number 192, October 5, 1989, are incorporated by reference.

(5) Revisions to 29 C.F.R. 1926.705, as published in the Federal Register, Volume 55, Number 202, October 18, 1990, are incorporated by reference].

Section 2. Except as modified by Section 1 of this administrative regulation, the construction industry shall comply with 29 C.F.R. 1926 Subpart Q, Concrete and Masonry Construction, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration [Public Notice. (1) In accordance with KRS 13A.224(3)(c), 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.

(2) Office hours are 8 a.m. – 4:30 p.m. (EST), Monday through Friday].

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: January 7, 2021

FILED WITH LRC: January 13, 2021 at 1:36 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2021 at 10:00 am (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/82552984635?pwd=VjRaRjFkeWs2NHFPNUVWOGY4ZDVjUT09> Password: 151868 or by telephone at (713) 353-0212 or (888) 822-7517 (toll free), conference code 194378. 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 March 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation defines terms not used in the federal standard. Section 2, effective since December 15, 1989, adopts the requirements of 29 C.F.R. 1926.700-706, which establishes the federal requirements related to concrete and masonry construction. 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 used in the federal standard. Section 2, effective since December 15, 1989, adopts the requirements of 29 C.F.R. 1926.700-706, which establishes the federal requirements related

to concrete and masonry construction. 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.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Amendments to this regulation are technical and maintain consistency with other regulations.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061. KRS 338.051(3) 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 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: 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 state or 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. 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 2:417. Steel erection.

RELATES TO: KRS 338.015(1), (2), 29 C.F.R. 1926.750-1926.761

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 authorize the board to establish, modify, or repeal standards and reference federal standards. [29 C.F.R. 1926.750 to 1926.761 establish the federal requirements relating to steel erection.] This administrative regulation establishes standards that are [to be] enforced by the Department of Workplace Standards in [the] construction [industry relating to steel erection].~~

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).

Section 2. ~~Except as modified by the definitions in Section 1 and the requirements in Section 3 of this administrative regulation, the [The] construction industry shall comply with 29 C.F.R. 1926, Subpart R, Steel Erection, [the following federal regulations] published by the Office of the Federal Register, National Archives and Records Administration[, except as modified by the definitions in Section 1 and requirements in Section 3 of this administrative regulation:~~

~~(1) 29 C.F.R. 1926.750 through 1926.761, and Appendices, revised July 1, 2010; and~~

~~(2) The amendment to 29 C.F.R. 1926.754 as published in the May 17, 2010 Federal Register, Volume 75, Number 94; and].~~

Section 3. Fall Hazards. (1)(a) The language in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1926.760(a)(1).

(b) Each employee engaged in a steel erection activity who is on a walking/working surface with an unprotected side or edge ten (10) feet or more above a lower level shall be protected from fall hazards by guardrail systems, safety net systems, personal fall arrest systems, positioning device systems, or fall restraint systems.

(2)(a) The language in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1926.760(a)(3).

(b) Connectors and employees working in controlled decking zones shall be protected from fall hazards in accordance with subsections (5) and (6) of this section, respectively.

(3)(a) The language in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1926.760(b)(1).

(b) Each connector shall be protected in accordance with subsection (2) of this section from fall hazards of ten (10) feet or more above a lower level.

(4)(a) The language in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1926.760(b)(3).

(b) Each connector shall be provided with, wear, and utilize, at heights of ten (10) feet or more above a lower level, a personal fall arrest system, positioning device system, or fall restraint system; or be provided with other means of protection from fall hazards in accordance with subsection (1) of this section.

(5)(a) The language in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1926.760(c).

(b) A controlled decking zone (CDZ) may be established in that area of the structure over six (6) feet and up to ten (10) feet above a lower level if metal decking is initially being installed and forms the leading edge of a work area. In each CDZ, the following shall apply:

1. The language in subparagraph 2 of this paragraph shall apply in lieu of 29 C.F.R. 1926.760(c)(1).

2. Each employee working at the leading edge in a CDZ shall be protected from fall hazards of ten (10) feet or more above a lower level.

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: January 7, 2021

FILED WITH LRC: January 13, 2021 at 1:36 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2021 at 10:00 am (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/82552984635?pwd=VjRaRjFkeWs2NHFPNUVWOGY4ZDVjUT09> Password: 151868 or by telephone at (713) 353-0212 or (888) 822-7517 (toll free), conference code 194378. 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 March 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, 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 adopts the requirements of 29 C.F.R. 1926.750-761, which establishes the federal requirements related to steel erection in construction. Section 3 of this regulation establishes specific requirements related to fall protection trigger heights. 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: 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 adopts the requirements of 29 C.F.R. 1926.750-761 which establishes the federal requirements related to steel erection in construction. Section 3 of this regulation establishes specific requirements related to fall protection trigger heights. 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 Kentucky 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 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 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.

(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 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? Yes

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: The amendment maintains the maximum ten (10) foot fall protection trigger height that has been in effect in Kentucky since 1980. The requirement promotes worker safety and health throughout Kentucky.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects any unit, part, or division of state or 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 2:424. Diving[Construction—industry—diving standards].

RELATES TO: KRS 338.051, 338.061, 29 C.F.R. 1926.1071-1926.1091

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to [adopt-and] promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the

board to establish, modify, or repeal standards and reference federal standards. [necessary to accomplish the purposes of KRS Chapter 338. 29 C.F.R. 1926.1071-1926.1091 and Subpart S App. A establish federal requirements relating to commercial diving operations.] This administrative regulation establishes [the] diving standards [to be] enforced by the Department of Workplace Standards in construction [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.

(4) "Employee" is defined by KRS 338.015(2).

(5) "Employer" is defined by KRS 338.015(1).

(6) "Standard" is defined in KRS 338.015(3).

Section 2. Except as established by the definitions in Section 1 of this administrative regulation, the construction industry shall comply with 29 C.F.R. 1926 Subpart Y, Diving, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration [The construction industry shall comply with the requirements of 29 C.F.R. 1926.1071 through 1926.1091, and Appendices, revised as of July 1, 2006].

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: January 7, 2021

FILED WITH LRC: January 13, 2021 at 1:36 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 23, 2021 at 10:00 am (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/82552984635?pwd=VjRaRjFkeWs2NHFPNUVWOGY4ZDVjUT09> Password: 151868 or by telephone at (713) 353-0212 or (888) 822-7517 (toll free), conference code 194378. 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 March 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation defines terms not used in the federal standard. Section 2 of this administrative regulation, effective since May 5, 1994, adopts the requirements of 29 C.F.R. 1926.1071-1091 and establishes the federal requirements relating to commercial diving operations in construction. 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 occupational safety and health (OSH) regulations to be as effective as the federal requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5.

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

(a) How the amendment will change this existing administrative regulation: Section 1 of this administrative regulation defines terms not used in the federal standard. Section 2 of this administrative regulation, which adopts the requirements of 29 C.F.R. 1926.1071-1091 and establishes the federal requirements relating to commercial diving operations in construction. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations. Additionally, this regulation was reviewed and revised in accordance with HB 50 2017 from the Regular Session of the 2017 General Assembly.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Amendments to this regulation are technical and maintain consistency with other regulations.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061. KRS 338.051(3) 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 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 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This amendment does not impose stricter requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects any unit, part, or division of state or 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. 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 2:600. Occupational safety and health standards for agriculture.

RELATES TO: KRS 338.051, 338.061, 29 C.F.R. 1928

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. [29 C.F.R. 1928.1 to 1928.1027 establishes the federal requirements relating to occupational safety and health standards for agriculture.] This administrative regulation establishes [the occupational safety and health] standards [for agriculture to be] enforced by the Department of Workplace Standards [Division of Occupational Safety and Health Compliance] in the agriculture industry.

Section 1. (1) "Assistant secretary" means Secretary, ~~of the~~ Labor Cabinet or ~~the~~ Commissioner, ~~of the~~ Department of Workplace Standards, Labor Cabinet.

(2) "C.F.R." means Code of Federal Regulations.

(3) "Employee" is defined in KRS 338.015(2).

(4) "Employer" is defined in KRS 338.015(1).

(5) "U.S. Department of Labor" means Kentucky Labor Cabinet, Mayo-Under Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601 or U.S. Department of Labor.

Section 2. Except as established by the definitions in Section 1, the [The] agriculture industry shall comply with 29 C.F.R. Part 1928 [the following federal regulations] published by the Office of the Federal Register, National Archives and Records Services, General Services Administration[, except as modified by the definitions in Section 1 of this administrative regulation and requirements in Section 3 of this administrative regulation:

(1) 29 C.F.R. 1928.1 through 29 C.F.R. 1928.1027, and Appendices, revised July 1, 2010; and

(2) The amendment to 29 C.F.R. 1928.110 published in the June 8, 2011, Federal Register, Volume 76, Number 110.

~~Section 3. Scope and Application. (1) The language in subsection (2) of this section shall apply in addition to 29 C.F.R. 1928.1.~~

~~(2) The provisions of this administrative regulation adopt and extend the applicability of established federal standards contained in 29 C.F.R. Part 1928 to all employers, employees, and places of employment throughout the Commonwealth, except those excluded in KRS 338.021.~~

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: January 7, 2021

FILED WITH LRC: January 13, 2021 at 1:36 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public

hearing on this administrative regulation shall be held on March 23, 2021 at 10:00 am (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/82552984635?pwd=VjRaRjFkeWVs2NHFPNUVWOGY4ZDVjUT09> Password: 151868 or by telephone at (713) 353-0212 or (888) 822-7517 (toll free), conference code 194378. 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 March 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Workplace Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation defines terms not used in the federal standard. Section 2 of this administrative regulation, effective since December 15, 1989, adopts the requirements of 29 C.F.R. 1928.1-1027, which establishes the federal standards for agriculture. 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 occupational safety and health (OSH) regulations to be as effective as the federal requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky and ensures the state is as effective as the federal requirement. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5.

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

(a) How the amendment will change this existing administrative regulation: Section 1 of this administrative regulation defines terms not used in the federal standard. Section 2 of this administrative regulation, effective since December 15, 1989, adopts the requirements of 29 C.F.R. 1928.1-1027, which establishes the federal standards for agriculture. 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.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Amendments to this regulation are technical and maintain consistency with other regulations.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061. KRS 338.051(3) 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 engaged in agriculture 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 29 C.F.R. Parts 1952 and 1953 to be at least as effective as OSHA. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by 29 C.F.R.

Parts 1952 and 1953 to be at least as effective as OSHA. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This amendment does not impose stricter requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation affects any unit, part, or division of local government covered by KRS 338 engaged in agriculture 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.

PUBLIC PROTECTION CABINET

Department of Insurance

Division of Health and Life Insurance and Managed Care (Amendment)

806 KAR 14:005. Rate and form filing procedures for life insurers, life settlement providers, and life settlement brokers.

RELATES TO: KRS 304.4-010, 304.14-120, 304.14-190, 304.15-020, 304.15-700

STATUTORY AUTHORITY: KRS 304.2-110[; EO 2009-535]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. [EO 2009-535, signed June 12, 2009, created the Department of Insurance, headed by the Commissioner of Insurance. KRS 304.2-110(1) authorizes the Executive Director of the Office of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined in KRS 304.1-010.] This administrative regulation establishes rate and form filing procedures for life insurers, life settlement providers, and life settlement brokers.

Section 1. Definitions. As used in this administrative regulation:

(1) "Commissioner" is defined by KRS 304.1-050(1). ~~[means the Commissioner of the Kentucky Department of Insurance.]~~

(2) "Department" is defined by KRS 304.1-050(2) ~~[means the Kentucky Department of Insurance, unless context otherwise requires].~~

(3) "Life settlement broker" is defined ~~by~~[in] KRS 304.15-020(16).

(4) "Life settlement provider" is defined ~~by~~[in] KRS 304.15-020(18).[

~~Section 2. (1) Life and annuity form filings shall be accompanied by a Life, Annuity, and Credit Transmittal Document, Form L-TD.~~

~~(2) Life settlement form filings shall be accompanied by a Life Settlement Transmittal Document, Form LS-TD.]~~

Section 2 [Section 3]. An entity may include any number of forms or documents in a filing for a particular insurance company [any number of forms or documents, filed]. They shall be filed electronically together on a particular date, pertaining to a single line of insurance.

~~Section 3 [Section 4]. The period of time in which the commissioner may approve or disapprove the filing shall not begin until both the filing and appropriate fee are received by the department.~~

Section 4 [Section 5]. A policy or contract form shall not be used in the Commonwealth of Kentucky until:

(1) It has been approved; and

(2) If rates for the form are required by law to be approved, the appropriate rate schedule has been approved.

Section 5 [Section 6]. Each form document, including riders and endorsements, shall be identified by a unique identifying form number in the lower left-hand corner of each page of the document.

Section 6 [Section 7]. If a filing includes a form which amends, replaces, or supplements a form which has been previously filed and not disapproved, it shall be accompanied by a letter of explanation from the filing entity establishing:

(1) All changes contained in the newly-filed form;

(2) Any effect the changes have upon the hazards purported to be assumed by the policy;

(3) The rates applicable to the policy, if required; and

(4) A revised form number.

Section 7 [Section 8]. If a filing is disapproved, the form numbers used on each form within this filing shall not be used on any form in [ef] a future filing.

Section 8 [Section 9]. (1) Facsimile signatures of company officers, attorneys-in-fact, employees, and representatives shall not be required and shall not be submitted with any filing.

(2) A change of signature of the executing officer on a policy form shall not, because of this change alone, require a new filing.

Section 9 [Section 10]. (1) Life insurance companies, life settlement providers, and life settlement brokers shall [may] file a rate or form electronically through the National Association of Insurance Commissioners' electronic system for rate and form filings via the Web site www.serff.com.

(2) An electronic filing as identified in subsection (1) of this section shall be in lieu of a paper filing.[

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Life, Annuity, and Credit Transmittal Document," Form L-TD, 10/1/2009 edition; and

(b) "Life Settlement Provider and Broker Transmittal Document," Form LS-TD, 10/26/2009 edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Insurance, 215 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 internet Web site at <http://insurance.ky.gov>.]

SHARON P. CLARK, Commissioner
KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: December 21, 2020

FILED WITH LRC: December 23, 2020 at 11:17 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on March 22nd, 2021 at 500 Mero Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on March 31st, 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: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email abigail.gall@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Abigail Gall

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes rate and form filing procedures for life insurance companies.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish uniform procedures for the rate and form filings required by statute.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. This administrative regulation will standardize rate and form filing procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation formalizes a procedure for complying with the statute.

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

(a) How the amendment will change this existing administrative regulation: The amendments to this administrative regulation are changes required by Chapter 13A and also deletes the forms incorporated. The forms are no longer necessary, as they were required for paper filing, which are no longer accepted by the department.

(b) The necessity of the amendment to this administrative regulation: The necessity of these amendments are established in the Chapter 13A.222, in which the drafting requirements are set forth. These requirements ensure the administrative regulation language to be uniform and simple for those needing to reference.

(c) How the amendment conforms to the content of the authorizing statutes: Chapter 13A gives a very detailed explanation of the formatting rules as well as prohibited words and phrases, so these amendments remove old language and replace with acceptable unambiguous language.

(d) How the amendment will assist in the effective administration of the statutes: The amendments made to this administrative regulation meet Chapter 13A guidelines, which

means the administrative regulation meets standards that are more effective. With clearer language 304.1-010 is more effective and thus, allowing the Department to regulate more effectively.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the approximately 520 insurers that are licensed to offer life insurance in Kentucky.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Regulated entities will be required to use SERFF to provide documents regarding filings.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: We requested that the industry provide us with information on the cost impact of this regulation. The Office of Insurance has not received a response to its request. Therefore, the Department assumes that because this is a national standard that insurers may already be complying with in other states, the cost impact is minimal.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation standardizes life filings and should reduce the overall cost of doing business for regulated entities by simplifying the filing process.

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

(a) Initially: Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance.

(b) On a continuing basis: Implementation of this amendment is not anticipated to have an on-going cost on the Department of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks necessary.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation is relative to all licensed life insurers.

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 as the implementer.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation should be essentially revenue neutral

(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 be essentially revenue neutral

(c) How much will it cost to administer this program for the first year? This regulation should be essentially revenue neutral

(d) How much will it cost to administer this program for subsequent years? This regulation should be essentially revenue neutral

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation:

PUBLIC PROTECTION CABINET
Department of Insurance
Divisions of Health and Life Insurance and Managed Care
(Amendment)

806 KAR 14:007. Rate and form filing for health insurers.

RELATES TO: KRS 304.1-010, 304.1-050, 304.3-270, 304.4-010, 304.14-120, 304.14-190, 304.17-380, 304.17A-005, 304.17A-095, 304.17A-096, 304.17C-010(5)

STATUTORY AUTHORITY: KRS 304.2-110(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the Commissioner ~~[Executive Director]~~ of Insurance to promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of the Kentucky Insurance Code, as defined by~~[in]~~ KRS 304.1-010. ~~[EO 2008-507, effective June 16, 2008, established the Department of Insurance and the Commissioner of Insurance as head of the department.]~~ This administrative regulation establishes rate and form filing procedures for health insurers.

Section 1. Definitions. As used in this administrative regulation:

(1) ~~["Basic health benefit plan" is defined in KRS 304.17A-005(4).]~~

(2) "Commissioner" means the Commissioner of Insurance as defined by KRS 304.1-050(1).

(2) [(3)] "Department" means Department of Insurance as defined by KRS 304.1-050(2).

(3) [(4)] "Filing entity" means a health insurer authorized to transact business in Kentucky or an entity authorized by that health insurer to submit filings on its behalf.

(4) [(5)] "Health benefit plan" is defined in KRS 304.17A-005(22).

(5) [(6)] "Health policy form" or "form" means application, policy, certificate, contract, rider, endorsement, and for long-term care, short term nursing and Medicare Supplement products, includes advertising ~~[, provider agreement, or risk sharing arrangement].~~

(6) Limited health service benefit plan is defined by KRS 304.17C-010(5).

Section 2. Filing Procedures. (1) A health insurance rate and form filing shall be accompanied by a Face Sheet and Verification Form, HIPMC-F1.[]

(2) ~~A health policy form filed under policy form certification shall be accompanied by a Health Policy Forms Filing Certification Privilege Program Form, HIPMC-F2.[]~~

(2) [(3)] An individual health insurance rate ~~[form]~~ filing shall be accompanied by an Individual Health Forms Actuarial Certification Form, HIPMC-R4.

(3) [(4)] An insurer issuing, delivering, or renewing a[]:

(a) health ~~[Health]~~ benefit plan or a limited health service benefit plan shall complete and attach to each plan filed a Health ~~[Benefit Plan]~~ Summary Sheet - Form Filings Form, HIPMC-F11 ~~[HIPMC-F35].[]~~

(b) ~~Basic health benefit plan shall complete and attach to each plan filed a Basic Health Benefit Plan Summary Sheet - Form and Rate Filings Form, HIPMC-RF-25; and~~

(c) ~~Limited health service benefit plan shall complete and attach to each plan filed a Limited Health Service Benefit Plan~~

~~Summary Sheet - Form Filings, HIPMC-F37 pursuant to 806 KAR 17:440.[]~~

(4) [(5)] Except for a health benefit plan rate filing pursuant to KRS 304.17A-095, a rate filing shall be accompanied by a Rate Filing Information Form, HIPMC-R36.

(5) [(6)] If a rate or form filing ~~[as]~~ submitted by a health insurer ~~does not contain the information necessary to review the filing~~ ~~[is not a complete filing]~~, the department shall use an Additional Health Information Request, Form HIPMC-F16, to request submittal of the incomplete information.

(6) [(7)] (a) Each form shall be identified by a unique form number in the lower left-hand corner of the first page of the form; and

(b) Other numbers shall not appear in close proximity to the form number.

(7) [(8)] Each submission shall be accompanied by a submittal letter ~~[on the stationery of the filing entity which intends to use a form;]~~ listing all forms by number, ~~all forms~~ being submitted together with a brief description of each.

(8) [(9)] If a form is submitted with alternate pages or alternative benefits, the submittal letter required by subsection (7) [(8)] of this section shall:

(a) State under what conditions each alternate page or alternative benefit may be used; and

(b) Identify by a unique form number each alternate page or alternative benefit.

(9) [(10)] If a filing entity files a form containing variable text, the filing entity shall file an explanation of each variation the health insurer proposes to use.

(10) [(11)] Except for an insert page or alternate page, each form shall contain the corporate name and address of the health insurer.

(11) [(12)] A form filed for approval by the department shall not contain advertising or marketing material.

(12) [(13)] If a new form is submitted, the filing entity shall identify the unique features of the form.

(13) [(14)] If a filing includes a form which was previously disapproved by the department, the filing entity shall assign the form a new form number.[]

(15) ~~A rate or form filing shall include two (2) complete sets of documents and a self-addressed stamped envelope.[]~~

Section 3. Filing Entity. A filing entity may include in a filing multiple forms or documents pertaining to a single line of insurance, filed together on a particular date.

Section 4. Date of Filing. Pursuant to KRS 304.4-010(2), a fee payable under the Kentucky insurance code shall be collected in advance. The period of time in which the commissioner may approve or disapprove a filing shall not commence, and the submission shall not be given a filing date, until the following are received by the department:

(1) The rate or form filing;

(2) The appropriate fee pursuant to 806 KAR 4:010~~[, Section 4(24)]~~; and

(3) A form required by Sections 2 and 6 of this administrative regulation, as appropriate.

Section 5. Use of Forms and Rates. (1) A form or rate shall not be used in Kentucky until:

(a) The form or rate has been approved ~~[or certified]~~ by the department, which shall occur within the sixty (60) day time frame identified in KRS 304.14-120(2) except as follows:

1. If the 60th day falls on a weekend or holiday, the 60th day shall be the following business day; and

2. If the commissioner grants an extension of the sixty (60) day time period required for approval or disapproval of a form or rate, and the insurer does not submit a corrected form or rate or additional requested information at least five (5) days prior to the expiration of the extended time period, the filing shall be disapproved; and

(b) If a rate for the form is required by KRS 304.14-120 to be approved, the appropriate rate schedule has been approved.

(2) A document subject to a filed only process, including advertisements and provider directories,~~[provider agreements, subcontract provider agreements, or risk-sharing arrangements,]~~ shall be:

- (a) Filed with the department; and
- (b) Subject to review in accordance with KRS 304.14-120.

Section 6. Form Revision. If a filing includes a form which amends, replaces, or supplements a form~~[-]~~ which has been previously filed ~~[and not disapproved]~~, it shall be accompanied by a letter of explanation from the filing entity which identifies:

- (1) All changes contained in the newly filed form;
- (2) The form being replaced;
- (3) The date the replaced form was:
 - (a) Approved;
 - (b) Disapproved;
 - (c) ~~[(b)]~~ Withdrawn; or
 - (d) ~~[(e)]~~ Submitted; and
- (4) The effect the changes have upon the policy or the rates applicable to the policy.

Section 7. Rate Revision and Annual Rate Filings. (1) The following shall be included and properly completed in a filing for rate revision or annual rate filing:

- (a) Signed actuarial memorandum, in accordance with 806 KAR 17:070, Sections 3 and 4;
 - (b) New rate sheet, in accordance with 806 KAR 17:070, Section 3; and
 - (c) Forms required by Section 2 of this administrative regulation.
- (2) An appropriate fee pursuant to 806 KAR 4:010, ~~[Section 4(24)]~~, shall be submitted with each filing.

Section 8. Officer Signature. A change of signature of the executing officer on a policy form shall not, because of this change alone, require a new filing.

Section 9. Electronic Filings. (1) A health insurer may file a rate or form electronically through the National Association of Insurance Commissioners' electronic system for rate and form filings via the Web site www.serff.com.

(2) An electronic filing as identified in subsection (1) of this section shall be in lieu of a paper filing.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) Form HIPMC-F1, "Face Sheet and Verification Form", 07/2020 [07/2008] edition;
- (b) Form HIPMC-F11, Health Rate Summary Sheet – Form Filings, 07/2020 edition; ~~[Form HIPMC-F2, "Health Policy Forms Filing Certification Privilege Program Form", 07/2008 edition;]~~
- (c) Form HIPMC-R4, "Individual Health Forms Actuarial Certification Form", 07/2008 edition; ~~[(d) Form HIPMC-F35, "Health Benefit Plan Summary Sheet Form Filings", 07/2008 edition;]~~
- (d) ~~[(e)]~~ Form HIPMC-R36, "Rate Filing Information Form", 07/2020 [07/2008] edition; and
- (e) ~~[(f)]~~ Form HIPMC-F16, "Additional Health Information Request", 07/2008 edition; ~~[(g) Form HIPMC-RF-25, "Basic Health Benefit Plan Summary Sheet Form and Rate Filings", 07/2008 edition; and~~
- (h) Limited Health Service Benefit Plan Summary Sheet – Form Filings, HIPMC-F37, 07/2008 edition;

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Department of Insurance, Mayo-Underwood Building, 500 Mero Street [245 West Main Street], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the department's Web site at: <http://insurance.ky.gov>.

SHARON P. CLARK, Commissioner
KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: December 21, 2020

FILED WITH LRC: December 23, 2020 at 11:59 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on March 22nd, 2021 at 500 Mero Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on March 31st, 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: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email abigail.gall@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Abigail Gall

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes rate and form filing procedures for health insurers so the executive director will have relevant information to approve or disapprove a filing.

(b) The necessity of this administrative regulation: KRS 304.14-120 requires all policy forms to be delivered or issued in Kentucky to be filed with and approved by the executive director before being issued or delivered. KRS 304.14-130 requires the executive director to determine whether the benefits in the policy are reasonably related to the premium charged. This administrative regulation is necessary to establish the procedures for insurers to file forms and rates with the executive director in accordance with the law.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the executive director to promulgate reasonable administrative rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS 304.1-010 through 304.99-152. This administrative regulation establishes rate and form filing procedures for health insurers.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist the executive director in the proper review of form and rate filings in accordance with the law.

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

(a) How the amendment will change this existing administrative regulation: The amendments to this administrative regulation are to meet Chapter 13A drafting requirements, and to require health rate a form filings to be accompanied by a Face Sheet and a verification HIPMC-F1.

(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are necessary to meet uniform drafting rules as well as update the process of health filings. There are amendments to exclude certain filing forms as they are no longer necessary in the process established in this administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner to promulgate administrative regulations that and these amendments aid in the effectuation of the Insurance Code.

(d) How the amendment will assist in the effective administration of the statutes: These amendments meet the requirements of Chapter 13A as well as setting the standards for health filings.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this

administrative regulation: This regulation affects the 470 licensed insurers writing health insurance in the state of Kentucky.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: The changes made by this emergency administrative regulation will not create a significant impact to health insurers. The amended regulation would simply detail the rate and form filing procedures for newly created basic health benefit plans.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: The insurers will be responsible for copying and delivery costs. Because insurers are currently required to file this information, the cost to insurers should not increase significantly, if at all.

(c) As a result of compliance, what benefits will accrue to the entities: Meeting the proper filing requirements means filings are more likely to be approved and accepted by the Commissioner.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: No cost is expected.

(a) Initially: Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance.

(b) On a continuing basis: Implementation of this amendment is not anticipated to have an on-going cost on the Department of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks necessary.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation applies to all insurers.

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 as the implementer.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(1)

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation is revenue neutral.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation is revenue neutral.

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

(d) How much will it cost to administer this program for subsequent years? There is no associated cost with this administrative regulation.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation:

PUBLIC PROTECTION CABINET Department of Insurance Division of Property and Casualty (Amendment)

806 KAR 14:090. Grouping for preferential treatment prohibited.

RELATES TO: KRS 304.12-080 [KRS 304.14], 304.13-051, 304.14-120

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: 304.2-110 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 as defined in KRS 304.1-010 [KRS 304.2-110 provides that the Executive Director of Insurance may make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code]. The function of this [This] administrative regulation is to prohibit [prohibits] the grouping of risk[risk]s for the preferential treatment in insurance rates or forms.

Section 1. A [No] form, plan, or policy of insurance covering any group or combination of person[persons] or risk[persons or risks], other than life or health insurance, shall not be written or delivered within or outside the Commonwealth of Kentucky to cover a Kentucky person [persons] or risk [risk]s at any preferred rate or form other than that offered to [persons not in such group, and] the public generally, unless the [such] form, plan, or policy and the rate[rates] or premium[premiums] to be charged [therefor] have been submitted [to] and approved by the Commissioner [Executive Director] of Insurance.

SHARON P. CLARK, Commissioner

KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: December 21, 2020

FILED WITH LRC: December 23, 2020 at 11:17 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on March 22nd, 2021 at 500 Mero Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on March 31st, 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: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email abigail.gall@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Abigail Gall

(1) Provide a brief summary of:

(a) What this administrative regulation does: The function of this administrative regulation is to prohibit risk grouping for

preferential treatment in insurance rates or forms, unless the rates and forms have been submitted and approved by the Commissioner prior.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to ensure fair treatment in insurance rates and forms, in turn, aiding in the effectuation of the Insurance Code provisions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: 304.2-110 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 as defined in KRS 304.1-010.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is being promulgated by the Commissioner to aid in the effectuation of the provisions established in the Insurance Code. This administrative regulation ensures fair and non-preferential treatment in all insurance rates and forms.

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

(a) How the amendment will change this existing administrative regulation: The amendments conform to the requirements in Chapter 13A

(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to meet the requirements of Chapter 13A.222 drafting rules.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments made remove and replace outdated language that does not conform to Chapter 13A. The administrative regulation works to ensure that the grouping of persons for the issuance of insurance policies and the rating of insurance policies is done in a fair manner.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will assist in the effectuation of the administration of cited statutes by ensuring the language of the regulation is easier to read for those affected by the administrative regulation itself.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Insurers writing policies in Kentucky, except health and life policies.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: No insurer should group risks for preferential treatment unless the rate and forms are approved by the Commissioner.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is no cost expected.

(c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance with this regulation, the forms and rates the insurer insurer is proposing to issue in Kentucky will meet requirements for approval by the Department.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: There is no cost to implement this administrative regulation.

(a) Initially: Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance.

(b) On a continuing basis: Implementation of this amendment is not anticipated to have an on-going cost on the Department of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks necessary.

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

personnel is likely unnecessary.

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

(9) TIERING: Is tiering applied? There is no tiering applied because this administrative regulation applies in the same manner to all insurers in the Commonwealth.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department as the implementer.

(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? No revenue is expected.

(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 expected.

(c) How much will it cost to administer this program for the first year? There is no expected 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 expected 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:

PUBLIC PROTECTION CABINET Department of Insurance Division of Property and Casualty (Amendment)

806 KAR 14:110. Dividend plans; filing, participation.

RELATES TO: KRS 304.3-050, 304.24-310, 304.24-320, 304.24-330, 304.24-250, 304.13-010-304.13-390, 304.14-120, 304.12-010, 304.12-080-304.12-110

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. [KRS 304.2-110 provides that the Executive Director of Insurance may make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code.] The function of this [This] administrative regulation is to permit [permits the] participation of the insured [by insureds] in writing dividend premium plans [premiums] under a "participating" policy [policies] and shall require [requires] a filing of the [such] dividend plan [plans] with the commissioner [executive director].

Section 1. To [It having been demonstrated that improved safety measures and improved claims handling may result in

savings in expenses and in losses over and above those levels anticipated, and it having also been demonstrated that it is possible, in certain cases, for an insurer to identify and group the policyholders contributing to such savings into specific classifications; to further encourage [such] savings in the net cost of insurance protection, insurers authorized to transact [such] insurance in this state may, after complying with the following conditions, issue a policy [policies] allowing the insured [entitled] to participate [from time to time] in the dividend earning of the insurer [earnings of the insurer through dividends]. This administrative regulation shall not apply to dividends to shareholders in a stock company or [companies not] to the general dividends to a policyholder [policyholders] in a mutual company [companies].

Section 2. (1) An [Such] insurer shall file or refile with the commissioner [executive director], in [substantially] the same manner as a rate filing, every proposed dividend plan and every modification of a dividend plan [thereof], including discontinuance, which it intends [proposes] to use, accompanied by the information that [upon which the insurer] supports the [such] filing.

(2)(a) [(1)] A filing shall not [No such filing shall] propose [in this state] both a participating and nonparticipating policy [policies] for the same class of risk. Any classification by the insurer of its participating policy [policies] and of risks assumed under that policy [thereunder] which the insurer may make shall be reasonable and nondiscriminatory. In determining the proposed eligibility requirements for a dividend plan, the underlying standard shall be the demonstrated or demonstrable success in savings in expenses or in losses [over and] above levels anticipated in previously filed rates.

(b) Any proposed dividend plan shall [must] be made available to all insureds meeting the eligibility requirements set forth in the dividend plan. [To facilitate this and to broaden the availability of such programs.]

(c) An agent appointed [agents licensed] by one or more companies of a group of affiliated insurers shall also be appointed [licensed] by the company within the [such] group authorized to write participating [such] insurance policies [if the company for which such agent is then licensed does not write such participating policies]. Notice and details of the availability of the program in Kentucky shall be given to all licensed agents within the authorized group [of the group's licensed agents].

(3) [(2)] If the [such] filing is an initial filing or the facts or the laws have changed since a prior filing has been used, the filing shall contain either satisfactory evidence of proper specific charter [(as defined in KRS 304.3-050)], authority to issue a participating policy [policies], or satisfactory evidence that unless otherwise provided by its charter, the laws of its domicile provide that it may issue a policy [policies] entitled to participate in the earnings of the insurer through dividends.

(4) [(3)] The [Such] filing shall also contain proposed policy provisions or proposed policy endorsement forms for the payment of dividends which shall further provide that all [such] dividends [must] be paid by the insurer directly to the insured, and that no [such] dividends may be assigned to associations or others, except upon assignment of the policy for value. If the provision for the payment of dividends is made by separate endorsement rather than incorporated in the policy form, the [such] endorsement shall [must] be attached to each [and every such] policy issued.

Section 3. (1) Dividends to [such] participating policies shall be paid only out of that part of [such] surplus funds that derives [which is derived] from any realized net profits from the insurer's business. No [such] insurer or its agents shall guarantee or promise to a policyholder or prospective policyholder the amount of [of] percentage of dividends to be paid. No [and no] dividend, otherwise earned, shall be made contingent upon payment of renewal premium on any policy, or membership in, or affiliation with, any association.

(2) All brochures and advertising material shall affirmatively and clearly set forth that dividends are not guaranteed and that all policyholders are eligible for the dividend program whether or not

they are members of, or affiliated with, any association.

SHARON P. CLARK, Commissioner
KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: December 21, 2020

FILED WITH LRC: December 23, 2020 at 11:17 .a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on March 22nd, 2021 at 500 Mero Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on March 31st, 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: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email abigail.gall@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Abigail Gall

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation is to permit insureds participation in "participating" policies to file the dividend plan with the Commissioner.

(b) The necessity of this administrative regulation: This administration requires insurers to submit a proposed dividend plan and its modifications that it intends to use as well as supporting documents to the Commissioner for regulatory purposes of the department.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effectuation of the Insurance Code, by offering the department more information to regulate insurers offering "participating" policies offering dividend plans.

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

(a) How the amendment will change this existing administrative regulation: The amendments to this administrative regulation are changes required by Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The necessity of these amendments are established in the Chapter 13A.222, in which the drafting requirements are set forth. These requirements ensure the administrative regulation language to be uniform and simple for those needing to reference.

(c) How the amendment conforms to the content of the authorizing statutes: Chapter 13A gives a very detailed explanation of the formatting rules as well as prohibited words and phrases, so these amendments remove old language and replace with acceptable unambiguous language.

(d) How the amendment will assist in the effective administration of the statutes: The amendments made to this administrative regulation meet Chapter 13A guidelines, which means the administrative regulation meets standards that are more effective. With clearer language 304.1-010 is more effective and thus, allowing the Department to regulate more effectively.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any insurers offering dividend plans.

(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: Insurers must submit, in a filing format the dividend plan intended for us and the plans supporting documentation to the Commissioner.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is no cost associated.

(c) As a result of compliance, what benefits will accrue to the entities: The insurer will be approved to offer the plan or not.

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

(a) Initially: Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance.

(b) On a continuing basis: Implementation of this amendment is not anticipated to have an on-going cost on the Department of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks necessary.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because the requirements in this administrative regulation applies to all insurers offering dividend plans.

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 as the implementer.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation is revenue neutral.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation is revenue neutral.

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

(d) How much will it cost to administer this program for subsequent years? There is no expected cost for implementation.

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

Revenues (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation:

PUBLIC PROTECTION CABINET

Department of Insurance

Division of Health and Life Insurance and Managed Care (Amendment)

806 KAR 14:121. Minimum standards for the readability and intelligibility of insurance contracts.

RELATES TO: KRS 304.14-130, 304.14-420-304.14-450

STATUTORY AUTHORITY: KRS 304.2-110, 304.14-420

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-

110 authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. [~~KRS 304.2-110 provides that the Executive Director of Insurance may adopt reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code.~~] KRS 304.14-420(2) requires the Commissioner [~~Executive Director~~] of Insurance to promulgate administrative regulations to establish the minimum standards for [the] readability and intelligibility of insurance contracts. KRS 304.14-450(1) requires the Commissioner [~~Executive Director~~] of Insurance to promulgate administrative regulations establishing a list of type face styles acceptable for use in insurance contracts. The function of this administrative regulation is to establish the list of type face styles acceptable for the use in insurance contracts, and the readability and intelligibility of insurance contracts.

Section 1. Definitions. As used in this administrative regulation:

(1) "Commissioner" is defined by KRS 304.1-050(1). [~~"Executive director" means the Executive Director of the Kentucky Office of Insurance;~~]

(2) "Personal lines insurance" means those personal lines of insurance established [~~designated~~] in KRS 304.14-420(1);

(3) "Amended" or "renewed" do not include changes or extension of term that [which] are contractually granted and exercised by the policyowner or insured under the provisions of the policy;

(4) "Text" means all printed matter except:

(a) The name and address of the insurer, the name, number, or title of the policy, the table of contents or index, captions and subcaptions, specification or declarations pages, schedules, or tables; and

(b) Any policy language that [~~which~~] is drafted to conform to the requirements of any federal law, regulation, or agency interpretation, any medical terminology, and any policy language required by law or regulation, but the insurer shall certify that the language is entitled to be excepted from the definition of "text" as set forth in this paragraph.

Section 2. Scope.

(1) This administrative regulation shall apply [~~applies~~] to all personal lines insurance policies delivered, issued for delivery, amended, or renewed in Kentucky on and after one (1) year from the effective date of this administrative regulation.

(2) This administrative regulation shall not apply to policies issued for conversion from policies not subject to this administrative regulation.

Section 3. Minimum Standards for Legibility. No personal lines insurance policy shall be delivered, issued for delivery, amended, or renewed in Kentucky unless it is printed, except for specification or declarations pages, schedules, and tables, in not less than ten (10) point type, one (1) point leaded.

Section 4. (1) The following type face styles shall be acceptable for personal lines insurance policies:

- (a) Aldus
- (b) Alternate Gothic No. 3
- (c) American Typewriter Light
- (d) American Typewriter Medium
- (e) Americana

(f) Andover (Palatino)
 (g) Antique Olive Light
 (h) Aster
 (i) Auriga
 (j) Avant Garde Light
 (k) Avant Garde Book
 (l) Baskerville
 (m) Bembo
 (n) Benguiat Book
 (o) Bodoni
 (p) Bodoni Book
 (q) Bookman
 (r) Caledonia
 (s) Candida
 (t) Caslon Old Face No. 2
 (u) Century Expanded
 (v) Century Schoolbook
 (x) Chelmsford (Optima)
 (y) Clarendon Light
 (z) Clearface
 (aa) Crown (Century)
 (bb) Egyptian
 (cc) Egyptian Light
 (dd) Electra
 (ee) Eurostile
 (ff) Fairfield Medium
 (gg) Friz Quadrata
 (hh) Garamond
 (ii) Garamond No. 3
 (jj) Goudy Oldstyle
 (kk) Hanover (Melior)
 (ll) Helvetica Light
 (mm) Helvetica
 (nn) Helvetica Condensed
 (oo) Highland (Calendonia)
 (pp) Iridium
 (qq) Italia Book
 (rr) Janson
 (ss) Korinna
 (tt) Megaron Light (Helvetica Light)
 (uu) Megaron Medium (Helvetica Medium)
 (vv) Melior
 (ww) Memphis Light
 (xx) Memphis Medium
 (yy) Monticello
 (zz) News Gothic
 (aaa) Optima
 (bbb) Orion
 (ccc) Palatino
 (ddd) Primer
 (eee) Quorum Light
 (fff) Quorum Book
 (ggg) Rotation
 (hhh) Sabon
 (iii) Schoolbook
 (jii) Serif Gothic Light
 (kkk) Souvenir
 (lll) Souvenir Light
 (mmm) Stymie Medium
 (nnn) Stymie Light
 (ooo) Tiffany Light
 (ppp) Tiffany Medium
 (qqq) Times Roman
 (rrr) Trade Gothic Light
 (sss) Trade Gothic
 (ttt) Trade Gothic Condensed
 (uuu) Trade Gothic Extended
 (vvv) Triumvirant
 (www) Trump
 (xxx) Trump Medieval
 (yyy) Univers Light
 (zzz) Univers Medium
 (aaa) Univers No. 45

(bbb) Univers No. 46
 (ccc) Univers No. 55
 (ddd) Univers No. 56
 (eee) Univers No. 57
 (fff) Univers 45 Light

(2) ~~[This list is not intended to be exhaustive, but is an indication of the legibility of a type face style that is required.]~~ Any type face style selected other than those listed in subsection (1) of this section shall not be used unless approved by the commissioner ~~[executive director]~~. Extreme type styles including ~~[such as]~~ "Old English" or heavy block shall ~~[are]~~ not be acceptable.

(3) Italics, bold face, and contrasting styles may be used to emphasize important or technical terms and for captions. When two (2) or more type face styles are used, they shall be visually compatible.

Section 5. Minimum Standards for Intelligibility.

(1) A ~~[No]~~ personal lines insurance policy shall not be delivered, issued for delivery, amended, or renewed in this state unless the text achieves a minimum score of forty (40) on the Flesch reading ease test or an equivalent score on any other reading test approved by the commissioner ~~[executive director]~~ for use as an alternative that is comparable in result to the Flesch reading ease test. ~~[if it is comparable in result to the Flesch reading ease test.]~~

(2) For the purposes of this section, a Flesch reading ease test score shall be measured by the following method:

(a) For policy forms containing 10,000 words or less of text, the entire policy form shall be analyzed. For policy forms containing more than 10,000 words, the readability of two (2) 200 word samples per page may be analyzed instead of the entire policy form. The samples shall be separated by at least twenty (20) printed lines. Any endorsement made a part of the policy may, at the discretion of the insurer ~~[insurer's option]~~, be scored separately or as part of the policy.

(b) The number of words and sentences in the text shall be counted and the total number of words divided by the total number of sentences. The figure obtained shall be multiplied by a factor of 1.015.

(c) The total number of syllables shall be counted and divided by the total number of words. The figure obtained shall be multiplied by a factor of 84.6.

(d) The sum of the figures computed under paragraphs (b) and (c) of this subsection subtracted from 206.835 equals the Flesch reading ease score for the policy form.

(e) For the purposes of paragraphs (b), (c), and (d) of this subsection, the following procedures shall be used:

1. A contraction, hyphenated word, or numbers and letters, when separated by spaces, shall be counted as one (1) word;

2. A unit of words ending with a period, semicolon, or colon, but excluding headings and captions, shall be counted as one ~~(1)~~ sentence; and

3. A syllable means a unit of spoken language consisting of one (1) or more letters of words as divided by an accepted dictionary. Where the dictionary shows two (2) or more equally acceptable pronunciations of a word, the pronunciation containing fewer syllables may be used.

(3) All policy form filings subject to this administrative regulation shall be accompanied by a certificate signed by an officer of the insurer or other insurer representative authorized by the board of directors stating that the policy form meets the minimum reading ease score on the test used or stating that the score is lower than the minimum required, but the policy form may be approved in accordance with subsection (4) of this section. ~~[To confirm the accuracy of any certification, the executive director may require the submission of further information to verify the certification in question.]~~

(4) The commissioner ~~[executive director]~~ may approve a policy form filing ~~[authorize]~~ with a lower reading ease test score than the Flesch reading ease score required in subsection (1) of this section if ~~[whenever in his sole discretion,]~~ he finds that a lower score:

- (a) Will provide a more accurate reflection of the readability of a policy form;
- (b) Is warranted by the nature of a particular policy form or type or class of policy forms; or
- (c) Is caused by certain policy language that [which] is drafted to conform to the requirements of any federal or state law, regulation, or agency interpretation.[]

~~Section 6. Severability; Effective Date. (1) If any provision of this administrative regulation or the application of this administrative regulation to any person or circumstance is for any reason held to be invalid, the remainder of the administrative regulation and the application of such provision to other persons or circumstances shall not be affected thereby.~~

~~(2) This administrative regulation shall become effective upon completion of its review pursuant to KRS Chapter 13A.]~~

SHARON P. CLARK, Commissioner
KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: December 21, 2020

FILED WITH LRC: December 23, 2020 at 11:17 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on March 22nd, 2021 at 500 Mero Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on March 31st, 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: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email abigail.gall@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Abigail Gall

(1) Provide a brief summary of:

(a) What this administrative regulation does: __This administrative regulation is to establish the list of type face styles acceptable for the use in insurance contracts, and the readability and intelligibility of insurance contracts.

(b) The necessity of this administrative regulation: This administrative regulation sets for the standards of readability and intelligibility of insurance contracts.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.14-420(2) requires the Commissioner of Insurance to promulgate administrative regulations to establish the minimum standards for readability and intelligibility of insurance contracts. KRS 304.14-450(1) requires the Commissioner of Insurance to promulgate administrative regulations establishing a list of type face styles acceptable for use in insurance contracts.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 304.2-110 authorizes the Commissioner to promulgate administrative regulations to aide in the effectuation of the Insurance Code.

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

(a) How the amendment will change this existing administrative regulation: The amendments to this administrative regulation are changes required by Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The necessity of these amendments are established in the Chapter 13A.222, in which the drafting requirements are set

forth. These requirements ensure the administrative regulation language to be uniform and simple for those needing to reference.

(c) How the amendment conforms to the content of the authorizing statutes: Chapter 13A gives a very detailed explanation of the formatting rules as well as prohibited words and phrases, so these amendments remove old language and replace with acceptable unambiguous language.

(d) How the amendment will assist in the effective administration of the statutes: The amendments made to this administrative regulation meet Chapter13A guidelines, which means the administrative regulation meets standards that are more effective. With clearer language 304.1-010 is more effective and thus, allowing the Department to regulate more effectively.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All insurers writing business in the state of Kentucky.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Insurers writing insurance contracts must use the listed fonts and flesch score model established in the administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is no cost associated for the entities.

(c) As a result of compliance, what benefits will accrue to the entities: Insurers will meet readability and intelligibility requirements established by statute and regulation, thus, insurance contracts have a better chance of being approved.

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

(a) Initially: Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance.

(b) On a continuing basis: Implementation of this amendment is not anticipated to have an on-going cost on the Department of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks necessary.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation applies to all insurers writing insurance contracts.

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 as the implementer.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110, 304.14-420

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

counties, fire departments, or school districts) for the first year? This administrative regulation is revenue neutral.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation is revenue neutral.

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

(d) How much will it cost to administer this program for subsequent years? There is no expected cost to administer this program.

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

Revenues (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation:

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Health and Life Insurance and Managed Care
(Amendment)

806 KAR 15:050. Reporting and general requirements for settlement providers and brokers.

RELATES TO: KRS 304.12-020, 304.14-120, 304.14-450, 304.14-450, 304.15-020, 304.15-035, 304.15-700-304.15-725, 304.99-020

STATUTORY AUTHORITY: KRS 304.15-715(2), 304.15-720
NECESSITY, FUNCTION, AND CONFORMITY: [EO-2008-507, signed June 6, 2008, and effective June 16, 2008, created the Department of Insurance headed by a commissioner.] KRS 304.15-715 requires a request for verification of coverage to be made on a form approved by the commissioner [executive director]. KRS 304.15-720 authorizes the commissioner [executive director] to promulgate administrative regulations [to implementing the provisions of] KRS 304.15-700 to 304.15-720. The function of this administrative regulation is to establish [establishes] the standard [standards] for life settlement contracts and other forms, the information to be included in disclosures and reports, advertising standards, and general rules and prohibited practices with respect to life settlement contracts, life settlement providers, and life settlement brokers.

Section 1. Definitions. As used in this administrative regulation:

(1) "Commissioner" means the Commissioner of the Department of Insurance as defined by KRS 304.1-050(1) [means the Commissioner of the Department of Insurance].

(2) "Department" means the Department of Insurance as defined by KRS 304.1-050(2) [means the Department of Insurance].

(3) "Individual identification data" means an insured's address, telephone number, facsimile number, electronic mail address, photograph or likeness, employer, employment status, Social Security number, or other information that is likely to lead to the identification of the insured.

(4) "Insured" means the person covered under the policy being considered for settlement.

(5) "Insurer" is defined by [in] KRS 304.1-040.

(6) "Life expectancy" means the mean of the number of months the individual insured under the life insurance policy to be settled can be expected to live as utilized by the life settlement provider pursuant to the life settlement contract considering medical records and appropriate experiential data.

(7) "Net death benefit" means the amount of the life insurance policy or certificate to be settled less any outstanding debts or liens.

(8) "Owner" is defined by [in] KRS 304.15-020(19).

Section 2. General Rules. (1) A life settlement provider shall not unfairly discriminate in making life settlements on the basis of

race, age, sex, national origin, creed, religion, occupation, or marital or family status.

(2) A life settlement provider shall not unfairly discriminate between an owner with a dependent and an owner with no dependent.

(3) A life settlement provider shall not solicit investors who may influence the treatment of the illness of the insured whose coverage would be the subject of the investment.

(4) Within three (3) days of execution of the life settlement contract, the life settlement provider shall mail to the owner copies of the following:

- (a) The executed life settlement contract;
- (b) The application for the life settlement contract; and
- (c) The statement from the licensed attending physician that the owner is of sound mind and not under undue influence or constraint.

(5) Payment of the proceeds of a life settlement pursuant to KRS 304.15-710 (1)(g) shall be by means of wire transfer to an account designated by the owner or by certified check or cashier's check.

(6) Payment of the proceeds to the owner pursuant to a life settlement shall be made in a lump sum, except the life settlement provider may purchase an annuity or similar financial instrument issued by a licensed insurance company or bank, or an affiliate of either. The life settlement provider or escrow agent shall not retain a portion of the proceeds not disclosed or described in the life settlement contract without written consent of the owner.

(7) A life settlement provider or life settlement broker shall not pay or offer to pay any finder's fee, commission, or other compensation to any insured's physician, or to an attorney, accountant, or other person providing medical, legal, or financial planning services to the owner, or to any other person acting as an agent of the owner, other than a life settlement broker, with respect to the life settlement.

(8) If a life settlement provider enters into a life settlement that allows the owner to retain an interest in the insurance policy, the life settlement contract shall contain the following provisions:

(a) A provision that the life settlement provider will affect the transfer of the amount of the death benefit only to the extent or portion of the amount settled. Benefits in excess of the amount settled shall be paid directly to the owner's beneficiary by the insurance company;

(b) A provision that the life settlement provider shall, upon acknowledgment of the completion of the transfer, either:

- 1. Advise the owner, in writing, that the insurance company has confirmed the owner's interest in the policy; or
- 2. Send, to the owner, a copy of the instrument sent from the insurance company to the life settlement provider that acknowledges the owner's interest in the policy; and

(c) A provision that apportions the premiums to be paid by the life settlement provider and the owner, provides premium payment terms and nonforfeiture options no less favorable, on a proportional basis, than those included in the policy.

(9) If the insured is a minor child, disclosures to and permission of a parent or legal guardian satisfy the requirements KRS 304.15-700 through KRS 304.15-720 and this administrative regulation.

Section 3. Life Settlement Contract and Form Approval. (1) A life settlement form submitted to the commissioner for approval shall:

- (a) Be filed in accordance with KRS 304.14-120;
- (b) Provide space for identifying the parties;
- (c) Provide space for including the amount of the proceeds payable to the owner; and
- (d) Provide that the contract shall [is to] be governed under the laws of the Commonwealth of Kentucky, and that the courts of the Commonwealth of Kentucky shall be the exclusive forum for any judicial remedies sought by either party.

(2) Each life settlement contract or other form submitted for approval shall:

- (a) Be accompanied by the filing fee prescribed by 806 KAR 4:010;
- (b) Have a form number in the lower left corner;

(c) Meet the readability standards established by KRS 304.14-440; and

(d) Meet the legibility standards established by KRS 304.14-450, except the disclosures required by KRS 304.15-710 shall be in at least twelve (12) point type.

(3) The commissioner may review any previously approved life settlement contract or other form for compliance with KRS 304.15-700 to 304.15-725 and this administrative regulation.

Section 4. Filing Requirements for Advertising of Life Settlements.

(1) This section shall apply to advertising of life settlement contracts, or related products or services intended for dissemination in Kentucky, including Internet advertising viewed by persons located in Kentucky.

(2) A life settlement licensee shall establish and maintain a system of control over the content, form, and method of dissemination of advertisements of its contracts, products, and services. A system of control shall include routine notification, at least once a year, to persons authorized by the life settlement licensee to disseminate advertisements, of the requirements and procedures for review by the department prior to the use of any advertisements not furnished by the life settlement licensee.

(3) A life settlement licensee shall provide a copy of any advertising for life settlements intended for use in Kentucky whether through written, radio, or television medium to the commissioner for review in accordance with KRS 304.12-020.

(4) An advertisement shall be truthful and not misleading in fact or by implication. The form and content of an advertisement shall be sufficiently complete and clear ~~so as~~ to avoid deception. It shall not have the capacity or tendency to mislead or deceive. If ~~Whether~~ an advertisement has the capacity or tendency to mislead or deceive shall be determined by the commissioner from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

(5) The information required to be disclosed under this section shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so it shall not ~~as to~~ be confusing or misleading.

(6) The following rules shall govern the advertisement of life settlements:

(a) An advertisement shall not omit material information or use words, phrases, statements, references, or illustrations if the omission or use has the capacity, tendency, or effect of misleading or deceiving owners, as to the nature or extent of any benefit, loss covered, premium payable, or state or federal tax consequence. It shall not be a remedy of misleading statements to make the life settlement contract available for inspection prior to completion of the sale, or offering to refund the payment if the owner is not satisfied, or including in the life settlement contract a "free look" period that satisfies or exceeds legal requirements.

(b) An advertisement shall not use the name or title of a life insurer or a life insurance policy unless the advertisement has been approved by the insurer.

(c) An advertisement shall not state or imply that interest charged on an accelerated death benefit or a policy loan is unfair, inequitable, or in any manner an incorrect or improper practice.

(d) The words "free," "no cost," "without cost," "no additional cost," "at no extra cost," or words of similar import shall not be used with respect to a benefit or service unless true. An advertisement may specify the charge for a benefit or a service, may state that a charge is included in the payment, or may use other similar language.

(e) When a testimonial, appraisal, or analysis is used in an advertisement, the testimonial, appraisal, or analysis shall:

1. Be genuine;
2. Represent the current opinion of the author;
3. Be applicable to the life settlement contract product or service advertised;
4. Be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective owners as to the nature or scope of the testimonial, appraisal, analysis, or endorsement;

5. Prominently disclose in the advertisement if the individual making the testimonial, appraisal, analysis, or endorsement has a financial interest in the life settlement provider or related entity as a stockholder, director, officer, employee, or otherwise, or receives a benefit other than required union scale wages; and

6. Not state or imply that a life settlement contract benefit or service has been approved or endorsed by a group of individuals, society, association, or other organization unless that is the fact and unless any relationship between an organization and the life settlement licensee is disclosed. If the entity making the endorsement or testimonial is owned, controlled, or managed by the life settlement licensee, or receives any payment or other consideration from the life settlement licensee for making an endorsement or testimonial, that fact shall be disclosed in the advertisement.

(f) In using testimonials, appraisals, or analysis, the life settlement licensee makes as its own all the statements contained therein, and the statements are subject to all the provisions of this section.

(g) If an endorsement refers to benefits received under a life settlement contract, all pertinent information shall be retained for a period of not less than five (5) years following creation of the material or the completion of the purpose for which it was created, whichever shall occur last.

(h) An advertisement shall not contain statistical information unless it accurately reflects recent and relevant facts. The source of all statistics used in an advertisement shall be identified.

(i) An advertisement shall not disparage insurers, life settlement providers, life settlement brokers, insurance producers, policies, services, or methods of marketing.

(j) The name of the life settlement licensee shall be identified in all advertisements about the licensee or its life settlement contracts, products, or services, and if any specific life settlement contract is advertised, the life settlement contract shall be identified either by form number or some other appropriate description. If an application is part of the advertisement, the name of the life settlement provider shall be shown on the application.

(k) An advertisement shall not use a trade name, group designation, name of the parent company of a life settlement licensee, name of a particular division of the life settlement licensee, service mark, slogan, symbol, or other device, or reference without disclosing the name of the life settlement licensee, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the life settlement licensee, or to create the impression that a company other than the life settlement licensee would have any responsibility for the financial obligation under a life settlement contract.

(l) An advertisement shall not use any combination of words, symbols, or physical materials that by their content, phraseology, shape, color, or other characteristics are so similar to a combination of words, symbols, or physical materials used by a government program or agency or otherwise appear to be of such a nature that they tend to mislead prospective owners into believing that the solicitation is in some manner connected with a government program or agency.

(m) An advertisement may state that a life settlement licensee is licensed in the state where the advertisement appears, provided it does not exaggerate that fact or suggest or imply that competing life settlement licensee may not be so licensed. The advertisement may ask the audience to consult the licensee's Web site or contact the department to find out if Kentucky requires licensing and, if so, whether the life settlement provider or life settlement broker is licensed.

(n) An advertisement shall not create the impression that the life settlement provider, its financial condition or status, the payment of its claims, or the merits, desirability, or advisability of its life settlement contracts are recommended or endorsed by a government entity.

(o) The name of the actual licensee shall be stated in all of its advertisements. An advertisement shall not use a trade name, group designation, name of an affiliate or controlling entity of the licensee, service mark, slogan, symbol, or other device in a manner that would have the capacity or tendency to mislead or

deceive as to the true identity of the actual licensee or create the false impression that an affiliate or controlling entity would have responsibility for the financial obligation of the licensee.

(p) An advertisement shall not create the impression that a division or agency of the state or of the U. S. government endorses, approves or favors:

1. A life settlement licensee or its business practices or methods of operation;

2. The merits, desirability, or advisability of a life settlement contract;

3. A life settlement contract; or

4. A life insurance policy or life insurer.

(q) If the advertiser emphasizes the speed with which the settlement will occur, the advertising shall disclose the average time frame from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the owner.

(r) If the advertising emphasizes the dollar amounts available to owners, the advertising shall disclose the average purchase price as a percent of face value obtained by owners contracting with the licensee during the past six (6) months.

Section 5. Standards for Evaluation of Reasonable Payments for Terminally or Chronically-Ill Insureds. In order to ensure that owners receive a reasonable return for settling an insurance policy, the return for settling a policy shall be no less than the following payouts for insureds that are terminally or chronically ill:

(1) If an insured's life expectancy is less than six (6) months, eighty (80) percent of the minimum percentage of face value, reduced by any outstanding loans received by the owner;

(2) If an insured's life expectancy is at least six (6) months, but less than twelve (12) months, seventy (70) percent of the minimum percentage of face value, reduced by any outstanding loans received by the owner;

(3) If an insured's life expectancy is at least twelve (12) months, but less than eighteen (18) months, sixty-five (65) percent of the minimum percentage of face value, reduced by any outstanding loans received by the owner;

(4) If an insured's life expectancy is at least eighteen (18) months but less than twenty-five (25) months, sixty (60) percent of the minimum percentage of face value, reduced by any outstanding loans received by the owner; and

(5) If an insured's life expectancy is twenty-five (25) months or more, the owner shall receive at least the greater of the cash surrender value or accelerated death benefit in the policy.

Section 6. Prohibited Practices. (1) Except for a subpoena issued by the commissioner, if a life settlement provider or broker is served with a subpoena compelling the life settlement provider or broker to produce records containing individual identification data, the life settlement provider or broker shall notify the owner and the insured within five (5) business days after receiving notice of the subpoena. Notice shall be sufficient if delivered to the last known address of the owner and the insured.

(2) A life settlement broker shall not seek or obtain any compensation from the owner in connection with a life settlement transaction prior to performing any services.

Section 7. Insurance Company Practices. (1) Life insurance companies authorized to do business in this state shall respond to a request for verification of coverage from a life settlement provider or a life settlement broker within thirty (30) calendar days of the date a request is received, subject to the receipt of the Verification of Coverage for Life Insurance Policies Form VOC, which has been completed by the life settlement provider or the life settlement broker in accordance with the instructions on the form.

(2) A life insurance company shall not charge a fee for responding to a request for information from a life settlement provider or life settlement broker in compliance with this section in excess of any usual and customary charges to policyholders or certificate holders for similar services.

(3) The life insurance company shall send an acknowledgement of receipt of the request for verification of coverage to the policyholder or certificate holder the

acknowledgment shall contain a general description of any accelerated death benefit that is available under a provision of or rider to the life insurance contract.

(4) A life insurance company shall not require the owner to sign any request for change in a policy or a group certificate from a life settlement provider that is the owner or assignee of the insured's insurance coverage, unless the owner has ownership, assignment, or irrevocable beneficiary rights under the policy. In that situation, the life settlement provider shall provide timely notice to the owner that a settlement transaction on the policy has occurred. Notice shall be provided within fifteen (15) calendar days of the change in a policy or group certificate.

Section 8. Disclosure. (1) The life settlement broker shall provide a copy of the life settlement disclosure Form LS 7 and the "Kentucky Consumer Guide to Understanding Life Settlements" to the owner on or before the date that the life settlement broker offers or advertises the availability of the owner's life insurance policy, introduces the owner to a life settlement provider, or offers or attempts to negotiate a life settlement between an owner and a life settlement provider.

(2) If there is no life settlement broker involved in the life settlement transaction, the life settlement provider shall provide the life settlement disclosure Form LS 7 and the "Kentucky Consumer Guide to Understanding Life Settlements" to the owner on or before the date that the viatical settlement contract is signed by each party to the contract.

Section 9. Reporting Requirement. (1) On or before March 1 of each calendar year, the licensed life settlement provider shall submit the following:

(a) A report of the life settlement transactions related to Kentucky insureds, which shall be submitted on Form LS 1;

(b) A report of the individual mortality of Kentucky insureds, which shall be submitted on Form LS 2;

(c) A report of the life settlement transactions in all states and territories, which shall be submitted on Form LS 3; and

(d) A certification of the information contained in the reports, which shall be submitted on Form LS 6 and shall be filed with the reports.

(2) The information reported pursuant to subsection (1) of this section shall include the total number of policies for the previous calendar year that were:

(a) Reviewed for consideration by a life settlement provider;

(b) Offered for purchase to an owner of a life insurance policy; and

(c) Purchased by an owner of a life insurance policy.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Consumer Guide to Understanding Life Settlements" 3/2020 edition [(7/2008 edition)];

(b) Form LS 1, "Life Settlement Provider Report - Kentucky Insureds Only" 7/2008 edition [(7/2008 edition)];

(c) Form LS 2, "Individual Mortality Report - Kentucky Insureds Only" 7/2008 edition [(7/2008 edition)];

(d) Form LS 3, "Life Settlement Provider Report - All States and Territories" 7/2008 edition [(7/2008 edition)];

(e) Form LS 6, "Life Settlement Provider Certification Form" 7/2008 edition [(7/2008 edition)]; and

(f) Form LS 7, "The Kentucky Life Settlement Disclosure Form - Notice Regarding Life Settlement Contracts" 3/2020 edition [(7/2008 edition)]; and

(g) Form VOC, "Verification of Coverage for Life Insurance Policies Form" 7/2008 edition [(7/2008 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], Post Office Box 517, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the Department of Insurance Internet Web site at <http://insurance.ky.gov> [<http://doi.ppr.ky.gov>].

SHARON P. CLARK, Commissioner
KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: December 18, 2020

FILED WITH LRC: December 23, 2020 at 4:18 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on March 22nd, 2021 at 500 Mero Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on March 31st, 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: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email abigail.gall@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Abigail Gall

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the standards for life settlement contracts and other forms, the information to be included in disclosures and reports, advertising standards, and general rules and prohibited practices with respect to life settlement contracts, life settlement providers and life settlement brokers.

(b) The necessity of this administrative regulation: This regulation is necessary to provide additional clarification of the life settlement statutes and to prescribe the processes for doing business as a life settlement broker and a life settlement provider.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.15-720 authorizes the executive director to promulgate administrative regulations to implement the life settlement statutes. KRS 304.15-715 authorizes the executive director to establish a form for life settlement providers to use to request verification of coverage. This regulation aids in the implementation of the life settlement statutes and prescribes the required form to request verification of coverage.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation prescribes the process for approval of forms for use in life settlement transactions, clarifies prohibited practices in life settlement transactions, establishes minimum amounts to be paid to a chronically or terminally ill owner, prescribes required disclosures, sets standards for advertising life settlement services and establishes a reporting mechanism to allow the Department of Insurance to appropriately monitor the industry.

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

(a) How the amendment will change this existing administrative regulation: The amendments to this administrative regulation are changes required by Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The necessity of these amendments are established in the Chapter 13A.222, in which the drafting requirements are set forth. These requirements ensure the administrative regulation language to be uniform and simple for those needing to reference.

(c) How the amendment conforms to the content of the authorizing statutes: Chapter 13A gives a very detailed explanation of the formatting rules as well as prohibited words and phrases, so these amendments remove old language and replace with acceptable unambiguous language.

(d) How the amendment will assist in the effective administration of the statutes: The amendments made to this

administrative regulation meet Chapter 13A guidelines, which means the administrative regulation meets standards that are more effective. With clearer language 304.1-010 is more effective and thus, allowing the Department to regulate more effectively.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the approximately 520 insurers that are licensed to offer life insurance and the approximately 113 licensed life settlement brokers and life settlement providers in the Commonwealth of Kentucky.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Most of the amendments to this administrative regulation are formatting and terminology changes that will not require any new action on behalf of the regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Because most of the changes relate to formatting and terminology changes, there should not be an additional cost to regulated entities in order to comply with the amendments to this administrative regulation. Because the reporting requirement for life settlement brokers was removed, there should be a reduced administrative cost for life settlement brokers.

(c) As a result of compliance, what benefits will accrue to the entities: As a result of compliance with this administrative regulation, regulated entities will be in compliance with the life settlement law in Kentucky and, therefore, not subject to administrative action by the Department. Policyholders seeking to settle life insurance policies can be assured that they are receiving the proper disclosures to make an informed decision..

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

(a) Initially: Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance.

(b) On a continuing basis: Implementation of this amendment is not anticipated to have an on-going cost on the Department of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks necessary.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because the requirements in this administrative regulation applies to all insurers offering dividend plans.

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 as the implementer.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.15-715(2), 304.15-720

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation is revenue neutral.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation is revenue neutral.

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

(d) How much will it cost to administer this program for subsequent years? There is no expected cost for implementation.

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

Revenues (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation:

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Health and Life Insurance and Managed Care
(Amendment)

806 KAR 15:060. Universal life insurance.

RELATES TO: KRS 304.6-120, 304.6-140, 304.6-145, 304.6-150, 304.14-120, 304.15-040, 304.15-300, 304.15-310, 304.15-340, 304.15-342

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 as defined in KRS 304.1-010. ~~[authorizes the Executive Director of the Office 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.]~~ The function of this [This] administrative regulation is to establish [establishes] ~~requirements to [supplement existing administrative regulations on life insurance policies in order to] accommodate the development and issuance of universal life insurance policies.~~

Section 1. Definitions. As used in this administrative regulation:

(1) "Cash surrender value" means the net cash surrender value plus any amounts outstanding as policy loans.

(2) "Commissioner" means the Commissioner of the Department of Insurance as defined by KRS 304.1-050(1) ~~["Executive director" is defined in KRS 304.1-050(1).]~~

(3) "Fixed premium universal life insurance policy" means a universal life insurance policy other than a flexible premium universal life insurance policy.

(4) "Flexible premium universal life insurance policy" means a universal life insurance policy that [which] permits the policyowner to vary, independently of each other, the amount or timing of one (1) or more premium payments or the amount of insurance.

(5) "Guaranteed maturity premium for fixed premium universal life insurance policies" means the premium defined in the policy that at the time of issue, [which at issue] provides the minimum policy guarantees.

(6) "Guaranteed maturity premium" means [that] the level gross premium, that is paid at issue and periodically thereafter over the period which premiums are allowed to be paid, that [which] will mature the policy on the latest maturity date, if any, permitted under the policy, or [otherwise] at the highest age in the valuation mortality table~~[s]~~, for an amount which is in accordance with the policy structure.

(7) "Interest-indexed universal life insurance policy" means any universal life insurance policy in which the interest credits are linked to an external reference.

(8) "Net cash surrender value" means the maximum amount payable to the policyowner upon surrender.

(9) "Policy value" means the amount ~~that shall [to which]~~ separately identify [identified] interest credits and mortality, expense, or other charges ~~[are]~~ made under a universal life insurance policy.

(10) "Universal life insurance policy" means a life insurance policy:

(a) ~~That shall [in which]~~ separately identify [identified] interest credits, other than in connection with dividend accumulations, premium deposit funds, or other supplementary accounts, and mortality and expense charges ~~[are]~~ made to the policy; and

(b) That may provide for other credits and charges, such as charges for the cost of benefits provided by the rider.

Section 2. Application. This administrative regulation shall apply to all individual universal life insurance policies except variable universal life insurance policies.

Section 3. Valuation. (1) Requirements:

(a) The minimum valuation standard for universal life insurance policies shall be the Commissioners Reserve Valuation Method, as described in this section, and the tables and interest rates established in paragraphs (b) through (m) [specified] in this subsection.

(b) The terminal reserves for the basic policy and riders for ~~[which]~~ premiums that are not paid separately as of any policy anniversary shall be equal to the net level premium reserves ~~[calculated pursuant to paragraph (c) of this subsection]]~~, minus the calculations established in [determined pursuant to] paragraphs (h) and (j) of this subsection.

(c) Reserves by the net level premium method shall be equal to the formula " $((d)-(e))r$ ", with:

1. The letter "(d)" equaling the calculation as established in [made pursuant to] paragraph (d) of this subsection;

2. The letter "(e)" equaling the calculation as established in [made pursuant to] paragraph (e) of this subsection; and

3. The letter "r" equaling the calculation as established in [made pursuant to] paragraph (f) of this subsection.

(d) The letter "(d)" shall be determined by calculating the present value of all future guaranteed benefits at the date of valuation.

(e) The letter "(e)" shall be determined by calculating the formula " $PVFB_{ax+t}/ax$ " as established in [required by] this paragraph.

1. " $PVFB$ " shall be the present value of all benefits guaranteed at policy issue assuming future guaranteed maturity premiums are paid by the policyowner and taking into account all guarantees contained in the policy or declared by the insurer.

2. " ax " and " $ax+t$ " shall be present values of an annuity of one (1) per year payable on policy anniversaries beginning at ages " x " and " $x+t$ ", respectively, and continuing until the highest attained age that [which] a premium may be paid under the policy. The letter " x " shall be the policy issue age and the letter " t " shall be the duration of the policy.

3. The guaranteed maturity premium shall be calculated at issue based on all policy guaranteed at issue, excluding guarantees linked to an external referent. The guaranteed maturity premium for fixed premium universal life insurance policies shall be the premium defined in the policy which at policy issue shall provide [provides] the minimum policy guarantees.

(f) The letter "r" shall be:

1. Equal to one (1); or

2. If the policy is a flexible premium policy and the policy value is less than the guaranteed maturity fund, the ratio of the policy value to guaranteed maturity fund.

(g) The guaranteed maturity fund at any duration shall be that amount that [which], together with future guaranteed maturity premiums, will mature the policy based on all policy guarantees at issue.

(h) The numerical value for this paragraph shall be the quantity that results from the formula " $r((a)-(b))ax+t/ax$ ", with:

1. The letter "r" equaling the calculation made pursuant to paragraph (f) of this subsection;

2. The value " $(a)-(b)$ " equaling the calculation made pursuant

to paragraph (i) of this section; and

3. The values for "ax+t" and "ax" established in paragraph (e)2, of this subsection.

(i) The value of "(a)-(b)" shall be as established in KRS 304.6-150(1) for the plan of insurance defined at policy issue by the guaranteed maturity premiums and all guarantees contained in the policy or declared by the insurer.

(j) The numerical value for this paragraph shall be the sum of any additional quantities analogous to paragraph (h) of this subsection which arise because of structural changes in the policy, with each quantity being determined on a basis consistent with that of paragraph (h) of this subsection using the maturity date in effect at the time of the change.

(k) The guaranteed maturity premium, the guaranteed maturity fund and paragraph (e) of this subsection shall be recalculated to reflect any structural changes in the policy. This recalculation shall be done in a manner consistent with the requirements established in this subsection.

(l) Future guaranteed benefits shall be determined by:

1. Projecting the greater of the guaranteed maturity fund and the policy value, taking into account future guaranteed maturity premiums, if any, and using all guarantees of interest, mortality and expense deductions, contained in the policy or declared by the insurer; and

2. Taking into account any benefits guaranteed in the policy or by declaration that [which] do not depend on the policy value.

(m) All present values shall be determined using:

1. An interest rate or rates specified by KRS 304.6-145(2) for policies issued in the same year;

2. The mortality rates specified by KRS 304.6-140 for policies issued in the same year or contained in another table approved by the commissioner [~~executive director~~] for this purpose; and

3. Any other tables needed to value supplementary benefits provided by a rider that [which]-is being valued together with the policy.

(2) Alternative Minimum Reserve.

(a) If, in any policy, the guaranteed maturity premium on any universal life insurance policy is less than the valuation net premium for such policy, calculated by the valuation method actually used in calculating the reserve but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for the contract shall be the greater of:

1. The reserve calculated according to the method, the mortality table, and the rate of interest actually used; or

2. The reserve calculated according to the method actually used by using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the guaranteed maturity premium in each policy year for which the valuation net premium exceeds the guaranteed maturity premium.

(b) For universal life insurance reserves on a net level premium basis, the valuation net premium shall be "PVFB/ax", where "PVFB" and "ax" shall be determined pursuant to subsection(1)(e), (l), and (m) of this section.

(c) For reserves on a Commissioners Reserve Valuation Method, the valuation net premium shall be "PVFB/ax + (9a)-(b)/ax", where "(a)-(b)" shall be determined pursuant to subsection (1)(i) of this section.

Section 4. Nonforfeiture. (1) Minimum cash surrender values for flexible premium universal life insurance policies.

(a) Minimum cash surrender values for flexible premium universal life insurance policies shall be determined separately for the basic policy and any benefits and riders for which premiums are paid separately.

(b) The requirements established in this paragraph shall pertain to a basic policy and any benefits and riders for which premiums are not paid separately.

1. The minimum cash surrender value before adjustment for indebtedness and dividend credits available on a date as of which interest is credited to the policy shall be equal to the accumulation to that date of the premiums paid minus the accumulations to that date of:

a. The benefit charges;

b. The averaged administrative expense charge [charges] for the first policy year and any insurance increase years;

c. The actual [Actual] administrative expense charge [charges] for other years;

d. An initial [Initial] and additional acquisition expense charge [charges] not exceeding the initial or additional expense allowances, respectively;

e. The service [Service] charge [charges] actually made excluding charges for cash surrender or election of a paidup nonforfeiture benefit; and

f. Deductions made for partial withdrawals.

2. All accumulations shall be at the actuarial rate or rates of interest at which interest credits have been made unconditionally to the policy or have been made unconditionally, but for [which] the conditions that have since been met, and minus any unamortized unused initial and additional expense allowances.

3. Interest on the premiums and on all charges referred to in subparagraph 1. of this paragraph shall be accumulated from and to dates consistent with the manner in which interest is credited in determining the policy value.

4. The benefit charge [charges] shall include the charge [charges] made for mortality and the charge [charges] made for riders or supplementary benefits for [which] premiums that are not paid separately.

5. If benefit charges are substantially level by duration and develop low or no cash values, the commissioner [~~executive director~~] shall require higher cash values unless the insurer provides justification that the cash values are appropriate in relation to the policy's other characteristics.

6. An [~~The~~] administrative expense charge [charges] shall include:

a. A charge [Charges] per premium payment;

b. A charge [Charges] per dollar of premium paid;

c. A periodic charge [Periodic charges] per one (1) thousand dollars of insurance;

d. A periodic [Periodic] per policy charge [charges]; and

e. Any other charge [Other charges] permitted by the policy to be imposed without regard to the policyowner's request for the service of the insurer [services].

7. The averaged administrative expense charge [charges] for any year shall be those which would have been imposed in that year if the charge rate or rates for each transaction or period within the year had been equal to the arithmetic average of the corresponding charge rates that [which] the policy states will be imposed in policy years two (2) through twenty (20) in determining the policy value.

8. The initial acquisition expense charge [charges] shall be the excess of the expense charge [charges], other than service charge [charges], actually made in the first policy year over the averaged administrative expense charge [charges] for that year.

9. Additional acquisition expense charge [charges] shall be the excess of the expense charge [charges], other than the service charge [charges], actually made in an insurance-increase year over the averaged administrative expense charge [charges] for that year.

10. An insurance-increase year shall be the year beginning on the date of increase in the amount of insurance by policyowner request or by the terms of the policy.

11. The service charge [Service charges] shall include any charge [charges] permitted by the policy to be imposed as the result of a policyowner's request for a service by the insurer or a [of] special transaction [transactions].

12. The initial expense allowance shall be the allowance established in [~~provided by~~] KRS 304.15-342(1) for a fixed premium, fixed benefit endowment policy with a face amount equal to the initial face amount of the flexible premium universal life insurance policy, with level premiums paid annually until the highest attained age at which a premium may be paid under the flexible premium universal life insurance policy, and maturing on the latest maturity date permitted under the policy.

13. If there is no maturity date in the policy, the highest age in the valuation mortality table shall be used.

14. The unused initial expense allowance shall be the excess

of the initial expense allowance over the initial acquisition expense charge ~~[charges]~~.

15. If the amount of insurance is subsequently increased upon request of the policyowner or by the terms of the policy, an additional expense allowance and an unused additional expense allowance shall be determined on a basis consistent with this paragraph and ~~as established in [with]~~ KRS 304.15-342(5) using the face amount and the latest maturity date permitted at the time under the policy.

16. The unamortized unused initial expense allowance shall be:

a. Calculated during the policy year beginning on the policy anniversary at age "x+t", with "x" equaling the same issue age; and

b. The unused initial expense allowance multiplied by "(ax + t)/ax", with "ax+t" and "ax" being the present values of an annuity of one (1) per year payable on ~~the anniversary of the policy [anniversaries]~~ beginning at ages "x+t" and "x", respectively, and continuing until the highest attained age at which a premium may be paid under the policy, both on the mortality and interest bases guaranteed in the policy.

17. An unamortized unused additional expense allowance shall be the unused additional expense allowance multiplied by a similar ratio of annuities, with "ax" replaced by an annuity beginning on the date as of which the additional expense allowance was determined.

(2) ~~The minimum [Minimum]~~ cash surrender value ~~[values]~~ for ~~a fixed premium universal life insurance policy [policies]~~.

(a) For ~~a fixed premium universal life insurance policy [policies]~~, the minimum cash surrender value ~~[values]~~ shall be determined separately for the basic policy and any benefits and riders for which premiums are paid separately.

(b) The requirements established in paragraph (c) of this subsection shall pertain to a basic policy and any benefits and riders for which premiums are not paid separately.

(c) The minimum cash surrender value before adjustment for indebtedness and dividend credits available on a date as of which interest is credited to the policy shall be equal to "(d)-(e)-(f)-(g)", with:

1. The letter "(d)" equaling the calculation made pursuant to paragraph (d) of this subsection;

2. The letter "(e)" equaling the calculation made pursuant to paragraph (e) of this subsection;

3. The letter "(f)" equaling the calculation made pursuant to paragraph (f) of this subsection;

4. The letter "(g)" equaling the calculation made pursuant to paragraph (g) of this subsection.

(d) The letter "(d)" shall be the present value of all future guaranteed benefits.

(e) The letter "(e)" shall be the present value of future adjusted premiums. The adjusted premiums shall be calculated as ~~established by [described in]~~ KRS 304.15-342. The nonforfeiture net level premium shall be equal to the quantity "PVFB divided by ax".

1. "PVFB" shall be the present value of all benefits guaranteed at ~~policy issue~~ assuming future ~~premium is [premiums are]~~ paid by the policyowner and all guarantees contained in the policy or declared by the insurer.

2. "ax" shall be the present value of an annuity of one (1) per year payable on ~~the anniversary of the policy [policy anniversaries]~~ beginning at age "x" and continuing until the highest attained age at which a premium may be paid under the policy.

(f) The letter "(f)" shall be the present value of any quantities analogous to the nonforfeiture net level premium which arise because of guarantees declared by the insurer after the issue date of the policy. "ax" shall be replaced by an annuity beginning on the date as of which the declaration became effective and payable until the end of the period covered by the declaration.

(g) The letter "(g)" shall be the sum of any quantities analogous to paragraph (e) which arise because of structural changes in the policy.

1. ~~Any future [Future]~~ guaranteed ~~benefit [benefits]~~ shall be determined by:

a. Projecting the policy value, taking into account the future

premiums, and using all guarantees of interest, mortality, and expense deductions contained in the policy or declared by the insurer; and

b. Taking into account any ~~benefit [benefits]~~ guaranteed in the policy or by declaration ~~that [which]~~ do not depend on the policy value.

2. All present values shall be determined using:

a. An interest rate ~~established [specified]~~ by KRS 304.15-342(9) for policies issued in the same year; and

b. The mortality rates ~~established [specified]~~ by KRS 304.15-342(8) for policies issued in the same year or contained in other table ~~that [as]~~ may be approved by the ~~commissioner [executive director]~~ for this purpose.

(3) ~~The minimum [Minimum]~~ paid-up nonforfeiture ~~benefit [benefits]~~.

(a) If a universal life insurance policy provides for the optional election of a paid-up nonforfeiture benefit, it shall have a present value at least equal to the cash surrender value provided for by the policy on the effective date of the election.

(b) The present value shall be based on mortality and interest standards at least as favorable to the policyowner as:

1. In the case of a flexible premium universal life insurance policy, the mortality and interest basis guaranteed in the policy for determining the policy value; or

2. In the case of a fixed premium policy, the mortality and interest standards permitted for paid-up nonforfeiture benefits ~~as established~~ by KRS 304.15-342(8) and (9).

(c) In lieu of the paid-up nonforfeiture benefit, the insurer may substitute, upon request not later than sixty (60) days after the due date of the premium in default, an actuarially equivalent alternative paid-up nonforfeiture benefit which provides a greater amount or longer period of ~~the death benefit [benefits]~~, or, if applicable, a greater amount or earliest payment of ~~the endowment benefit [benefits]~~.

Section 5. Mandatory Policy Provisions. The policy shall provide the following:

(1) A report which shall be sent at least annually to the policyowner to inform the policyowner of the status of the policy.

(a) The end of the current reporting period shall not be more than three (3) months prior to the date of the mailing of the report.

(b) The report shall comply with the requirements established in Section 7 of this administrative regulation;

(2) Notice that the policyholder may request an illustration of ~~the current and future benefits and values~~;

(3) ~~The guarantee [Guarantees]~~ of minimum interest ~~credit [credits]~~ and ~~the maximum mortality and expense charge [charges]~~.

(a) All values and data shown in the policy shall be based on guarantees.

(b) ~~Any figure [Figures]~~ based on nonguarantees shall not be included in the policy;

(4) A general description of the calculation of ~~the cash surrender value [values]~~ including the following information:

(a) The guaranteed maximum expense ~~charge [charges]~~ and ~~the load [loads]~~;

(b) Any limitation on the crediting of additional interest. ~~Any interest credit [Interest credits]~~ shall not remain conditional for a period longer than twenty-four (24) months;

(c) The guaranteed minimum rate or rates of interest;

(d) The guaranteed maximum mortality ~~charge [charges]~~;

(e) Any other guaranteed ~~charge [charges]~~; and

(f) Any surrender or partial withdrawal ~~charge [charges]~~;

(5)(a) If the policyowner has the right to change the basic coverage, any limitation on the amount or timing of the change shall be stated in the policy.

(b) If the policyowner has the right to increase the basic coverage, the policy shall state if ~~if [whether]~~ the additional coverage shall be subject to the same provisions as the original policy;

(6) Written notice to be sent to the policyowner's last known address at least thirty (30) days prior to termination of coverage.

(a) A flexible premium policy shall ~~allow [provide]~~ for a grace period of at least thirty (30) days after lapse.

(b) Unless otherwise defined in the policy, lapse shall occur on that date on which the net cash surrender value is first equal to [equals] zero;

(7) If there is a misstatement of age or sex in the policy, the amount of death benefit shall be that of what [that which] would be purchased by the most recent mortality charge at the correct age or sex; and

(8) If a policy provides for a maturity date, end date, or similar date, the policy shall contain a statement, in close proximity to that date, that it is possible that coverage may not continue to the maturity date even if the scheduled premium is [premiums are] paid in a timely manner.

Section 6. Disclosure of information about the policy being applied for shall follow the standards established in 806 KAR 12:140.

Section 7. Periodic Disclosure to Policyowner. (1)(a) The policy shall provide that the policyowner shall be sent, without charge at least annually, a report which shall inform the policyowner of the status of the policy.

(b) The end of the current report period shall not be more than three (3) months prior to the date of the mailing of the report.

(2) The report shall include the following:

(a) The beginning and end of the current report period;

(b) The policy value at the end of the previous report period and at the end of the current report period;

(c) The total amount that has [amounts which have] been credited or debited to the policy value during the current report period, identifying each by type;

(d) The current death benefit at the end of the current report period on each life covered by the policy;

(e) The net cash surrender value of the policy as of the end of the current report period;

(f) The amount of any outstanding loan [loans], if any, as of the end of the current report period;

(g) For a fixed premium policy [policies], if applicable, a notice to the effect that based on the calculation [calculations] of the guaranteed interest, mortality, and expense load [loads] and the continued scheduled premium payment [payments], the policy's net cash surrender value is at a level that will not maintain insurance in force until the end of the next reporting period; and

(h) For a flexible premium policy [policies], if applicable, a notice to the effect that based on the guaranteed interest, mortality, and expense load [loads], the policy's net cash surrender value will not maintain insurance in force until the end of the next reporting period unless further premium payments are made.

Section 8. The Interest-indexed Universal Life Insurance Policy [Policies]. (1)(a) All information received in accordance with paragraph (c) of this subsection shall be treated confidentially to the extent permitted by law.

(b) The information required by paragraph (c) of this subsection shall be submitted in addition to the requirements established by [of] KRS 304.14-120.

(c) The following information shall be submitted in connection with any filing of an interest indexed universal life insurance policy [policies]:

1. A description of how the interest credit shall be [credits are] determined, including:

a. A description of the index;

b. The relationship between the value of the index and the actual interest rate to be credited;

c. The frequency and timing of determining the interest rate; and

d. The allocation of the interest credit [credits], if more than one (1) rate of interest shall be applied [applies] to different portions of the policy value;

2. The insurer's investment policy, which shall include a description of the following:

a. How the insurer addressed the reinvestment risks;

b. How the insurer plans to address the risk of capital loss on cash outflows;

c. How often the insurer plans to address the risk that appropriate investments may not be available or not available in sufficient quantities;

d. How the insurer plans to address the risk that the indexed interest rate may fall below the minimum contractual interest rate guaranteed in the policy;

e. The amount and type of assets currently held for interest indexed policies;

f. The amount and type of assets expected to be acquired in the future;

3. If policies are linked to an index for a specified period less than to the maturity date of the policy, a description of the method used to determine interest credits upon the expiration of such period;

4. A description of any interest guarantee in addition to or in lieu of the index; and

5. A description of any maximum premium limitations and the conditions under which they apply.

(2) Reporting requirements:

(a) Annually, every insurer shall submit a Statement of Actuarial Opinion by the insurer's actuary similar to the example contained in subsection (3) of this section.

(b) Annually, an insurer shall submit a description of the amount and type of assets currently held by the insurer with respect to its interest-indexed policies.

(c)1. Prior to implementation, a domestic insurer shall submit a description of any material change in the insurer's investment strategy or method of determining the interest credits.

2. A change shall be material if it would:

a. Affect the form or definition of the index; or

b. Significantly change the amount or type of assets held for interest-indexed policies.

(3) Statement of Actuarial Opinion for Interest-Indexed Universal Life Insurance Policies shall state as follows: I,

_____, am (position or relationship to Insurer) for the _____ Name of Life Insurance Company (the Insurer) in the state of _____ (State of Domicile of Insurer) I am a member of the American Academy of Actuaries (or if not, state other qualifications to sign annual statement actuarial options). I have examined the interest-indexed universal life insurance policies of the Insurer in force as of December 31, _____, encompassing _____ number of policies and \$_____ of insurance in force. I have considered the provisions of the policies. I have considered any reinsurance agreements pertaining to the policies, the characteristics of the identified assets, and the investment policy adopted by the Insurer as they affect future insurance and investment cash flows under the policies and related assets. My examination included tests and calculations that I considered necessary to form an opinion concerning the insurance and investment cash flows arising from the policies and related assets. I relied on the investment policy of the Insurer and on projected investment cash flows as provided by _____, Chief Investment Officer of the Insurer. The tests were conducted under various assumptions as to future interest rates, and particular attention was given to those provisions and characteristics that may cause future insurance and investment cash flows to vary with changes in the level of prevailing interest rates. In my opinion, the anticipated insurance and investment cash flows referred to above make a sufficient provision for the contractual obligations of the Insurer under these insurance policies.

_____. Signature of Actuary.[]

~~Section 9. Effective Date. The requirements, implementation, and enforcement of this administrative regulation shall take effect on January 1, 2008.]~~

SHARON P. CLARK, Commissioner

KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: December 21, 2020

FILED WITH LRC: December 23, 2020 at 4:18 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall be held at 9:00 a.m. on March 22nd, 2021 at 500 Mero Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on March 31st, 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: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email abigail.gall@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Abigail Gall

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation supplements existing regulations on life insurance policies to accommodate the development and issuance of universal life insurance policies, to provide for the valuation of policy benefits, to require annual written status reports, and to require actuarial certification that the insurance and investment cash flows are financially sound.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that universal life policies are developed in a financially sound manner and include annual disclosures to the policyowner.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the commissioner to make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation will create financial standards for developing universal life products, and require annual baseline status disclosure to the policy owner.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will create actuarial and contract provision standards for universal life policies, which should make those products stronger from a solvency perspective. It also provides for consumer protection disclosures about policy benefits which should help the consumer understand what the product does and does not include.

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

(a) How the amendment will change this existing administrative regulation: The amendments to this administrative regulation are changes required by Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The necessity of these amendments are established in the Chapter 13A.222, in which the drafting requirements are set forth. These requirements ensure the administrative regulation language to be uniform and simple for those needing to reference.

(c) How the amendment conforms to the content of the authorizing statutes: Chapter 13A gives a very detailed explanation of the formatting rules as well as prohibited words and phrases, so these amendments remove old language and replace with acceptable unambiguous language.

(d) How the amendment will assist in the effective administration of the statutes: The amendments made to this administrative regulation meet Chapter 13A guidelines, which means the administrative regulation meets standards that are more effective. With clearer language 304.1-010 is more effective and thus, allowing the Department to regulate more effectively.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this

administrative regulation: This regulation will affect the approximately 520 insurers and, 43,000 agents that are licensed to offer life products in Kentucky.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Regulated entities will be required to calculate life insurance values and reserves in accordance with standardized actuarial procedures, and, in some instances, to certify compliance with the regulation annually, using their existing actuarial resources.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: We requested that the industry provide us with information on the cost impact of this regulation. The Department of Insurance has not received a response to its request. Therefore, the Department assumes that because this is a national standard that insurers may already be complying with in other states, the cost impact is minimal.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation is part of a package that standardizes life insurance regulation across the various states and should reduce the overall cost of doing business for regulated entities.

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

(a) Initially: Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance.

(b) On a continuing basis: Implementation of this amendment is not anticipated to have an on-going cost on the Department of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks necessary.

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

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

(9) TIERING: Is tiering applied? Explain why or why not. applies equally to all insurance companies offering life insurance in Kentucky.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department as the implementer.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation should be essentially revenue neutral.

(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 be essentially revenue neutral

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

year? There is no expected cost to administer this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There is no expected cost to administer this administrative regulation.

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

Revenues (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation:

PUBLIC PROTECTION CABINET
Department of Insurance
Division of Health and Life Insurance and Managed Care
(Amendment)

806 KAR 15:070. Annuity nonforfeiture.

RELATES TO: 304.14-120, 304.15-365

STATUTORY AUTHORITY: KRS 304.2-110, 304.15-365(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010 [KRS 304.2-110(1) authorizes the Executive Director of the Office 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]. KRS 304.15-365(7) authorizes the commissioner [executive director] to promulgate administrative regulations to implement KRS 304.15-365(6) [the statute] and to establish [provide for] further adjustments to the calculation of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit and for other contracts that [for which] the commissioner [executive director] shall determine if [determines] adjustments are justified. The function of this [This] administrative regulation is to establish [establishes] the requirement[requirements] to implement the annuity nonforfeiture provisions established [pertaining to annuity nonforfeiture] in KRS 304.15-365(4).

Section 1. Definitions. As used in this administrative regulation:

(1) "Basis" means:

(a) If used in the context of an initial or redetermination method, the specified period over which an average is computed that shall produce [produces] the value of the five-year Constant Maturity Treasury (CMT) Rate; or

(b) If used in the context of the equity-indexed benefit [benefits], the point in time used for establishing the parameters that:

1. Are incorporated into the calculation of the value of the equity-indexed options; and

2. Include the risk free rate, dividend yield, index volatility, and prior index values if the option is path dependent.

(2) "Equity-indexed benefit [benefits]" means a benefit that:

(a) Is in an annuity contract in which the value of the benefit is determined using an interest crediting rate based on the performance on an equity-based index and contract parameters; and

(b) Shall [Does] not include the variable benefit [benefits] of separate account variable annuities and indexed guaranteed separate account contracts purchased by an institutional buyer [buyers].

(3) "Commissioner" [Executive director] means the Commissioner of Insurance as [is] defined by [in] KRS 304.1-050(1).

(4) "Index term" means each period of time until the next indexed interest crediting date.

(5) "Initial method" means the basis upon which the initial nonforfeiture rate is established and the period that [for which] it shall apply [applies] and shall [which may] last for the entirety

[entire duration] of the contract.

(6) "Initial nonforfeiture rate" means the nonforfeiture rate applicable at contract issue.

(7) "Minimum nonforfeiture amount" means the amount established by [determined pursuant to] KRS 304.15-365(4)(a).

(8) "Modal period" means the period the company specifies during which the current nonforfeiture rate will remain fixed.

(9) "Nonforfeiture rate" means the interest rate established in KRS 304.15-365(5).

(10) "Redetermination method" means the redetermination date, basis, and period for all future redetermination nonforfeiture rates.

Section 2. Basis Applicability. The same basis shall apply to equity-indexed benefits and nonequity-indexed benefits, if any.

(1)(a) The basis may use a specified period that is determined by the level of change in the CMT rate, or another date-dependent methodology adopted by the National Association of Insurance Commissioners and in compliance with this administrative regulation.

(b) A specifically excluded method is a method that shall define the nonforfeiture rate as the lowest rate in a specified time period.

(c) A method based upon changes in CMT levels shall move up or down in an identical manner with changes in interest rates, subject to KRS 304.15-365(5).

(2) If the basis uses a specified period determined by the level of change in the CMT rate:

(a) The nonforfeiture rate applicable if this subsection is first utilized for a contract form shall be determined by a method using a specified period or a date-dependent methodology in compliance with this administrative regulation.

(b)1. A symmetrical range shall be defined that shall [will] determine if the rate shall be updated.

2. The maximum allowable range shall be plus or minus fifty (50) basis points.

(c) At the beginning of each modal period, a potential nonforfeiture rate shall be calculated using the method in paragraph (a) of this subsection, without incorporating caps or floors.

(d) If the difference between the potential nonforfeiture rate and the current initial nonforfeiture rate is less than or equal to the range, the current nonforfeiture rate shall not be updated.

(e) If the difference between the potential nonforfeiture rate and the current nonforfeiture rate is more than the range, the current nonforfeiture rate shall be updated to be equal to the potential nonforfeiture rate adjusted for rounding and caps or floors.

Section 3. Initial Method. (1) The initial method shall be filed with the commissioner [executive director].

(2)(a) Changes to the initial method shall be allowed once per calendar year.

(b) Changes to the initial method shall be filed with the commissioner [executive director] in accordance with KRS 304.14-120.

(c) A change in the initial method would be applicable only to new contracts or new certificates issued subsequent to the effective date of the change in method.

(3) The initial method may [shall] not be required to be disclosed in the contract form.

(4) The initial nonforfeiture rate shall not be required to be disclosed in the contract form unless redetermination is used.

(5) The minimum nonforfeiture parameters shall not be required to be disclosed in the contract unless they are utilized in the calculation of the guaranteed minimum value of the contract.

Section 4. Redetermination Method. (1) If redetermination is used, the method shall be disclosed in the contract form or certificate.

(2) Changes in the redetermination method for future issues or certificates shall be filed in accordance with KRS 304.14-120.

Section 5. Nonforfeiture Rate and Minimum Nonforfeiture

Amount. (1) An annuity contract or certificate without an equity-indexed benefit shall have one (1) nonforfeiture rate and one (1) minimum nonforfeiture amount applicable to the entire contract.

(2) An annuity contract or certificate with equity-indexed benefits may have more than one (1) nonforfeiture rate applicable to the contract or certificate subject to the following:

(a) If the contract has a non equity-indexed benefit, the nonforfeiture interest rate applicable to the non equity-indexed benefit shall be determined in compliance with KRS 304.15-365(5) without [any] consideration of any equity indexed feature.

(b) If an additional reduction is elected for equity-indexed benefits, reduced nonforfeiture interest rates may apply to each equity-indexed benefit for which the additional reduction is elected in compliance with KRS 304.15-365(6) and Section 5 of this administrative regulation.

(c) The minimum nonforfeiture amount for the contract shall be determined by calculating a nonforfeiture amount, without any reduction for indebtedness to the company on the contract including interest due and accrued on the indebtedness, for each equity-indexed and non equity-indexed benefit using the nonforfeiture interest rates described in this subsection, summing the results, and then deducting any indebtedness to the company on the contract including interest due and accrued on the indebtedness.

(d) If contract value is transferred:

1. From a benefit, the benefit's minimum nonforfeiture amount shall be reduced by the benefit's minimum nonforfeiture amount prior to the transfer and multiplied by the proportion of the benefit's contract value that is transferred;

2. To a benefit, the benefit's minimum nonforfeiture amount shall be increased by the sum of all reductions in minimum nonforfeiture amounts determined pursuant to subparagraph 1 of this paragraph, and multiplied by the proportion of total contract value that is transferred to that benefit; or

3. For the purpose [purposes of the] of calculations specified in subparagraphs 1 and 2 of this paragraph the contract value shall first be reduced by any fees associated with the transfer.

(e) In the case of a withdrawal from a benefit in which the amount of withdrawal exceeds the benefit's nonforfeiture amount, the insurer shall treat the excess withdrawal in a manner at least as favorable to the contract holder as deducting the excess withdrawal from the nonforfeiture amounts of other benefits in order from lowest to highest nonforfeiture interest rate.

(f) A contract charge or premium tax paid by the company shall be allocated to a benefit's minimum nonforfeiture amount based on the percentage of that benefit's contract value to the total contract value.

Section 6. Equity-indexed Benefits. (1) If a company chooses to take the additional reduction for an equity-indexed benefit, the company shall prepare a demonstration showing compliance with KRS 304.15-365(6).

(2) To demonstrate compliance a company shall:

(a) Calculate the annualized option cost for the equity-indexed benefit in the form of basis points for the entire index term as of the beginning of the index term.

1. In making the calculation, a company shall:

a. Use the equity-indexed benefit's guaranteed product features;

b. Use a basis representative of the point in time at the beginning of the current index term for the option cost. The company shall not change this basis during the index term; and

c. Calibrate the method and parameters for the option cost to capital markets based option pricing.

2. A company shall not make adjustments for persistency, death, or utilization.

(b) Be eligible to take a reduction equal to the lesser of one hundred (100) basis points or the annual cost basis value, if the annualized option cost for the equity-indexed benefit is twenty-five (25) basis points or more, and the equity-indexed benefit shall provide substantive participation under KRS 304.15-365(6).

(c) Prepare an actuarial certification signed by a member of the American Academy of Actuaries that the reduction complies with

KRS 304.15-365(6) at the time that the contract form is filed and submitted.

(d) Annually prepare an actuarial certification in accordance with KRS 304.15-365(6) signed by a member of the American Academy of Actuaries with regard to ongoing compliance and submit it in conjunction with the filing of the annual statement.

(3) If the additional reduction of up to one hundred (100) basis points for equity-indexed benefits has been inappropriately taken, the commissioner [executive director] shall require the recalculation of all values for all affected policyholders without all or part of the additional reduction.[]

~~Section 7. Effective Date. The requirements, implementation, and enforcement of this administrative regulation shall begin on January 1, 2008.[]~~

SHARON P. CLARK, Commissioner

KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: December 21, 2020

FILED WITH LRC: December 23, 2020 at 4:18 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on March 22nd, 2021 at 500 Mero Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on March 31st, 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: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email abigail.gall@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Abigail Gall

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth actuarial standards for minimum nonforfeiture benefits for annuities to implement the provisions of KRS 304.15-365.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set standards in accordance with KRS 304.15-365 and to provide for an actuarial certification of compliance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the commissioner to make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation implements the provisions of KRS 304.15-365 and standardizes the calculation of values and sets minimum nonforfeiture amounts for annuities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will set the baseline actuarial requirements for annuities and require an actuarial certification of compliance with the regulation which adds a layer of consumer protection

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

(a) How the amendment will change this existing administrative regulation: The amendments to this administrative regulation are to meet the drafting requirements set forth in Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The necessity to the amendments are to meet the

drafting requirements so the administrative regulation is read more easily and meets the uniform standard set in Chapter 13A.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments conform to the requirements in Chapter 13A.

(d) How the amendment will assist in the effective administration of the statutes: The administrative regulation will meet the drafting requirements and assist in the effective administration of KRS 304.15-365 by being more legible to entities that are affected by the enforcement of the administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the insurers and agents that are licensed to offer annuity products in Kentucky.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Regulated entities will be required to calculate the minimum nonforfeiture benefits for annuities in accordance with this regulation, using their existing actuarial resources.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Entities will not incur any additional cost as this regulation is a national standard.

(c) As a result of compliance, what benefits will accrue to the entities: This regulation is part of a package that standardizes regulation across the various states and should reduce the overall cost of doing business for regulated entities.

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

(a) Initially: Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance.

(b) On a continuing basis: Implementation of this amendment is not anticipated to have an on-going cost on the Department of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks necessary.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all insurance companies offering life insurance in Kentucky.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The department as the implementer of the administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110, 304.15-365(7)

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. 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? No expected revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The administrative regulation should remain revenue neutral for subsequent years.

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

(d) How much will it cost to administer this program for subsequent years? There is no expected cost for subsequent years.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation:

PUBLIC PROTECTION CABINET

Department of Insurance

Division of Health and Life Insurance and Managed Care (Amendment)

806 KAR 19:050. Combined health and dismemberment restrictions.

RELATES TO: KRS 304.19-080, 304.19-120

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. [KRS 304.2-140 provides that the Executive Director of Insurance may make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code.] The function of this [This] administrative regulation is to prohibit [prohibits] the writing of [both] health and dismemberment insurance in connection with a credit transaction unless the debtor has a choice upon extinguishment of the debt, to receive a refund of [are fund for] premiums paid for the unused insurance, or to continue the coverage under the unused insurance.

Section 1. An [No] insurer shall not write or issue any health and dismemberment insurance policy in connection with a credit transaction subject to the provisions of KRS Chapter 304, Subtitle 19, that [the insurance code, which,] alone or in conjunction with [of] the policy [policies], is expressly written as security for a loan. Unless [, provides for both health insurance and dismemberment insurance; unless the insurer shall afford to the debtor a choice, when] the debt is extinguished prior to maturity at the end of the claim, the insurer shall grant the debtor the choice to receive a refund of premiums paid for the unused insurance, or to continue the coverage afforded by the [such] unused policy [or policies].

SHARON P. CLARK, Commissioner

KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: December 21, 2020

FILED WITH LRC: December 23, 2020 at 10:27 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on March 22nd, 2021 at 500 Mero Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you

may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on March 31st, 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: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email abigail.gall@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Abigail Gall

(1) Provide a brief summary of:

(a) What this administrative regulation does: The function of this administrative regulation is to prohibit writing health and dismemberment insurance connected to a credit transaction, with the expectation that the debtor has the option to receive a refund of premium paid upon extinguishment of the debt.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to aide in the effectuation of the Insurance Code defined in KRS 304.1-010.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 304.2-110 authorizes the Commissioner to promulgate administrative regulations that help the Insurance Code be more effective, this administrative regulation does so by helping to regulate the insurance market.

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

(a) How the amendment will change this existing administrative regulation: The amendments to this administrative regulation are changes required by Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The necessity of these amendments are established in the Chapter 13A.222, in which the drafting requirements are set forth. These requirements ensure the administrative regulation language to be uniform and simple for those needing to reference.

(c) How the amendment conforms to the content of the authorizing statutes: Chapter 13A gives a detailed explanation of the formatting rules as well as prohibited words and phrases, so these amendments remove old language and replace with acceptable unambiguous language.

(d) How the amendment will assist in the effective administration of the statutes: The amendments made to this administrative regulation meet Chapter 13A guidelines, which means the administrative regulation meets standards that are more effective. With clearer language 304.1-010 is more effective and thus, allowing the Department to regulate more effectively.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Insurers who write health and dismemberment policies and offer reimbursements for said policies as well as the department for implementing the restrictions.

(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: An insurer should not write or issue any health and dismemberment policy that has a connection to a credit transaction or is written as loan security except when the debtor is offered a choice of refund or continued coverage upon maturity.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is no cost associated with the administrative regulation or amendment.

(c) As a result of compliance, what benefits will accrue to the

entities: The insurer can write valid health and dismemberment policies as long as the debtor is given a choice of refund of premium paid or continued coverage upon maturity

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

(a) Initially: Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance.

(b) On a continuing basis: Implementation of this amendment is not anticipated to have an on-going cost on the Department of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks necessary.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied because these restrictions apply to all insurers.

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 as the implementer.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation is revenue neutral.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation is revenue neutral.

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

(d) How much will it cost to administer this program for subsequent years? There is no associated cost to administer this program.

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

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation:

PUBLIC PROTECTION CABINET

Department of Insurance

Division of Health and Life Insurance and Managed Care (Amendment)

806 KAR 19:060. Joint lives.

RELATES TO: KRS 304.19-020, 304.19-080

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of Insurance to promulgate

administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. [KRS 304.2-110 provides that the Executive Director of Insurance may make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code.] The function of this [This] administrative regulation shall be to prohibit [prohibits] the insuring of joint lives, unless the spouse of the debtor [except in the case of the debtor's spouse who] is a cosigner to the credit or finance transaction.

Section 1. No agent or insurer shall deliver or issue for delivery in this state any policy of credit life, or health insurance, or any certificate [in the case of such a policy] of group insurance, that [which] shall insure [insures] the life or health of more than one (1) individual, unless the spouse of the debtor [except in the case of the debtor's spouse who] is cosigner to [in] the credit or finance transaction.

Section 2. If a married couple is [When a husband and wife are] insured under the exception provided in Section 1 of this administrative regulation, [of this administrative regulation,] the premium rate charged shall not exceed one hundred fifty (150) percent of the rate permissible in [under] KRS 304.19-080.

Section 3. Only [Not more than] one (1) individual credit life insurance policy and one (1) credit health insurance policy shall [may] be issued as security for a single indebtedness.

Section 4. This administrative regulation shall not be construed to authorize [allow] the insuring of joint lives by credit life or credit health insurance in credit transactions involving a small loan or industrial loan in violation of KRS 288.560(2) or 291.480(1)(b).

SHARON P. CLARK, Commissioner
KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: December 21, 2020

FILED WITH LRC: December 23, 2020 at 10:27 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on March 22nd, 2021 at 500 Mero Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on March 31st, 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: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email abigail.gall@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Abigail Gall

(1) Provide a brief summary of:

(a) What this administrative regulation does: The function of this administrative regulation is to prohibit and insurer from insuring joint lives unless the spouse is a certified cosigner to credit or financial transactions.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to ensure that joint life insurance is only provided to the spouse if the other spouse can sign the transaction; this ensures both spouses are aware of the transaction. 304.2-110 authorizes the commissioner to promulgate administrative regulations that aide in the effectuation of 304.1-

010.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effectuation of the administrative statutes by protecting the public and regulating insurance companies based on the Insurance Code established in KRS 304.1-010.

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

(a) How the amendment will change this existing administrative regulation: The amendments to this administrative regulation are changes required by Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The necessity of these amendments are established in the Chapter 13A.222, in which the drafting requirements are set forth. These requirements ensure the administrative regulation language to be uniform and simple for those needing to reference.

(c) How the amendment conforms to the content of the authorizing statutes: Chapter 13A gives a very detailed explanation of the formatting rules as well as prohibited words and phrases, so these amendments remove old language and replace with acceptable unambiguous language.

(d) How the amendment will assist in the effective administration of the statutes: The amendments made to this administrative regulation meet Chapter 13A guidelines, which means the administrative regulation meets standards that are more effective. With clearer language 304.1-010 is more effective and thus, allowing the Department to regulate more effectively.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those individuals seeking joint life insurance, insurers that provide joint life insurance and the department as the implementer.

(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: When applying for joint life insurance coverage, the other spouse must be able to sign the transaction.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities:

(c) As a result of compliance, what benefits will accrue to the entities: Insurer can deliver said insurance and couples can receive benefits from the policy if the criteria of this administrative regulation is met.

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

(a) Initially: Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance.

(b) On a continuing basis: Implementation of this amendment is not anticipated to have an on-going cost on the Department of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks necessary.

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

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

(9) TIERING: Is tiering applied? Tiering is not necessary in this

regulation because this applies to all insurers and couples who seek joint life insurance.

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 as the implementer.

(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? There is no expected revenue for the first year.

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

(c) How much will it cost to administer this program for the first year? There is no expected cost associated with this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There is no expected cost associated with 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:

PUBLIC PROTECTION CABINET Department of Insurance Division of Property and Casualty (Amendment)

806 KAR 39:050. Self-insurance.

RELATES TO: KRS 304.8-030, 304.39-020(12), 304.39-080, 304.39-290, 304.39-170

STATUTORY AUTHORITY: KRS 304.2-110, 304.39-300

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.39-080 authorizes [allows] the Commissioner [Executive Director] of Insurance to approve applications for self-insurance and set standards that [which] shall [must] be met by [such] applicants [thereof]. The function [purpose] of this administrative regulation is to set forth [in-detail] the criteria [that must be met in order] to apply for self-insurance, and the authority of the commissioner to [grounds on which the executive director may] revoke self-insurance status.

Section 1. Any person that desires [desiring] to be self-insured as established in [for the purposes of] KRS Chapter 304, Subtitle 39, shall submit an application to the Commissioner [Executive Director] of Insurance on the form, "Application for Motor Vehicle Self-Insurance," 12/2020 edition [forms provided by the Office of Insurance].

Section 2. The applicant shall agree in writing to pay all tort liability and basic reparation benefits incurred and established [required] by KRS Chapter 304, Subtitle 39, and shall further agree to become a member of the Kentucky Arbitration Association, to meet all obligations incurred [thereby]; and further, shall agree to

become a member of the Assigned Claims Bureau, and to meet all obligations incurred [thereby].

Section 3. The applicant shall file with the application, and every year after [annually thereafter], a balance sheet and income statement that [which] shall reflect the actual financial condition of the applicant as of the last complete calendar or fiscal year preceding the date of the application; and, in the case of an individual, the [such] balance sheet and income statement shall be certified, under oath, by the individual that it truly reflects his financial condition and income as of that time. In the case of a corporation or partnership, it shall be certified by a Certified Public Accountant or responsible accounting officer of the applicant. This [Such] information shall be confidential, and the Commissioner [Executive Director] of Insurance shall not release this [such] information unless he has the prior written consent of the applicant.

Section 4. The application shall list the vehicles as of the date of application and annually thereafter for which the self-insurance shall provide security and advise the commissioner [executive director] of any changes in the number of insured vehicles thereof unless they have furnished maximum security.

Section 5. The applicant shall furnish security to the commissioner [executive director] to meet his continuing obligation [obligations] as agreed to in Section 2 of this administrative regulation. The security [se] furnished may be in the form of a bond, with surety [thereon], by an insurer authorized by the Department [Office] of Insurance to engage in surety insurance contracts or an irrevocable letter of credit issued by a bank chartered by the Commonwealth of Kentucky or a member bank of the Federal Reserve System whose capital and surplus shall equal or exceed twenty-five million dollars (\$25,000,000) [-or with such other surety as the executive director may approve].

Section 6. Security may also be furnished by depositing with the Custodian of Insurance Securities cash or assets of the kind that [which-] may be deposited by a domestic insurer pursuant to KRS 304.8-030. Where the security tendered to the commissioner [executive director] is of a kind that may [which tends to] vary in market value, including [(U.S. obligations, bonds, stocks or real estate)], the commissioner [executive director] may, in his discretion, require the amount [se] tendered to have a current market value greater than the minimum required security, but not in excess of 150 percent of minimum required security.

Section 7. The minimum requirement security that shall [must] be furnished to the commissioner [executive director] is for one (1) secured vehicle, \$50,000; and for each additional vehicle: \$10,000, up to a maximum of \$200,000.

Section 8. The commissioner [executive director] shall hold the securities furnished under Sections 5, 6, and 7 of this administrative regulation for the benefit of the person [those persons] to whom the self-insured is obligated under the provisions of KRS Chapter 304, subtitle 39.

Section 9. Each self-insured shall furnish to the commissioner [executive director], no later than January 10, April 10, July 10, and October 10 of each year, a report on forms, authorized by the commissioner [prescribed by the executive director], of all claims incurred during the preceding calendar year.

Section 10. If, based upon the number of claims incurred by the self-insured, the commissioner [executive director] shall determine [determines] that the security furnished is inadequate, he may require additional security and more frequent report of claims incurred.

Section 11. If a self-insured fails to meet its obligations under KRS Chapter 304, Subtitle 39, or fails to make his required report of claims, or to post additional security required by the commissioner [executive director], the commissioner [executive

director] shall disapprove the self-insured for self-insurance.

Section 12. A self-insured may, at any time, by written request to the commissioner ~~[executive director]~~, withdraw as a self-insured.

Section 13. When a self-insured voluntarily withdraws as a self-insured, or when the commissioner ~~[executive director]~~ disapproves the self-insured, the commissioner ~~[executive director]~~ shall retain the security furnished to him until such time as he is satisfied that the self-insured has met all obligations incurred as a self-insured under KRS Chapter 304, Subtitle 39. If any [said] obligation remains unsatisfied for ninety (90) days, the commissioner ~~[executive director]~~ may institute proceedings to assure that all persons ~~[person]~~ to whom the self-insured is obligated under KRS Chapter 304, Subtitle 39 shall receive their equitable share of the securities available.

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

(1) "Application for Motor Vehicle Self-Insurance", 12/2020 edition

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, from the Department of Insurance, Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the office's Web site at www.insurance.ky.gov.

SHARON P. CLARK, Commissioner

KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: December 21, 2020

FILED WITH LRC: December 23, 2020 at 12:08 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on March 22nd, 2021 at 500 Mero Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on March 31st, 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: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email abigail.gall@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Abigail Gall

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the criteria to apply or re-apply for self-insurance and the jurisdiction that authorizes the commissioner to revoke self-insurance.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to set forth the application criteria for self-insurers and the limitations of approval or disapproval determined by the commissioner.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.39-080 authorizes the commissioner to approve or disapprove self-insurance applications and set the standards at which self-insurance applications are approved or disapproved, this administrative regulation conforms to this statute by establishing those limitations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 304.2-110

authorizes the commissioner to promulgate administrative regulations to aide in the effectuation of the Insurance Code. This administrative regulation promulgates the application criteria for self-insurers, conforming to the effectiveness of KRS 304.39-080.

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

(a) How the amendment will change this existing administrative regulation: The amendments made in this administrative regulation are to abide by the requirements of Chapter 13A. the amendments also incorporate the "Application for Self Insurance" into the regulation, which requires a materials incorporated section and a summary of said materials.

(b) The necessity of the amendment to this administrative regulation: The necessity of these amendments are to conform to the drafting requirements set forth in Chapter 13A.222. The form newly incorporated allows entities to apply for self-insurance in the Commonwealth according to Subtitle 39 of the Kentucky Revised Statutes.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments change and replace old language, as well as address outdated formatting. The amendments will allow the administrative regulation to read more clearly and effectively.

(d) How the amendment will assist in the effective administration of the statutes: The amendments meeting Chapter 13A requirements assist in the effective administration of KRS 304.2-110 and KRS 304.39-080 by ensuring the administrative regulation is easily understood by lay men and can be clearly received by entities affected by the administrative regulation itself.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Anyone who is looking to apply for self-insurance, is currently self-insured, those seeking to re-apply for self-insurance, those disapproved by the commissioner for self-insurance and the department.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Applicants must file an application with the commissioner to be approved or disapproved to be self-insured. If approved they must file annually every year and if disapproved they must re-apply to meet the proper standards not met in the initial application.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Pursuant to 806 KAR 4:010, the fee to apply to be a motor vehicle self-insured entity is \$200.

(c) As a result of compliance, what benefits will accrue to the entities: If a person is compliant to the administrative regulation they should receive approval by the commissioner to be self-insured.

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

(a) Initially: Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance.

(b) On a continuing basis: Implementation of this amendment is not anticipated to have an on-going cost on the Department of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks necessary.

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

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

(9) TIERING: Is tiering applied? Tiering is not applied. Tiering is not applied. The application process applies in the same manner to all entities who desire become self-insured for the purpose of motor vehicle insurance.

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? Persons who wish to be self-insured and the department.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110, 304.39-300

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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

(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 expected.

(c) How much will it cost to administer this program for the first year? There is not expected cost to administer this program, as it has been in place for many years prior.

(d) How much will it cost to administer this program for subsequent years? There is not expected cost to administer this program, as it has been in place for many years prior.

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

Revenues (+/-): Neutral
Expenditures (+/-): Neutral
Other Explanation:

PUBLIC PROTECTION CABINET Department of Insurance Division of Health and Life Insurance and Managed Care (Amendment)

806 KAR 40:020. Charitable health care provider registration.

RELATES TO: KRS 304.40-075

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.40-075(3)(b)

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 as defined in~~ authorizes the Executive Director of the Office of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of [KRS 304.1-010 [304.040] through 304.99-154 [304.99-152]. KRS 304.40-075(3)(b) ~~authorizes~~ requires the department to promulgate administrative regulations to establish reasonable guidelines for the registration of charitable health care providers. As established in KRS 304.40-075, the [This] function of this administrative regulation is to establish [establishes] guidelines for the registration of charitable health care providers who seek [wish] to obtain reimbursement of paid premium [premiums paid] for medical professional liability insurance. [Pursuant to KRS 304.40-075, the office is required to establish guidelines for the registration of charitable health care providers who wish to obtain reimbursement of premiums paid for medical professional liability insurance. This administrative

~~regulation will implement that requirement.]~~

Section 1. A charitable health care provider shall supply the following information to the Department [Office] of Insurance in order to request reimbursement of paid premium for medical professional liability insurance:

(1) The name [Name] and address of the provider;
(2) The license [License] number of the provider;
(3) The source [Source] of funding for the provider of charitable health care service;

(4) The number [Number] of employees who render medical care without compensation or charge and without expectation of compensation or charge and who shall [will] be covered under the medical professional liability insurance [malpractice coverage];

(5) The expected number of patients that may [to] be provided charitable health care services in the year for which the insurer offers [will offer] malpractice coverage;

(6) The health [Health] services provided by the charitable health care provider;

(7) The following information [Information] regarding the provider's medical professional liability insurance policy for which reimbursement is being requested:

(a) A copy [Copy] of the entire policy, including the declarations page showing:

1. The name and address of the insurer [Insurer's name and address];

2. The effective date of the policy [Policy effective dates];

3. The policy [Policy] number;

4. The total amount of premium [Premium] due; and

(b) The itemized [Itemized] billing and proof of payment of the requested reimbursement amount [being requested to be reimbursed];

(8) A copy [Copy] of the registration filed with the Cabinet for Health and Family Services established by [under] KRS 216.941; and

(9) Acknowledgment that the provider will follow the [insurer's] risk management and loss prevention policies and procedures established by the insurer.

Section 2. If any of the information provided in Section 1 of this administrative regulation changes or is incorrect, the charitable health care provider shall provide the correct information immediately to the Department of Insurance [office].

Section 3. Any premium refund received by the charitable health care provider and remitted to the Department [Office] of Insurance, pursuant to KRS 304.40-075(3)(d), shall be accompanied by the following:

(1) A copy of the previous request;
(2) An explanation of the events prompting the refund; and
(3) Copies of all documents from the insurer regarding the refund and its amount.

Section 4. (1) An insurer that [which] offers medical professional liability insurance shall provide information regarding the premium [premiums] paid, any expenses incurred by the insurer, and the profits [profits] made for all risk covered pursuant to KRS 304.40-075. The information required by Section 1 of this administrative regulation shall be provided to the Department of Insurance [office] by March 1 and shall include premium, expense, and profit information from the preceding calendar year and shall be submitted on Form CHP-2B P&C [07-2000].

(2) In order for the department [office] to determine reasonable loss ratio guidelines, upon request by the department [office], an insurer that [which] offers medical professional liability insurance shall provide premium, profit, and expense information related to the entirety of the [all of its] medical professional liability insurance business of the insurer.

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

(a) Form CHP-2A P&C [07-2000], "Commonwealth of Kentucky Department [Office] of Insurance Property and Casualty Division

Medical Professional Liability Insurance Annual Call for Data Instructions", 11/2020 edition; and

(b) Form CHP-2B P&C [97-2000], "Commonwealth of Kentucky Department [Office] of Insurance Property and Casualty Division Liability Insurance Annual Call for Data", 11/2020 edition.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, from the Department [Office] of Insurance, Mayo-Underwood Building, 500 Mero Street [215 West Main Street], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the office's Web site at www.insurance.ky.gov [http://doi.ppr.ky.gov/kentucky/].

SHARON P. CLARK, Commissioner

KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: December 21, 2020

FILED WITH LRC: December 23, 2020 at 12:06 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on March 22nd, 2021 at 500 Mero Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on March 31st, 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: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email abigail.gall@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Abigail Gall

(1) Provide a brief summary of: This administrative regulation sets forth the guidelines for charitable health care providers on how to register to receive paid premium reimbursement.

(a) What this administrative regulation does: The function of this administrative regulation is to create registration guidelines for charitable health care providers who want to obtain paid premium reimbursements for medical professional liability insurance.

(b) The necessity of this administrative regulation: KRS 304.40-075 requires the Department of Insurance to establish guidelines for the registration processes of charitable health care providers that seek premium paid reimbursement for medical professional liability insurance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.40-07 5 charges the Department with the promulgation of administrative regulations which establish reasonable guidelines for the registration of charitable health care providers. This administrative regulation carries out the duties required by the statute.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 304.2-110(1) authorizes the commissioner to promulgate administrative regulations to assert the Insurance code. Also, KRS 304.40-075(3)(b), KRS 304.010 to 304.99-152 authorizes the commissioner to promulgate administrative regulations to set forth the guidelines for the registration process of charitable health care providers who seek reimbursements for paid premiums of medical professional liability insurance.

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

(a) How the amendment will change this existing administrative regulation: The amendments to this administrative regulation are to address the statutory requirements set forth in Chapter 13A.

(b) The necessity of the amendment to this administrative

regulation: To meet the requirements of Chapter 13A.222 drafting rules.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments made remove and replace outdated language that does not conform to Chapter 13A.

(d) How the amendment will assist in the effective administration of the statutes: The amendments will assist in the effectuation of the administration of cited statutes by ensuring the language of the regulation is easier to read for those effected by the administrative regulation itself.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Charitable health care providers who wish to obtain reimbursement of premiums paid for medical professional liability insurance will be affected. Currently, there are twenty-five (25) charitable health care providers in Kentucky. Insurers that provide medical professional liability insurance to charitable health care providers will be required to report information to the Department. Other insurers that offer medical professional liability insurance will be required to report information to the Department upon request.

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

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Each charitable health care provider must inform the Department of any changes in its reported data. Insurers providing medical professional liability insurance must annually report information to the Department. Other insurers offering medical professional liability insurance must continually report information to the Department upon request.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There are no expected costs aside from filing fees that have been in place prior to this amendment.

(c) As a result of compliance, what benefits will accrue to the entities: Charitable health care providers that follow the registration process thoroughly may, if justifiable, receive reimbursements of premium payments for medical professional liability insurance.

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

(a) Initially: Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance.

(b) On a continuing basis: Implementation of this amendment is not anticipated to have an on-going cost on the Department of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks necessary.

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

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

(9) TIERING: Is tiering applied? No tiering is applied. These requirements apply equally to all charitable health care providers seeking reimbursement of medical professional liability insurance premium payments.

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 will be impacted.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(1), 304.40-075(3)(b)

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. 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? No revenue is expected to 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 is expected to be generated.

(c) How much will it cost to administer this program for the first year? No cost is expected.

(d) How much will it cost to administer this program for subsequent years? No cost is expected.

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:

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Certificate of Need
(Amendment)

900 KAR 6:030. Certificate of Need expenditure minimums.

RELATES TO: KRS 216B.015

STATUTORY AUTHORITY: KRS 194A.030(1)(c)4, 216B.040(3)(a), 216B.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(3)(a) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations. KRS 216B.130 requires the cabinet to promulgate an administrative regulation to annually adjust expenditure minimums provided in KRS Chapter 216B. This administrative regulation provides for the adjustment of expenditure minimums for capital expenditures and major medical equipment.

Section 1. Price Index. [(4)] The U.S. Department of Commerce, Bureau of Economic Analysis Price Indexes for Private Fixed Investment by Type shall be used in making annual adjustments to the expenditure minimums required by KRS 216B.130.[]

(2) ~~The change in the price index for the twelve (12) month period ending December 31, 2013, represents a 3.43 percent increase.~~]

Section 2. ~~[Expenditure Minimums Based on 2013 Change in Price Indexes. (1) The capital expenditure minimum established in KRS 216B.015(8) shall be \$2,913,541.~~

(2) ~~The major medical equipment minimum established in KRS 216B.015(17) shall be \$2,913,541.~~

Section 3. ~~Annual Adjustments of Expenditure Minimums. (1) [Beginning July 1, 2015,] The cabinet shall annually adjust the capital expenditure minimum and the major medical equipment expenditure minimum [minimums] on July 1 based on the change in the price index referenced in Section 1[(4)] of this administrative regulation for the previous twelve (12) month period ending December 31.~~

(2) The annual adjustments of the expenditure minimums shall be available by July 1 for the previous twelve (12) month period on the Office of Inspector General, Division of Certificate of Need Web site at <https://chfs.ky.gov/agencies/os/oig/dcn> [<https://chfs.ky.gov/agencies/os/oig/dcn/Pages/cn.aspx>].

ADAM D. MATHER, Inspector General
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: January 5, 2021

FILED WITH LRC: January 6, 2021 at 12:18 p.m.

A public hearing on this administrative regulation shall, if requested, be held on March 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 March 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 March 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes certificate of need expenditure minimums as required by statute.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216B.130, which requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to set the annual adjusted expenditure minimums for capital expenditures and major medical equipment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.130 by establishing the adjusted expenditure minimums.

(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 required expenditure minimums.

(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 deletes outdated language, updates the location of the Certificate of Need Division with the Cabinet for Health and Family Services, and updates the web address where the expenditure minimums are located.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to correctly reflect the office where the CON Division is located and the correct web address where the expenditure minimums can be found.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 216B.130 because it provides the required expenditure minimum information.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by establishing the required expenditure minimums for CON determinations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects

certificate of need applicants and affected persons as defined by KRS 216B.015(3). In calendar year 2018, eighty-three (83) certificate of need applications were filed; in calendar year 2019, eighty-four (84) applications were filed; and in the first six (6) months of calendar year 2020, thirty-seven (37) applications were filed.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities that submit a certificate of need application can find the expenditure minimums as set out in this administrative regulation.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants for a certificate of need will be able to find the expenditure minimums as set out in this administrative regulation.

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

(a) Initially: There are no additional costs to the cabinet for implementation of this administrative regulation.

(b) On a continuing basis: There are no additional costs to the cabinet for 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: State general funds and agency monies are used to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities who apply for a certificate of need.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Cabinet for Health and Family Services, Office of Inspector General.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.010 and 216B.130.

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local government. No additional costs will be incurred to implement this administrative regulation.

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

year? (d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

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

Revenues (+/-): See response above.

Expenditures (+/-): This administrative regulation is anticipated to have no fiscal impact on the cabinet.

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Office of Inspector General Division of Certificate of Need (Amendment)

900 KAR 6:055. Certificate of need forms.

RELATES TO: KRS 216B.015

STATUTORY AUTHORITY: KRS 216B.040(2)(a)1

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. This administrative regulation establishes the forms necessary for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Administrative escalation" means an approval from the cabinet to increase the capital expenditure authorized for a certificate of need project.

(2) "Cabinet" is defined by KRS 216B.015(6).

Section 2. Forms. (1) CON[QHP] - Form 2A, Certificate of Need Application, shall be filed by an applicant for a certificate of need unless the application is for ground ambulance services, change of location, replacement, cost escalation, or acquisition.

(2) CON[QHP] - Form 2B, Certificate of Need Application For Ground Ambulance Service, shall be filed by an applicant for a certificate of need for a ground ambulance service.

(3) CON[QHP] - Form 2C, Certificate of Need Application For Change of Location, Replacement, Cost Escalation, or Acquisition, shall be filed by an applicant for a certificate of need for change of location, replacement, cost escalation, or acquisition.

(4) CON[QHP] - Form 3, Notice of Appearance, shall be filed by a person who wishes to appear at a hearing.

(5) CON[QHP] - Form 4, Witness List, shall be filed by a person who elects to call a witness at a hearing.

(6) CON[QHP] - Form 5, Exhibit List, shall be filed by a person who elects to introduce evidence at a hearing.

(7) CON[QHP] - Form 6, Cost Escalation Form, shall be filed by a facility that elects to request an administrative escalation.

(8) CON[QHP] - Form 7, Request for Advisory Opinion, shall be filed by anyone electing to request an advisory opinion.

(9) CON[QHP] - Form 8, Certificate of Need Six Month Progress Report, shall be filed by a holder of a certificate of need whose project is not fully implemented.

(10) CON[QHP] - Form 9, Notice of Intent to Acquire a Health Facility or Health Service, shall be submitted by a person proposing to acquire an existing licensed health facility or service.

(11) CON[QHP] - Form 10A, Notice of Addition [or Establishment] of a Health Service or Equipment, shall be filed by any health facility that adds equipment or makes an addition to a health service for which there are review criteria in the State Health Plan but for which a certificate of need is not required.

(12) CON[QHP] - Form 10B, Notice of Termination or Reduction of a Health Service or Reduction of Bed Capacity, shall be filed by a health facility that reduces or terminates a health service or reduces bed capacity.

(13) CON - Form 10C, Notice of Relocation of Acute Care Beds or Redistribution of Beds by Licensure Category, shall be filed by any hospital that relocates acute care beds to another

acute care hospital under common ownership in the same area development district, or that redistributes beds among its existing licensure categories within the same hospital.

(14) CON[OHP] - Form 11, Application for Certificate of Compliance for a Continuing Care Retirement Community (CCRC), shall be filed by a facility to obtain a certificate of compliance as a continuing care retirement community.

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

(a) CON[OHP] - Form 2A, "Certificate of Need Application", 12/2020[07/2015];

(b) CON[OHP] - Form 2B, "Certificate of Need Application For Ground Ambulance Service", 12/2020 [05/2009];

(c) CON[OHP] - Form 2C, "Certificate of Need Application For Change of Location, Replacement, Cost Escalation, or Acquisition", 12/2020[05/2009];

(d) CON[OHP] - Form 3, "Notice of Appearance", 12/2020[10/2015];

(e) CON[OHP] - Form 4, "Witness List", 12/2020[10/2015];

(f) CON[OHP] - Form 5, "Exhibit List", 12/2020[10/2015];

(g) CON[OHP] - Form 6, "Cost Escalation Form", 12/2020[12/2016];

(h) CON[OHP] - Form 7, "Request for Advisory Opinion", 12/2020[05/2009];

(i) CON[OHP] - Form 8, "Certificate of Need Six Month Progress Report", 12/2020 [07/2015];

(j) CON[OHP] - Form 9, "Notice of Intent to Acquire a Health Facility or Health Service", 12/2020[07/2015];

(k) CON[OHP] - Form 10A, "Notice of Addition [or Establishment] of a Health Service or Equipment", 12/2020[05/2009];

(l) CON[OHP] - Form 10B, "Notice of Termination or Reduction of a Health Service or Reduction of Bed Capacity", 12/2020[07/2015];[and]

(m) CON - Form 10C, "Notice of Relocation of Acute Care Beds or Redistribution of Beds By Licensure Category", 12/2020; and

(n) CON[OHP] - Form 11, "Application for Certificate of Compliance for a Continuing Care Retirement Community (CCRC)", 12/2020[05/2009].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Office of Inspector General, Division of Certificate of Need [Health Policy], 275 East Main Street 5E-A[4WE], Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ADAM D. MATHER, Inspector General

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: January 5, 2021

FILED WITH LRC: January 6, 2021 at 12:18 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 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 March 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 March 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the forms necessary for administration of the certificate of need program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216B.040(2)(a.)1., which requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to establish the certificate of need review procedures, including applications, notice, review for completeness, and review cycle timetables.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.040 by establishing the forms to be used for the certificate of need review process.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the various forms to be used for the certificate of need review process.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the forms to reflect the new location of the CON division in the Office of Inspector General and incorporates by reference a new form to be used by hospitals that relocate acute care beds to another acute care hospital under common ownership in the same area development district or that redistribute hospital beds among licensure types within the same hospital. The forms have also been updated for clarification and compliance with KRS Chapter 13A.

(b) The necessity of the amendment is necessary to correctly reflect the office where the CON Division is located and update forms incorporated by reference.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 216B.040 because it establishes the forms to be used for the certificate of need process.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by establishing the forms to be used for the certificate of need process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects acute care hospitals, certificate of need applicants, and affected persons as defined by KRS 216B.015(3). There are seventy (70) licensed acute care hospitals. In calendar year 2018, eighty-three (83) certificate of need applications were filed; in calendar year 2019, eighty-four (84) applications were filed; and in the first six (6) months of calendar year 2020, thirty-seven (37) applications were filed.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities that submit a certificate of need application will be required to submit the appropriate form incorporated by reference. Acute care hospitals that used to be required to go through the certificate of need process to redistribute beds by licensure category may now submit a form notifying the CON division of the change.

(b) In complying with this administrative regulation or

amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to applicants for a certificate of need or affected persons.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants for a certificate of need will be able to file documents more easily and have greater clarity about which office to communicate with. Acute care hospitals that were formerly required to go through the certificate of need process to redistribute beds by licensure category may now submit a form notifying the CON division of the change in bed type.

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

(a) Initially: There are no additional costs to the cabinet for implementation of this administrative regulation.

(b) On a continuing basis: There are no additional costs to the cabinet for 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: State general funds and agency monies are used to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities who apply for a certificate of need.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Cabinet for Health and Family Services, Office of Inspector General.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.010 and 216B.040(2)(a).

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local government. No additional costs will be incurred to implement this administrative regulation.

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

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

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

Revenues (+/-): See response above.

Expenditures (+/-): This administrative regulation is anticipated to have minimal fiscal impact to the cabinet.

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Office of Inspector General Division of Certificate of Need (Amendment)

900 KAR 6:060. Timetable for submission of certificate of need applications.

RELATES TO: KRS 216B.015, 216B.040, 216B.062, 216B.095(3)(a)-(f)

STATUTORY AUTHORITY: KRS 194A.030(1)(c)4., 216B.040(2)(a)1, 216B.062(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. KRS 216B.062(1) and (2) require the cabinet to promulgate administrative regulations to establish timetables and batching groups for applications for certificates of need. This administrative regulation establishes the timetable for submission of application requirements necessary for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 216B.015(6).

(2) "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Office of Inspector General, Division of Certificate of Need Web site at <https://chfs.ky.gov/agencies/os/oig/dcn> [<https://chfs.ky.gov/agencies/os/oig/dcn/Pages/cn.aspx>].

(3) "Formal review" means the review of an application for certificate of need that is reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and that is reviewed for compliance with the review criteria set forth at KRS 216B.040 and 900 KAR 6:070.

(4) "Long-term care beds" means nursing home beds, intermediate care beds, nursing facility beds, and Alzheimer nursing home beds.

(5) "Nonsubstantive review" is defined by KRS 216B.015(18).

Section 2. Timetable for Submission of an Application for Formal Review. (1) ~~[Prior to July 1, 2017, the cabinet's timetable for giving public notice for an application deemed complete for formal review shall be as established in this subsection.]~~

~~(a) Public notice for an application for organ transplantation, magnetic resonance imaging, megavoltage radiation equipment, cardiac catheterization, open heart surgery, positron emission tomography equipment, a Level I psychiatric residential treatment facility (Level I PRTE), a Level II psychiatric residential treatment facility (Level II PRTE), or a new technological development shall be provided in the Certificate of Need Newsletter published on the third Thursday of the following months:~~

- ~~1. January; and~~
- ~~2. July.~~

~~(b) Public notice for an application for a residential hospice facility, a hospice service, or a home health agency shall be provided in the Certificate of Need Newsletter published on the third Thursday of the following months:~~

- ~~1. February; and~~
- ~~2. August.~~

~~(c) Public notice for an application for a Class I, II, III, or VI ground ambulance service, or a private duty nursing service shall be provided in the Certificate of Need Newsletter published on the third Thursday of the following months:~~

- ~~1. March; and~~
- ~~2. September.~~

~~(d) Public notice for an application for a day health care program shall be provided in the Certificate of Need Newsletter published on the third Thursday of the following months:~~

- ~~1. April; and~~
- ~~2. October.~~

~~(e) Public notice for an application for long-term care beds, an~~

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~~acute care hospital including all other State Health Plan covered services to be provided within the proposed acute care hospital, acute care hospital beds, psychiatric hospital beds, special care neonatal beds, comprehensive physical rehabilitation beds, chemical dependency treatment beds, or an ambulatory surgical center shall be provided in the Certificate of Need Newsletter published on the third Thursday of the following months:~~

- ~~1. May; and~~
- ~~2. November.~~

~~(f) Public notice for an application for an intermediate care facility for individuals with an intellectual disability shall be provided in the Certificate of Need Newsletter published on the third Thursday of the following months:~~

- ~~1. June; and~~
- ~~2. December.~~

~~(g) A proposal not included in paragraphs (a) through (f) of this subsection shall be placed in the cycle that the cabinet determines to be most appropriate by placing it in the cycle with similar services.~~

~~(2) Beginning July 1, 2017,] The cabinet's timetable for giving public notice for an application deemed complete for formal review shall be as established in this subsection.~~

(a) Public notice for an application for organ transplantation, magnetic resonance imaging, megavoltage radiation equipment, cardiac catheterization, open heart surgery, positron emission tomography equipment, a Level I psychiatric residential treatment facility (Level I PRTF), a Level II psychiatric residential treatment facility (Level II PRTF), or a new technological development shall be provided in the Certificate of Need Newsletter published on the third Thursday of the following months:

1. January;
2. April;
3. July; and
4. October.

(b) Public notice for an application for long-term care beds, intermediate care beds for individuals with an intellectual disability, a residential hospice facility, a hospice service, a private duty nursing service, or a home health agency shall be provided in the Certificate of Need Newsletter published on the third Thursday of the following months:

1. February;
2. May;
3. August; and
4. November.

(c) Public notice for an application for an acute care hospital including all other State Health Plan covered services to be provided within the proposed acute care hospital, acute care hospital beds, psychiatric hospital beds, special care neonatal beds, comprehensive physical rehabilitation beds, chemical dependency treatment beds, an ambulatory surgical center, or a Class I, II, III, or IV ~~[or and V]~~ ground ambulance service shall be provided in the Certificate of Need Newsletter published on the third Thursday of the following months:

1. March;
2. June;
3. September; and
4. December.

(d) A proposal not included in paragraphs (a) through (c) of this subsection shall be placed in the cycle that the cabinet determines to be most appropriate by placing it in the cycle with similar services.

~~(2) [(3)] An application for formal review shall be filed with the cabinet at least fifty (50) calendar days, but not more than eighty (80) calendar days, prior to the date of the desired public notice. An initial application filed more than eighty (80) days prior to the desired public notice shall be returned to the applicant along with the fee submitted pursuant to 900 KAR 6:020.~~

Section 3. Timetable for Submission of an Application for Nonsubstantive Review. (1) The cabinet shall give public notice for an application deemed complete and granted nonsubstantive review status pursuant to KRS 216B.095(3)(a) through (f) in the Certificate of Need Newsletter published on the third Thursday of

each month.

(2) An application for nonsubstantive review shall be filed with the cabinet at least fifty (50) calendar days prior to the date of the desired public notice.

ADAM D. MATHER, Inspector General

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: January 5, 2021

FILED WITH LRC: January 6, 2021 at 12:18 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 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 March 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 March 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes timetables and batching groups for applications for certificates of need.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216B.062, which requires the Cabinet for Health and Family Services to promulgate administrative regulations to establish timetables and batching groups for applications for certificates of need.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.062 by establishing the timetable for submission of application requirements as part of the certificate of need process.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the timetable for submission of application requirements necessary for the orderly administration of the certificate of need process.

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

(a) How the amendment will change this existing administrative regulation: This amendment deletes outdated language, updates the location of the Certificate of Need Division with the Cabinet for Health and Family Services, and updates the web address where the monthly certificate of need newsletter can be accessed.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to correctly reflect the office where the CON Division is located and update the web address where the newsletter can be accessed.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of

KRS 216B.040 because it establishes procedures for the certificate of need process.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by deleting outdated language and updating the location of the Certificate of Need Division.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects certificate of need applicants and affected persons as defined by KRS 216B.015(3). In calendar year 2018, eighty-three (83) certificate of need applications were filed; in calendar year 2019, eighty-four (84) applications were filed; and in the first six (6) months of calendar year 2020, thirty-seven (37) applications were filed.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities that submit a certificate of need application can find the monthly newsletter as set out 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): There will be no additional costs to applicants for a certificate of need or affected persons.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants for a certificate of need will be able to find the monthly newsletter as set out in this administrative regulation.

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

(a) Initially: There are no additional costs to the cabinet for implementation of this administrative regulation.

(b) On a continuing basis: There are no additional costs to the cabinet for 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: State general funds and agency monies are used to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities who apply for a certificate of need.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Cabinet for Health and Family Services, Office of Inspector General.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.010, 216B.040(2)(a), and 216B.062.

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

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

counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local government. No additional costs will be incurred to implement this administrative regulation.

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

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

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

Revenues (+/-): See response above.

Expenditures (+/-): This administrative regulation is anticipated to have minimal fiscal impact to the cabinet.

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Office of Inspector General Division of Certificate of Need (Amendment)

900 KAR 6:065. Certificate of need application process.

RELATES TO: KRS 216B.015, 216B.040, 216B.062(1), 216B.085, 216B.095

STATUTORY AUTHORITY: KRS 194A.030(1)(c)4., 216B.040(2)(a)1

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. This administrative regulation establishes the requirements necessary for the orderly administration of the certificate of need application, review, decision, and reconsideration process.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 216B.015(6).

(2) "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Office of Inspector General, Division of Certificate of Need Web site at <https://chfs.ky.gov/agencies/os/oig/dcn> [<http://chfs.ky.gov/ohp/con>].

(3) "Days" means calendar days, unless otherwise specified.

(4) "Formal review" means the review of an application for certificate of need that is reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and that is reviewed for compliance with the review criteria set forth at KRS 216B.040 and 900 KAR 6:070.

(5) "Nonsubstantive review" is defined by KRS 216B.015(18).

(6) "Owner" means a person as defined in KRS 216B.015(22) who is applying for the certificate of need and will become the licensee of the proposed health service or facility.

(7) "Proposed service area" means the geographic area the applicant proposes to serve.

(8) "Secretary" is defined by KRS 216B.015(26).

(9) "Show cause hearing" means a hearing during which it is determined whether a person or entity has violated provisions of KRS Chapter 216B.

Section 2. Certificate of Need Application. (1) An applicant for a certificate of need shall file an application with the cabinet on the appropriate certificate of need application form: CON[QHP] - Form 2A, CON[QHP] - Form 2B, or CON[QHP] - Form 2C, incorporated by reference in 900 KAR 6:055.

(2) To file an application for certificate of need, the applicant

shall file ~~an original and one (1) copy of~~ the appropriate certificate of need application form together with the prescribed fee set forth in 900 KAR 6:020 on or before the deadlines established by 900 KAR 6:060. The appropriate fee shall be received by the Division of Certificate of Need before an application may be deemed complete.

(3) Formal or nonsubstantive review of an application for a certificate of need shall not begin until the application has been deemed complete by the cabinet.

(4) The cabinet shall deem an application complete if the applicant has:

(a) Provided the cabinet with all of the information necessary to complete the application; or

(b) Declined to submit the requested information and has requested that its application be reviewed as submitted.

(5) Once an application has been deemed complete, the applicant shall not submit additional information regarding the application unless the information is introduced at a public hearing.

(6) Once an application has been deemed complete, it shall not be amended to:

- (a) Increase the scope of the project;
- (b) Increase the amount of the capital expenditure;
- (c) Expand the size of the proposed service area;
- (d) Change the location of the health facility or health service;

or

(e) Change the owner, unless the application involves a licensed health facility and a change of ownership with appropriate notice has occurred after the application was submitted.

(7) An application that has been deemed complete may be amended at a public hearing to:

- (a) Decrease the scope of the project;
- (b) Decrease the amount of the capital expenditure; or
- (c) Decrease the proposed service area.

(8) An applicant that has had a certificate of need approved under the nonsubstantive review provisions of KRS 216B.095(3)(a) through (f) may request that the cabinet change the specific location to be designated on the certificate of need if:

- (a) The facility has not yet been licensed;
- (b) The location is within the county listed on the certificate of need application; and

(c) The applicant files a written request with the cabinet within 180 days of the date of issuance of the certificate of need. A request shall include the reason why the change is necessary.

(9) An application that is not deemed complete within one (1) year from the date that it is filed shall expire and shall not be placed on public notice or reviewed for approval.

Section 3. Certificate of Need Review. (1) Prior to being reviewed for the approval or denial of a certificate of need, an application for certificate of need shall be reviewed for completeness pursuant to Section 4 of this administrative regulation.

(2) Unless granted nonsubstantive review status under the criteria in 900 KAR 6:075, an application for a certificate of need shall be reviewed for approval or denial according to the formal review criteria set forth in 900 KAR 6:070.

(3) If granted nonsubstantive review status under the criteria in 900 KAR 6:075, an application for a certificate of need shall be reviewed for approval or denial of the certificate of need according to the nonsubstantive review criteria set forth in 900 KAR 6:075.

Section 4. Completeness Review. (1) Fifteen (15) days after the deadline for filing an application in the ~~next~~ appropriate batching cycle, the cabinet shall conduct an initial review to determine if the application is complete for formal review or nonsubstantive review requested pursuant to KRS 216B.095(3)(a) through (f).

(2) If the cabinet finds that the application for formal review is complete, the cabinet shall:

(a) Notify the applicant in writing within one (1) day that the application has been deemed complete and that review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and

(b) Give public notice in the next appropriate Certificate of Need Newsletter, pursuant to the timetable set forth in 900 KAR 6:060, that review of the application for approval or denial of a certificate of need has begun.

(3) If the cabinet finds that the application for nonsubstantive review is complete, the cabinet shall notify the applicant in writing within ten (10) days that the application has been deemed complete and that review of the application for the approval or denial of a certificate of need shall begin upon public notice being given.

(4) A decision to grant or deny nonsubstantive review status shall be made within ten (10) days of the date the applicant is notified that the application has been deemed complete.

(5) The cabinet shall give public notice for applications granted nonsubstantive review status under the provisions of KRS 216B.095(3)(a) through (f) in the next appropriate Certificate of Need Newsletter, pursuant to the timetable set forth in 900 KAR 6:060, that status has been granted and that review of the application for approval or denial of a certificate of need has begun.

(6) If the cabinet finds that the application is incomplete, the cabinet shall:

(a) Provide the applicant with written notice of the information necessary to complete the application; and

(b) Notify the applicant that the cabinet shall not deem the application complete unless within fifteen (15) days of the date of the cabinet's request for additional information:

- 1. The applicant submits the information necessary to complete the application by the date specified in the request; or
- 2. The applicant requests in writing that the cabinet review its application as submitted.

(7) If, upon the receipt of the additional information requested, the cabinet finds that the application for formal review is complete, the cabinet shall:

(a) Notify the applicant in writing that:

- 1. The application for formal review has been deemed complete; and

2. Review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and

(b) Give public notice in the next appropriate Certificate of Need Newsletter, pursuant to the timetable set forth in 900 KAR 6:060, that review of the application for approval or denial of a certificate of need has begun.

(8) If, upon the receipt of the additional information requested, the cabinet finds that an application for nonsubstantive review is complete, the cabinet shall:

(a) Notify the applicant in writing that:

- 1. The application has been deemed complete;

2. Review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and

3. A decision to grant or deny nonsubstantive review status shall be made within ten (10) days of the date that the application was deemed complete; and

(b) Give public notice in the next appropriate Certificate of Need Newsletter, pursuant to the timetable set forth in 900 KAR 6:060, for an application~~applications~~ granted nonsubstantive review status under the provisions of KRS 216B.095(3)(a) through (f) that status has been granted and that review of the application for approval or denial of a certificate of need has begun.

(9) If the information submitted in response to the cabinet's request for additional information is insufficient to complete the application, the cabinet shall:

(a) Request the information necessary to complete the application; and

(b) Inform the applicant that the application shall not be deemed complete and shall not be placed on public notice until:

- 1. The applicant submits the information necessary to complete the application; or
- 2. The applicant requests in writing that its application be reviewed as submitted.

(10) Once an application has been deemed complete, an applicant shall not submit additional information to be made part of the public record unless:

(a) The information is introduced at a public hearing;
 (b) For a deferred application for formal review, the additional information is submitted at least twenty (20) days prior to the date that the deferred application is placed on public notice; or

(c) For a deferred application for nonsubstantive review, the additional information is submitted at least ten (10) days prior to the date that the deferred application is placed on public notice.

(11) A determination that an application is complete shall:

(a) Indicate that the application is sufficiently complete to be reviewed for approval or disapproval;

(b) Not be determinative of the accuracy of, or weight to be given to, the information contained in the application; and

(c) Not imply that the application has met the review criteria for approval.

Section 5. Notice of Decision. (1) The cabinet shall notify the applicant and any party to the proceeding of the final action on a certificate of need application within three (3) days.

(2) Notification of approval shall be in writing and shall include:

(a) Verification that the review criteria for approval have been met;

(b) Specification of any terms or conditions limiting a certificate of need approval, including limitations regarding certain services or patients. This specification shall be listed on the facility or service's certificate of need and license;

(c) Notice of appeal rights; and

(d) The amount of capital expenditure authorized, if applicable.

(3) Written notification of disapproval shall include:

(a) The reason for the disapproval; and

(b) Notice of appeal rights.

(4) An identical application for certificate of need that is disapproved shall not be refiled for a period of twelve (12) months from the original date of filing, absent a change in circumstances.

Section 6. Deferral of an Application. (1)(a) Except as described in paragraph (b) of this subsection, an applicant may defer review of an application a maximum of two (2) times by notifying the cabinet in writing of its intent to defer review.

(b) An applicant shall not defer review of an application filed pursuant to 900 KAR 6:080 to alleviate an emergency circumstance.

(c)1. If the application has been granted nonsubstantive review status under the provisions of KRS 216B.095(3)(a) through (f), the notice to defer shall be filed pursuant to 900 KAR 6:090 no later than five (5) days prior to the date that the decision is due on the application unless a hearing has been scheduled.

2. If a hearing has been scheduled, the notice to defer shall be filed pursuant to 900 KAR 6:090 no later than six (6) days prior to the date of the hearing.

(d)1. If the application is being reviewed under formal review, the notice to defer shall be filed pursuant to 900 KAR 6:090 no later than ten (10) days prior to the date that the decision is due on the application unless a hearing has been scheduled.

2. If a hearing has been scheduled, the notice to defer shall be filed pursuant to 900 KAR 6:090 no later than eight (8) days prior to the date of the hearing.

(e) If a hearing has been scheduled, the applicant shall also notify all parties to the proceedings in writing of the applicant's intent to defer the application.

(2) If a notice to defer an application for formal review is filed, the application shall be deferred to the next regular batching cycle and shall be placed on public notice pursuant to the timetables set forth in 900 KAR 6:060.

(3) If an application for formal review is deferred, an applicant may update its application by providing additional information to the cabinet at least twenty (20) days prior to the date that the deferred application is placed on public notice.

(4) If a notice to defer an application that has been granted nonsubstantive review is filed, the application shall be deferred and shall be placed on public notice in the Certificate of Need Newsletter published the next calendar month following the date the request was received[month].

(5) If an application for nonsubstantive review is deferred, an

applicant may update its application by providing additional information to the cabinet at least ten (10) days prior to the date that the deferred application is placed on public notice.

(6) In order for a hearing to be held on a deferred application, a hearing shall be requested by either the applicant or an affected person within:

(a) Ten (10) days of the deferred application being placed on public notice if the application has been granted nonsubstantive review status; or

(b) Fifteen (15) days of the deferred application being placed on public notice if the application is being reviewed under the provision of formal review.

Section 7. Withdrawal of an Application. (1) An applicant may withdraw an application for certificate of need by notifying the cabinet in writing of the decision to withdraw the application prior to the entry of a decision to deny or approve the application.

(2) If a hearing has been scheduled or held on the application, the applicant shall also notify all parties to the proceedings in writing of the applicant's decision to withdraw the application.[]

~~(3) If an applicant withdraws a deferred application between February 5, 2015 and June 30, 2015 and submits a new application for the same proposed health facility or service within five (5) years from the date of withdrawal, the cabinet shall apply the application fee that was submitted for the withdrawn application toward the fee assessed pursuant to 900 KAR 6:020 for the new application.]~~

Section 8. Location of New and Replacement Facilities. A certificate of need approved for the establishment of a new facility or the replacement of an existing facility shall be valid only for the location stated on the certificate.

Section 9. Requests for Reconsideration. (1) A request for reconsideration shall be filed, pursuant to 900 KAR 6:090, within fifteen (15) days of the date of the notice of the cabinet's final decision relating to:

(a) Approval or disapproval of an application for a certificate of need;

(b) An advisory opinion entered after a public hearing;

(c) Revocation of a certificate of need; or

(d) A show cause hearing conducted in accordance with 900 KAR 6:090.

(2) A copy of the request for reconsideration shall be served by the requester on all parties to the proceedings.

(3) A party to the proceedings shall have seven (7) days from the date of service of the request for reconsideration to file a response to the request with the cabinet.

(4) If a hearing was held pursuant to subsection (1)(a), (b), or (c) of this section, the hearing officer that presided over the hearing shall enter a decision to grant or deny a request for reconsideration within thirty (30) days of the request being filed.

(5) If a hearing was held pursuant to subsection (1)(d) of this section, the secretary shall enter a decision to grant or deny a request for reconsideration within thirty (30) days of the request being filed.

(6) If reconsideration is granted, the hearing shall be held by the cabinet in accordance with the applicable provisions of 900 KAR 6:090, Section 3 or 4, within thirty (30) days of the date of the decision to grant reconsideration, and a final decision shall be entered by the cabinet no later than thirty (30) days following the conclusion of the hearing.

(7) If reconsideration is granted on the grounds that a public hearing was not held pursuant to KRS 216B.085, the applicant shall have the right to waive the reconsideration hearing if the deficiencies in the application can be adequately corrected by submission of written documentation. 900 KAR 6:065

ADAM D. MATHER, Inspector General

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: January 5, 2021

FILED WITH LRC: January 6, 2021 at 12:18 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A

public hearing on this administrative regulation shall, if requested, be held on March 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 March 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 March 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the certificate of need application process.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216B.040(2)(a).1., which requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to establish the certificate of need review procedures, including applications, notice, review for completeness, and review cycle timetables.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.040 by establishing procedures for the certificate of need process.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing review procedures for the certificate of need process.

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

(a) How the amendment will change this existing administrative regulation: This amendment deletes outdated language, removes the requirement that applicants file an original and a copy of the application, clarifies that an application is not complete until the application fee is received, and clarifies when a notice of deferral is published in the CON Newsletter.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the administrative regulation and clarify issues that have caused confusion among applicants.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 216B.040 because it establishes procedures for the certificate of need process.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by establishing procedures for the certificate of need process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects certificate of need applicants and affected persons as defined by

KRS 216B.015(3). In calendar year 2018, eighty-three (83) certificate of need applications were filed; in calendar year 2019, eighty-four (84) applications were filed; and in the first six (6) months of calendar year 2020, thirty-seven (37) applications were filed.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities that submit a certificate of need application will be required to follow the procedures set out 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): There will be no additional costs to applicants for a certificate of need or affected persons.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants for a certificate of need will no longer be required to submit an original and a copy of their applications and will have greater clarity about the CON application process.

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

(a) Initially: There are no additional costs to the cabinet for implementation of this administrative regulation.

(b) On a continuing basis: There are no additional costs to the cabinet for 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: State general funds and agency monies are used to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities who apply for a certificate of need.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Cabinet for Health and Family Services, Office of Inspector General.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.010 and 216B.040(2)(a).

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local government. No additional costs will be incurred to implement this administrative regulation.

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

year?

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

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

Revenues (+/-): See response above.

Expenditures (+/-): This administrative regulation is anticipated to have minimal fiscal impact to the cabinet.

Other Explanation

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Certificate of Need
(Amendment)

900 KAR 6:080. Certificate of Need emergency circumstances.

RELATES TO: KRS 216B.015, 216B.020, 216B.061[216B.040-216B.130, 216B.330-216B.339, 216B.455], 216B.990

STATUTORY AUTHORITY: KRS 194A.030(1)(c)4., [194A.050,] 216B.040(2)(a)1

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. This administrative regulation establishes the guidelines for alleviating an emergency circumstance for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 216B.015(6)[(5)].

(2) "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Office of Inspector General, Division of Certificate of Need Web site at <https://chfs.ky.gov/agencies/os/oig/dcn> [<https://chfs.ky.gov/agencies/os/oig/dcn/Pages/cn.aspx>].

(3) "Days" means calendar days, unless otherwise specified.

(4) "Emergency circumstance" means a situation that poses an imminent threat to the life, health, or safety of a citizen of the Commonwealth.

(5) "Office of Inspector General" means the office within the Cabinet for Health and Family Services that is responsible for licensing and regulatory functions of health facilities and services.

(6) [~~"Public information channels" means the Office of Communication and Administrative Review in the Cabinet for Health and Family Services.~~]

(7) "Public notice" means notice given through:

(a) The Web site of the Office of Inspector General, Division of Certificate of Need at <https://chfs.ky.gov/agencies/os/oig/dcn> [~~Public information channels~~]; or

(b) The cabinet's Certificate of Need Newsletter.

(7) [(8)] "Service area" means county unless otherwise specified in the state health plan.

(8) [(9)] "State Health Plan" is defined by KRS 216B.015(28)[(27)] and is incorporated by reference in 900 KAR 5:020.

Section 2. Emergency Circumstances. (1) If an emergency circumstance arises, a person may proceed to alleviate the emergency without first obtaining a certificate of need if:

(a) The person is licensed by the Office of the Inspector General or the Kentucky Board of Emergency Medical Services to provide the same or similar services necessary to alleviate the emergency;

(b) The Office of Inspector General, Division of Certificate of Need, [Health Policy] is notified in writing within five (5) days of the commencement of the provision of the service required to alleviate the emergency; and

(c) The Office of Inspector General, Division of Certificate of Need, [Health Policy] acknowledges in writing that it recognizes that an emergency does exist.

(2) The notice to the Office of Inspector General, Division of Certificate of Need, [Health Policy] shall be accompanied by an affidavit and other documentation from the person proposing to provide emergency services that shall contain the following information:

(a) A detailed description of the emergency that shall include at least the following information:

1. A description of health care services that will be provided to the person or persons to whom the services will be provided, including proof of eligibility for the service;

2. A list of the providers in the service area licensed to provide the services that will be provided during the emergency; and

3. Proof that:

a. Other providers licensed in the service area to provide the service are aware of the need for the service to be provided to the person and have refused or are unable to provide the service; or

b. Circumstances exist under which the transfer of a patient to another provider licensed in the service area to provide the service would present an unacceptable risk to a patient's life, health, or safety;

(b) The steps taken to alleviate the emergency;

(c) The location or geographic service area where the emergency service is being provided; and

(d) The expected duration of the emergency.

(3) The Office of Inspector General, Division of Certificate of Need, [Health Policy] may request additional information necessary to make its determination from the person proposing to provide emergency services before it acknowledges that an emergency circumstance does exist.

(4) If the provision of service to meet the emergency circumstance is required to continue beyond sixty (60) days from the date that the notice is filed with the cabinet, the person providing the emergency service shall file [an OHP—Form 4, Letter of Intent and] the appropriate application for a certificate of need, which is [are] incorporated by reference in 900 KAR 6:055, for the next appropriate public notice pursuant to 900 KAR 6:060. Failure to submit [a Letter of Intent and] an application to the Office of Inspector General, Division of Certificate of Need, [Health Policy] shall result in the rescission of the emergency acknowledgement and generate notification to the Office of Inspector General, Division of Health Care.

(5) The person providing the emergency service may continue to alleviate the emergency circumstances without a certificate of need until:

(a) The emergency circumstance ceases to exist; or

(b) The cabinet issues a final decision to approve or disapprove the application for certificate of need.

(6) The person providing the emergency service shall notify the Office of Inspector General, Division of Certificate of Need, [Health Policy] within ten (10) days of the date the emergency circumstance ceases and emergency services are no longer required.

ADAM D. MATHER, Inspector General

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: January 5, 2021

FILED WITH LRC: January 6, 2021 at 12:18 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 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 March 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 March 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the process for addressing emergency circumstances as part of the certificate of need process.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216B.040(2)(a)1., which requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to establish the certificate of need review procedures, including applications, notice, review for completeness, and review cycle timetables.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.040 by establishing procedures for the certificate of need process.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing review procedures for the certificate of need process.

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

(a) How the amendment will change this existing administrative regulation: This amendment deletes the definition of "public information channels" and updates the definition of "public notice" to include posting the information on the CON website, updates the office where the CON Division is located, updates the office Web address, and deletes a reference to a form that is no longer in use.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to correctly reflect the manner of public notice and office where the CON Division is located, and update the regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 216B.040 because it establishes procedures for the certificate of need process.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by establishing procedures for the certificate of need process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects certificate of need applicants and affected persons as defined by KRS 216B.015(3). In calendar year 2018, eighty-three (83) certificate of need applications were filed; in calendar year 2019, eighty-four (84) applications were filed; and in the first six (6) months of calendar year 2020, thirty-seven (37) applications were filed.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities that submit a certificate of need

application will be required to follow the procedures set out 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): There will be no additional costs to applicants for a certificate of need or affected persons.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants for a certificate of need will have greater clarity about which office to communicate with and which forms are to be used.

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

(a) Initially: There are no additional costs to the cabinet for implementation of this administrative regulation.

(b) On a continuing basis: There are no additional costs to the cabinet for 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: State general funds and agency monies are used to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities who apply for a certificate of need.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Cabinet for Health and Family Services, Office of Inspector General.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.010 and 216B.040(2)(a).

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local government. No additional costs will be incurred to implement this administrative regulation.

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

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

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

Revenues (+/-): See response above.

Expenditures (+/-): This administrative regulation is anticipated to have minimal fiscal impact to the cabinet.

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Certificate of Need
(Amendment)

900 KAR 6:090. Certificate of need filing, hearing, and show cause hearing.

RELATES TO: KRS 45A.340, 216B.015, 216B.020(2)(a), 216B.040, 216B.062(1), 216B.095(1), 216B.990
 STATUTORY AUTHORITY: KRS 194A.030(1)(c)4., 216B.040(2)(a)1., (b), 216B.085, 216B.086, 216B.090
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1. and (b) require the Cabinet for Health and Family Services to administer Kentucky's certificate of need program, to promulgate administrative regulations as necessary for the program, and to conduct public hearings in respect to certificate of need applications and revocations of certificates of need. KRS 216B.085, 216B.086, and 216B.090 establish requirements for certificate of need, revocation, and reconsideration hearings. This administrative regulation establishes the requirements for filing, hearing, and show cause hearings necessary for the orderly administration of the certificate of need program.

Section 1. Definitions. (1) "Affected person" is defined by KRS 216B.015(3).

(2) "Cabinet" is defined by KRS 216B.015(6).

(3) "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Certificate of Need Web site at <https://chfs.ky.gov/agencies/os/oig/dcn> [http://chfs.ky.gov/ohp/con].

(4) "Days" means calendar days, unless otherwise specified.

(5) "Nonsubstantive review" is defined by KRS 216B.015(18).

(6) "Notice" means notice given through the cabinet's Certificate of Need Newsletter.

(7) "Office of Inspector General" means the office within the Cabinet for Health and Family Services that is responsible for licensing and regulatory functions of health facilities and services.

(8) "Office or clinic" means the physical location at which health care services are provided.

(9) "Party to the proceedings" is defined by KRS 216B.015(20).

(10) "Person" is defined by KRS 216B.015(22).

(11) "Proposed findings" means the submission of a proposed final order by the applicant or an affected party for review and consideration by the hearing officer.

(12) "Secretary" is defined by KRS 216B.015(26).

(13) "Show cause hearing" means a hearing during which it is determined whether a person or entity has violated provisions of KRS Chapter 216B.

Section 2. Filing. (1) The filing of documents required by this administrative regulation shall be made with the Office of Inspector General, Division of Certificate of Need, [Health Policy] CHR Building, [4-WE] 5E-A, 275 East Main Street, Frankfort, Kentucky 40621 on or before 4:30 p.m. Eastern time on the due date.

(2) Filing of a document [~~other than a certificate of need application or a proposed hearing report,~~] may be made by facsimile transmission or email if [:

(a) the document is received by the cabinet by facsimile transmission or email on or before 4:30 p.m. Eastern time on the due date [due; and

(b) ~~The original document is filed with the cabinet on or before 4:30 p.m. Eastern time on the next business day after the due date].~~

(3) The Office of Inspector General, Division of Certificate of Need, [Health Policy] shall endorse by file stamp the date that each filing is received and the endorsement shall constitute the filing of the document.

(4) In computing any period of time prescribed by this administrative regulation, the date of notice, decision, or order shall not be included.

(5)(a) Except as provided in paragraph (b) of this subsection,

the last day of the period so computed shall be included.

(b) If the last day is a Saturday, Sunday, or legal state holiday, the period shall run until 4:30 p.m. Eastern time of the first business day following the Saturday, Sunday, or legal state holiday.

Section 3. Hearing. (1)(a) A hearing on a certificate of need application or revocation of a certificate of need shall be held by a hearing officer from the Cabinet for Health and Family Services, Division of Administrative Hearings.

(b) A hearing officer shall not act on any matter in which the hearing officer has a conflict of interest as defined by KRS 45A.340.

(c) A party may file with the cabinet a petition for removal based upon a conflict of interest supported by affidavit.

(2) The hearing officer shall preside over the conduct of each hearing and shall regulate the course of the proceedings in a manner that shall promote the orderly and prompt conduct of the hearing.

(3) Notice of the time, date, place, and subject matter of each hearing shall be:

(a) Mailed to the applicant and each affected person who requested the hearing not less than ten (10) days prior to the date of the hearing; and

(b) Published in the Certificate of Need Newsletter, if applicable.

(4) A public hearing shall be canceled if each affected person who requested the hearing withdraws the request by giving written notification to the Office of Inspector General, Division of Certificate of Need, [Health Policy] that the hearing is no longer required. The consent of each affected person who has not requested a hearing shall not be required in order for a hearing to be canceled.

(5) A dispositive motion made by a party to the proceedings shall be filed with the cabinet at least three (3) working days prior to the scheduled date of the hearing.

(6) The hearing officer may convene a preliminary conference.

(a) The purposes of the conference shall be to:

1. Formulate and simplify the issues;

2. Identify additional information and evidence needed for the hearing; and

3. Dispose of pending motions.

(b) A written summary of the preliminary conference and the orders thereby issued shall be made a part of the record.

(c) The hearing officer shall:

1. Record the conference; or

2. If requested by a party to the proceedings, allow a court reporter to be present at the expense of the requesting party.

(d) During the preliminary conference, the hearing officer may:

1. Instruct the parties to:

a. Formulate and submit a list of genuine contested issues to be decided at the hearing;

b. Raise and address issues that can be decided before the hearing; or

c. Formulate and submit stipulations to facts, laws, and other matters;

2. Prescribe the manner and extent of the participation of the parties to the proceedings;

3. Rule on any pending motions for discovery or subpoenas; or

4. Schedule dates for the submission of prefiled testimony, further preliminary conferences, and submission of briefs and documents.

(7) At least five (5) days prior to the scheduled date of a nonsubstantive review hearing and at least seven (7) days prior to the scheduled date of any other certificate of need hearing, each affected person wishing to participate as a party to the proceeding shall file with the cabinet [~~an original and one (1) copy of~~] the following for each affected application and serve copies on all other known parties to the proceeding:

(a) CON[QHP] - Form 3, Notice of Appearance, incorporated by reference in 900 KAR 6:055;

(b) CON[QHP] - Form 4, Witness List, incorporated by reference in 900 KAR 6:055; and

(c) CON[QHP] - Form 5, Exhibit List, incorporated by reference

in 900 KAR 6:055 and attached exhibits.

(8)(a) If a hearing is requested on an application that has been deferred from a previous cycle and for which a hearing had previously been scheduled, parties shall:

1. File a new CON[OHP] - Form 3, Notice of Appearance; and
2. Either:
 - a. Incorporate previously-filed witness lists (CON[OHP] - Form 4) and exhibit lists (CON[OHP]- Form 5); or
 - b. File an amended CON[OHP] - Form 4 and CON[OHP] - Form 5.

(b) A new party to the proceedings[hearings] shall file an original CON[OHP] - Form 3, CON[OHP] - Form 4, and CON[OHP] - Form 5.

(c) Forms shall be filed in accordance with subsection (7) of this section.

(9)(a) If a party to the proceedings requests a court reporter to be present during the hearing, the party shall:

1. Arrange for and bear the cost for a court reporter to transcribe the hearing; and
2. File an original copy of the transcript with the cabinet.

(b) If all parties agree, the hearing may be recorded in lieu of a written transcript.

(10) The hearing officer shall convene the hearing and shall state the purpose and scope of the hearing or the issues upon which evidence shall be heard. Each party appearing at the hearing shall enter an appearance by stating the party's name and address.

(11) Each party shall have the opportunity to:

- (a) Present its case;
- (b) Make an opening statement;
- (c) Call and examine witnesses;
- (d) Offer documentary evidence into the record;
- (e) Make a closing statement; and
- (f) Cross-examine opposing witnesses on:

1. Matters covered in direct examination; and
2. At the discretion of the hearing officer, other matters relevant to the issues.

(12) A party that is a corporation shall be represented by an attorney licensed to practice in the Commonwealth of Kentucky.

(13) The hearing officer may:

(a) Allow testimony or other evidence on an issue not previously identified in the preliminary order that may arise during the course of the hearing, including a petition for intervention that may be filed;

(b) Act to exclude irrelevant, immaterial, or unduly repetitious evidence; and

(c) Question any party or witness.

(14) The hearing officer shall not be bound by the Kentucky Rules of Evidence. Relevant hearsay evidence may be allowed at the discretion of the hearing officer.

(15) The hearing officer shall have discretion to designate the order of presentation of evidence and the burden of proof as to persuasion.

(16) A witness shall be examined under oath or affirmation.

(17) A witness may, at the discretion of the hearing officer:

- (a) Appear through deposition or in person; and
- (b) Provide written testimony in accordance with the following:
 1. The written testimony of a witness shall be in the form of questions and answers or a narrative statement;
 2. The witness shall authenticate the document under oath; and

3. The witness shall be subject to cross-examination.

(18) The hearing officer may accept documentary evidence in the form of copies of excerpts if:

- (a) The original is not readily available;
- (b) Upon request, parties are given an opportunity to compare the copy with the original; and
- (c) The documents to be considered for acceptance are listed on and attached to the party's Exhibit List (CON[OHP]- Form 5).

(19) A document shall not be incorporated into the record by reference without the permission of the hearing officer. Each referenced document shall be precisely identified.

(20) The hearing officer may take official notice of facts that are

not in dispute or of generally-recognized technical or scientific facts within the agency's special knowledge.

(21) The hearing officer may permit a party to offer, or request a party to produce, additional evidence or briefs of issues as part of the record within a designated time after the conclusion of the hearing. During this period, the hearing record shall remain open. The conclusion of the hearing shall occur when the additional information is timely filed or at the end of the designated time period, whichever occurs first.

(22) The hearing officer may, upon the agreement of the applicant, extend the review deadlines established by KRS 216B.062(1) and 216B.095(1).

(23) If all parties agree to waive the established decision date, the hearing officer shall render a decision within sixty (60) days of the filing of proposed findings.

(24) The cabinet shall forward a copy of the hearing officer's final decision by U.S. mail to each party to the proceedings. The original hearing decision shall be filed in the administrative record maintained by the cabinet.

Section 4. Show Cause Hearing. (1) The cabinet may conduct a show cause hearing on its own initiative or at the request of an affected person, to include hearings requested pursuant to *Humana of Kentucky v. NKC Hospitals, Ky., 751 S.W.2d 369 (1988)*, in order to determine if a person:

(a) Has established or is operating a health facility or health service in violation of:

1. The provisions of KRS Chapter 216B; ~~or~~
2. The provisions of 900 KAR Chapter 6; ~~or~~
3. The terms or conditions that are a part of a certificate of need approval and license held by that person; ~~or~~

(b) Is subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(2) The cabinet shall conduct a show cause hearing if a complaint investigation or licensure inspection by the Office of the Inspector General or the Kentucky Board of Emergency Medical Services reveals a possible violation of KRS Chapter 216B.

(3) Unless initiated by the cabinet, in order for a show cause hearing to be held, a request for a show cause hearing submitted by an affected person shall be accompanied and corroborated by credible, relevant, and substantial evidence, including an affidavit or other documentation that demonstrates probable cause to believe that a person:

(a) Has established, or is operating, a health facility or health service in violation of:

1. The provisions of KRS Chapter 216B;
2. The provisions of ~~or~~ 900 KAR Chapter 6; ~~or~~
3. The terms and conditions that were a part of a certificate of need approval and license held by that person; ~~or~~

(b) Is subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(4) If a show cause hearing is requested by an affected person, the cabinet shall provide a copy of the request for show cause hearing to the person alleged to be in violation and the person shall have fourteen (14) days in which to file a response to the request and supporting documentation.

(5) ~~[(3)]~~ Based upon the materials accompanying the request for a show cause hearing, and any subsequent response to the allegations, the cabinet shall determine if sufficient cause exists to conduct a hearing.

~~(6) [(4)] The cabinet shall conduct a show cause hearing if a complaint investigation or licensure inspection by the Office of the Inspector General or the Kentucky Board of Emergency Medical Services reveals a possible violation of KRS Chapter 216B.~~

~~(5) The cabinet shall also conduct a show cause hearing regarding terms and conditions that are a part of a certificate of need approval and license at the request of any affected person.~~

~~(6) The show cause hearing regarding the terms and conditions shall determine if a person is operating a health facility or health service in violation of any terms or conditions that are a part of that certificate of need approval and license.~~

~~(7) Show cause hearings shall be conducted in accordance with the provisions of Section 3 of this administrative regulation.~~

(8) If a show cause hearing is held, the individual or entity alleged to be in violation of KRS Chapter 216B shall have the burden of showing that the individual or entity:

(a) Has not established or is not operating a health facility or health service in violation of the provisions of KRS Chapter 216B or 900 KAR Chapter 6; or

(b) Is not subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(9) If it is alleged that an office or clinic offering services or equipment covered by the State Health Plan was established or is operating in violation of KRS 216B.020(2)(a), the hearing officer shall base his or her recommended findings of fact, conclusions of law, and recommended decision on whether the clinic or office meets the physician exemption criteria set forth in 900 KAR 6:130, Certificate of Need criteria for physician exemption.

(10) Prior to convening a show cause hearing, the cabinet shall give the parties [person suspected or alleged to be in violation] not less than twenty (20) days' notice of its intent to conduct a hearing and notice shall be published in the Certificate of Need Newsletter, if applicable.

(11) The notice shall include [advise the person of]:

(a) The allegations against the person suspected or alleged to be in violation;

(b) Any facts determined to exist that support the existence of the allegation; [and]

(c) The statute or administrative regulation alleged to have been violated;

(d) The person's response to the allegations, if any; and

(e) Notice of the time, date, place, and subject matter of the hearing.

(12) Notice of the time, date, place, and subject matter of each hearing shall be:

(a) Mailed to all known affected persons or entities not less than ten (10) business days prior to the date of the hearing; and

(b) Published in the Certificate of Need Newsletter, if applicable.

(13) At least seven (7) days prior to a show cause hearing required or requested pursuant to KRS Chapter 216B, all persons or entities wishing to participate as a party to the proceedings shall file [an original and one (1) copy of] the following with the cabinet and serve copies on all other known parties to the proceedings:

(a) CON[OHP] - Form 3, Notice of Appearance;

(b) CON[OHP] - Form 4, Witness List; and

(c) CON[OHP] - Form 5, Exhibit List [and attached exhibits].

(9) A show cause hearing shall be conducted in accordance with the provisions of Section 3 of this administrative regulation.

(10) If a show cause hearing is held, the person alleged to be in violation of KRS Chapter 216B shall have the burden of showing that the person:

(a) Has not established, or is not operating, a health facility or health service in violation of:

1. The provisions of KRS Chapter 216B;

2. The provisions of 900 KAR Chapter 6; or

3. The terms and conditions that are a part of a certificate of need approval and license held by that person; or

(b) Is not subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(11) If it is alleged that an office or clinic offering services or equipment covered by the State Health Plan was established or is operating in violation of KRS 216B.020(2)(a), the hearing officer shall base his or her recommended findings of fact, conclusions of law, and recommended decision on whether the clinic or office meets the physician exemption criteria established in 900 KAR 6:130.

(12) Within thirty (30) days of the conclusion of the hearing, the hearing officer shall tender findings of fact and a recommended decision to the Office of Inspector General, Division of Certificate of Need for submission to the secretary. A copy of the findings of fact and recommended decision shall be forwarded to each party and the party's legal representative by the Division of Certificate of Need.

(13) Each party shall have fifteen (15) days from the date the recommended decision is forwarded [mailed] by the cabinet to

file exceptions to the findings of fact and recommended decision with the Office of Inspector General, Division of Certificate of Need, for submission to the secretary and the hearing officer [with the secretary].

(14) Within thirty (30) days of the receipt of any exceptions [the findings of fact and recommended decision from the hearing officer], the secretary shall either accept the hearing officer's recommended decision or request changes. The hearing officer shall then prepare a final decision for the secretary's signature [issue a final decision on the matter].

(15) The Office of Inspector General, Division of Certificate of Need shall mail [(17)] a copy of the final decision [shall be mailed] to each party [or] and his or her legal representative with the original hearing decision filed in the administrative record maintained by the cabinet.

(16) If a violation is found to have occurred as a result of a show cause hearing conducted pursuant to subsection (1) of this section, the cabinet shall take action as provided by KRS Chapter 216B.

(17) If the person is found to have violated any of the terms or conditions of any certificate of need approval and license as a result of a show cause hearing conducted pursuant to subsection (1) or (2) [(4)] of this section, the cabinet shall take the action required by this subsection.

(a) If the person had not previously been found to be in violation of the terms and conditions that were made a part of the person's certificate of need approval and license, the person shall be given a period of time, not to exceed sixty (60) days after issuance of the cabinet's decision, in which to demonstrate that the violation has been corrected. At the conclusion of this period, the cabinet shall verify that the facility or service is operating in compliance with the terms or conditions of the certificate of need and license at issue.

(b) If the cabinet is unable to verify that the facility or service has corrected the violation in accordance with paragraph (a) of this subsection, or if a person who had previously been found to be in violation of the terms and conditions that were a part of the person's certificate of need approval and license is found in a subsequent show cause hearing conducted pursuant to this section to be in violation of the terms and conditions again, the matter shall be referred to the Office of Inspector General for appropriate action.

(18) The deadlines established with respect to hearings shall be modified if agreed to by all parties and the hearing officer.

ADAM D. MATHER, Inspector General

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: January 5, 2021

FILED WITH LRC: January 6, 2021 at 12:18 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 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 March 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 March 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Donna Little, Deputy Executive Director, Office of Legislative and Regulatory Affairs, 275 East Main Street 5

W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for filings, hearings, and show cause hearings necessary to administer the certificate of need program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216B.040(2)(a).1., which requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to establish the certificate of need review procedures; and KRS 216B.085, 216B.086, and 216B.090, which establish requirements for CON, revocation, and reconsideration hearings.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.040, 216B.085, 216B.086, and 216B.090 by establishing procedures for the certificate of need process and related hearings.

(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 review procedures for the certificate of need process.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the office where the CON Division is located, updates form numbers, deletes the requirement that CON applications and hearing reports be filed using paper copies, and clarifies the process for requesting and conducting show cause hearings, including adding an opportunity to respond before a hearing is ordered.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to correctly reflect the office where the CON Division is located, update form numbers, and clarify the show cause hearing process.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 216B.040, KRS 216B.085, KRS 216B.086, and KRS 216B.090 because it establishes procedures for the certificate of need process and related hearings.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by establishing procedures for the certificate of need process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects certificate of need applicants and affected persons as defined by KRS 216B.015(3). In calendar year 2018, eighty-three (83) certificate of need applications were filed; in calendar year 2019, eighty-four (84) applications were filed; and in the first six (6) months of calendar year 2020, thirty-seven (37) applications were filed.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities that submit a certificate of need application will be required to follow the procedures set out in the administrative regulation. The amendment does not impose additional requirements.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants for a certificate of need will be able to file documents more easily and have greater clarity about which office to communicate with, which forms are to be used, and how the show cause hearing process will be conducted. Additionally, any entity that is alleged to be in violation of the CON statutes or administrative regulations will now have the opportunity to respond to allegations before a show cause hearing is ordered.

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

(a) Initially: There are no additional costs to the cabinet for implementation of this administrative regulation.

(b) On a continuing basis: There are no additional costs to the cabinet for 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: State general funds and agency monies are used to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities who apply for a certificate of need.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Cabinet for Health and Family Services, Office of Inspector General.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.010, 216B.040(2)(a), 216B.085, 216B.086, and 216B.090.

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local government. No additional costs will be incurred to implement this administrative regulation.

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

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

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

Revenues (+/-): See response above.

Expenditures (+/-): This administrative regulation is anticipated to have minimal fiscal impact to the cabinet.

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Certificate of Need
(Amendment)

900 KAR 6:095. Certificate of need administrative escalations.

RELATES TO: KRS 216B.015(6), (31), 216B.061(1)(e), 216B.990(2)

STATUTORY AUTHORITY: KRS 194A.030(1)(c)4., 216B.040(2)(a)1, 216B.061(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. KRS 216B.061(4) requires the cabinet to establish the requirements for administrative escalations. This administrative regulation establishes the requirements for an administrative escalation.

Section 1. Definitions. (1) "Administrative escalation" means an approval from the cabinet to increase the capital expenditure authorized for a certificate of need project.

(2) "Cabinet" is defined by KRS 216B.015(6).

(3) "Substantial change in a project" is defined by KRS 216B.015(31).

Section 2. Administrative Escalations. (1) A person shall not obligate a capital expenditure in excess of the amount authorized by an existing certificate of need or a previously approved administrative escalation unless the person has received an administrative escalation or an additional certificate of need from the cabinet.

(2) A request for an administrative escalation shall be submitted to the cabinet on the CON[OHP] - Form 6, Cost Escalation Form, incorporated by reference in 900 KAR 6:055.

(3) The cabinet shall authorize an administrative escalation for funds that have not been obligated and that do not exceed the following limits if there is not a substantial change in the project:

(a) \$100,000, if the capital expenditure authorized by the certificate of need or a previously approved cost escalation is less than \$500,000[~~\$500,000~~]; and

(b) Twenty-five (25) percent of the capital expenditure if the capital expenditure authorized by the certificate of need or a previously approved cost escalation is \$500,000 or more.

(4) If an administrative escalation is authorized, the certificate of need holder shall submit any additional certificate of need application fee required by the increased capital expenditure pursuant to 900 KAR 6:020.

(5) The escalation of a capital expenditure in excess of the limits set forth in subsection (3) of this section shall:

(a) Constitute a substantial change in a project; and

(b) Require a certificate of need pursuant to KRS 216B.061(1)(e).

(6) The unauthorized obligation of a capital expenditure in excess of the amount authorized for a certificate of need project shall be:

(a) Presumed to be a willful violation of KRS Chapter 216B; and

(b) Subject to the penalties set forth at KRS 216B.990(2).

ADAM D. MATHER, Inspector General

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: January 5, 2021

FILED WITH LRC: January 6, 2021 @ 12:18 P.M.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 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 March 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 March 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for an administrative escalation.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216B.040(2)(a).1., which requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to establish the certificate of need review procedures, including applications, notice, review for completeness, and review cycle timetables.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.040 by establishing procedures for the certificate of need process.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing review procedures for cost escalations as part of the certificate of need process.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the reference to a required form that has been updated to reflect the new location of the CON division in the Office of Inspector General.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the reference to the form incorporated by reference in 900 KAR 6:055.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 216B.040 because it establishes procedures for the certificate of need process.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by updating the reference to a form used as part of the certificate of need process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects certificate of need applicants and affected persons as defined by KRS 216B.015(3). In calendar year 2018, eighty-three (83) certificate of need applications were filed; in calendar year 2019, eighty-four (84) applications were filed; and in the first six (6) months of calendar year 2020, thirty-seven (37) applications were filed.

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

(a) List the actions that each of the regulated entities identified

in question (3) will have to take to comply with this administrative regulation or amendment: Entities that submit a certificate of need application will be required to follow the procedures set out 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): There will be no additional costs to applicants for a certificate of need or affected persons.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants for a certificate of need will be able to file documents more easily and have greater clarity about which office to communicate with and which forms are to be used.

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

(a) Initially: There are no additional costs to the cabinet for implementation of this administrative regulation.

(b) On a continuing basis: There are no additional costs to the cabinet for 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: State general funds and agency monies are used to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? (explain why or why not) Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities who apply for a certificate of need.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Cabinet for Health and Family Services, Office of Inspector General.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.010 and 216B.040(2)(a).

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local government. No additional costs will be incurred to implement this administrative regulation.

(c) How much will it cost to administer this program for the first year? (d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

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

Revenues (+/-): See response above.

Expenditures (+/-): This administrative regulation is anticipated to have minimal fiscal impact to the cabinet.

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Office of Inspector General Division of Certificate of Need (Amendment)

900 KAR 6:100. Certificate of need standards for implementation and biennial review.

RELATES TO: KRS 216B.015
STATUTORY AUTHORITY: KRS 194A.030(1)(c)4., 216B.040(2)(a)1, 216B.086

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. KRS 216B.086 authorizes the revocation of certificate of need, or portion thereof, for failure to implement the project in accordance with timetables and standards established by administrative regulation. This administrative regulation establishes the required timetables and standards for implementation as well as requirements for biennial reviews for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 216B.015(6)(5).

(2) "Days" means calendar days, unless otherwise specified.

(3) "Long-term care beds" means nursing home beds, intermediate care beds, skilled nursing beds, nursing facility beds, and Alzheimer nursing home beds.

(4) "Office of Inspector General" means the office within the Cabinet for Health and Family Services that is responsible for licensing and regulatory functions of health facilities and services.

(5) "Show cause hearing" means a hearing during which it is determined whether a person or entity has violated provisions of KRS Chapter 216B.

Section 2. Standards for Implementation. (1) As a condition for the issuance of a certificate of need, a holder of a certificate of need shall submit progress reports on the CON[OHP] - Form 8, Certificate of Need Six Month Progress Report, incorporated by reference in 900 KAR 6:055, at the six (6) month intervals specified in this section.

(2) A notice specifying the date each progress report is due shall be sent to every holder of a certificate of need whose project is not fully implemented.

(3) The cabinet or its designee shall review a progress report and shall determine:

(a) If the required elements have been completed; and

(b) If the required elements have not been completed, if sufficient reasons for failure to complete have been provided.

(4) A certificate of need shall be deemed complete if:

(a) The project has been approved for licensure or occupancy by the Office of Inspector General;

(b) A final cost breakdown has been submitted; and

(c) The required progress report fee pursuant to Section 3 of this administrative regulation has been submitted.

(5) Until a project is deemed complete by the cabinet, the cabinet may require:

(a) The submission of additional reports as specified in subsections (16) through (18) of this section; or

(b) Progress reports in addition to those required at six (6) month intervals under the provisions of this section.

(6) Except for a long-term care bed proposal[proposals], a certificate of need shall not be revoked for failure to complete the items required during a six (6) month period if the holder of the certificate of need establishes that the failure was due to circumstances that:

(a) Could not reasonably be anticipated and avoided by the holder; or

(b) Were not the result of action or inaction of the holder.

(7) If the cabinet determines that required elements have not been completed for reasons other than those set forth in subsection (6) of this section, it shall notify the holder of the certificate of need, in writing, that it has determined to revoke the certificate of need.

(8) The revocation shall become final thirty (30) days from the date of notice of revocation unless the holder requests a hearing pursuant to KRS 216B.086.

(9) The first progress report for any project~~[all projects]~~ other than long-term care beds shall include:

(a) For a project~~[projects]~~ for the addition of new services or expansion of existing services that does~~[do]~~ not involve construction, renovation, or the installation of equipment: plans for implementation of the project;

(b) For a project~~[projects]~~ for the purchase of equipment only, a copy of the purchase order;

(c) For a project~~[projects]~~ involving the acquisition of real property, evidence of an option to acquire the site; or

(d) For a construction or renovation project, evidence that schematic plans have been submitted to the Public Protection Cabinet, Department of Housing, Buildings, and Construction, and the Office of Inspector General, Division of Healthcare.

(10) For a project~~[projects]~~ other than long-term care beds not deemed complete, a second progress report shall include:

(a) For a project~~[projects]~~ converting beds, documentation that all beds are licensed;

(b) For a project~~[projects]~~ for addition of new services or expansion of existing services that do not involve construction, renovation, or the installation of equipment, documentation of approval for licensure and occupancy by the Office of Inspector General, Division of Healthcare, or the Kentucky Board of Emergency Medical Services; or

(c) For a construction or renovation project~~[projects]~~, the schedule for project completion, evidence of preliminary negotiation with a financial agency, and evidence of preliminary negotiation with contractors.

(11) For a project~~[projects]~~ other than long-term care beds not deemed complete, a third progress report shall include:

(a) For a construction or renovation project~~[projects]~~:

1. A copy of the deed or lease of land;

2. Documentation of the final enforceable financing agreement, if applicable;

3. Documentation that final plans have been submitted to the Public Protection Cabinet, Department of Housing, Buildings, and Construction, and the Office of Inspector General, Division of Healthcare; and

4. An enforceable contract with a construction contractor; or

(b) For a project~~[projects]~~ for purchase of equipment only, evidence of approval for licensure and occupancy by the Office of Inspector General, Division of Healthcare.

(12) For a project~~[projects]~~ other than long-term care beds not deemed complete, a fourth progress report shall include documentation of final plan approval by the Public Protection Cabinet, Department of Housing, Buildings, and Construction, and the Office of Inspector General, Division of Healthcare, and evidence that construction has begun.

(13) For a project~~[projects]~~ other than long-term care beds not deemed complete, a fifth progress report shall include documentation that construction or renovation is progressing according to schedule.

(14) For a project~~[projects]~~ other than long-term care beds not deemed complete, a sixth progress report shall include documentation that the project has been approved for licensure or occupancy by the Office of Inspector General, Division of Healthcare, and, if required, that the appropriate license has been approved for the health care service or facility.

(15) For a project~~[projects]~~ other than long-term care beds not deemed complete after the sixth progress report, the certificate holder shall, upon request, provide the cabinet or its designee with a written statement showing cause why the certificate should not be revoked. The cabinet may defer revocation action upon a showing by the certificate holder that the project shall be completed on a revised schedule. The cabinet or its designee may

require additional progress reports.

(16) For a project~~[projects]~~ involving long-term care beds, the progress reports required by this subsection shall be submitted.~~[.]~~

(a) The first progress report shall include:

1. A copy of the deed or lease of land for a project~~[projects]~~ requiring acquisition of real property; and

2. Evidence that final plans have been submitted to the Public Protection Cabinet, Department of Housing, Buildings, and Construction, and the Office of Inspector General, Division of Healthcare.

(b) For a project~~[projects]~~ involving long-term care beds not deemed complete, a second progress report shall include:

1. For a conversion of bed project~~[projects]~~, documentation that the beds in the project are licensed; or

2. For a construction project~~[projects]~~:

a. A schedule for project completion with projected dates;

b. Documentation of final financing;

c. Documentation of final plan approval by the Public Protection Cabinet, Department of Housing, Buildings, and Construction, and the Office of Inspector General, Division of Healthcare; and

d. An enforceable construction contract.

(17) For a project~~[projects]~~ involving long-term care beds not deemed complete, a third progress report shall include documentation that construction or renovation is progressing according to the schedule for project completion.

(18) For a project~~[projects]~~ involving long-term care beds not deemed complete, a fourth progress report shall include documentation that the project has been appropriately licensed and approved for occupancy by the Office of Inspector General, Division of Healthcare.

(19) The cabinet or its designee may grant no more than three (3) additional extensions of six (6) months for good cause shown if the certificate holder of long-term care beds has failed to comply with the relevant progress report requirements established in this section.

(20) If the project involves a capital expenditure, a final cost breakdown shall be included in the final progress report.

(21) If the Office of Inspector General, Division of Healthcare, discovers a violation of terms and conditions listed on a certificate of need and license while it is conducting its annual licensure inspection, it shall refer this violation for a show cause hearing in accordance with 900 KAR 6:090, Section 4.

Section 3. Progress Report Fee. (1) ~~[Upon the effective date of this administrative regulation.]~~ A progress report fee in the amount of \$100.00 or one (1) percent of the application fee assessed pursuant to 900 KAR 6:020, whichever amount is greater, shall be submitted by the certificate of need holder with each semi-annual progress report filed for each certificate of need that has been issued for more than three (3) years.

(2) A certificate of need shall be revoked for failure to submit the progress report fee.

Section 4. Voluntary Revocation of a Certificate of Need. If a certificate of need holder requests revocation of a certificate of need or a portion of a certificate of need ~~[within six (6) months of the effective date of this administrative regulation]~~ and submits a new application for the same proposed health facility or service within five (5) years from the date of revocation, the cabinet shall apply the application fee ~~that~~~~[which]~~ was submitted for the revoked certificate of need or portion of a certificate of need toward the fee assessed pursuant to 900 KAR 6:020 for the new application.

Section 5. Biennial Review. (1) A certificate of need ~~holder~~~~[holders]~~ may be subject to biennial review to determine if the holder is~~[they are]~~ in compliance with the terms as listed on the~~[their]~~ certificate of need.

(2) Biennial review may be conducted within sixty (60) days of the second anniversary of the final progress report and at twenty-four (24) month intervals thereafter.

(3) The cabinet or its designee shall provide sixty (60) days' advance written notification to the subject of any biennial review,

including the following:

- (a) When the biennial review will be initiated;
- (b) Request for information necessary for the review to which the cabinet does not have ready access; and
- (c) A deadline for a response to the request for information.
- (4) If the cabinet finds that any of the terms and conditions of a certificate of need approval and license have been violated, the review of, and any sanctions for, this violation shall be conducted in accordance with 900 KAR 6:090, Section 4.

ADAM D. MATHER, Inspector General

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: January 5, 2021

FILED WITH LRC: January 6, 2021 at 12:18 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 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 March 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 March 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Donna Little

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes the timetables and standards for implementation as well as requirements for biennial reviews.
 - (b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216B.040(2)(a).1., which requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to establish the certificate of need review procedures, including applications, notice, review for completeness, and review cycle timetables.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.040 by establishing procedures for the certificate of need process.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing review procedures for the certificate of need process.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation: This amendment updates the form number and clarifies that existing references to the Office of Inspector General are to the Division of Healthcare.
 - (b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the form number and correctly reflect the division referred to within the

Office of Inspector General.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 216B.040 because it establishes procedures for the certificate of need process.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by clarifying the procedures for the certificate of need process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects certificate of need applicants and affected persons as defined by KRS 216B.015(3). In calendar year 2018, eighty-three (83) certificate of need applications were filed; in calendar year 2019, eighty-four (84) applications were filed; and in the first six (6) months of calendar year 2020, thirty-seven (37) applications were filed.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities that submit a certificate of need application will be required to follow the procedures set out in the administrative regulation. No changes were made to the existing requirements.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants for a certificate of need will have greater clarity about the division referred to within the Office of Inspector General.

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

(a) Initially: There are no additional costs to the cabinet for implementation of this administrative regulation.

(b) On a continuing basis: There are no additional costs to the cabinet for 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: State general funds and agency monies are used to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities who apply for a certificate of need.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Cabinet for Health and Family Services, Office of Inspector General.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.010 and 216B.040(2)(a).

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

the first full year the administrative regulation is to be in effect.

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local government. No additional costs will be incurred to implement this administrative regulation.

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

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

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

Revenues (+/-): See response above.

Expenditures (+/-): This administrative regulation is anticipated to have minimal fiscal impact to the cabinet.

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Certificate of Need
(Amendment)

900 KAR 6:105. Certificate of Need advisory opinions.

RELATES TO: KRS 216B.015, 216B.020, 216B.061[216B.040-216B.130, 216B.330-216B.339, 216B.455], 216B.990

STATUTORY AUTHORITY: KRS 194A.030(1)(c)4, [194A.050,] 216B.040(2)(a)1

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. This administrative regulation establishes the policies for issuance of advisory opinions necessary for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 216B.015(6)(f).

(2) "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Office of Inspector General, Division of Certificate of Need Web site at <https://chfs.ky.gov/agencies/os/oig/dcn> [https://chfs.ky.gov/agencies/os/oig/dcn/Pages/cn.aspx].

(3) "Days" means calendar days, unless otherwise specified.

(4) [~~"Public information channels" means the Office of Communication and Administrative Review in the Cabinet for Health and Family Services.~~

(5) "Public notice" means notice given through:

(a) The Web site of the Office of Inspector General, Division of Certificate of Need at <https://chfs.ky.gov/agencies/os/oig/dcn> [Public information channels]; or

(b) The cabinet's Certificate of Need Newsletter.

Section 2. Advisory Opinions. (1) The cabinet shall issue advisory opinions regarding matters related to certificate of need on its own initiative or upon request from any person.

(2) A request for an advisory opinion shall be filed with the cabinet on CON[and shall be accompanied by the OHP] – Form 7, Request for Advisory Opinion, as incorporated by reference in 900 KAR 6:055.

(3) The cabinet may require verification of information and request additional documentation at its discretion prior to issuing

an advisory opinion.

(4) The cabinet shall issue a written advisory opinion within thirty (30) days of receipt of a completed request for an advisory opinion or of receipt of additional information, if applicable.

(5) Public notice of the advisory opinion shall be published in the monthly Certificate of Need Newsletter following the issuance of the advisory opinion.

(6) An affected person may request a public hearing regarding an advisory opinion in writing within thirty (30) days of the public notice of the advisory opinion.

(7) The public hearing shall be held within forty-five (45) days of the date of the filing of the request and shall be conducted in accordance with the provisions of 900 KAR 6:090.

(8) The cabinet shall enter a final decision regarding the advisory opinion within forty-five (45) days of the completion of the public hearing.

(9) If a public hearing is not requested, the advisory opinion shall be the final action of the cabinet.

ADAM D. MATHER, Inspector General

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: January 5, 2021

FILED WITH LRC: January 6, 2021 at 12:18 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 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 March 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 March 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the policies for issuance of certificate of need advisory opinions.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216B.040(2)(a)1., which requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to establish the certificate of need review procedures, including applications, notice, review for completeness, and review cycle timetables.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.040 by establishing procedures for advisory opinions associated with the certificate of need process.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing review procedures for the certificate of need process.

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

(a) How the amendment will change this existing administrative regulation: This amendment deletes the definition of "public information channels" and updates the definition of "public notice" to include posting the information on the CON website; updates the web address where the certificate of need newsletter may be viewed, updates a form number, and clarifies when advisory opinions are published in the newsletter.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to correctly reflect the manner of public notice and the web address for the CON Division, update a form number, and clarify when advisory opinions are published.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 216B.040 because it establishes procedures for advisory opinions associated with the certificate of need process.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by clarifying the process for advisory opinions associated with the certificate of need process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects certificate of need applicants and affected persons as defined by KRS 216B.015(3). In calendar year 2018, eighty-three (83) certificate of need applications were filed; in calendar year 2019, eighty-four (84) applications were filed; and in the first six (6) months of calendar year 2020, thirty-seven (37) applications were filed.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities that request an advisory opinion associated with certificates of need will be required to follow the procedures set out in the administrative regulation. The amendment does not create any additional requirements.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities that request an advisory opinion related to certificates of need will have greater clarity about which forms to use and publication of the opinion in the newsletter.

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

(a) Initially: There are no additional costs to the cabinet for implementation of this administrative regulation.

(b) On a continuing basis: There are no additional costs to the cabinet for 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: State general funds and agency monies are used to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities who apply for a certificate of need.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Cabinet for Health and Family Services, Office of Inspector General.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.010 and 216B.040(2)(a).

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local government. No additional costs will be incurred to implement this administrative regulation.

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

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

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

Revenues (+/-): See response above.

Expenditures (+/-): This administrative regulation is anticipated to have no fiscal impact to the cabinet.

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Office of Inspector General

Division of Certificate of Need

(Amendment)

900 KAR 6:110. Certificate of Need notification requirements [of the addition or establishment of a health service, or notification of the reduction or termination of a health service, or reduction of bed capacity, or notice of intent to acquire a health facility or health service].

RELATES TO: KRS 216B.061, 216B.065, 216B.066, 216B.990
STATUTORY AUTHORITY: KRS 194A.030(1)(c)4., [194A.050; 216B.040(2)(a)1.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. This administrative regulation establishes the [notification] requirements for notification by facilities of the addition or establishment of a health service, [and the notification requirements by facilities of] the reduction or termination of a health service or bed capacity, the redistribution of beds by licensure category, and [the notification requirements by facilities of] the intent to acquire a health facility for health service.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 216B.015(6)({5}).

(2) "Days" means calendar days, unless otherwise specified.

Section 2. Notification of the Addition [or Establishment] of a Health Service or Equipment. (1) A health facility shall submit a completed CON[OHP] - Form 10A, incorporated by reference in 900 KAR 6:055, to notify the cabinet that a service or equipment

has been added.

(2) The notification shall be submitted within ten (10) days of the date the facility:

(a) Makes an addition to an existing health service (including adding respite beds in an intermediate care facility[facilities] for individuals with an intellectual disability) for which there is review criteria in the State Health Plan, but for which a certificate of need is not required; or

(b) Adds equipment for which there is a review criteria in the State Health Plan, but for which a certificate of need is not required.

Section 3. Notification of the Reduction or Termination of a Health Service or Bed Capacity. A health facility shall submit a completed CON[OHP] - Form 10B, incorporated by reference in 900 KAR 6:055, to notify the cabinet of the reduction or termination of a health service, or reduction of bed capacity within thirty (30) days prior to the reduction or termination.

Section 4. Notification of Relocation of Acute Care Beds. If a certificate of need is not otherwise required, a hospital shall submit a completed CON - Form 10C, incorporated by reference in 900 KAR 6:055, to notify the cabinet that the facility has relocated acute care beds to another hospital under common ownership in the same area development district, within ten (10) days of the relocation.

Section 5. Notification of Redistribution of Beds by Licensure Category. A hospital shall submit a completed CON - Form 10C, incorporated by reference in 900 KAR 6:055, to notify the cabinet that the facility has redistributed beds among its existing licensure categories, within ten (10) days of the redistribution.

Section 6. Notification of the Intent to Acquire a Health Facility or Health Service. A health facility shall submit a completed CON[OHP] - Form 9, Notice of Intent to Acquire a Health Facility or Health Service, incorporated by reference in 900 KAR 6:055, to notify the cabinet of the acquisition of a health facility or health service at least thirty (30) days prior to the acquisition.

ADAM D. MATHER, Inspector General
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: January 5, 2021

FILED WITH LRC: January 6, 2021 at 12:18 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 22, 2021, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621. Individuals interested in attending this hearing shall notify this agency in writing by March 15, 2021, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until March 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. In accordance with KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for facilities to notify the Cabinet of changes in health services, bed capacity, bed category, and the intent to acquire a health facility.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216B.040(2)(a).1., which requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to establish the certificate of need review procedures, including applications and notifications.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.040 by establishing procedures for the certificate of need process.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing review procedures for facilities to notify the Cabinet of changes to health services and capacity as part of the certificate of need process.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the administrative regulation's title, updates the form numbers, and adds a requirement that a hospital notify the Cabinet if it redistributes beds among its existing licensure categories.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to update the administrative regulation and to provide a means for hospitals to notify the cabinet if they redistribute their beds by licensure type. This allows the cabinet to maintain up-to-date information about the number and type of licensed beds available in the state.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 216B.040 because it establishes procedures for notification to the Cabinet of certain changes in health services as part of the certificate of need process.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by establishing procedures for the certificate of need process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects certificate of need applicants and affected persons as defined by KRS 216B.015(3). In calendar year 2018, eighty-three (83) certificate of need applications were filed; in calendar year 2019, eighty-four (84) applications were filed; and in the first six (6) months of calendar year 2020, thirty-seven (37) applications were filed.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Hospitals that intend to redistribute their beds by licensure category will be required to submit a form notifying the Cabinet of the change within ten (10) days.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): In the past, hospitals were required to apply for and obtain a certificate of need to change the licensure category of their beds. They now have the flexibility to redistribute beds among their existing licensure categories as needed, but must notify the Cabinet of any changes.

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

(a) Initially: There are no additional costs to the cabinet for

implementation of this administrative regulation.

(b) On a continuing basis: There are no additional costs to the cabinet for 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: State general funds and agency monies are used to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities who apply for a certificate of need.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Cabinet for Health and Family Services, Office of Inspector General.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.010 and 216B.040(2)(a).

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local government. No additional costs will be incurred to implement this administrative regulation.

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

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

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

Revenues (+/-): See response above.

Expenditures (+/-): This administrative regulation is anticipated to have minimal fiscal impact to the cabinet.

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES Office of Inspector General Division of Certificate of Need (Amendment)

900 KAR 6:115. Certificate of need requirement for critical access hospitals, swing beds, and continuing care retirement communities.

RELATES TO: KRS 216B.015, 216B.020, 216B.061, 216B.332[216B.010-216B.430, 216B.330-216B.339], 216B.990, 42 C.F.R. 482.58, 485.645

STATUTORY AUTHORITY: KRS 194A.030(1)(c)4,

~~[194A.050,]~~ 216B.040(2)(a)1, 216B.330

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. KRS 216B.330 requires the cabinet to promulgate administrative regulations to establish the procedures and requirements for obtaining a certificate of compliance for a continuing care retirement community. This administrative regulation establishes the certificate of need requirements for critical access hospitals, swing beds, and continuing care retirement communities.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 216B.015(6)(5).

(2) "Days" means calendar days, unless otherwise specified.

(3) "Office of Inspector General" means the office within the Cabinet for Health and Family Services that is responsible for licensing and regulatory functions of health facilities and services.

Section 2. Critical Access Hospitals. A certificate of need shall not be required for a critical access hospital to re-establish the number of acute care beds that the hospital operated prior to becoming a critical access hospital if the hospital decides to discontinue operating as a critical access hospital.

Section 3. Swing Beds. (1) An acute care hospital or a critical access hospital that has been designated as a swing bed hospital by the Office of Inspector General, having met the requirements of 42 C.F.R. 482.58[482.66] or 485.645, shall not be required to obtain a certificate of need to utilize its licensed acute or critical access hospital beds as swing beds.

(2) For a designated swing bed hospital to add new acute or critical access hospital beds that may be utilized as swing beds, the hospital's proposal shall be consistent with the State Health Plan's review criteria for hospital acute care beds and certificate of need approval.

Section 4. Certification of Continuing Care Retirement Communities. (1) In order to be certified as a continuing care retirement community, a certificate of compliance shall be obtained from the Office of Inspector General, Division of Certificate of Need [Health Policy].

(2) In order to obtain a certificate of compliance, a continuing care retirement community shall complete and file CON[QHP] - Form 11, Application for Certificate of Compliance for a Continuing Care Retirement Community (CCRC), incorporated by reference in 900 KAR 6:055, thereby certifying that:

(a) All residents shall have a written agreement with the continuing care retirement community;

(b) The continuing care retirement community shall offer a continuum of residential living options and support services to its residents age sixty (60) and older and may offer these living options and services to persons below age sixty (60) on an as needed basis;

(c) None of the health facilities or health services established by the continuing care retirement community under this section shall apply for or become certified for participation in the Medicaid Program, and that this restriction shall be disclosed in writing to each of its residents;

(d) A claim for Medicaid reimbursement shall not be submitted for a person for a health service established by the continuing care retirement community under this section, and that this restriction shall be disclosed in writing to its residents;

(e) All residents in nursing home beds shall be assessed using the Health Care Financing Administration approved long-term care resident assessment instrument. The assessment shall be transmitted to the state data bank if the nursing home bed is certified for Medicare participation;

(f) Admissions to continuing care retirement community nursing home beds shall be exclusively limited to on-campus residents;

(g) A resident shall not be admitted to a continuing care retirement community nursing home bed prior to ninety (90) days

of residency in the continuing care retirement community unless the resident experiences a significant change in health status documented by a physician;

(h) A resident shall not be involuntarily transferred or discharged without thirty (30) days prior written notice to the resident or the resident's guardian;

(i) The continuing care retirement community shall assist a resident upon move-out notice to find appropriate living arrangements;

(j) The continuing care retirement community shall share information on alternative living arrangements provided by the Department of Aging and Independent Living at the time a move-out notice is given to a resident; and

(k) Written agreements executed by the resident and the continuing care retirement community shall contain provisions for assisting any resident who has received a move-out notice to find appropriate living arrangements.

(3)(a) The Office of Inspector General, Division of Certificate of Need, [Health Policy] shall issue a certificate of compliance within thirty (30) days of receipt of a completed CON[QHP] - Form 11 if all conditions are met.

(b) If all conditions are not met, the cabinet shall advise the applicant of any deficiencies.

(c) Upon correction of the deficiencies, the cabinet shall issue the certificate of compliance within thirty (30) days of correction.

(4) A continuing care retirement community's nursing home beds shall be considered to have been established for purposes of KRS Chapter 216B upon the issuance of an authority to occupy by the cabinet.

(5) If, after having obtained an initial certificate of compliance, a continuing care retirement community wishes to establish additional nursing home beds, an additional certificate of compliance shall be obtained from the cabinet.

(6) Upon request, the continuing care retirement community shall provide the Office of Inspector General, Division of Certificate of Need [Health Policy] the:

(a) Payor source for each of its nursing home beds; and

(b) ~~The~~ Number of each type of bed or living unit within the continuing care retirement community.

ADAM D. MATHER, Inspector General

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: January 5, 2021

FILED WITH LRC: January 6, 2021 at 12:18 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 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 March 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 March 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the certificate of need requirements for critical access hospitals, swing beds, and continuing care retirement communities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with KRS 216B.040(2)(a).1. which requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to establish the certificate of need review procedures, including applications, notice, review for completeness, and review cycle timetables.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of KRS 216B.040 and 216B.330 by establishing procedures for the certificate of need process.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing review procedures for the certificate of need process.

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

(a) How the amendment will change this existing administrative regulation: This amendment updates the administrative regulation to reflect the relocation of the CON Division from the Office of Health Policy to the Office of Inspector General.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to correctly reflect the office where the CON Division is located and update form numbers.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 216B.040 and 216B.330 because it establishes procedures for the certificate of need process.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by clarifying the location of the CON Division with the Cabinet and updating the form numbers.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects certificate of need applicants and affected persons as defined by KRS 216B.015(3). In calendar year 2018, eighty-three (83) certificate of need applications were filed; in calendar year 2019, eighty-four (84) applications were filed; and in the first six (6) months of calendar year 2020, thirty-seven (37) applications were filed.

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

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities that submit a certificate of need application will be required to follow the procedures set out in the administrative regulation. The amendment does not create any new requirements.

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

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants for a certificate of need will be able to file documents more easily and have greater clarity about which office to communicate with and which forms are to be used.

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

(a) Initially: There are no additional costs to the cabinet for implementation of this administrative regulation.

(b) On a continuing basis: There are no additional costs to the

cabinet for 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: State general funds and agency monies are used to implement and enforce this administrative regulation.

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

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

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities who apply for a certificate of need.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation impacts the Cabinet for Health and Family Services, Office of Inspector General.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.010 and 216B.040(2)(a).

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

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

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local government. No additional costs will be incurred to implement this administrative regulation.

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

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred to implement this administrative regulation on a continuing basis.

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

Revenues (+/-): See response above.

Expenditures (+/-): This administrative regulation is anticipated to have minimal fiscal impact to the cabinet.

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Community Based Services

Division of Family Support

(Amendment)

921 KAR 3:025. Technical requirements.

RELATES TO: KRS 205.2005, 7 C.F.R. Parts 271-285, 273.4, 273.5, 273.7, 273.11, 45 C.F.R. 261.2, 7 U.S.C. 2011, 2014, 2015(d), 20 U.S.C. 28 Part F, Pub. L. 116-260 Section 702(e)

STATUTORY AUTHORITY: KRS 194A.050(1), 7 C.F.R. 271.4, Part 272, Part 273

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 a Supplemental Nutrition Assistance Program (SNAP) within the state. 7 C.F.R. Parts 272 and 273 establish requirements for the cabinet to participate in the SNAP. In addition, 7 U.S.C. 2014 establishes that an otherwise-qualified alien who is blind or receiving a disability benefit, who has lived in the United States for at least five (5) years, or who is under eighteen (18) years of age shall be eligible to participate in SNAP regardless of the date he entered the United States. This administrative regulation establishes the technical eligibility requirements used by the cabinet in the administration of SNAP. Pursuant to Section 702(e) of Pub. L. 116-260, the Consolidated Appropriations Act of 2021, SNAP eligibility was temporarily expanded for qualifying students.

Section 1. Definitions. (1) "Exempt" means excused by the department from participation in the Supplemental Nutrition Assistance Program Employment and Training Program (E&T).

(2) "Qualified alien" is defined by 7 C.F.R. 273.4.

(3) "Student" means a person who is between the ages of eighteen (18) and forty-nine (49), physically and mentally fit, and enrolled at least half-time in an institution of higher education.

Section 2. Technical Eligibility. In accordance with 7 C.F.R. Parts 271 through 285 promulgated by the Food and Nutrition Service (FNS), of the United States Department of Agriculture, the cabinet shall utilize national uniform requirements of technical eligibility for SNAP.

Section 3. Technical Eligibility Criteria. Technical eligibility requirements shall apply to all households and consist of the criteria established in this section.

(1) Residency. A household:

(a) Shall reside in the county in which the household receives benefits; and

(b) May apply for benefits in any county in accordance with 921 KAR 3:030, Section 3.

(2) Identity.

(a) The applicant's identity shall be verified; and

(b) If an authorized representative applies for the household, the applicant's and the authorized representative's identities shall be verified.

(3) Citizenship and alien status.

(a) An individual shall satisfy the citizenship and alien status requirement if the individual is a:

1. Citizen of the United States;
2. U.S. noncitizen national; or
3. Qualified alien who is lawfully residing in Kentucky.

(b) Except as provided in paragraph (c) of this subsection, an individual whose status is questionable shall be ineligible to participate until verified.

(c) An individual whose status is pending verification from a federal agency shall be eligible to participate for up to six (6) months from the date of the original request for verification.

(d) A single household member shall attest in writing to the citizenship or alien status requirements as established in 921 KAR 3:030 for each household member.

(4) Household size. If information is obtained by the Department for Community Based Services (DCBS) that household size differs from the household's stated size, the size of household shall be verified through readily available documentary evidence or through a collateral contact.

(5) Students. A student shall be ineligible to participate unless the student is:

(a)1. Engaged in paid employment for an average of twenty (20) hours per week; or

2. If self-employed, employed for an average of twenty (20) hours per week and receiving weekly earnings at least equal to the federal minimum wage multiplied by twenty (20) hours;

(b) Participating in a state or federally financed work study

program during the regular school year;

(c) Responsible for the care of a dependent household member under the age of six (6);

(d) Responsible for the care of a dependent household member who has reached the age of six (6), but is under age twelve (12) and for whom the cabinet has determined that adequate child care is not available to enable the individual to attend class and to satisfy the work requirements of paragraphs (a) or (b) of this subsection;

(e) Receiving benefits from the Kentucky Transitional Assistance Program (K-TAP);

(f) Assigned to or placed in an institution of higher learning through a program pursuant to:

1. 7 C.F.R. 273.5(a);
2. 45 C.F.R. 261.2; or
3. 19 U.S.C. 2296;

(g) Enrolled in an institution of higher learning as a result of participation in a work incentive program pursuant to 42 U.S.C. 681;

(h) Enrolled in an institution of higher learning as a result of participation in E&T in accordance with 921 KAR 3:042; or

(i) A single parent with responsibility for the care of a dependent household member under age twelve (12); or

(j) Enrolled at least half-time in an institution of higher education and:

1. Eligible to participate in a state or federally financed work study program during the regular school year; or

2. Has an expected family contribution of \$0 in the current academic year pursuant to 20 U.S.C. 28 Part F.

(6) Social Security number (SSN).

(a) Households applying for or participating in SNAP shall comply with SSN requirements by providing the SSN of each household member or applying for a number prior to certification.

(b) Failure to comply without good cause shall be determined for each household member and shall result in an individual's disqualification from participation in SNAP until this requirement is met.

(7) Work registration. All household members, unless exempt, shall be required to comply with the work registration requirements established in Section 4 of this administrative regulation.

(8) Work requirement.

(a) Except for individuals who may be eligible for up to three (3) additional months in accordance with paragraph (e) of this subsection, an individual shall not be eligible to participate in SNAP as a member of a household if the individual received SNAP for more than three (3) countable months during any three (3) year period, during which the individual did not:

1. Work eighty (80) hours or more per month;
2. Participate in and comply with the requirements of the E&T component pursuant to 7 U.S.C. 2015(d) for twenty (20) hours or more per week;
3. Participate in and comply with the requirements of a program pursuant to:

- a. 7 C.F.R. 273.5(a); or
- b. 19 U.S.C. 2296;

4. Participate in and comply with the requirements established in 921 KAR 3:042; or

5. Receive SNAP benefits pursuant to paragraph (b), (c), or (d) of this subsection.

(b) Paragraph (a) of this subsection shall not apply to an individual if the individual is:

1. Under eighteen (18) or fifty (50) years of age or older;
2. Physically or mentally unfit for employment as determined by the cabinet;

3. A parent or other adult member of a household containing a dependent child under the age of eighteen (18);

4. Exempt from work registration pursuant to Section 4(4) of this administrative regulation; or

5. Pregnant.

(c) Paragraph (a) of this subsection shall not apply if, pursuant to an approved waiver by FNS, the county or area in which the individual resides:

1. Has an unemployment rate of over ten (10) percent; or

2. Does not have a sufficient number of jobs to provide employment.

(d) Subsequent eligibility.

1. An individual denied eligibility pursuant to paragraph (a) of this subsection shall regain eligibility to participate in SNAP if, during a thirty (30) day period, the individual meets one of the conditions of paragraph (a)1. through 4. of this subsection, or the individual was not meeting the work requirements in accordance with paragraph (b) of this subsection.

2. An individual who regains eligibility pursuant to subparagraph 1. of this paragraph shall remain eligible as long as the individual meets the requirements of subparagraph 1. of this paragraph.

(e) Loss of employment or training.

1. An individual who regains eligibility pursuant to paragraph (d)1. of this subsection and who no longer meets the requirements of paragraph (a)1. through 4. of this subsection shall remain eligible for a consecutive three (3) month period, beginning on the date the individual first notifies the cabinet that the individual no longer meets the requirements of paragraph (a)1. through 4. of this subsection.

2. An individual shall not receive benefits pursuant to subparagraph 1. of this paragraph for more than a single three (3) month period in any three (3) year period.

(f) If the individual does not meet all other technical and financial eligibility criteria pursuant to 7 U.S.C. 2011, nothing in this section shall make an individual eligible for SNAP benefits.

(9) Quality control. Refusal to cooperate in completing a quality control review shall result in termination of the participating household's benefits.

(10) Drug felons. An individual convicted under federal or state law of an offense classified as a felony by the law of the jurisdiction involved and that has an element of possession, use, or distribution of a controlled substance as defined in 21 U.S.C. 862(a), may remain eligible for SNAP benefits if the individual meets the requirements established in KRS 205.2005.

Section 4. Work Registration. (1) Unless a household member is exempt from work requirements as established in subsection (4) of this section, a household member shall register for work:

- (a) At the time of initial application for SNAP; and
- (b) Every twelve (12) months following the initial application.

(2) Work registration shall be completed by the:

- (a) Member required to register; or
- (b) Person making application for the household.

(3) Unless otherwise exempt, a household member excluded from the SNAP case shall register for work during periods of disqualification. An excluded person shall be an:

- (a) Ineligible alien; or
 - (b) Individual disqualified for:
1. Refusing to provide or apply for a Social Security number; or
 2. An intentional program violation.

(4) An individual meeting the criteria of 7 C.F.R. 273.7(b)(1) shall be exempt from work registration requirements.

(5) A household member who loses exemption status due to a change in circumstances shall register for work in accordance with 7 C.F.R. 273.7(b)(2).

(6) After registering for work, a nonexempt household member shall:

- (a) Respond to a cabinet request for additional information regarding employment status or availability for work;
- (b) In accordance with 7 C.F.R. 273.7(a)(1)(vi), accept a bona fide offer of suitable employment pursuant to 7 C.F.R. 273.7(h), at a wage not lower than the state or federal minimum wage; or
- (c) In accordance with 7 C.F.R. 273.7(a)(1)(ii), participate in the E&T Program if assigned by the cabinet.

(7) A household member making a joint application for SSI and SNAP in accordance with 921 KAR 3:035 shall have work requirements waived in accordance with 7 C.F.R. 273.7(a)(6).

(8) The cabinet's E&T worker shall explain to the SNAP applicant the:

- (a) Work requirements for each nonexempt household member;
- (b) Rights and responsibilities of the work-registered household

members; and

(c) Consequences of failing to comply.

Section 5. Determining Good Cause. (1) A determination of good cause shall be undertaken if a:

(a) Work registrant has failed to comply with work registration requirements as established in Section 4 of this administrative regulation; or

(b) Household member has, pursuant to Section 7 of this administrative regulation, voluntarily:

1. Quit a job; or

2. Reduced the household member's work effort.

(2) In accordance with 7 C.F.R. 273.7(i)(2), good cause shall be granted for circumstances beyond the control of the individual, such as:

(a) Illness of the individual;

(b) Illness of another household member requiring the presence of the individual;

(c) A household emergency;

(d) Unavailability of transportation; or

(e) Lack of adequate care for a child who is six (6) to twelve (12) years of age for whom the individual is responsible.

(3) Good cause for leaving employment shall be granted if:

(a) A circumstance established in subsection (2) of this section exists;

(b) The employment became unsuitable in accordance with 7 C.F.R. 273.7(h); or

(c) A circumstance established in 7 C.F.R. 273.7(i)(3) exists.

Section 6. Disqualification. (1) A participant shall be disqualified from the receipt of SNAP benefits if the participant:

(a) Fails to comply with the work registration requirements; or

(b) Is determined to have voluntarily, without good cause, quit a job or reduced the work effort as established in Section 5 of this administrative regulation.

(2) An individual disqualified from participation in SNAP shall be ineligible to receive SNAP benefits until the latter of the:

(a) Date the individual complies; or

(b) Lapse of the following time periods:

1. Two (2) months for the first violation;

2. Four (4) months for the second violation; or

3. Six (6) months for the third or a subsequent violation.

(3) Ineligibility shall continue until the ineligible member:

(a) Becomes exempt from the work registration; or

(b) 1. Serves the disqualification period established in subsection (2)(b) of this section; and

2. Complies with the work registration requirements.

(4) A disqualified household member who joins a new household shall:

(a) Remain ineligible for the remainder of the disqualification period established in subsection (2)(b) of this section;

(b) Have income and resources counted with the income and resources of the new household; and

(c) Not be included in the household size in the determination of the SNAP allotment.

Section 7. Disqualification for Voluntary Quit or Reduction in Work Effort. (1) Within thirty (30) days prior to application for SNAP or any time after application, an individual shall not be eligible to participate in SNAP if the individual voluntarily, without good cause:

(a) Quits a job:

1. Of thirty (30) hours or more per week; and

2. With weekly earnings at least equal to the federal minimum wage times thirty (30) hours; or

(b) Reduces the individual's work effort:

1. To less than thirty (30) hours per week; and

2. So that after the reduction, weekly earnings are less than the federal minimum wage times thirty (30) hours.

(2) The cabinet shall impose a disqualification period established in Section 6(2)(b) of this administrative regulation on an individual meeting subsection (1)(a) or (1)(b) of this section.

Section 8. Curing Disqualification for Voluntary Quit or Reduction in Work Effort. (1) Eligibility and participation may be reestablished by:

(a) Securing new employment with salary or hours comparable to the job quit;

(b) Increasing the number of hours worked to the amount worked prior to the work effort reduction and disqualification; or

(c) Serving the minimum period of disqualification imposed pursuant to Section 6(2)(b) of this administrative regulation.

(2) If the individual applies again and is determined to be eligible, an individual may reestablish participation in SNAP.

(3) If an individual becomes exempt from work registration, the disqualification period shall end, and the individual shall be eligible to apply to participate in SNAP.

Section 9. Hearing Process. If aggrieved by a cabinet action or inaction that affects participation, a SNAP participant may request a hearing in accordance with 921 KAR 3:070.

Section 10. This administrative regulation was found deficient by the Interim Joint Committee on Health, Welfare, and Family Services on September 23, 2020.

MARTA MIRANDA-STRAUB, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: January 13, 2021

FILED WITH LRC: January 15, 2021 at 8:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 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 March 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 March 31, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Laura Begin or Donna Little

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the technical requirements to receive Supplemental Nutrition Assistance Program (SNAP) benefits.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the technical requirements for eligibility for SNAP.

(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 technical requirements for SNAP eligibility.

(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 technical requirements 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: This amendment expands student eligibility criteria for SNAP by incorporating provisions for eligibility established by Pub. L. 116-260, the Consolidated Appropriations Act of 2021. The new provisions will allow students who are eligible to participate in a federal or state funded work study or whose expected family financial contribution is zero (as determined by the higher education facility per part F of Title IV of the Higher Education Act of 1965) to also be eligible students for SNAP technical requirements. This new eligibility is in effect from January 16, 2021, until thirty (30) days past the end of the COVID-19 public health emergency, but this amendment must be in place on or before January 16, 2021, pursuant to federal guidance received from the United States Department of Agriculture dated December 31, 2020.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with a change in eligibility in federal law.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment will assist in the effective administration of the statutes governing SNAP by complying with federal law.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes governing SNAP by incorporating additional student eligibility criteria as mandated in the Consolidated Appropriations Act of 2021.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: SNAP recipients who are enrolled at least part-time in higher education and are eligible to participate in a federal or state funded work study, or whose expected family financial contribution to education costs is zero, will be eligible to participate in SNAP if all other technical requirements are met.

(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 student will be required to obtain proof of eligibility from the institution of higher education.

(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 costs to the effected entities, as this information is provided to each student.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Students meeting the new criteria will be eligible to receive SNAP benefits if all other technical requirements are met.

(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 program cost for system changes to accommodate the new eligibility.

(b) On a continuing basis: No ongoing costs are anticipated.

(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 by the U.S. Department of Agriculture. Program administrative costs are funded 50% federal and 50% state and have 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 are no increases in fees or funding required with this amendment

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

(9) TIERING: Is tiering applied? Tiering is not applied as this administrative regulatory amendment will be applied in a like

manner on a statewide basis.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 271.4, 272, 273, Pub. L. 116-260

2. State compliance standards. KRS 194A.050(1), 205.2005

3. Minimum or uniform standards contained in the federal mandate. 7 C.F.R. 271.4, 272, 273

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation will 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 Department for Community Based Services will be impacted by the administrative regulation amendment

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. Pub. L. 116-260, the Consolidated Appropriations Act.

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

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

(c) How much will it cost to administer this program for the first year? This amendment does not affect the cost of administering the SNAP program. There will be a one-time agency cost for design changes to the web-based eligibility system used for SNAP. This is estimated to be less than \$200,000.

(d) How much will it cost to administer this program for subsequent years? This amendment does not affect the on-going cost of administering the SNAP 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:

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](#).

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(New Administrative Regulation)

103 KAR 1:160. Mandatory electronic filing and payment requirements.

RELATES TO: 103 KAR 18:050, 18:150, 41:220 and KRS 65.7621, 131.010, 131.130, 131.155, 131.250, 131.990, 136.604, 136.616, 136.620, 138.135, 138.140, 138.143, 138.146, 138.195, 138.240, 138.250, 138.260, 139.200, 139.310, 141.010, 141.020, 141.040, 141.0401, 141.150, 141.201, 141.202, 141.206, 141.220; 141.310, 141.315, 141.330, 141.335, 142.115, 142.400, 142.402, 160.613, 160.614, 160.615, 224.50-868, 224.60-145, 234.320, 365.390, 446.010.

STATUTORY AUTHORITY: KRS 131.130, 131.155; 131.250

NECESSITY, FUNCTION AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of Kentucky tax laws. KRS 131.250 authorizes the Department of Revenue to require any tax return, report, or statement to be electronically filed to facilitate the administration of the taxes it administers. KRS 131.155 authorizes the Department of Revenue to require any tax payment to be made by electronic fund transfer to facilitate the administration, payment, or collection of the taxes. This administrative regulation establishes requirements for the electronic filing of tax returns, reports, and statements, and for tax payments to be made by electronic fund transfer for certain taxes administered by the Department of Revenue.

Section 1. Definitions. (1) "Commercial mobile radio service" and "CMRS" has the same meaning as provided in KRS 65.7621(4).

(2) "Corporation" has the same meaning as provided in KRS 141.010(4).

(3) "Department" has the same meaning as provided in KRS 131.010(2).

(4) "Electronic fund transfer" has the same meaning as provided in KRS 131.010(14).

(5) "Employer" has the same meaning as provided in KRS 141.010(9).

(6) "Limited liability pass-through entity" has the same meaning as provided in KRS 141.010(16).

(7) "Pass-through entity" has the same meaning as provided in KRS 141.010(22).

(8) "Person" has the same meaning as provided in KRS 446.010(33).

(9) "Reasonable cause" has the same meaning as provided in KRS 131.010(9).

(10) "Specified tax return preparer" means, with respect to any calendar year, any tax return preparer unless the preparer reasonably expects to file ten (10) or fewer individual income tax returns during the calendar year.

(11) "Taxpayer" has the same meaning as provided in KRS 131.010(4).

Section 2. Tax Returns, Reports, Statements, and Tax Payments. (1) The tax returns, reports, schedules, and statements relating to the taxes subject to this administrative regulation shall be electronically filed with the department.

(2) The tax or fee payments relating to taxes or fees included in this administrative regulation shall be made by electronic fund transfer.

Section 3. Income Taxes. The following income tax returns, reports, schedules, statements, and payments shall be required to be submitted electronically:

(1) Individuals. Individual income tax returns, reports, statements, and related tax payments filed by a specified tax return preparer to report taxes imposed pursuant to KRS 141.020;

(2) Corporations and limited liability pass-through entities. Corporation income and limited liability entity tax returns, reports, statements and related tax payments filed by corporations and limited liability pass-through entities in accordance with KRS 141.201(3), 141.202, and 141.0401(4) to report and pay corporation and limited liability entity taxes imposed pursuant to KRS 141.040 and 141.0401 if the corporation or limited liability pass-through entity has gross receipts in an amount equal to, or greater than, one million dollars (\$1,000,000) on its annual federal income tax return in the current year;

(3) Pass-through entities. Pass-through entity returns, reports, statements, and related tax payments filed to report and pay taxes in accordance with the requirements under KRS 141.206 if the pass-through entity reports gross receipts in an amount equal to, or greater than, one million dollars (\$1,000,000) on its federal income tax return;

(4) Employers.

(a) Reports, statements, and payment requirements imposed upon employers with regard to the deduction and withholding of income taxes from wages paid pursuant to KRS 141.310 and 141.315 shall be filed and paid electronically as provided under 103 KAR 18:150; and

(b) Annual withholding statements filed pursuant to KRS 141.335 and KRS 141.150 shall be filed electronically as provided under 103 KAR 18:050.

Section 4. Sales and Excise Taxes and Fees. The following returns, reports, statements and payments shall be required to be submitted electronically when filing, reporting and paying sales and excise taxes and fees:

(1) Cigarettes, tobacco products, and vapor products excise taxes and license fees.

(a) License applications, license fees, excise taxes, returns and reports, stamp orders, and statements filed and paid pursuant to KRS 138.135, 138.140, 138.143, 138.146, and 138.195, as provided under 103 KAR 41.220;

(b) Enforcement and administrative fees required to be filed and paid pursuant to KRS 365.390;

(2) Commercial mobile radio service (CMRS) fees. Returns and payments to report and pay the CMRS prepaid service charges collected and remitted to the department in accordance with KRS 142.115;

(3) Gasoline, special fuels and liquefied petroleum gas motor fuels excise taxes and fees. Reports, excise taxes, and fees required to be filed and paid pursuant to KRS 138.240, 138.250, 138.260, 224.60-145, and 234.320;

(4) Multichannel video programming and communications services excise taxes. Returns, reports, statements and related tax payments required to be filed and paid in accordance with KRS 136.620 to report the taxes imposed pursuant to KRS 136.604 and 136.616;

(5) Sales and use taxes. (a) Returns, reports, supplementary schedules and related tax payments required to be filed and paid to report retail sales or services subject to the tax imposed pursuant to KRS 139.200;

(b) Returns, reports, supplementary schedules and related tax payments required to be filed and paid for the storage, use, or other consumption of tangible personal property, digital property, and extended warranty services subject to the tax imposed pursuant to KRS 139.310;

(6) Statewide transient room taxes. Returns, reports, statements and related tax payments required to be filed and paid in accordance with KRS 142.402 to report the tax imposed pursuant to KRS 142.400;

(7) Tire fees. Returns, reports, and related fee payments required to be filed and paid to report sales of new motor vehicle tires and the number of waste tires received and pay fees pursuant to KRS 224.50-868;

(8) Utility gross receipts license taxes. Returns, reports, statements and related tax payments required to be filed and paid in accordance with KRS 160.615 to report the taxes imposed pursuant to KRS 160.613 and 160.614.

Section 5. Penalties for Noncompliance. Any person, taxpayer, or tax preparer who fails or refuses to comply with the requirements of this administrative regulation shall, unless it is shown to the satisfaction of the department that the failure is due to reasonable cause, pay applicable penalties as provided under KRS 131.990.

Section 6. Waiver. (1) A person, taxpayer, or tax preparer required to electronically file a return, report or statement may contact the department to request a waiver. The contact information by tax type may be found on the Department of Revenue's Web site at <http://revenue.ky.gov>.

(2) The Department may waive the electronic fund transfer requirement if a taxpayer is unable to remit funds electronically, as provided in KRS 131.155(4).

Section 7. Effective Date. The returns, reports, statements, or payments required to be submitted electronically by this administrative regulation shall be effective for tax periods beginning on or after January 1, 2021.

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: January 13, 2021

FILED WITH LRC: January 14, 2021 at 8:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on March 25, 2021, at 10:00 a.m. in Room 11A, State Office Building, 501 High Street, Frankfort Kentucky 40601. In the event the declaration of a State of Emergency in Executive Order 2020-215 is not rescinded by this time, this hearing will be conducted by video teleconference. 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 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 March 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for the electronic filing of tax returns, reports, and statements, and for tax payments to be made by electronic fund transfer for certain taxes administered by the Department of Revenue.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to enhance agency efficiency in the administration of tax filings and payments.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides taxpayers the electronic filing and payment requirements

established by the Department of Revenue as authorized under KRS 131.130(1), KRS 131.250, and KRS 131.155.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation requiring electronic filing of returns, reports, statements and related tax payments for certain taxes will facilitate efficient tax administration by the Department of Revenue.

(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: The following taxpayers will be affected:

(a) for income tax, individuals who file returns using a specified tax return preparer; corporations and limited liability pass-through entities with gross receipts in excess of \$1,000,000; and pass-through entities filing federal partnership returns and making income tax payments on behalf of partners; and (b) for sales and miscellaneous excise taxes, businesses filing sales and use tax returns or other miscellaneous excise taxes specified in this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: Taxpayers required to file the returns or reports listed in this regulation will be required to do so electronically and pay any taxes or fees due electronically.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They must file returns, reports, or statements electronically and pay taxes or fees by electronic fund transfer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Unknown. Taxpayers using certain software may be required to pay nominal filing fees to the software vendors.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Electronically filed returns and payments are processed faster than paper returns or reports, reducing processing errors.

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

(a) Initially: Current staff and Department funding are being utilized to implement this administrative regulation.

(b) On a continuing basis: Costs are anticipated to be absorbed by the Department's budget.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current Department budgetary 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 new funding or increase in any current fees will be necessary to implement this new administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation advises of the possibility of penalties that could be assessed for noncompliance, but does not create new fees or penalties. Penalties are currently assessed by the Department for various violations pursuant to KRS 131.990

(9) TIERING: Is tiering applied? Tiering was not applied because all taxpayers impacted by this administrative regulation will be treated 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 Finance and Administration Cabinet, Department of Revenue will be directly impacted. Any direct or indirect impact to other agencies or local governments from the guidance provided in this administrative regulation is unknown.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130, KRS 131.250, and KRS 131.155.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There is no known 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? This administrative regulation provides guidance for taxpayers on the Department's electronic filing requirements. It is believed the mandatory provisions contained in this regulation may result in greater efficiencies or collection of state taxes. Whether it will have an effect on the collection of local taxes by local government agencies is unknown at this time.

(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? Increased revenue due to collection efficiencies is unknown at this time.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year this administrative regulation is in effect because the preparation to administer the provisions of this administrative regulation will have been done prior to filing.

(d) How much will it cost to administer this program for subsequent years? No additional costs are expected to be incurred outside normal operating costs for the Department 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:

**KENTUCKY INFRASTRUCTURE AUTHORITY
(New Administrative Regulation)**

200 KAR 17:100. Guidelines for Broadband Deployment Account.

RELATES TO: KRS 224A.011, 224A.112, KRS 224A.1121

STATUTORY AUTHORITY: KRS 224A.070(1), 224A.1121(12), 224A.113

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224A.070(1) and 224A.113 authorize the Kentucky Infrastructure Authority to promulgate administrative in accordance with KRS Chapter 13A to govern the application for and provision of financial assistance to governmental agencies and private sector entities for the construction of infrastructure for the deployment of broadband services from the Broadband Deployment Fund established pursuant to KRS 224A.112. KRS 224A.1121(12) requires the authority to promulgate administrative regulations governing the submission, review, and approval of applications and the administration of the broadband deployment projects. This administrative regulation establishes the requirements for the broadband deployment account.

Section 1. Definitions.

(1) "Applicant" is defined by KRS 224A.011(3).

(2) "Application" means an application submitted by an applicant for a grant from the broadband deployment account.

(3) "Broadband deployment project" or "project" is defined by KRS 224A.011(11).

(4) "Conditional commitment letter" means a letter delivered to the applicant stating the authority's commitment to provide a grant under specifications and subject to the satisfaction of certain conditions by the applicant.

(5) "Kentucky State Clearinghouse" means the project review mechanism, attached to the Department for Local Government, established in KRS 45.031

(6) "Kentucky Uniform System of Accounting" means the elements of a basic accounting system, including a standardized format for an annual budget, a chart of accounts with definitions, and a monthly operating report to system managers established by the authority, which shall be used by an applicant seeking or using funds of the authority if an alternative accounting system has not been approved by the authority.

(7) "Private sector entity" means a partnership, corporation, individual, association, limited liability company or other legal entity:

(a) Not owned, operated or controlled by a governmental agency;

(b) Which owns or operates a broadband service provider company; and

(c) Which is subject to the jurisdiction of the Public Service Commission of the Commonwealth of Kentucky.

(8) "Project priority list" means the list developed by the authority as required by Section 4 of this administrative regulation for funding of projects in priority order.

Section 2. Eligible Projects. Funds in the broadband deployment account shall be used to construct infrastructure for the deployment of broadband service to underserved or unserved areas of the Commonwealth.

Section 3. Eligible Applicants.

(1) Any governmental agency as defined in KRS 224A.011, or private sector entities, shall be eligible to apply to receive financial assistance for construction of infrastructure for the deployment of broadband service to households in underserved or unserved areas of the Commonwealth.

(2) Each applicant shall have or shall attain the legal authority necessary for constructing the proposed infrastructure project. The applicant shall also have the legal authority to obtain the proposed financing.

Section 4. Submission Requirements.

(1) An application shall be submitted to the Kentucky Infrastructure Authority, 100 Airport Road, Frankfort, Kentucky 40601, Attention: KIA Executive Director.

(2) Applicants may supplement their applications during the review process to clarify or explain the project scope, or make adjustments in the application to enhance the programmatic or financial feasibility of the project.

(3) Applications shall contain all information required by KRS 224A.1121.

(4) Applicants shall be required to submit to the Authority a current endorsement letter from the Kentucky eClearinghouse.

Section 5. Project Priority List.

(1) The authority shall maintain a project priority list on a continuous basis.

(2) A project shall be ranked using the following criteria:

(a) Total cost of the project;

(b) Availability of other funding for the project;

(c) Number of unserved and underserved households served by the project;

(d) The median household income of the users of the system or systems to benefit from the project;

(e) The cost per household for the project; and

(f) How effectively the project provides broadband service to the greatest number of underserved and unserved Kentucky

citizens and at the lowest cost.

(3) Projects shall be selected for financial assistance based on the criteria established in this subsection.

(a) The highest funding priority shall be given to those projects that best satisfy subsection (2)(f) of this section.

(b) Projects shall then be selected based on:

1. The level of funding available in the broadband deployment account;

2. The position of the project on the project priority list at the time funding is available; and

3. The project's readiness to proceed at the time funding is available.

Section 6. Additional Conditions to Project Funding.

(1) An applicant seeking funding for a project shall submit with the application current information including:

(a) A geographic description of the broadband deployment project area, including whether the area is partially served;

(b) A description of the broadband deployment project, including facilities, equipment, total cost, timeframe for completion, and network capabilities, including minimum speed thresholds;

(c) Documentation of the applicant's technical, financial, and managerial resources and experience to build, operate, and manage broadband serving citizens, households, and businesses in Kentucky;

(d) Documentation of the economic and commercial feasibility of the proposed broadband deployment project;

(e) The number of citizens, households, or businesses that would have new access to broadband as a result of the grant;

(f) The amount of matching funds the eligible applicant will contribute and a certification that no portion of the matching funds is derived from any state or federal grant received for the purpose of funding broadband infrastructure within the project area; and

(g) A certification that:

1. none of the funds provided by the program for the project in the application will be used to extend or deploy facilities to any currently served citizens, households, or businesses, and

2. The applicant shall provide at least fifty (50) percent of the project funding from a source other than another state or federally funded grant program designed to encourage broadband deployment in the area.

(2) Before funds may be disbursed to an applicant whose project has been approved for funding, the applicant shall demonstrate to the authority that the project:

(a) Has been reviewed through the Kentucky State Clearinghouse process; and

(b) Is in compliance with other state and federal requirements.

Section 7. Terms of Financial Assistance.

(1) An application for funding shall be:

(a) Subject to financial viability review by authority staff; and

(b) Referred to the board of directors of the authority for final action.

(2) A project may be funded by loans or grants or a combination of loans and grants, as approved by the board of directors of the authority.

(3) Upon approval of an application for funding of a project, the authority shall issue a conditional commitment letter to the applicant setting forth the requirements to be satisfied by the applicant prior to execution of an assistance agreement, including:

(a) Accounting standards or financial reporting conditions;

(b) Rate covenants;

(c) Other federal or state legal requirements relating to the project or the applicant;

(d) Engineering or technical requirements;

(e) Receipt of additional funding commitments from other sources; or

(f) Other relevant requirements.

(4) Financial assistance by the authority shall be made available only upon:

(a) Execution of an assistance agreement; and

(b) Satisfaction by the applicant of the conditions set forth in the conditional commitment letter.

(5) A grant amount may be adjusted by up to ten (10) percent from the principal amount approved by the board of directors without the need for further action by the board if:

(a) Requested by an applicant; and

(b) The staff of the authority finds that:

1. The additional requested amount is needed for the project;

2. The project cannot proceed without the additional funding; and

3. Adequate uncommitted funds are available in the broadband deployment account.

DENNIS KEANE, Chairman

APPROVED BY AGENCY: January 15, 2021

FILED WITH LRC: January 15, 2021 at 10:35 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 23, 2021, at 10:00 a.m. at 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by March 16, 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 cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until March 31, 2021, at 11:59 a.m. 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 12A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made upon request.

CONTACT PERSON: Bill Pauley, Staff Attorney, Department for Local Government, 100 Airport Road, 3rd Floor, Frankfort, Kentucky 40601; phone 502-330-6359; fax 502-227-8691; email Bill.Pauley@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Bill Pauley

(1) Provide a brief summary of: The following is a brief summary regarding 200 KAR 17.100:

(a) What this administrative regulation does: This Administrative Regulation provides guidelines for the submitting and reviewing of applications for grants under the Broadband Deployment Account created under KRS 224A.112.

(b) The necessity of this administrative regulation: It is necessary in order to provide guidance to applicants for grants, and to ensure that the application, review and awarding of grants is in accordance with all applicable laws.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Regulation conforms to the content of KRS 224A.1121, which provides guidelines for the grants, by incorporating its guidelines and definitions throughout.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will assist in the effective administration of the statutes by providing applicants with a consistent procedure for providing the statutorily required information needed to administer the grant program. It will also aid the Kentucky Infrastructure Authority (KIA) in its administration of the program by creating a written process to analyze potential Broadband Infrastructure projects requesting grant funds.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: This is a new regulation, and will not change any existing administrative regulation.

(a) How the amendment will change this existing administrative regulation:

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All governmental agencies, including cities, and private sector entities seeking grant funds for the construction of Broadband Infrastructure in the Commonwealth will be affected 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: As a result of this Regulation, those governmental agencies and private sector entities will be provided guidance as to how to apply for state grant funds. In order to comply with the Regulation, they will be required to provide documentation regarding their proposed construction including the financial and geographical information required by statute. This will require the submission of documents and may require advice from an accounting professional.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The expense for the administrative and financial expenses are estimated to be minimal, and will only apply to those wishing to request funds.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits to successful applicants are immeasurable. Access to Broadband capabilities will improve educational and business opportunities. Innovation in technological areas will continue to grow and provide even greater benefits in the future.

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

(a) Initially: The expense for the KIA initially will consist of creating new processes for analyzing grant applications. This may require new computer software, and will certainly require the time of staff members.

(b) On a continuing basis: On a continuing basis, staff will continue to be utilized, and computer systems will need upgraded as needed.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of grant funding for this program is entirely state funded. The KIA receives its funding from state monies as well.

(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: In order to implement this Regulation, some additional fees and funding may be necessary. This funding will be for the creation of software and use of staff resources. It remains to be seen what that amount may be.

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

(9) TIERING: Is tiering applied? No tiering is applied. KRS 224A.1121 states that grant priority will be given to those projects which most effectively provide broadband service to the greatest number of underserved and unserved Kentucky citizens and at the lowest cost. In following that requirement, no tiering is necessary.

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 has the potential to impact all level of state and local government, including cities, counties, and special purpose governmental agencies.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This regulation relates to providing grant money for the

building of infrastructure for the deployment of broadband service. KRS 224A.1121 requires the action taken by this administrative regulation.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The effect to expenditures on state government include the administrative duties required by the Kentucky Infrastructure Authority. Those expenses should be minimal. The effect to revenues to local governments is unlimited.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is difficult to estimate the amount of revenue this administrative regulation will generate for state and local government for the first year since construction times are unknown. However, jobs can be assumed to be created relating to the construction of broadband infrastructure. Also, this regulation allows local governments to be given half of their construction costs for approved infrastructure projects. State government will receive benefits from any taxes as a result of infrastructure construction.

(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? In subsequent years, the deployment of broadband internet has the potential to create an unknown number of employment and educational opportunities. The potential for revenue is unlimited.

(c) How much will it cost to administer this program for the first year? The costs of this regulation for the first year will include the administrative expenses required in order to provide the necessary information to the Kentucky Infrastructure Authority.

(d) How much will it cost to administer this program for subsequent years? In subsequent years, the administrative costs will remain the same, but, since this is a voluntary program, those costs should be outweighed by the benefits.

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 Department of Insurance Division of Consumer Protection (New Administrative Regulation)

806 KAR 2:060. Complaints.

RELATES TO: KRS 304.2-160

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. The function of this administrative regulation is to set forth the classification of complaints made to the Department of Insurance.

Section 1. When a written and signed complaint is received by the Department of Insurance, the commissioner, within the jurisdiction under the laws of this Commonwealth, shall make a determination, as to the merits, of any received complaint.

Section 2. (1) The department shall not have the authority to usurp or infringe upon the jurisdiction, prerogative, or authority of the various courts of competent jurisdiction in this Commonwealth. The ultimate decision upon questions of law and fact shall rest with the court.

(2) Upon final disposition of each complaint, the commissioner shall have the duty, to make a finding as to if the complaint is

justifiable, unjustifiable, indeterminate, or a request for information, and to record the findings in its record. In making this finding, the department shall be guided by the common and accepted practice in the insurance industry and a fair and reasonable application of the duties, responsibilities, and obligations of the respective parties.

SHARON P. CLARK, Commissioner
KERRY B. HARVEY, Secretary

APPROVED BY AGENCY: December 21, 2020

FILED WITH LRC: December 23, 2020 at 10:23 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 9:00 a.m. on March 22nd, 2021 at 500 Mero Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on March 31st, 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: Abigail Gall, Executive Administrative Secretary, 500 Mero Street, Frankfort, Kentucky 40601, phone +1 (502) 564-6026, fax +1 (502) 564-1453, email abigail.gall@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Abigail Gall

(1) Provide a brief summary of: This administrative regulation clarifies the Commissioner's authority to classify complaints that are received by the Department of Insurance.

(a) What this administrative regulation does: The function of this administrative regulation is to set forth the classification of complaints made to the Department of Insurance.

(b) The necessity of this administrative regulation: The necessity of this administrative regulation is to ensure all received complaints are classified by the commissioner and within the jurisdiction of the department. This is necessary in order to aide in the effectuation of the Insurance Code.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Commissioner to promulgate administrative regulations that aide in the effectuation of Insurance Code.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The classification of the complaints received by the Department determine the fate of the complaint and the following steps necessary to carry out the complaint.

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

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

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

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

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

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The entities that are listed in each complaint will be affected by this administrative regulation.

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

amendment, including:

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: The commissioner and the appointing department staff authorized to receive and process complaints will need to utilize any supporting documents provided to the department to determine the classification of the complaint.

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

(c) As a result of compliance, what benefits will accrue to the entities: Complaints will be classified appropriately and the mission of the Department of Insurance will be met.

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

(a) Initially: Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance.

(b) On a continuing basis: Implementation of this amendment is not anticipated to have an on-going cost on the Department of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks necessary.

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

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

(9) TIERING: Is tiering applied?

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 and the entities involved in the received complaint.

(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? No revenue is expected.

(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 expected.

(c) How much will it cost to administer this program for the first year? No cost is expected.

(d) How much will it cost to administer this program for subsequent years? No cost is expected.

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: There should be no fiscal impact of this administrative regulation.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of January 13, 2021

Call to Order and Roll Call

The January meeting of the Administrative Regulation Review Subcommittee was held on Wednesday, January 13, 2021 at 8 a.m. In Room 149 of the Capitol Annex. Senator West, Co-Chair, called the meeting to order, the roll call was taken. The minutes from the December 2020 meeting were approved.

Present were:

Members: Senators Julie Raque Adams, Alice Forgy Kerr, Stephen West, and David Yates. Representatives Randy Bridges, Deanna Frazier, David Hale, and Marylou Marzian.

LRC Staff: Stacy Auterson, Emily Caudill, Ange Darnell, Emily Harkenrider, Karen Howard, Carrie Nichols, and Christy Young.

Guests: Leanne Diakov, Board of Medical Licensure; Larry Brandsetter, Cordelia Harbut, Stephanie McCrery, Ann-Tyler Morgan, Board of Architects; Todd Allen, Robin Chandler, David Cook, David Couch, Matthew Courtney, Kelly Foster, Denise Hartsfield, Lisa Moore, Marty Park, Micki Ray, Matt Ross, Department of Education; DJ Wasson, Department of Insurance; Jamie Eads, Marc Guilfoil, Chad Thompson, Jennifer Wolsing, Horse Racing Commission; Max Fuller, Benjamin Siegel, Department of Housing, Buildings, and Construction; Julie Brooks, Department for Public Health; Lee Guice, Lisa Lee, Jonathan Scott, Department for Medicaid Services; Victoria Elridge, Amy Metzger, Marnie Mountjoy, Phyllis Sosa, Tonia Wells, Department for Aging and Independent Living; Laura Begin, Donna Little, Paula Saenz; Department for Community Based Services; Robert Heleringer, Attorney.

The Administrative Regulation Review Subcommittee met on Wednesday, January 13, 2021, and submits this report:

The subcommittee determined that the following administrative regulation was deficient pursuant to KRS 13A.030(2)(a):

PUBLIC PROTECTION CABINET: Horse Racing Commission: Licensing

810 KAR 3:020. Licensing of racing participants. Jamie Eads, deputy executive director; Marc Guilfoil, executive director; Chad Thompson, deputy general counsel; and Jennifer Wolsing, general counsel, represented the commission. Robert Heleringer, attorney and former Kentucky Representative, appeared in opposition to this administrative regulation.

In response to a question by Co-Chair West, Ms. Wolsing stated that this administrative regulation protected the horse-racing industry from insolvent or recalcitrant debtors, especially regarding cases of complaints brought to the attention of the commission after unappealable final judgments. A prior court determination concluded that this administrative regulation only applied to licensee debts payable to other commission-licensed entities. Almost fifty (50) percent of complaints regarding financial irresponsibility were complaints regarding debts payable to nonlicensed entities. Prior to the court's determination, the commission interpreted financial responsibility provisions in this administrative regulation as applying to licensees with debts payable to licensed or nonlicensed, horse-racing industry related entities. This administrative regulation represented a rewrite of provisions to clarify that provisions applied to licensed and nonlicensed, horse-racing industry related entities. The proposed agency amendment to this administrative regulation should remedy past concerns of the subcommittee by specifically listing the nonlicensed entities to be included as those to whom a licensee could be indebted and included in a complaint to the commission.

In response to a question by Co-Chair West, Mr. Heleringer stated that he was opposed to this administrative regulation, which represented a huge expansion of the commission's authority. While this administrative regulation pertained to a former client, Mr. Heleringer was not appearing on behalf of any client. The proposed agency amendment did not remedy concerns that this administrative regulation vastly expanded the commission's scope of enforcement beyond what was statutorily authorized. This was an attempt to circumvent the court's determination. Because the list in the proposed agency amendment included the words, "such as," the list was not exhaustive and represented only examples. Financial disputes between the commission's licensees were the only matters that were appropriate for considerations of financial responsibility.

In response to a question by Co-Chair West, Ms. Wolsing stated that this administrative regulation did not represent an

expansion of the commission's authority. If a licensee had a debt with a nonlicensed, horse-racing industry related entity, that debt should be able to be included in matters pertaining to financial irresponsibility, and the commission should be able to take appropriate action. The list of entities in the proposed agency amendment was limited to those entities listed or similar entities in the horse-racing industry. The commission was not retaliating and was cleaning up this administrative regulation to support the agency's original intent.

In response to a question by Co-Chair West, Mr. Heleringer stated that, while the commission had stated that it was not retaliating, this administrative regulation would provide for the possibility of retribution to his former client. The commission should seek legislation that specifically established this authority. This administrative regulation would put the commission in the collections business and might result in significant litigation.

Co-Chair Hale stated that this subcommittee had considered this administrative regulation at three (3) subcommittee meetings, but none of the agency's proposed amendments had alleviated concerns.

Representative Bridges stated that this administrative regulation gave very broad authority to the commission. The nonlicensed entities listed were only examples; therefore, the list was not exhaustive or specific.

Co-Chair West stated that there were multiple red flags related to this administrative regulation. Did this administrative regulation reflect legislative intent? Was this matter legislative or regulatory? Did this constitute special legislation? Were these requirements aimed at one (1) individual? This seemed to constitute a major change to the commission's authority. This might also be an expansion of the court process in that a debtor, after a final judgment, could face additional action (a second penalty). Will this administrative regulation be applied equally to large and small breeders?

In response to a question by Co-Chair West, Mr. Heleringer stated that he agreed with Co-Chair West's concerns. These provisions could still apply even if payments were being made toward a final judgment. This could result in a loss of occupational income for someone who already had unpaid debt obligations. This was an attempt to circumvent the court's determination. There was the potential for selective enforcement of these provisions. Expressed statutory authority was necessary.

In response to a question by Co-Chair West, Ms. Wolsing stated that this administrative regulation was not special legislation and was not a mechanism for retaliation. The commission had never failed to act upon a verified case of financial irresponsibility, regardless of the influence of the licensee. This was not selective enforcement, and there was no provision for selective enforcement

in this administrative regulation. This was not an expansion of the court process. This was a clarification of the procedures the commission had followed for years. The commission did not expect an increase in litigation as a result of this administrative regulation. Mr. Thompson stated that there was no retaliatory intention toward Mr. Heleringer's former client, but that this represented a clarification of procedures resulting from the court's determination in that case. In that case, the debtor was actively subverting the restitution process, which would be an appropriate matter for action by the commission. In that case, Mr. Heleringer's former client was not acting in good faith and had attempted to gain licensure through his wife's application for a license after he was denied. In response, Mr. Heleringer stated that was a misrepresentation of the situation, which further supported the assertion that this was retaliatory on the part of the commission. In response, Mr. Thompson stated that there was no retaliatory intent.

In response to a question by Co-Chair West, Mr. Guilfoil stated that he had previously served as a steward in the horse-racing industry and had addressed these sorts of issues in that capacity. This administrative regulation represented a codification of those procedures at the commission level. Most matters of this type were successfully addressed at the steward level. There was no retaliatory intent pertaining to this administrative regulation.

In response to a question by Co-Chair West, Mr. Heleringer agreed that most debts between licensees were handled by the stewards without full action of the commission. This new version of this administrative regulation was more than a codification of steward procedures but was a significant expansion, which would involve more than disputes between commission licensees.

Senator Yates stated that sometimes powerful entities found ways to use administrative regulations to their advantage. There might be unintended consequences of these provisions. For example, could a mortgage company use this as a way to seek payment? It was necessary to protect the industry, but this administrative regulation might represent an expansion that would give undue advantage to the powerful. The commission should attempt to more narrowly tailor these provisions.

Co-Chair West made a motion, seconded by Representative Frazier, to find this administrative regulation deficient. A roll call vote was conducted, and it was determined that this administrative regulation was found deficient.

As a procedural precaution, Co-Chair West withdrew his motion, and Representative Frazier withdrew her second to find this administrative regulation deficient. Co-Chair West made a motion, seconded by Co-Chair Hale, to find this administrative regulation deficient. A roll call vote was conducted. With five (5) present members voting in support of the motion and two (2) members appearing in their districts via videoconference voting in support of the motion, the motion was approved. This administrative regulation was found deficient.

Compiler's Note: Pursuant to KRS 13A.335(3)(a), a new Section 25 was added to this administrative regulation to reflect the finding of deficiency.

Administrative Regulations Reviewed by this Subcommittee:

BOARDS AND COMMISSIONS: Board of Medical Licensure

201 KAR 9:081. Disciplinary proceedings. Leanne Diakov, general counsel, represented the board.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 2, 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.

Board of Architects

201 KAR 19:215. Accredited schools and colleges. Larry Brandsetter, board member; Cordelia Harbut, executive director; Stephanie McCrery, president; and Anne-Tyler Morgan, attorney, represented the board.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and

NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 19:220. Application for examination.

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 requirements of KRS Chapter 13A; and (2) to amend Section 3 to update material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 19:225. Examinations required; general provisions.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 through 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 19:230. Reexamination; reconsideration.

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 19:235. Reciprocity; registration without examination.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 3 to comply with the drafting requirements of KRS Chapter 13A; and (2) to add Section 4 to establish material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 19:240. Resident licensed in another state; reciprocity.

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 19:245. Duplicate certificates.

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 19:250. Temporary licensing not permitted.

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 19:255. Fees.

A motion was made and seconded to approve the following amendments: (1) to amend Section 2 to delete fees relating to the failure to notify the board of a change in information and for duplicate documents; (2) to amend Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A; (3) to amend Section 2 to: (a) clarify methods of payment to include payments by debit and credit card; and (b) delete the requirement for a check to be certified; and (4) to add Section 4 to establish material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

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201 KAR 19:260. Professional practice standards; violations, penalties.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 5 to comply with the drafting requirements of KRS Chapter 13A; and (2) to add Section 7 to establish provisions for advertising through the Internet or other electronic means. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 19:265. Individual seals; office titles.

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 update material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 19:270. Plans and specifications standards.

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 19:275. Use of title "architect".

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 19:410. Accredited schools and colleges for certified interior designers.

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 19:415. Application for certification as an interior designer.

A motion was made and seconded to approve the following amendments: (1) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 2 to update material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 19:420. Qualifications for certification.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1, 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 19:425. Limited period of certification by prior experience.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the NECESSITY, FUNCTION, AND CONFORMITY paragraph; and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 19:430. Certification by persons credentialed in other jurisdictions.

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 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 19:435. Certification renewal.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 2 to comply with the drafting and formatting requirements of KRS Chapter 13A; and (2) to add Section 3 to establish material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 19:440. Fees for certification of interior designers.

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 19:445. Continuing education.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 4 and 6 to comply with the drafting requirements of KRS Chapter 13A; and (2) to amend Section 6 to update material incorporated by reference. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 19:450. Signature of documents by certified interior designers; use of title.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 2 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

201 KAR 19:455. Unprofessional conduct.

A motion was made and seconded to approve the following amendments: to amend the TITLE; the STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs; and Section 1 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

EDUCATION AND WORKFORCE DEVELOPMENT CABINET: Department of Education: Office of Chief State School Officer

701 KAR 5:150. Nontraditional instruction program. Todd Allen, general counsel, represented the department.

A motion was made and seconded to approve the following amendments: to amend 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.

General Administration

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

In response to questions by Co-Chair Hale, Mr. Allen stated that this emergency administrative regulation provided school districts with the option for paid emergency leave related to the coronavirus (COVID-19) pandemic. Senate Bill 177 from the 2020 Regular Session of the General Assembly had these same provisions, but those provisions had expired. School districts were consulted, and the department received one (1) public comment, which was in support of this emergency administrative regulation.

Facilities Management

702 KAR 4:090. Property disposal.

A motion was made and seconded to approve the following amendments: to amend the STATUTORY AUTHORITY paragraph and Sections 1 through 4 to comply with the drafting requirements

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of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Office of Instruction

704 KAR 3:035. Annual professional development plan.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 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.

704 KAR 3:305. Minimum requirements for high school graduation.

A motion was made and seconded to approve the following amendments: to amend Sections 3, 4, and 8 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

704 KAR 3:325. Effective Instructional Leadership Act.

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.

Academic Standards

704 KAR 8:100. Kentucky Academic Standards for Library Media Elective.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO paragraph 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: Administration

806 KAR 2:095. Accounting and reporting requirements for collecting local government premium tax. DJ Wasson, deputy commissioner, represented the department.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 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.

Surplus Lines

806 KAR 10:030. Surplus lines reporting and tax payment structure.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 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.

Trade Practices and Frauds

806 KAR 12:010. Advertising.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

806 KAR 12:020. Fair disclosure to consumers.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments

were approved.

806 KAR 12:150. Annuity disclosures.

A motion was made and seconded to approve the following amendments: to amend the TITLE 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.

806 KAR 12:180. Military sales practices.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 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.

Rates and Rating Organizations

806 KAR 13:020. Excess rates; consent form.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 and 3 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Health Maintenance Organizations

806 KAR 38:100. Risk-based capital for health organizations.

A motion was made and seconded to approve the following amendments: to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 6 and 8 through 10 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Insurance Fraud

806 KAR 47:010. Fraud prevention.

A motion was made and seconded to approve the following amendments: to amend the RELATES TO; STATUTORY AUTHORITY; and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 1 through 3, 5, and 6 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: Horse Racing Commission: Licensing: Quarter Horse, Paint Horse, Appaloosa, and Arabian Racing

811 KAR 2:120. Kentucky Horse Breeders' Incentive Fund. Jamie Eads, deputy executive director; Marc Guilfoil, executive director; Chad Thompson, deputy general counsel; and Jennifer Wolsing, general counsel, represented the commission.

In response to a question by Co-Chair West, Ms. Wolsing stated that this administrative regulation was initially being amended to make technical corrections to prevent sunset of these provisions. After notification, meetings with stakeholders, and an informal public hearing with a Statement of Consideration, the commission developed the proposed agency amendments, which primarily provided for independent certification of the number of horses of a given breed. If a Kentucky affiliate was unable to find an independent third party, commission staff were able to perform the certification at a fee of \$120 per hour. Additionally, for a horse to be included in the certification, the horse had to be the offspring of a DNA-verified sire or dam, with a three (3) generation pedigree on either side of parentage.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to add a definition for "show horse"; (2) to amend Section 2 to require: (a) Kentucky affiliates to have an IRS 501(c) designation; (b) one (1) member of the advisory committee to have established knowledge of gaited horses; (c) re-registration of Kentucky affiliates; (d) a Kentucky affiliate who is the national breed organization to obtain certification by an independent third party, or by the commission at a fee of

\$120 per hour; (e) certified horses to have parentage verified by DNA; and (f) certification data to be provided to the commission electronically; (3) to amend Section 3 to require: (a) the commission to notify the Kentucky affiliate of the total dollars allocated to that affiliate; (b) a Kentucky affiliate to notify the commission of the names of incentive winners, the horses registered to that affiliate, and the date of each registration; (c) the commission to generate claim forms within thirty (30) days of notification; (d) a Kentucky affiliate to provide the forms to its incentive winners and to certify that the required notification has occurred; (4) to amend Section 4 to require the semiannual report to include a list of all horses registered, current board members, and current contact information; and (5) to amend Section 6 to allow the commission to bar registration for violations from one (1) to twenty (20) years based on the severity and repetition of violations. Without objection, and with agreement of the agency, the amendments were approved.

Department of Housing, Buildings and Construction: Electrical
815 KAR 35:015. Certification of electrical inspections. Benjamin Siegel, general counsel, represented the department.

A motion was made and seconded to approve the following amendments: to amend Sections 2 through 8 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: 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. Julie Brooks, regulation coordinator, represented the department.

In response to a question by Co-Chair West, Ms. Brooks stated that the proposed agency amendment to this administrative regulation restored the fee structure based on a facility's square footage and the risk level of the food being processed or stored.

Co-Chair West thanked the department for working with stakeholders to come to a consensus regarding this administrative regulation. In response, Co-Chair Hale agreed with Co-Chair West and stated that this was the way the system was intended to work.

A motion was made and seconded to approve the following amendments: to amend Section 3 to revise the fee structure so that fees are based on the facility's square footage and the risk level of the food being processed or stored. Without objection, and with agreement of the agency, the amendments were approved.

Department for Medicaid Services: Payments and Services

907 KAR 3:250. Programs of All-Inclusive Care for the Elderly (PACE). Lisa Lee, commissioner; Lee Guice, director of policy and operations; and Jonathan Scott, regulatory and legislative advisor, represented the department.

Department for Aging and Independent Living: Aging Services

910 KAR 1:151. Repeal of 910 KAR 001:150 and 910 KAR 001:160. Victoria Elridge, commissioner; Amy Metzger, division director; Marnie Mountjoy, assistant director; Phyllis Sosa, staff assistant; and Tonia Wells, division director, represented the department.

Guardianship

910 KAR 2:060. Guardianship Trust Fund.

A motion was made and seconded to approve the following amendments: to amend Sections 2, 4, and 6 through 9 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department for Community Based Services: Supplemental Nutrition Assistance Program

921 KAR 3:020. Financial requirements. Laura Begin, regulation coordinator; Donna Little, deputy executive director, Office of Legislative and Regulatory Affairs; and Paula Saenz,

branch manager, represented the department.

In response to questions by Senator Yates, Co-Chair West and Ms. Begin stated that provisions for SNAP benefits to be terminated after lottery or gambling winnings were included in order to conform with federal guidelines. Ms. Begin stated that SNAP benefits were prohibited from use in purchasing lottery chances. Senator Yates stated his concerns that many with limited means were spending excessive amounts on lottery chances. It was important to educate citizens about this matter.

921 KAR 3:030. Application process.

A motion was made and seconded to approve the following amendments: to amend Section 9 and material incorporated by reference to make technical corrections. Without objection, and with agreement of the agency, the amendments were approved.

921 KAR 3:042. Supplemental Nutrition Assistance Program Employment and Training Program.

Child Welfare

922 KAR 1:500. Educational and training vouchers.

Other Business: Co-Chair West welcomed new subcommittee members, Senator David Yates and Representative Randy Bridges.

The following administrative regulations were deferred or removed from the January 13, 2021, subcommittee agenda:

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.

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.

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 2:160. Exotic wagering.

Department of Housing, Buildings and Construction: Plumbing

815 KAR 20:150. Inspections and tests. Benjamin Siegel, general counsel, represented the department.

In response to questions by Representative Frazier, Mr. Siegel stated that remote inspections applied mostly to water heaters and a few rough-in inspections. Remote inspections were only conducted at the request of a master plumber after consideration and approval by the department. These provisions were not intended to expire after the coronavirus (COVID-19) pandemic. The department would not authorize a remote inspection if there was a possibility of fraud or a cross-connection between water and sewer lines.

Representative Frazier stated that she had concerns about this administrative regulation because, even for a water heater inspection, there seemed to be the potential for fraud. Representative Frazier made a motion to find this administrative regulation deficient.

In response to a question by Co-Chair West, Representative Frazier withdrew her motion to find this administrative regulation deficient.

In response to a question by Co-Chair West, Mr. Siegel agreed to defer consideration of this administrative regulation to the February 2021 meeting of this subcommittee. A motion was made and seconded to defer consideration of this administrative regulation to the February 2021 meeting of this subcommittee. Without objection, and with agreement of the agency, this administrative regulation was deferred.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Inspector General: Health Services and Facilities

902 KAR 20:160 & E. Chemical dependency treatment services and facility specifications.

902 KAR 20:440 & E. Facilities specifications, operation and services; residential crisis stabilization units.

Department for Public Health: Food and Cosmetics

902 KAR 45:190. Hemp-derived cannabidiol products and labeling requirements.

Department for Medicaid Services: Behavioral Health

907 KAR 15:070 & E. Coverage provisions and requirements regarding services provided by residential crisis stabilization units.

907 KAR 15:080 & E. Coverage provisions and requirements regarding chemical dependency treatment center services.

Department for Community Based Services: Supplemental Nutrition Assistance Program

921 KAR 3:035 & E. Certification process. Laura Begin, regulation coordinator; Donna Little, deputy executive director, Office of Legislative and Regulatory Affairs; and Paula Saenz, branch manager, represented the department.

In response to questions by Co-Chair West, Ms. Begin stated that this administrative regulation lengthened the certification period for SNAP benefits, especially during the coronavirus (COVID-19) pandemic. Certification errors might have caused SNAP benefits to be terminated inappropriately during a time of food scarcity. This administrative regulation made a conforming amendment to delete a cross-reference citation related to the administrative regulation that allowed a noncustodial parent who owed child support to continue to receive SNAP benefits. That administrative regulation had been found deficient by the Interim Joint Committee on Health, Welfare, and Family Services on September 23, 2020. The intent of the legislature was that noncustodial parents who owed child support were to stop receiving SNAP benefits; however, that administrative regulation, although it had been found deficient, was still effective. This administrative regulation included a citation deletion related to the one found deficient, but was filed prior to the finding of deficiency.

In response to questions by Co-Chair Hale, Ms. Begin stated that she did not readily have information regarding how many new Kentuckians became eligible for SNAP during the coronavirus (COVID-19) pandemic; however, she would provide the subcommittee with that information. Ms. Little stated that this administrative regulation included a deleted cross-reference

citation related to the administrative regulation that was found deficient. This administrative regulation was filed prior to the finding of deficiency. Subcommittee staff previously stated that this cross reference could not be corrected via the technical amendment process because it would constitute a substantive change; therefore, this administration had been filed through the standard process to make this correction.

In response to a question by Co-Chair West, Ms. Little stated that the department agreed to defer consideration of this administrative regulation to the February 2021 meeting of the subcommittee.

A motion was made and seconded to approve the following amendments: to amend Section 8 and material incorporated by reference to make technical corrections. Without objection, and with agreement of the agency, the amendments were approved.

A motion was made and seconded to defer consideration of this administrative regulation to the February 2021 meeting. Without objection, and with agreement of the agency, this administrative regulation was deferred.

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.

NONE

CUMULATIVE SUPPLEMENT

Unless otherwise noted, information contained in these indexes relates only to administrative regulations printed in this, the 47th year of the *Administrative Register of Kentucky*, from July 2020 through June 2021.

Locator Index - Effective Dates

H - 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

H- 14

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

H - 25

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

H - 26

A list of administrative regulations that have had technical, non-substantive amendments made during this Register year. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.2255(2), 13A.312(2), or 13A.320(1)(d). Because these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published in the Administrative Register of Kentucky; however, they are usually available for a short time on the Legislative Research Commission’s Web site.

Subject Index

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A general index of administrative regulations published during this Register year, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Administrative regulations published in previous Register years may appear in this index if a regulation had not completed the KRS Chapter 13A review process by the beginning of *Register* year 47. The "Register number" or "Ky.R. number" is listed the first time a regulation is published during that Register year. Once the regulation has been published in another *Register* year, the new Ky.R. number will appear next to the page number entry. To view versions of regulations published in 45 Ky.R. or 46 Ky.R., please visit our online *Administrative Registers of Kentucky*.

SYMBOL KEY:

- * Statement of Consideration not filed by deadline
- ** Withdrawn, deferred more than twelve months (KRS 13A.300(2)(e) and 13A.315(1)(d))
- *** Withdrawn before being printed in Register
- IJC Interim Joint Committee
- (r) Repealer regulation: KRS 13A.310(3)-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

EMERGENCY ADMINISTRATIVE REGULATIONS

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

009 KAR 001:040E	47 Ky.R. 8	6-9-2020
Replaced	91	1-5-2021
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
Withdrawn		1-15-2021
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 002:320E	47 Ky.R. 1527	1-13-2021
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	12-15-2020
902 KAR 002:190E	47 Ky.R. 266	7-10-2020
Withdrawn		8-10-2020
902 KAR 002:210E	47 Ky.R. 508	8-10-2020
Withdrawn		1-5-2021
902 KAR 002:211E	47 Ky.R. 1533	1-5-2021
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	13-19-2020
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
Resubmitted	1535	1-15-2021
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	1-5-2021
009 KAR 001:040		
Amended	47 Ky.R. 91	1-5-2021
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		

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Amended	47 Ky.R. 95		As Amended	2597	6-30-2020
As Amended	700	11-18-2020	016 KAR 003:090		
012 KAR 001:125			Amended	47 Ky.R. 355	
Amended	47 Ky.R. 96		As Amended	937	
As Amended	700	11-18-2020	016 KAR 005:020		
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 001:160	47 Ky.R. 1710	
As Amended	1252		103 KAR 002:005		
012 KAR 005:030			Amended	46 Ky.R. 2104	
Amended	47 Ky.R. 744		As Amended	2601	6-30-2020
As Amended	1353		103 KAR 026:080		
012 KAR 005:040			Amended	46 Ky.R. 1919	6-2-2020
Amended	47 Ky.R. 745		103 KAR 026:100		
As Amended	1353		Amended	47 Ky.R. 1610	
012 KAR 005:050			103 KAR 026:110		
Amended	47 Ky.R. 747		Amended	46 Ky.R. 1282	4-1-2020
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012 KAR 005:060			Amended	46 Ky.R. 1920	
Amended	47 Ky.R. 749		As Amended	2389	6-2-2020
As Amended	1356		103 KAR 027:020		
012 KAR 005:070			Amended	46 Ky.R. 1922	
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As Amended	1356		103 KAR 027:080		
013 KAR 001:050			Amended	46 Ky.R. 1284	4-1-2020
Amended	46 Ky.R. 2977		103 KAR 027:100		
As Amended	47 Ky.R. 515	12-1-2020	Amended	46 Ky.R. 1285	4-1-2020
013 KAR 004:010			103 KAR 027:120		
Amended	46 Ky.R. 1913		Amended	46 Ky.R. 1923	
Am Comments	2458		As Amended	2391	6-2-2020

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103 KAR 028:090			201 KAR 009:230		
Amended	46 Ky.R. 1288	4-1-2020	Amended	47 Ky.R. 369	11-19-2020
103 KAR 030:170			201 KAR 009:240		
Amended	46 Ky.R. 2105	6-30-2020	Amended	47 Ky.R. 371	11-19-2020
103 KAR 040:050			201 KAR 009:260		
Amended	46 Ky.R. 2107	6-30-2020	Amended	47 Ky.R. 374	
103 KAR 043:100			As Amended	944	11-19-2020
Repealed	46 Ky.R. 1996	6-2-2020	201 KAR 009:270	46 Ky.R. 2294	
103 KAR 043:101(r)	46 Ky.R. 1996	6-2-2020	Am Comments	2790	
105 KAR 001:149	46 Ky.R. 1997		As Amended	2881	8-26-2020
As Amended	2391	6-2-2020	Amended	47 Ky.R. 1057	
Amended	47 Ky.R. 753		Withdrawn		1-4-2021
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105 KAR 001:250			201 KAR 009:360	47 Ky.R. 473	
Amended	46 Ky.R. 1925		As Amended	948	11-19-2020
As Amended	2395	6-2-2020	201 KAR 012:030	46 Ky.R. 2298	
105 KAR 001:445	46 Ky.R. 2001		As Amended	2884	
As Amended	2396	6-2-2020	As Amended	47 Ky.R. 522	7-30-2020
200 KAR 017:100	47 Ky.R. 1712		201 KAR 012:060	46 Ky.R. 2302	
201 KAR 002:050	46 Ky.R. 2682		As Amended	2887	7-30-2020
201 KAR 002:095			201 KAR 012:082	46 Ky.R. 2303	
Amended	45 Ky.R. 3405		As Amended	2888	7-30-2020
As Amended	46 Ky.R. 2881	7-3-2020	201 KAR 012:100		
201 KAR 002:105			Amended	46 Ky.R. 2489	
Amended	47 Ky.R. 119		As Amended	2891	7-30-2020
Am Comments	985		201 KAR 012:140	46 Ky.R. 2307	
As Amended	1361		As Amended	2894	7-30-2020
201 KAR 002:106			201 KAR 012:260	46 Ky.R. 2308	
Amended	47 Ky.R. 123		As Amended	2895	7-30-2020
As Amended	1364		201 KAR 014:035		
201 KAR 002:175	46 Ky.R. 2683		Amendment	47 Ky.R. 758	
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201 KAR 002:225			201 KAR 014:070		
Amended	47 Ky.R. 362		Amendment	47 Ky.R. 760	
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201 KAR 002:230	46 Ky.R. 2292		201 KAR 014:095		
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201 KAR 002:320			201 KAR 014:130		
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201 KAR 005:140	47 Ky.R. 606		As Amended	1373	
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201 KAR 006:100	46 Ky.R. 3064	9-23-2020	Amendment	47 Ky.R. 768	
201 KAR 008:550			As Amended	1373	
Amended	46 Ky.R. 1928		201 KAR 016:012(r)	46 Ky.R. 2161	6-30-2020
Am Comments	2646		201 KAR 016:500	46 Ky.R. 1720	
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201 KAR 008:590	46 Ky.R. 2355		201 KAR 016:510	46 Ky.R. 1723	
As Amended	47 Ky.R. 52	7-29-2020	Am Comments	2460	
201 KAR 009:016			As Amended	2604	6-30-2020
Amended	47 Ky.R. 364		201 KAR 016:512	46 Ky.R. 1725	
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201 KAR 009:081			As Amended	2605	6-30-2020
Amended	47 Ky.R. 1053		201 KAR 016:514	46 Ky.R. 1726	
As Amended	1540		Am Comments	2463	
201 KAR 009:200			As Amended	2606	6-30-2020
Amended	47 Ky.R. 366		201 KAR 016:516	46 Ky.R. 1728	
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201 KAR 009:210			As Amended	2608	6-30-2020
Amended	47 Ky.R. 368		201 KAR 016:520	46 Ky.R. 1730	
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201 KAR 016:540	46 Ky.R. 1732		As Amended	1553	
Am Comments	2466		201 KAR 020:057	46 Ky.R. 2684	
As Amended	2610	6-30-2020	As Amended	47 Ky.R. 53	7-29-2020
201 KAR 016:550	46 Ky.R. 1735		201 KAR 020:065		
Am Comments	2468		Amended	46 Ky.R. 2984	
As Amended	2611	6-30-2020	As Amended	47 Ky.R. 525	
201 KAR 016:560	46 Ky.R. 1736		As Amended IJC	1194	11-19-2020
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201 KAR 016:570	46 Ky.R. 1738		Amended	47 Ky.R. 553	12-15-2020
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201 KAR 016:572	46 Ky.R. 1740		Amended	46 Ky.R. 2987	
Am Comments	2472		201 KAR 020:161		
As Amended	2615	6-30-2020	Amended	47 Ky.R. 555	12-15-2020
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Am Comments	2474		As Amended	47 Ky.R. 56	7-29-2020
As Amended	2616	6-30-2020	201 KAR 020:230	46 Ky.R. 2690	
201 KAR 016:590	46 Ky.R. 1743		As Amended	47 Ky.R. 57	7-29-2020
Am Comments	2475		201 KAR 020:320		
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201 KAR 016:600	46 Ky.R. 1745		Amended	2691	
Am Comments	2477		Amended	47 Ky.R. 769	
As Amended	2618	6-30-2020	201 KAR 020:370		
201 KAR 016:610	46 Ky.R. 1747		Amended	46Ky.R. 2691	
As Amended	2620	6-30-2020	As Amended	47 Ky.R. 58	7-29-2020
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201 KAR 019:225	47 Ky.R. 610		As Amended	47 Ky.R. 59	7-29-2020
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201 KAR 019:230	47 Ky.R. 612		Amended	46 Ky.R. 2992	
As Amended	1544		As Amended	47 Ky.R. 527	9-23-2020
201 KAR 019:235	47 Ky.R. 613		201 KAR 020:600	46 Ky.R. 2162	
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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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158.140	704 KAR 003:305		922 KAR 002:250
158.142	704 KAR 003:305	186	922 KAR 002:120
158.160	902 KAR 002:220	186.050	601 KAR 001:113
158.240	702 KAR 007:125E	186.010	601 KAR 002:232
158.4410	702 KAR 001:180	186.115	601 KAR 023:030
158.4412	702 KAR 001:180	186.200	601 KAR 023:030
158.442	702 KAR 001:180	186.440	601 KAR 002:232
158.443	702 KAR 001:180	186.442	601 KAR 002:232
158.444	702 KAR 001:180	186.480	601 KAR 002:232
158.645	704 KAR 003:305	186.531	601 KAR 002:232
	704 KAR 008:090	186.560	601 KAR 002:232
	704 KAR 008:100	186.570	601 KAR 002:232
	704 KAR 008:110	186A.070	601 KAR 023:030
158.6451	704 KAR 003:303	186A.120	601 KAR 023:030
	704 KAR 008:090	186A.130	601 KAR 023:030
	704 KAR 008:100	186A.165	601 KAR 023:030
	704 KAR 008:110	186A.170	601 KAR 023:030
158:6453	703 KAR 005:280	186A.520	601 KAR 023:030
	704 KAR 003:303	189.125	922 KAR 002:120
	704 KAR 008:110	189.290	601 KAR 001:113
158.6455	703 KAR 005:280	189.540	702 KAR 005:080
158.649	701 KAR 008:020	189A.005	601 KAR 002:232
158.782	703 KAR 005:280	189A.010	601 KAR 001:113
158.791	704 KAR 008:100		601 KAR 002:232
159.010	702 KAR 007:125E	189A.040	601 KAR 002:232

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189A.045	601 KAR 002:232	205.010	910 KAR 001:151
189A.070	601 KAR 002:232	205.2005	921 KAR 003:025
189A.085	601 KAR 002:231	205.201	910 KAR 001:151
	601 KAR 002:232	205.203	910 KAR 001:151
189A.090	601 KAR 002:232	205.204	910 KAR 001:151
189A.103	601 KAR 002:232	205.455	910 KAR 001:151
189A.105	601 KAR 002:232	205.460	910 KAR 001:151
189A.107	601 KAR 002:232	205.465	910 KAR 001:151
189A.200	601 KAR 002:232	205.520	907 KAR 003:250
189A.220	601 KAR 002:232		907 KAR 015:070E
189A.240	601 KAR 002:232		907 KAR 015:080
189A.250	601 KAR 002:232	205.560	907 KAR 001:604
189A.340	601 KAR 002:231	205.5605	907 KAR 003:250
	601 KAR 002:232	205.5606	907 KAR 003:250
189A.345	601 KAR 002:231	205.5607	907 KAR 003:250
	601 KAR 002:232	205.622	907 KAR 015:080
189A.350	601 KAR 002:232	205.6312	907 KAR 001:604
189A.370	601 KAR 002:232	205.6485	907 KAR 001:604
189A.400	601 KAR 002:232	205.712	601 KAR 002:232
189A.410	601 KAR 002:232	205.8451	907 KAR 001:604
189A.420	601 KAR 002:232	205.950	910 KAR 001:151
189A.440	601 KAR 002:232	205.955	910 KAR 001:151
194.540	201 KAR 032:060	209.030	908 KAR 001:400
194A.005	902 KAR 045:160		910 KAR 001:151
	908 KAR 001:400	210.005	902 KAR 020:160
	922 KAR 001:330		902 KAR 020:440
194A.010	921 KAR 004:116	210.053	908 KAR 002:270
194A.030	902 KAR 004:110	210.290	910 KAR 002:060
194A.050	900 KAR 011:011	210.366	201 KAR 032:060
	902 KAR 004:030		201 KAR 038:070
	902 KAR 010:030	211.015	902 KAR 010:140
	921 KAR 004:116	211.090	902 KAR 004:140E
	922 KAR 001:330		902 KAR 010:030
194A.060	910 KAR 001:151	211.180	902 KAR 002:020
	922 KAR 006:010		902 KAR 004:140E
	921 KAR 004:116		902 KAR 008:170
194A.070	908 KAR 001:400		902 KAR 095:040
	921 KAR 004:116	211.360	902 KAR 010:140
194A.700	910 KAR 001:151	211.375	902 KAR 010:140
196	501 KAR 006:070	211.684	922 KAR 001:330
	501 KAR 006:080	211.689	902 KAR 004:140E
	501 KAR 006:120	211.090	902 KAR 004:030
197	501 KAR 006:070		902 KAR 004:110
	501 KAR 006:080		902 KAR 050:050
	501 KAR 006:120		902 KAR 050:090
197.010	500 KAR 006:220	211.1751	902 KAR 008:160
198B.060	815 KAR 035:015	211.180	902 KAR 002:211E
198B.090	815 KAR 035:015		902 KAR 004:030
198B.260	902 KAR 020:160		902 KAR 004:110
199.011	922 KAR 001:520	211.220	902 KAR 010:160
	922 KAR 002:120	211.3103	902 KAR 095:040
	922 KAR 002:410E	211.350	815 KAR 035:015
	922 KAR 002:450E	211.350-211.380	922 KAR 002:120
199.570	922 KAR 001:450	211.357	902 KAR 010:110
199.894	922 KAR 002:120	211.360	902 KAR 010:110
	922 KAR 002:230		902 KAR 010:150
	922 KAR 002:410E		902 KAR 010:160
	922 KAR 002:450E	211.370	902 KAR 010:110
199.8951	922 KAR 002:120	211.375	902 KAR 010:110
199.896	922 KAR 002:120	211.380	902 KAR 010:110
	922 KAR 002:230	211.840-211.852	902 KAR 100:012
	922 KAR 002:240	211.9101	902 KAR 095:040
	922 KAR 002:410E	211.9107	902 KAR 095:040
199.8941	922 KAR 002:250	211.9119	902 KAR 095:040
199.8962	922 KAR 002:120	211.970	902 KAR 010:010
	922 KAR 002:450E		902 KAR 010:110
199.8982	922 KAR 002:240		902 KAR 010:140
199.898	922 KAR 002:120		902 KAR 010:150
200.115	922 KAR 001:520		902 KAR 010:160
200.503	902 KAR 020:440		902 KAR 010:170
200.700	902 KAR 004:140E	211.972	902 KAR 010:160
202A.011	922 KAR 001:330		902 KAR 010:170
202A.241	902 KAR 020:160	211.974	902 KAR 010:150
204.1-050	806 KAR 009:370		902 KAR 010:160

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211.976	902 KAR 010:170	216B.332	900 KAR 006:115
	902 KAR 010:110	216B.400	802 KAR 003:010
	902 KAR 010:150	216B.990	900 KAR 006:080
	902 KAR 010:160		900 KAR 006:090
211.981	902 KAR 010:150		900 KAR 006:095
	902 KAR 010:160		900 KAR 006:105
	902 KAR 010:170		900 KAR 006:110
211.990	902 KAR 010:010		900 KAR 006:115
	902 KAR 010:110		902 KAR 020:160
	902 KAR 010:140	217	922 KAR 002:120
	902 KAR 100:012	217.005-217.205	902 KAR 045:160
211.995	902 KAR 010:170	217.005-217.215	902 KAR 050:032
212.025	902 KAR 008:170	217.015	201 KAR 002:225
212.120	902 KAR 008:170		201 KAR 005:140
212.230	902 KAR 008:160		902 KAR 045:110
212.240	902 KAR 008:160		902 KAR 045:180
212.245	902 KAR 008:160		902 KAR 045:190
	902 KAR 008:170		902 KAR 050:010
212.890	902 KAR 008:160		902 KAR 050:031
	902 KAR 008:170	217.025	902 KAR 045:110
213.101	901 KAR 005:120		902 KAR 045:180
213.106	901 KAR 005:120		902 KAR 045:190
214.010	902 KAR 002:020		902 KAR 050:010
	902 KAR 002:211E		902 KAR 050:033
	902 KAR 002:220		902 KAR 050:090
214.020	902 KAR 002:220	217.035	902 KAR 045:110
214.036	922 KAR 001:330		902 KAR 045:180
214.155	902 KAR 004:030		902 KAR 045:190
214.610	201 KAR 009:360		902 KAR 050:010
214.620	201 KAR 009:360		902 KAR 050:080
214.645	902 KAR 002:020	217.037	902 KAR 045:110
	902 KAR 002:211E		902 KAR 045:180
215.520	902 KAR 002:020		902 KAR 045:190
216.787	910 KAR 001:151		902 KAR 050:080
216B.010	902 KAR 020:160	217.045	902 KAR 050:033
216B.010-216B.130	900 KAR 005:020	217.085	902 KAR 045:110
216B.015	802 KAR 003:010		902 KAR 045:180
	900 KAR 006:030	217.095	902 KAR 045:110
	900 KAR 006:055		902 KAR 045:180
	900 KAR 006:060	217.125	902 KAR 045:110
	900 KAR 006:065	217.155	902 KAR 045:110
	900 KAR 006:080		902 KAR 045:180
	900 KAR 006:090		902 KAR 045:190
	900 KAR 006:095	217.182	201 KAR 005:140
	900 KAR 006:100	217.215	902 KAR 045:160
	900 KAR 006:105	217.290-217.390	902 KAR 045:160
	900 KAR 006:115	217.811	902 KAR 045:110
	902 KAR 002:020	217.990-217.992	902 KAR 045:160
	902 KAR 020:160	217B	302 KAR 050:021
216B.020	900 KAR 006:080		302 KAR 050:045
	900 KAR 006:090		302 KAR 050:056
	900 KAR 006:105	217C	902 KAR 050:120
	900 KAR 006:115	217C.010-217C.990	902 KAR 050:032
216B.040	900 KAR 006:060		902 KAR 050:033
	900 KAR 006:065		902 KAR 050:040
	900 KAR 006:090	217C.010	902 KAR 050:031
216B.050	902 KAR 020:440		902 KAR 050:050
216B.061	900 KAR 006:080	217C.020	902 KAR 050:031
	900 KAR 006:095	217C.030	902 KAR 050:010
	900 KAR 006:105		902 KAR 050:080
	900 KAR 006:110	217C.050	902 KAR 050:071
	900 KAR 006:115	217C.060	902 KAR 050:031
216B.062	900 KAR 006:060		902 KAR 050:071
	900 KAR 006:065		902 KAR 050:080
	900 KAR 006:090		902 KAR 050:090
216B.065	900 KAR 006:110	217C.070	902 KAR 050:050
216B.066	900 KAR 006:110	217C.100	902 KAR 050:031
216B.085	900 KAR 006:065		902 KAR 050:090
216B.095	900 KAR 006:060	217C.990	902 KAR 050:031
	900 KAR 006:065		902 KAR 050:050
	900 KAR 006:090		902 KAR 050:080
216B.105	803 KAR 025:091	218A.172	201 KAR 009:260
	902 KAR 020:160	218A.202	201 KAR 009:230
	902 KAR 020:440		902 KAR 020:160

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218A.205	201 KAR 009:081	230.320	810 KAR 003:020
	201 KAR 009:200		810 KAR 004:030
	201 KAR 009:210		810 KAR 008:060
	201 KAR 009:240	230.330	810 KAR 003:020
	201 KAR 009:260		811 KAR 002:120
	201 KAR 009:360	230.361	810 KAR 001:011
	201 KAR 020:161		810 KAR 001:120
	201 KAR 025:011		811 KAR 001:005
	201 KAR 025:021		811 KAR 001:125
	201 KAR 025:031		811 KAR 001:250
222.005	908 KAR 001:400		811 KAR 002:010
222.211	908 KAR 001:381		811 KAR 002:060
222.221	908 KAR 001:400		811 KAR 002:160
223.010	902 KAR 010:030	230.3615	810 KAR 001:011
223.020	902 KAR 010:030		810 KAR 001:120
223.030	902 KAR 010:030		811 KAR 001:125
	902 KAR 010:036		811 KAR 002:060
223.060	902 KAR 010:030	230.370	810 KAR 001:011
223.080	902 KAR 010:030		810 KAR 001:120
223.990	902 KAR 010:030		811 KAR 001:125
224.10-100	401 KAR 060:005		811 KAR 001:250
	401 KAR 061:036		811 KAR 002:060
	401 KAR 063:002		811 KAR 002:160
224.20-100	401 KAR 060:005	230.398	810 KAR 001:011
	401 KAR 061:036		810 KAR 001:120
	401 KAR 063:002		811 KAR 001:125
224.20-110	401 KAR 060:005		811 KAR 001:250
	401 KAR 061:036		811 KAR 002:060
	401 KAR 063:002		811 KAR 002:160
224.20-120	401 KAR 060:005	230.750	810 KAR 001:011
	401 KAR 061:036		810 KAR 001:120
	401 KAR 063:002		811 KAR 001:125
224.50-868	103 KAR 001:160		811 KAR 001:250
224.60-145	103 KAR 001:160		811 KAR 002:060
224A.011	200 KAR 017:100		811 KAR 002:160
224A.112	200 KAR 017:100	230.804	811 KAR 002:120
224A.11121	200 KAR 017:100	234.320	103 KAR 001:160
227.450	815 KAR 035:015	238.545	820 KAR 001:050
227.480	815 KAR 035:015	238.550	820 KAR 001:050
227.489	815 KAR 035:015	243.027	804 KAR 004:415
227.491	815 KAR 035:015	243.028	804 KAR 004:415
227.492	815 KAR 035:015	243.029	804 KAR 004:415
227.495	815 KAR 035:015	243.030	804 KAR 004:415
230	810 KAR 001:001	244.050	804 KAR 004:415
230.215	810 KAR 002:020	244.440	804 KAR 004:415
	810 KAR 003:020	244.585	804 KAR 004:415
	810 KAR 004:010	246	302 KAR 004:010
	810 KAR 004:030	246.030	302 KAR 022:150
	810 KAR 008:060	247.4453	902 KAR 050:010
	811 KAR 001:005	247.453	902 KAR 050:010
	811 KAR 001:125	250.021	012 KAR 001:116
	811 KAR 002:010		012 KAR 001:140
230.225	811 KAR 002:120		012 KAR 001:155
230.240	810 KAR 002:020	250.031	012 KAR 001:116
	810 KAR 004:030		012 KAR 001:140
	810 KAR 008:060	250.041	012 KAR 001:116
230.260	810 KAR 002:260		012 KAR 001:140
	810 KAR 003:020	250.051	012 KAR 001:116
	810 KAR 004:030		012 KAR 001:140
	810 KAR 008:060	250.061	012 KAR 001:116
230.265	810 KAR 008:060		012 KAR 001:140
230.280	810 KAR 003:020	250.071	012 KAR 001:116
230.290	810 KAR 003:020		012 KAR 001:140
	810 KAR 004:030	250.081	012 KAR 001:116
	810 KAR 008:060		012 KAR 001:120
230.300	810 KAR 001:011		012 KAR 001:125
	810 KAR 001:120		012 KAR 001:130
	810 KAR 003:020		012 KAR 001:140
	811 KAR 001:125		012 KAR 001:160
	811 KAR 001:250		012 KAR 001:170
	811 KAR 002:060		012 KAR 001:175
	811 KAR 002:160	250.091	012 KAR 001:116
230.310	810 KAR 003:020		012 KAR 001:140
	810 KAR 004:030	250.101	012 KAR 001:116

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250.111	012 KAR 001:140	304.1-070	806 KAR 010:030
	012 KAR 001:116	304.2-065	806 KAR 003:170
	012 KAR 001:140	304.2-205	806 KAR 007:035
	012 KAR 001:155	304.2-140	806 KAR 047:010
250.366	012 KAR 004:075	304.2-150	806 KAR 038:100
	012 KAR 004:080	304.2-160	806 KAR 002:060
	012 KAR 004:091	304.2-210-304.2-290	806 KAR 003:170
	012 KAR 004:100	304.2-250	806 KAR 038:100
	012 KAR 004:130	304.2-260	806 KAR 038:100
	012 KAR 004:170	304.2-270	806 KAR 038:100
250.371-250.451	012 KAR 004:080	304.2-290	806 KAR 006:010
	012 KAR 004:091	304.2-310	806 KAR 009:360
250.371-250.461	012 KAR 004:075		806 KAR 012:020
250.391	012 KAR 004:130	304.3-050	806 KAR 014:110
250.396	012 KAR 004:130	304.3-070	601 KAR 001:113
	012 KAR 004:140	304.3-120	806 KAR 003:170
250.401	012 KAR 004:130	304.3-125	806 KAR 003:170
250.406	012 KAR 004:110	304.3-240	806 KAR 003:170
250.411	012 KAR 004:170		806 KAR 006:100
257.020	302 KAR 022:150		806 KAR 012:010
257.030	302 KAR 022:150	304.3-241	806 KAR 003:170
257.080	302 KAR 022:150	304.3-270	806 KAR 014:007
257.990	302 KAR 022:150	304.4-010	806 KAR 002:095
258.005	902 KAR 008:160		806 KAR 009:025
258.065	902 KAR 002:020		806 KAR 009:370
258.990	902 KAR 002:020		806 KAR 014:005
260	302 KAR 050:013		806 KAR 014:007
	302 KAR 060:010	304.5-020	806 KAR 012:180
260.775-260.845	012 KAR 005:010	304.5-030	806 KAR 012:120
	012 KAR 005:020		806 KAR 012:180
	012 KAR 005:030	304.6-070	806 KAR 006:080
	012 KAR 005:040		806 KAR 006:100
	012 KAR 005:050	304.6-120	806 KAR 015:060
	012 KAR 005:060	304.6-130-304.6-180	806 KAR 006:010
	012 KAR 005:070	304.6-140	806 KAR 015:060
260.813	902 KAR 050:050	304.6-145	806 KAR 015:060
260.850-260.869	302 KAR 050:021	304.6-150	806 KAR 006:100
	302 KAR 050:031		806 KAR 015:060
	302 KAR 050:045	304.6-155	806 KAR 006:100
	302 KAR 050:056	304.6-171	806 KAR 006:100
	302 KAR 050:080	304.6-180	806 KAR 006:100
260.992	012 KAR 005:010	304.7-360	806 KAR 007:090
	012 KAR 005:020	304.7-361	806 KAR 007:035
	012 KAR 005:030	304.8-030	806 KAR 039:050
	012 KAR 005:040	304.8-040	806 KAR 008:010
	012 KAR 005:050	304.8-120	806 KAR 008:010
	012 KAR 005:060	304.9-020	806 KAR 009:030
	012 KAR 005:070		806 KAR 009:370
273.401	739 KAR 002:050		806 KAR 012:120
273.405-273.453	922 KAR 006:010		806 KAR 012:180
278	807 KAR 005:056	304.9-040	806 KAR 012:120
281.010	601 KAR 001:113	304.9-053	806 KAR 009:360
281.600	601 KAR 001:113	304.9-054	806 KAR 009:360
281.630	601 KAR 001:113	304.9-105	806 KAR 009:025
281.6301	601 KAR 001:113	304.9-130	806 KAR 009:025
281.631	601 KAR 001:113	304.9-133	806 KAR 009:360
281.640	601 KAR 001:113	304.9-135	806 KAR 009:190
281.650	601 KAR 001:113	304.9-150	806 KAR 009:025
281.655	601 KAR 001:113	304.9-160	806 KAR 009:025
281.656	601 KAR 001:113	304.9-230	806 KAR 009:025
281.990	601 KAR 001:113		806 KAR 009:370
281A.170-281A.175	702 KAR 005:080	304.9-260	806 KAR 009:025
286.3-030	806 KAR 009:190		806 KAR 009:370
304.1-010	806 KAR 012:010	304.9-270	806 KAR 009:025
	806 KAR 012:020	304.9-295	806 KAR 009:025
	806 KAR 013:020	304.9-320	806 KAR 009:025
	806 KAR 014:007	304.9-390	806 KAR 012:120
304.1-040	806 KAR 012:120	304.9-430	806 KAR 009:025
	806 KAR 012:180		806 KAR 009:030
304.1-050	806 KAR 003:170	304.9-440	806 KAR 012:020
	806 KAR 009:360	304.9-432	806 KAR 009:030
	806 KAR 012:020	304.9-440	806 KAR 009:030
	806 KAR 014:007	304.10-010	601 KAR 001:113
	806 KAR 046:040	304.10-030	806 KAR 010:030

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304.10-040	806 KAR 009:360	304.17C-010	806 KAR 014:007
	806 KAR 010:030	304.19-020	806 KAR 019:060
304.10-050	806 KAR 010:030	304.19-080	806 KAR 019:050
304.10-070	601 KAR 001:113		806 KAR 019:060
304.10-170	806 KAR 010:030	304.19-120	806 KAR 019:050
304.10-180	806 KAR 010:030	304.20-020	601 KAR 001:113
304.12-010	806 KAR 012:010	304.24-250	806 KAR 014:110
	806 KAR 012:020	304.24-310	806 KAR 014:110
	806 KAR 012:120	304.24-320	806 KAR 014:110
	806 KAR 012:150	304.24-330	806 KAR 014:110
	806 KAR 012:170	304.30-030	806 KAR 030:010
	806 KAR 012:180	304.30-060	806 KAR 030:070
	806 KAR 014:110	304.32-140	806 KAR 038:100
304.12-020	806 KAR 012:010	304.32-210	806 KAR 003:170
	806 KAR 012:020	304.35-040	806 KAR 003:170
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CERTIFICATION LETTER SUMMARIES

The certification process is established in KRS 13A.3104. If the certification letter states the regulation shall be amended, the administrative body shall file an amendment to the regulation within 18 months of the date the certification letter was filed. If the certification letter states that the regulation shall remain in effect without amendment, the last effective date of the regulation is changed to the date the regulations compiler received the letter.

* KRS 13A.010(6) - "Effective" or "eff." means that an administrative regulation has completed the legislative review process established by KRS 13A.290, 13A.330, and 13A.331.

Regulation Number	Letter Filed Date	Action
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

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The Technical Amendment Index is a list of administrative regulations that have had technical, nonsubstantive amendments made during the 47th year of the *Administrative Register of Kentucky*. These technical changes have been made by the Regulations Compiler pursuant to KRS 13A.040(9) and (10), 13A.2255(2), 13A.312(2), or 13A.320(1)(d). Since these changes were not substantive in nature, administrative regulations appearing in this index will NOT be published to show the technical corrections in the *Register*. NOTE: Technical amendments may be available online for a short period of time before finalized versions of the technically amended regulations are available. To view regulations on the Legislative Research Commission Web site go to <https://apps.legislature.ky.gov/law/kar/titles.htm>.

‡ - A technical change was made to this administrative regulation during the promulgation process, pursuant to KRS 13A.320(1)(e).
† - A nonsubstantive change was made by the Compiler pursuant to KRS 13A.040(9).

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201 KAR 006:050		11-09-2020		
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